



CITY COUNCIL MEETING

COUNCIL CHAMBERS, 33 SOUTH MAIN STREET, COLFAX, CA



MAYOR WILL STOCKWIN • MAYOR PRO TEM MARNIE MENDOZA
COUNCILMEMBERS • STEVE HARVEY • KIM DOUGLASS

REGULAR MEETING AGENDA

February 14, 2018

Closed Session 6:30 PM

Regular Session 7:00 PM

1. CLOSED SESSION

1A. **Call Closed Session to Order**

1B. **Roll Call**

1C. **Public Comment on Closed Session Item**

1D. **Closed Session**

Conference with Legal Counsel – existing litigation pursuant to Government Code Section 54956.9(d)(1): California Public Employees Relations Board Unfair Practice Charge Case No. SA-CE-1028-M.

2. CALL TO ORDER

2A. **Call Open Session to Order**

2B. **Report from Closed Session**

2C. **Pledge of Allegiance**

2D. **Roll Call**

2E. **Approval of Agenda Order**

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

RECOMMENDED ACTION: By motion, accept the agenda as presented or amended.

3. PRESENTATION

3A. **S. Auburn Street Roundabout Project Presentation**

Engineering Consultants – Omni-Means

4. CONSENT CALENDAR

Matters on the Consent Agenda are routine in nature and will be approved by one blanket motion with a Council vote. No discussion of these items ensues unless specific items are pulled for discussion and separate action. If you wish to have an item pulled from the Consent Agenda for discussion, please notify the Mayor.

RECOMMENDED ACTION: Approve Consent Calendar

4A. **Minutes – Regular meeting January 24, 2018**

Recommendation: Approve the Minutes of the Regular Meeting of January 24, 2018.

4B. **Building Department Report – 2017**

Recommendation: Receive and file.

5. PUBLIC COMMENT

Members of the audience are permitted to address the Council on matters of concern to the public within the subject matter jurisdiction of the City Council that are not listed on this agenda. Please make your comments as brief as possible; not to 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.



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.

February 14, 2018

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6. 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 Colfax related 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.

6A. **Committee Reports and Colfax Informational Items - All Councilmembers**

6B. **City Operations Update – City staff**

6C. **Additional Reports – Agency partners**

7. PUBLIC HEARING

NOTICE TO THE PUBLIC: City Council will take the following actions when considering a matter scheduled for hearing:	
1. Open the public hearing	2. Presentation by staff
3. Statement from applicant (if applicable)	4. Council comments and questions
5. Accept public testimony	6. Council comments and questions
7. Close public hearing. (No public comment is taken after the hearing is closed)	8. City Council action
Public hearings that are continued will be announced. The continued public hearing will be listed on a subsequent Council Meeting Agenda and posting of that agenda will serve as notice.	

7A. **Village Oaks Community Vesting Tentative Subdivision Map**

Recommendation: Adopt Resolution 07-2018: approving the Vesting Tentative Subdivision Map for the Village Oaks Community.

8. COUNCIL BUSINESS

8A. **Introduction of an Ordinance Establishing Commercial Cannabis Regulations**

Staff Presentation: Alfred A. “Mick” Cabral, City Attorney

Recommendation: Introduce the proposed ordinance by title only, waive the first reading and continue for a second reading, public hearing and possible adoption at the February 28, 2018 regular meeting.

8B. **Introduction of an Ordinance amending Colfax Municipal Code Chapter 17.162..**

Staff Presentation: Alfred A. “Mick” Cabral, City Attorney

Recommendation: Introduce the proposed ordinance by title only, waive the first reading and continue for a second reading, public hearing and possible adoption at the February 28, 2018 regular meeting.

8C. **Property Management Agreement**

Staff Presentation: Wes Heathcock, City Manager

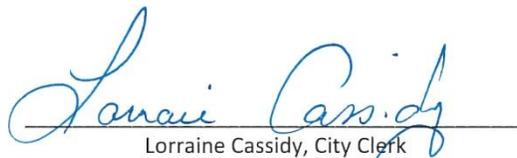
Recommendation: Adopt Resolution 08-2018 authorizing the City Manger to enter into a professional service agreement with Foothill Properties to set fair market rates, solicit tenants, and manage tenant contracts for City owned properties for a three year term with an option to renew for an additional two years.

9. GOOD OF THE ORDER - INFORMAL COUNCIL STATEMENTS REGARDING THE BUSINESS OF THE CITY

Informal observation reports and inquiries regarding the business of the City may be presented by Council members under this agenda item or requests for placement of items of interest on a future agenda. No action will be taken.

10. ADJOURNMENT

I, Lorraine Cassidy, City Clerk for the City of Colfax declare that this agenda was posted at Colfax City Hall and the Colfax Post Office. The agenda is also available on the City website at www.Colfax-ca.gov.


Lorraine Cassidy, City Clerk

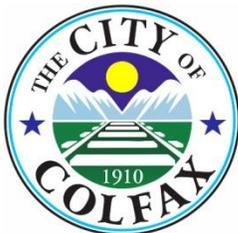
Administrative Remedies must be exhausted prior to action being initiated in a court of law. If you challenge City Council action in court, you may be limited to raising only those issues you or someone else raised at a public hearing described in this notice/ agenda, or in written correspondence delivered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



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February 14, 2018

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STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE FEBRUARY 14, 2018 COUNCIL MEETING

FROM: Wes Heathcock, City Manager
PREPARED BY: Dane Schilling, City Engineer
DATE: February 14, 2018
SUBJECT: Presentation for S. Auburn St. and I-80 Roundabout Project

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RECOMMENDED ACTION: Receive presentation and provide input on the S. Auburn St. & I-80 Roundabout Project

BACKGROUND AND DISCUSSION:

City Council, staff and interested parties have had numerous discussions regarding the operation of S. Auburn Street and facilitating access to properties in the vicinity of the Interstate 80 corridor. As a result, the City Council directed staff to investigate alternatives to improve the intersection of S. Auburn Street and the Interstate 80 on- and off-ramps (Project). The City Council authorized a feasibility analysis and an Intersection Control Evaluation (ICE) for traffic mitigation alternatives at the intersection. These studies concluded that a roundabout at this intersection would be the most cost-effective solution to traffic issues and at the same time will provide access to the undeveloped property at the intersection known as the Maidu Village property.

On September 15, 2017 staff issued a Request for Proposals (RFP) to engineering consultants to provide engineering design services for the roundabout. An evaluation committee consisting of City staff, PCTPA Staff, and City Engineering consultants reviewed the proposals submitted and determined that Omni-Means (Consultant) was the most qualified firm to design the Project. On November 8, 2017 City Council awarded a design contract to Omni-Means.

To date, Consultant has prepared a conceptual layout and a technical memorandum for the additional traffic analysis. The preliminary conceptual layout exhibit and conceptual grading exhibit are provided in the presentation.

Businesses in the immediate vicinity of the project were invited to a workshop on January 30, 2018. Staff discussed the project design and anticipated construction issues. Staff received many valuable comments and questions from business owners and operators. Questions ranged from pedestrian access, truck access, impacts during construction and timing of construction. As a direct result of provided, staff and consultant modified the conceptual design to include a

pedestrian crosswalk on the westerly leg of roundabout to provide more direct pedestrian access to businesses south of the intersection and along the east side of S. Auburn Street.

On February 7th, 2018, staff and Consultant hosted an open public meeting for the project before the regularly scheduled Council Meeting. A supplemental memorandum to the staff report will be provided at the Council Meeting to summarize public input from the meeting. It should also be noted, the next public meeting is scheduled for April 7th, 2018.

FISCAL IMPACT:

No fiscal impact at this time.

ATTACHMENTS:

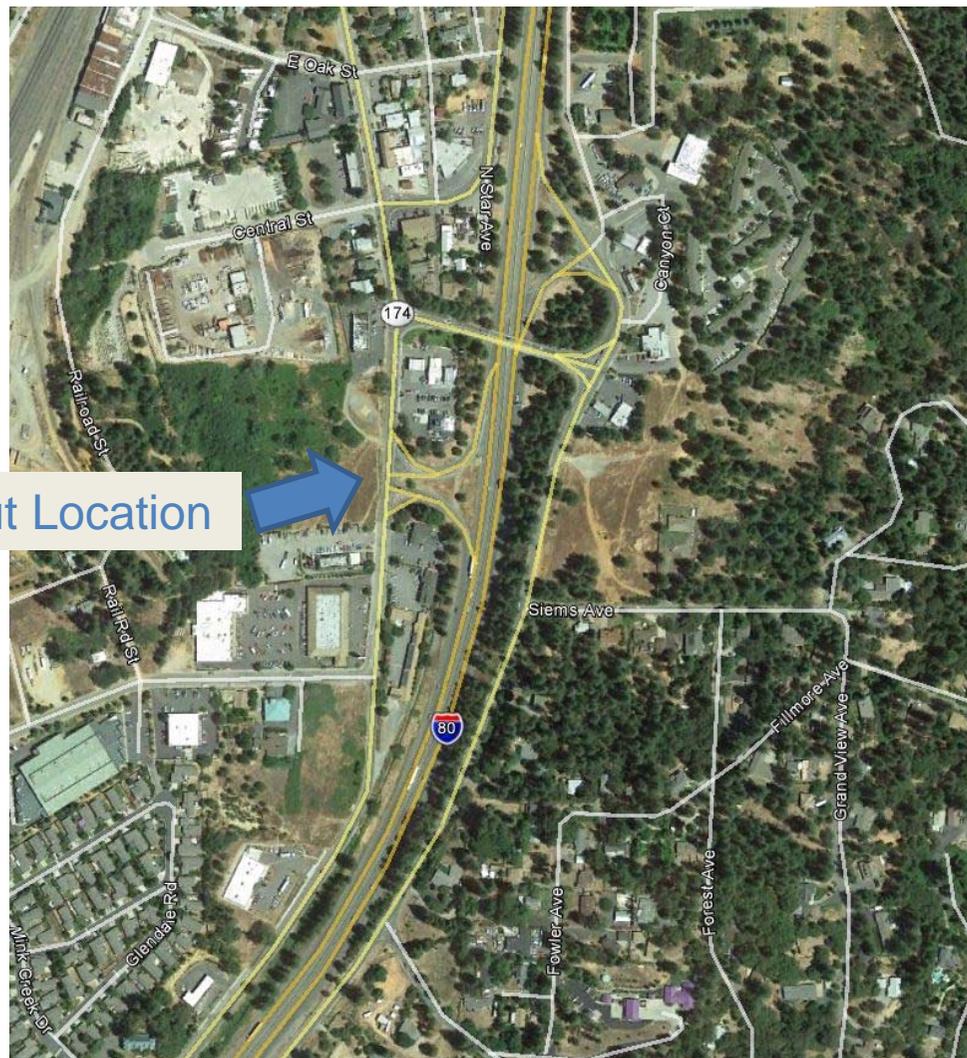
1. PowerPoint Presentation

S. Auburn Street and Interstate 80 Roundabout Project

Presentation to the
City of Colfax
City Council
February 14, 2018



Project Location

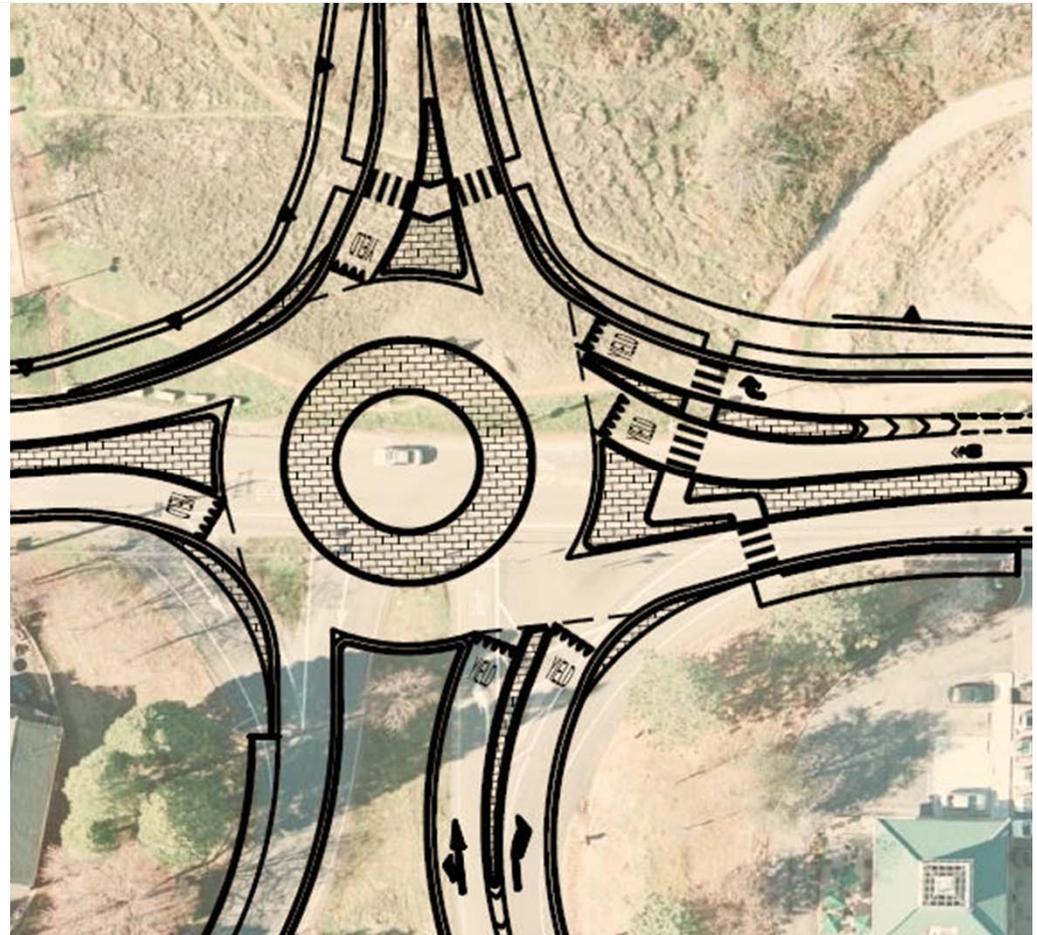


Future Roundabout Location

Project Purpose

Congestion Mitigation Air Quality Improvement Program Funds

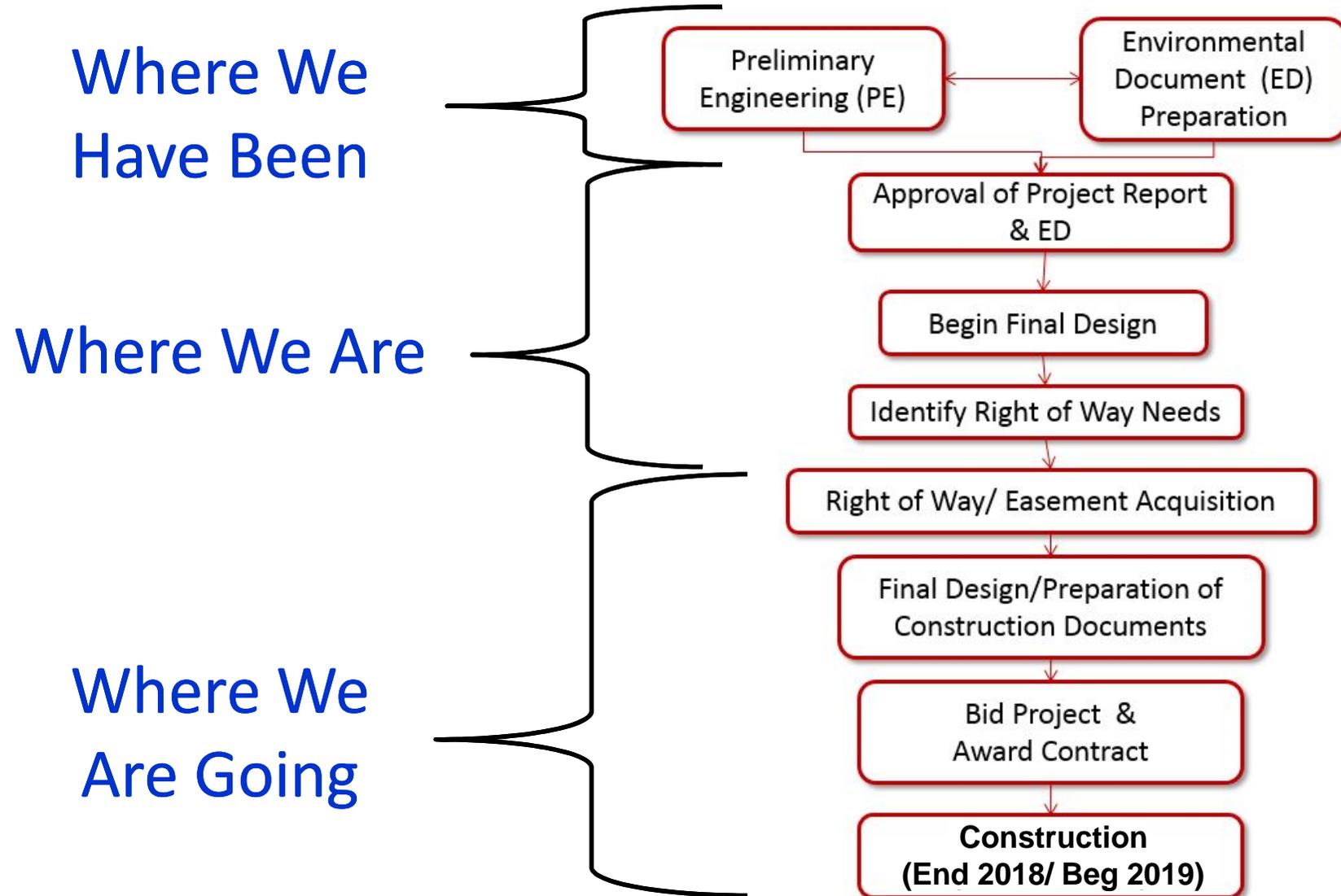
- Relieve Traffic Congestion
- Improve Traffic Safety
- Minimize Delay
- Improve Pedestrian and Bicycle Access
- Enhance Economic Vitality



Existing Conditions



Project Delivery Outline

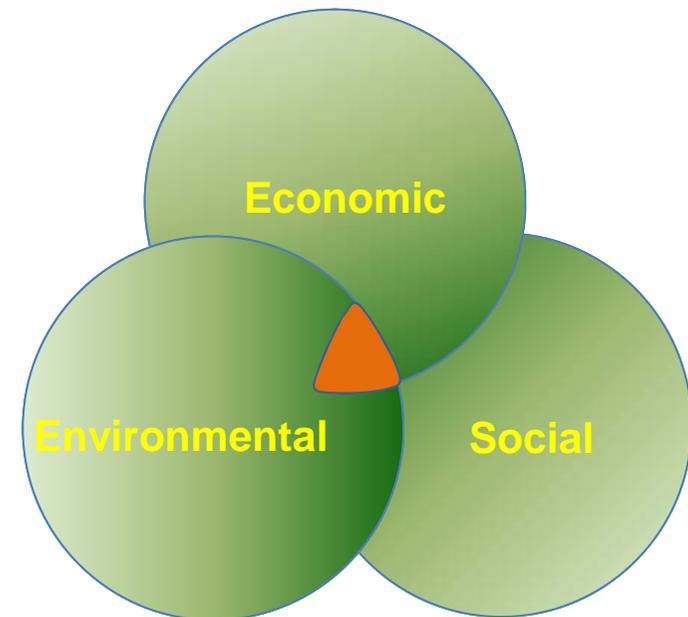


Why Roundabouts?

Sustainable Design

Consideration of Environmental, Economic and Social Issues in the Design of a Project:

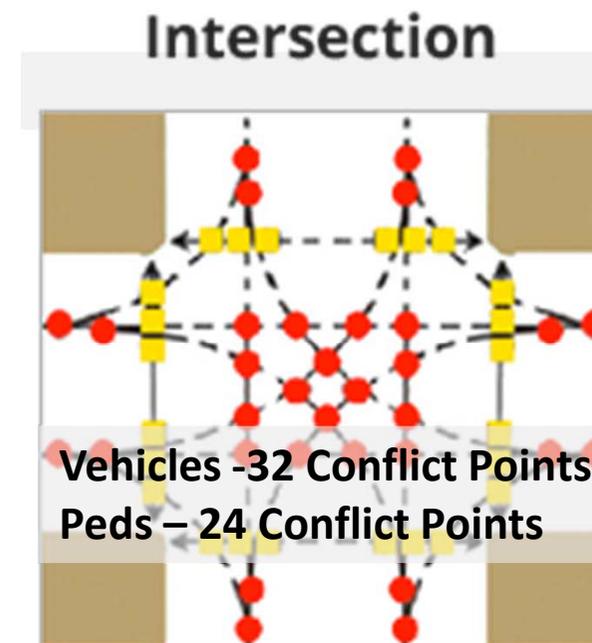
- Safety
- Delay
- Emissions
- Life Cycle Costs
- Consideration of All Users



Why Roundabouts?

Increased Safety

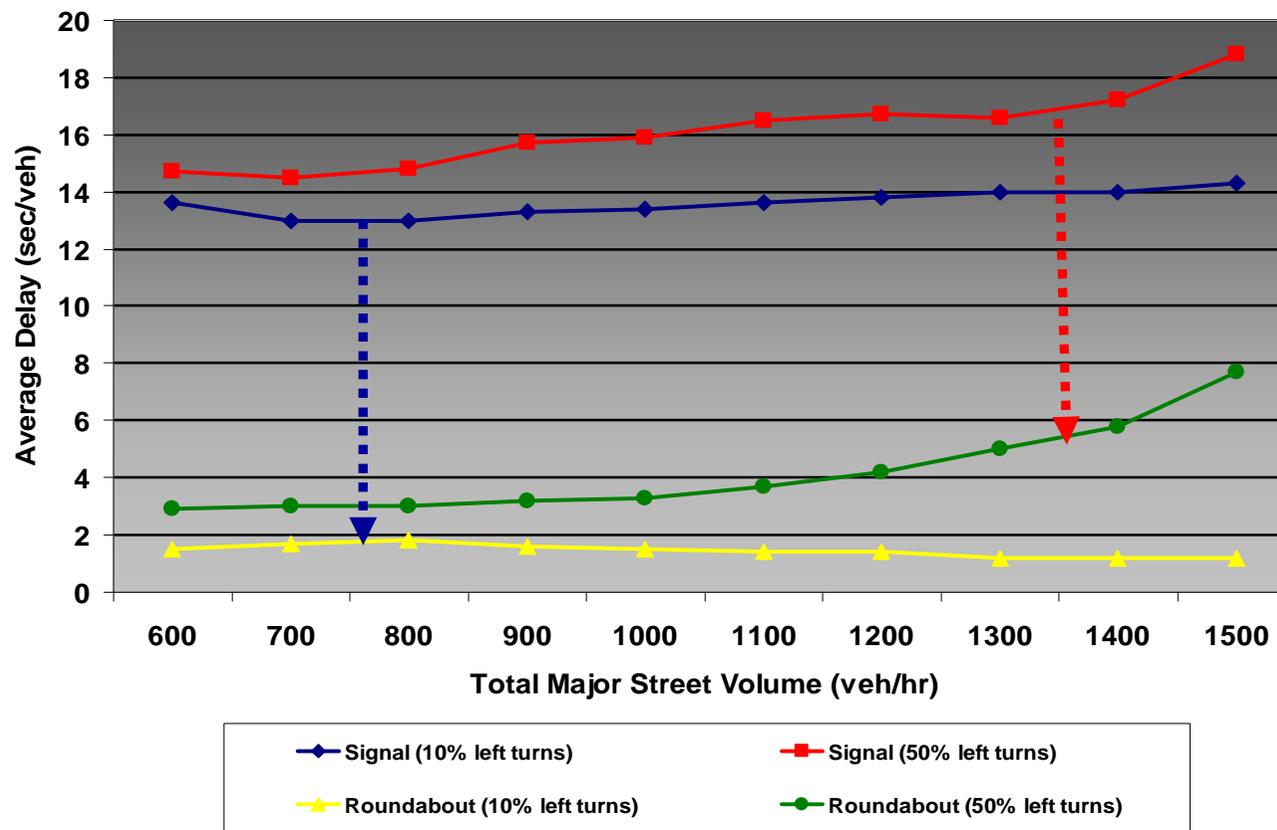
Conflict points on a regular 4-way intersection compared to a modern roundabout intersection



Why Roundabouts?

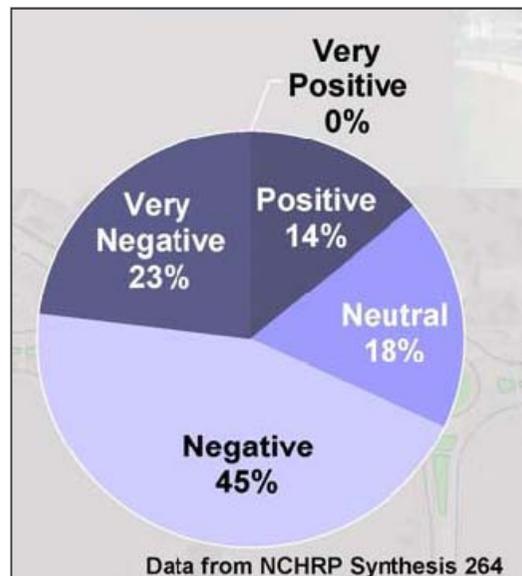
Increased Capacity & Reduced Delay

Average Delay per Vehicle at Traffic Signal as Compared to Roundabout

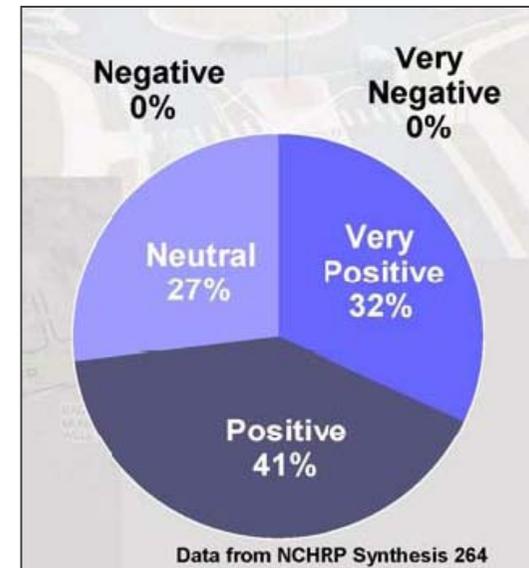


Public Opinion of Roundabouts

Before Roundabout Installation



After Roundabout Installation



Public Perception Changed from 68% Negative to 75% Positive after Installation

How To

Buses and Trucks



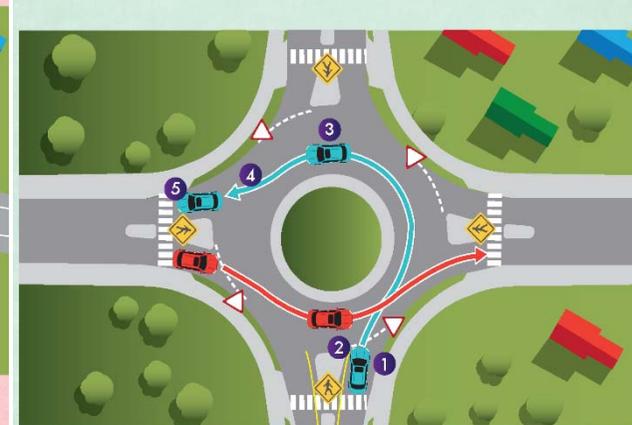
OVERSIZED VEHICLES CAN NAVIGATE ROUNDABOUTS SAFELY AND WITH EASE...

- 1 Have you ever heard of a "truck apron"? This feature allows for larger trailers to ride up a bit to ensure they can pass through the roundabout with ease.
- 2 Buses and other large passenger vehicles can use the striped median for extra turning room as they travel through the roundabout.

MOTORISTS GAIN EFFICIENCIES TOO!

- 3 Easy passing as the bus stops downstream of the roundabout.
- 4 No slow start for motorists after a red light... roundabouts keep traffic flowing for oversized vehicles.

Navigating a Roundabout



- 1 Slow down as you near the roundabout.
- 2 Look left and yield to vehicles that are approaching within the roundabout.
- 3 Now you're movin'... once you are in the roundabout you have the right-of-way.
- 4 Turn right to exit the roundabout when you reach your destination street.
- 5 Share the road: yield for pedestrians and cyclists as you enter and exit the roundabout.

Pedestrian Safety



- 1 You'll cross more quickly and safely.
- 2 You won't have to worry about speeding motorists, on average they're going about 20 MPH slower than in a traditional intersection.
- 3 Not your run of the mill island; this little break in crossing is plenty big to ensure your safety.
- 4 Stop to take in the landscaping.
- 5 Share this path with cyclists; it's wide enough to accommodate everyone!
- 6 Your path is clear with this guided crossing route.
- 7 You only need to look one way before you cross the entry or exit!

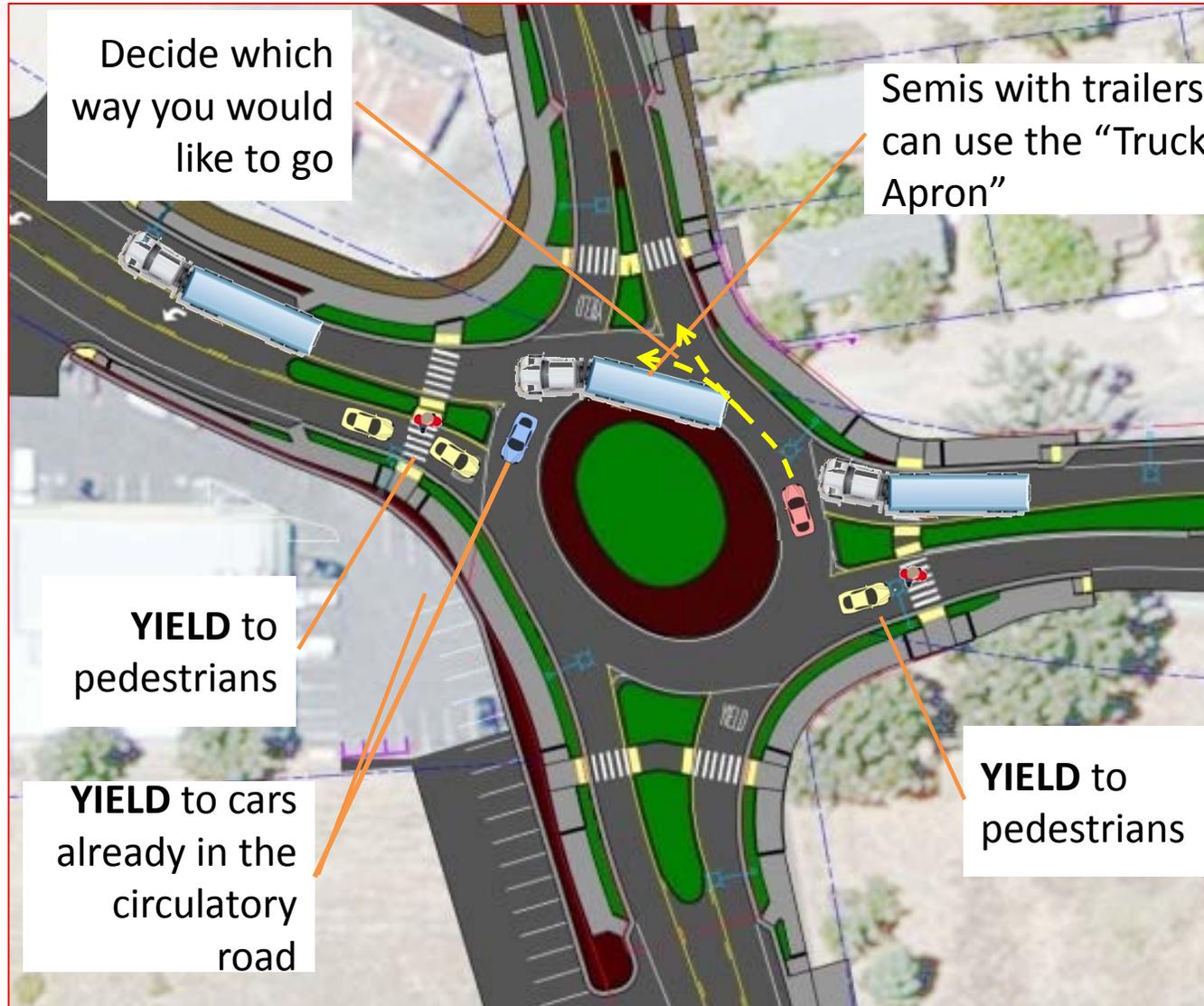
Navigating The Roundabout



Heavy Vehicles

Pedestrians

Cars



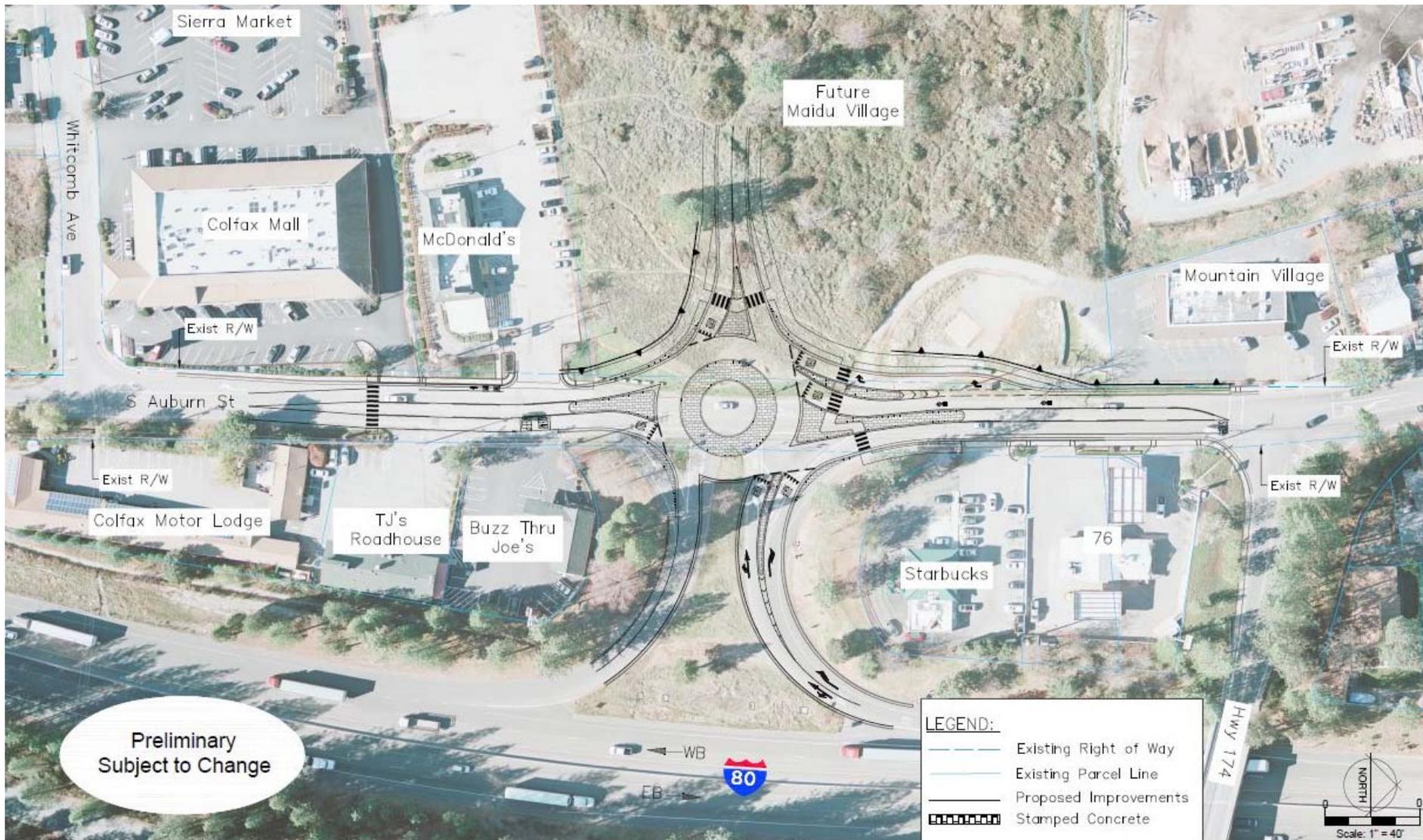
Decide which way you would like to go

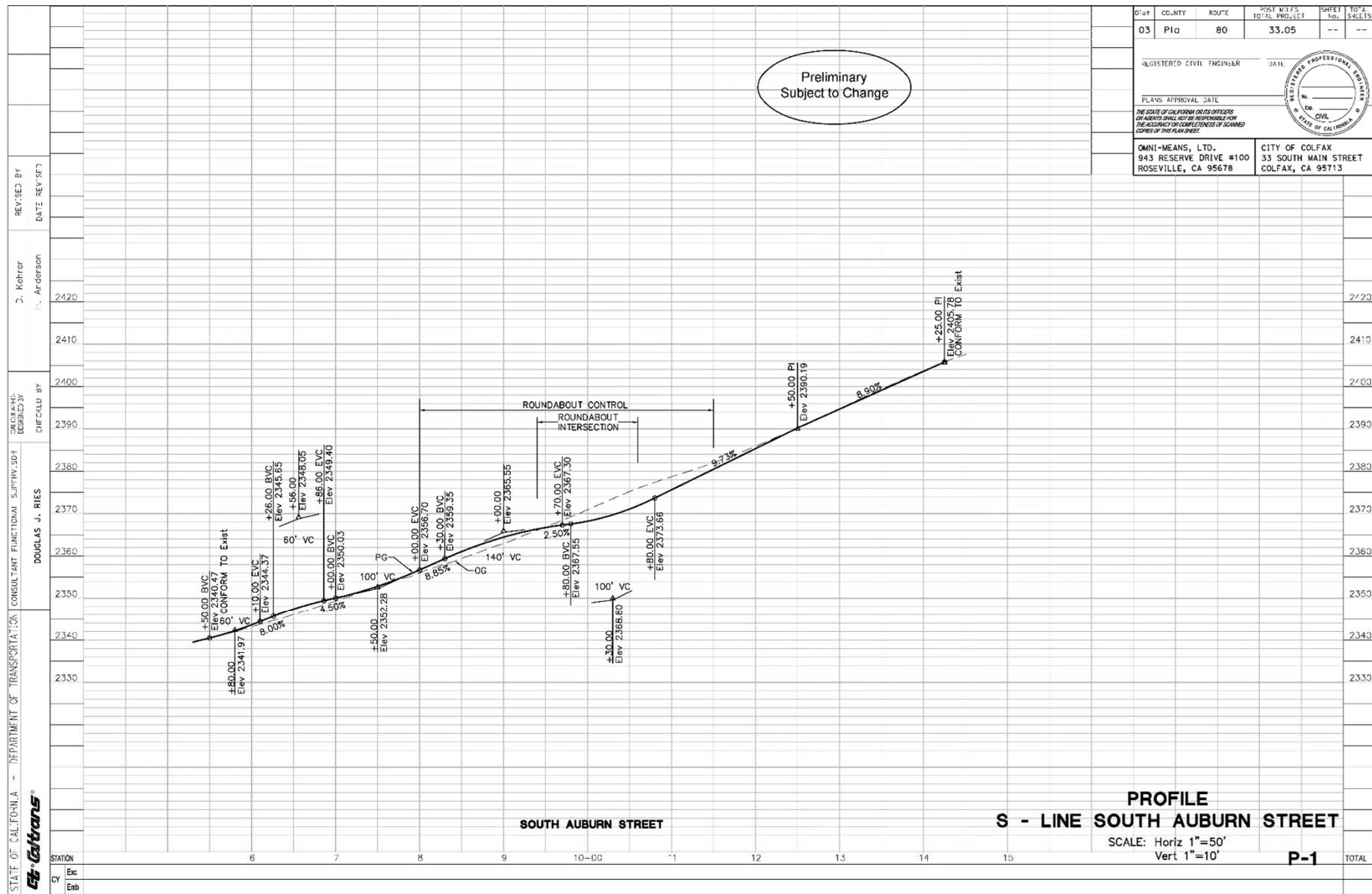
Semis with trailers can use the "Truck Apron"

YIELD to pedestrians

YIELD to cars already in the circulatory road

YIELD to pedestrians





STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION CONSULTANT FUNCTIONAL SUPPORTOR
Omni
 DOUGLAS J. RIES
 CHECKED BY
 D. Kottar
 H. Anderson
 REVISED BY
 DATE REVISED

STATION	Elev	Exc	Emb
6+00	2340.00		
6+50	2341.97		
7+00	2352.28		
7+50	2356.70		
8+00	2366.80		
8+50	2373.56		
9+00	2385.55		
9+50	2396.70		
10+00	2407.30		
10+50	2418.19		
11+00	2429.19		
11+50	2440.19		
12+00	2451.19		
12+50	2462.19		
13+00	2473.19		
13+50	2484.19		
14+00	2495.19		
14+50	2506.19		
15+00	2517.19		

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TO-A SHEETS
03	Plq	80	33.05	--	--
REGISTERED CIVIL ENGINEER		DATE			
PLANS APPROVAL DATE		DATE			
THE SEAL OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE REPRODUCED FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.					
OMNI-MEANS, LTD. 943 RESERVE DRIVE #100 ROSEVILLE, CA 95678			CITY OF COLFAX 33 SOUTH MAIN STREET COLFAX, CA 95713		

BORDER LAST REVISED 1/22/2018 | USERNAME => GJFR DGN FILE => RRFCLES1 | RELATIVE 80100R SCALE IS IN INCHES | UNIT 0000 | PROJECT NUMBER & PHASE 00000000001

2/9/2018



DATE PLOTTED => DATE
 SHEET PLOTTED => SHEET

Questions?





City of Colfax
 City Council Minutes
 Regular Meeting of Wednesday, January 24, 2018
 City Hall Council Chambers
 33 S. Main Street, Colfax CA

1 OPEN SESSION

1A. **Call to Order**

Mayor Stockwin called the open session to order at 6:59PM.

1B. **Pledge of Allegiance**

Wes Heathcock, City Manager, led the Pledge of Allegiance.

1C. **Roll Call**

Council members present: Douglass, Harvey, Mendoza, Stockwin

1D. **Approval of Agenda Order**

On a motion by Councilmember Harvey, seconded by Mayor Pro Tem Mendoza, the City Council approved the agenda order.

AYES: Douglass, Harvey, Mendoza, Stockwin

2 PRESENTATION

2A. **City of Colfax Audit Reports as of June 30, 2017**

Ingrid Shepline (Richardson and Co.), Auditor

Recommendation: Receive Audit Reports as of June 30, 2017 – Discuss and approve as appropriate.

Ms. Shepline gave highlights from the audit report. The City is in good financial health and she is able to report a “clean” audit which attests to the good work of Finance Director Laurie Van Groningen. The auditors recommend changing the reimbursement procedures for handling expenses with lost receipts – a minor adjustment in procedure.

City Manager Heathcock assured Council staff has already implemented a process to handle reimbursements in the case of missing receipts.

Councilmember Harvey asked why an Appropriations Limit calculation audit was not performed.

Ms. Shepline explained it is not necessary nor required by State law.

On a motion by Councilmember Harvey, seconded by Mayor Pro Tem Mendoza, the City Council approved the Audit Reports as of June 30, 2017.

AYES: Douglass, Harvey, Mendoza, Stockwin

2B. **Colfax High School Green Machine Introduction**

Andrea Harrison, President

Andrea Harrison and Melissa Bailey, Event Coordinator, handed out a brief introduction and explained the Green Machine raises funds to support sports and academic groups at Colfax High School. They also are helping with fundraising for the Skatepark and coordinate the 3rd of July event.

Council asked questions and thanked the Green Machine representatives for their efforts.

Sergeant Ty Conners was asked to give a brief update on the Skatepark. He stated the funds are at about \$45,000 cash and \$80,000 in in-kind donations.

3 CONSENT CALENDAR**3A. Minutes - Regular Meeting January 10, 2018****Recommendation:** Approve the Minutes of the Regular Meeting of January 10, 2018.**3B. Cash Summary Report – December 2017****Recommendation:** Receive and file.**3C. Quarterly Investment Report – Ending December 31, 2017****Recommendation:** Receive and file.**3D. Sales and Use Tax****Recommendation:** For information only.**3E. Every 15 Minutes Donation****Recommendation:** Authorize donating \$500 to the organizers of the Every 15 Minutes Program at Colfax High School in lieu of the budgeted donation to the cancelled 2017 Railroad Days event.**3F. South Auburn Street Hotel Development Proposal CEQA Document Preparation – Contract for Professional Services****Recommendation:** Authorize the City Manager to execute an agreement with the RCH Group for the S. Auburn Street hotel development in an amount not to exceed \$33,469.

Councilmembers pulled items 3D and 3F for discussion.

On a motion by Councilmember Harvey, seconded by Mayor Pro Tem Mendoza, Council approved Items 3A, 3B, 3C, and 3E of the Consent Calendar.

AYES: Douglass, Harvey, Mendoza, Stockwin

Item 3D – Sales and Use Tax

Councilmember Douglass pointed out the Agenda Packet contained no information for this report and had a duplicate of 3C instead. Staff handed out the correct information for Council's review.

On a motion by Councilmember Harvey, seconded by Mayor Pro Tem Mendoza, Council approved Item 3D of the Consent Calendar.

AYES: Douglass, Harvey, Mendoza, Stockwin

Item 3F South Auburn Street Hotel Development Proposal CEQA Document Preparation – Contract for Professional Services

Councilmember Douglass requested an explanation to the public regarding the funding for this contract.

City Manager Heathcock explained the contract is between the City and the contractor but paid for by the developer of the proposed hotel.

On a motion by Councilmember Harvey, seconded by Mayor Pro Tem Mendoza, Council approved Item 3F.

AYES: Douglass, Harvey, Mendoza, Stockwin

4 PUBLIC COMMENT*Chris Dion, Colfax resident*

- Mr. Dion spoke against allowing a new hotel at Whitcomb and S. Auburn, stating the historic hotel is vacant and should be used rather than developing a vacant parcel.
- He wanted to know if Council has had any public input regarding the roundabout and development a Maidu Village.
- He asked if City Attorney Cabral was responsible for the litigation about untreated water several years ago.

Council did not respond to Mr. Dion's questions. City Attorney Cabral explained only brief interaction is allowed during public comment or about any topic not posted on the agenda.

Karen Furry, Colfax Area Resident

- Ms. Furry asked how a member of the public can have a conversation with Council or get an item on the agenda if not during the public comment.

City Attorney Cabral explained items are placed on the agenda at the staff level. Council can direct staff to place an item on the agenda.

Mayor Stockwin stated State law precludes the Council from discussion or action on non-agenda items.

Ada Eschen, Owner of Blondies Yogurt

- Ms. Eschen spoke to Council and the public about changes to her menu since opening her restaurant in October. She now offers oatmeal, soups and baked goods to her customers. She invited everyone into her shop to try the treats and healthy items available.

5 COUNCIL, STAFF, AND OTHER REPORTS**5A. Committee Reports and Colfax Informational Items – All Councilmembers***Councilmember Harvey*

- Councilmember Harvey stated the ad hoc Cannabis Committee has begun preliminary evaluation of a new cannabis ordinance.
- He represented the City at the Placer County Transportation Planning Agency board meeting.

Mayor Pro Tem Mendoza

- Mayor Pro Tem Mendoza attended the New Councilmember's Conference hosted by the League of California Cities. It was a valuable learning experience.
- She continues to work with seniors in the area.

Councilmember Douglass

- Councilmember Douglass attended the Lions Club Crab Feed and the VFW 2nd Sunday Breakfast
- He represented the City at a Sierra Vista Community Center board meeting. The board is looking for a high school student to serve on the board.
- He also represented the City on the SACOG board, the Pioneer Energy board, and with Project Go.
- Councilmember Douglass and Mayor Pro Tem Mendoza will meet with the seniors at Canyon View Apartments to discuss the Pioneer Energy program.

Mayor Stockwin

- Mayor Stockwin spoke at the Regional Water Board Meeting about the proposed Centennial Dam. He also presented a letter which mirrors the letter submitted by Council last spring during the CEQA process for the proposed Nevada Irrigation District project.
- He represented the City at the Placer County Mosquito and Vector Control Board.
- He reported the area has 19.9 inches of rain this season.

5B. **City Operations – City Staff***City Manager Heathcock*

- City Manager Heathcock stated interviews for the part-time Customer Service Representative position will be next week and the deadline for the Community Services Director position has been extended to February 8, 2018.
- Staff has scheduled two informational meetings for the Roundabout. On January 30, 2018, staff and consultants will meet with the local business owners. On February 7, 2018 at 5:30PM the public is invited to a workshop in Council Chambers.

5C. **Additional Reports – Agency Partners***Sergeant Ty Conners, Placer County Sheriff Colfax Substation Commander*

- Sergeant Conners stated he appreciates the City Manager for notifying him of road closures and other information pertinent to law enforcement.
- He stated the substation volunteer program is being revamped to create more interaction with the public.

Officer Chris Nave, California Highway Patrol Gold Run Public Information Officer

- Officer Nave announced he will be conducting a safe winter driving course at Bass Pro Shops on February 11, 2018. In addition, on February 10, 2018 he will be available at Starbucks during the day to answer questions for snow travelers.
- The Every 15 Minutes program will be presented at Colfax High School on February 5 and 6, 2018.

Fred Abbott, City of Colfax Event Liaison

- Mr. Abbott stated a City-wide calendar meeting is scheduled for January 30, 2018 in Council Chambers. He is hoping representatives from every volunteer organization and church will attend. The Calendar will be posted on the City and the Chamber of Commerce websites.
- He has begun working with the Sierra Vista Community Center to publicize the Chocolate, Wine and Art Indulgence scheduled for April 28, 2018
- He will meet tomorrow in Auburn with the coordinators of Railroad Days.

Sharon Conners, Sierra Vista Community Center

- Ms. Conners announced upcoming events at the Community Center including Bingo the 1st Sunday of every month, a Spring Rock Painting class on February 10, 2018, a flea market on February 12, 2018 and the April 28, 2018 Chocolate Wine and Art Indulgence.

City Manager Heathcock mentioned that Mr. and Mrs. Furry recently toured the Wastewater Treatment Plant and tours are available to the public. Call City Hall to set up a time.

6 COUNCIL BUSINESS**6A. Agreement for Commercial Cannabis Consulting and Management Services**

Staff Presentation: Wes Heathcock, City Manager

Recommendation: Adopt Resolution 06-2018 authorizing the City Manager to enter into a consultant services agreement with HdL Companies to provide subject matter expertise and technical support, develop a Commercial Cannabis Regulatory ordinance, establish cost recovery fees, create a cannabis tax measure and conduct compliance and financial audits for the City of Colfax for a three year term with an option to renew for an additional two years.

City Manager Heathcock stated Council adopted Ordinance 534 regulating commercial cannabis activities in the City in November and at the same time created a cannabis subcommittee. The Committee met with HdL Companies representative David McPherson regarding services HdL can provide the City. These include writing a new ordinance allowing commercial cannabis retailers, establishing procedures, writing a tax measure to place on the ballot and managing commercial cannabis activities within the City. The committee is recommending the Council enter into an agreement with HdL for consultant and management services.

Councilmember Harvey stated the committee attended a very informative State workshop and quickly came to the realization that attempting to develop regulations for commercial cannabis activities in-house would be an overwhelming task.

Mayor Stockwin concurred implementing local regulations within the changing landscape of State regulations will be much better handled by experts. The Committee received a first draft of the proposed ordinance and spent two hours questioning Mr. McPherson about the contents. Although Mayor Stockwin was skeptical at first he was impressed Mr. McPherson was able to satisfactorily answer each of his questions.

Mr. McPherson gave Council a brief outline of HdL's qualifications – serving 100 California cities, successfully implementing over 40 ordinances and processing thousands of applications.

Council asked questions regarding payment to HdL. Mr. McPherson explained this contract has a cost recovery model. The City will not incur expenses until fees are received. The fee structure will include ongoing true costs: both HdL expenses and staff time.

Mr. Chris Dion stated he is opposed to allowing marijuana retailers in town.

Ms. Stacie Younggren asked if HdL will receive all of the receipts from fees.

City Manager Heathcock responded the contract is for a not-exceed-amount and the fee structure is still being defined. Some of the fees will recover staff time as well as HdL expenses.

On a motion by Councilmember Harvey, seconded by Mayor Stockwin, Council approved Resolution 06-2018 authorizing the City Manager to enter into a consultant services agreement with HdL Companies to provide subject matter expertise and technical support, develop a Commercial Cannabis Regulatory ordinance, establish cost recovery fees, create a cannabis tax measure and conduct compliance and financial audits for the City of Colfax for a three year term with an option to renew for an additional two years.

AYES: Douglass, Harvey, Mendoza, Stockwin

7 GOOD OF THE ORDER – INFORMAL COUNCIL STATEMENTS REGARDING THE BUSINESS OF THE CITY

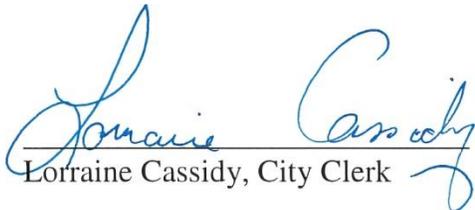
Councilmember Douglass noted that other California cities have millions of dollars of pension liability because they were not paying attention to these obligations. He gave thumbs up to staff for effectively monitoring this issue and keeping City liability low.

Councilmember Harvey suggested staff look into investing reserve funds into mutual funds. Council directed staff to explore this concept and report back to Council. City Attorney Cabral supported the concept but warned Council to be cautious. City Manager Heathcock suggested this could be discussed during a goal-setting workshop.

8 ADJOURNMENT

As there was no further business on the agenda, Mayor Stockwin adjourned the meeting at 8:09PM.

Respectfully submitted to City Council this 14th day of February, 2018


Lorraine Cassidy, City Clerk



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE FEBRUARY 14, 2018 COUNCIL MEETING

FROM: Wes Heathcock, City Manager
PREPARED By: Keith Bigbee, Building Inspector
DATE: January 24, 2018
SUBJECT: Building Department Year End Report for 2017

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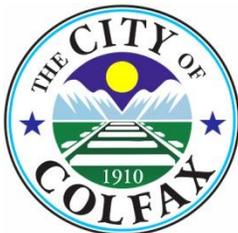
RECOMMENDED ACTION: Receive and file.

ISSUE STATEMENT AND DISCUSSION:

During the 2017 calendar year the Building Department issued 120 building permits. This was a 39.5% increase over the 86 issued in 2016. Of these permits, 75 were residential and 45 were for commercial buildings. The total valuation of the permits issued was \$1,317,167.19. No new commercial or residential buildings were constructed.

The total revenue for permits and plan reviews was \$27,984.86.
 In addition to building permits, 24 sewer lateral inspection permits were issued.

There are currently 20 open code enforcement cases from 2017.



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE FEBRUARY 14, 2018 COUNCIL MEETING

FROM: Wes Heathcock, City Manager
PREPARED BY: Amy Feagans, Planning Director
DATE: January 24, 2018
SUBJECT: Village Oaks Community Vesting Tentative Subdivision Map

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RECOMMENDED ACTION: Adopt Resolution No. 07-2018: approving the Vesting Tentative Subdivision Map for the Village Oaks Community.

PUBLIC NOTICE: This hearing has been noticed in accordance with the requirements of California Planning and Zoning Law, Title 7, Chapter 65000, Government Code, as amended. The project was originally noticed for the January 10, 2018 meeting but, at the applicant’s request, the item was continued to the February 14, 2018 meeting

PROJECT SUMMARY:

Project Title: Village Oaks Vesting Tentative Subdivision Map
 Applicant/Owner: Village Oaks Community LLC, a California limited liability company
 Project Location: Iowa Hill Road & Grandview Way, Colfax, CA
 Land Use (existing): Vacant
 Surrounding Land Uses
 North: Pinetop Apartments
 South: Large lot single-family residential (Placer County)
 East: Sierra Oaks Estates project site
 West: Commercial (Hills Flat Lumber)
 Assessor’s Parcel No: 101-170-029
 Zoning District: RM-1 (multifamily)
 GP Designation: Medium Density Residential

SURROUNDING LAND USES AND SETTING:

The 12.9-acre Village Oaks site is located on the south side of Iowa Hill Road east of Interstate 80 and Canyon Way. The site is bordered by the existing Pinetop Apartments to the northwest, commercial uses to the west and southwest, and rural residential uses to the north and south. To the east is the Sierra Oaks Estates project site.

PROJECT DESCRIPTION:

The project as proposed is to create a 39-lot single family subdivision in place of the previously approved 76 apartment units as Phase 2 of the Sierra Oaks development project.

Village Oaks Community, LLC proposes to develop a single-family residential project on APN 101-170-029, which contains 12.9-acres identified as Parcel 4 on the recorded 4-lot Pinetop Estates parcel map. This new project will consist of 39 single family lots ranging in size from approximately 5,300 square feet (Lot 31) up to 96,322 square feet (Lot 20) with the majority of the lots in the 6,500 – 8,500 square foot range. The three over-sized lots (Lots 6, 19 and 20) will most likely be developed as custom home sites to be constructed at a later date from the rest of the development. Like the rest of the project, these three lots will be part of a Homeowners Association (HOA) and subject to Covenants, Conditions and Restrictions (CC&Rs).

BACKGROUND:

In December 2016, the subject parcel was approved for 76 apartment units on 5-lots, and is now proposed for single-family development which is an allowed use in the RM-1 zoning district. That approval also included the approval of a vesting tentative map for a 34-lot single family residential development on Parcel 2 (Sierra Oaks Estates), immediately to the east. The public road improvements on Iowa Hill Road and the project entrance have been substantially completed.

In August 2017, the City entered into a reimbursement agreement with the developer/property owner (Attachment 4). This agreement included reimbursement for certain sewer upgrades that will benefit the City and also established a negotiated rate for some of the mitigation impact fees to be collected. Because the project has now changed, these rates were recalculated to determine the new fees for the revised project. The owner has requested that the same negotiated rates be applied to this new project. Staff has evaluated the difference in mitigation/impact fees based on the previously negotiated rates and has determined the fees to be collected satisfy the infrastructure needs based on the development impacts. The attached mitigation/impact fee analysis takes into account the change from 76 multifamily units to 39 single family lots (Attachment 5). Condition no. 11 and the First Amendment to the Agreement (Attachment 6) have been prepared to address the change from apartments to single family lots and these impact fees.

PROJECT ANALYSIS:General Plan/Zoning Consistency

The General Plan designation for the subject property is Medium Density residential. The Project, with a total of 39 homes on 12.9-acres is within the density range and appropriate development for the site conditions. The zoning RM-1 (Multifamily medium density) allows for single family development as a permitted use.

Vesting Tentative Subdivision Map

As proposed, the Vesting Tentative Subdivision Map (VTSM) creates 39 single family lots ranging in size from 96,322 square feet (Lot no. 6) to 5,300 square feet (Lot no.31) with most lots ranging between 6,500 – 8,500 square feet in size (Attachment 7).

Approval of a “vesting” tentative map would confer a vested right for the owner to proceed with development in substantial compliance with the ordinances, policies and standards in effect as of the date of approval, as described in Government Code Section 66474.2. These rights would expire one year after the recording date of the final map.

The proposed subdivision map and project description have been reviewed by City staff and outside agencies, and conditions have been incorporated into this report for approval.

These lots are intended to be developed with one and two story single family homes designed for families and first-time home buyers. Unlike the Sierra Estates project, which is designed for the “empty nester” buyer, these home sites will be fenced and maintained by each respective home owner, should be more affordable and attractive to a family oriented segment of the population.

It is anticipated that the three larger lots (no. 6, 19 and 20) will most likely not be developed concurrently with the majority of the subdivision but could be sold and developed separately with larger custom-style homes. These three lots are also large enough that there is the potential for subsequently splitting the lots through the parcel map process. This would require a separate review and approval process.

The majority of the lots are typical single-family lots that are proposed to be developed with homes ranging between 1,600 and 2,400 square feet.

Of specific note is lot 39, the first lot on the right as one enters the project. While this is not a small lot, it is an odd shape and specific setbacks and a buildable footprint have been established as part of this map. The applicant’s engineer has submitted a site-specific layout indicating how the lot could best accommodate the building envelope. A specific condition (no. 9) has been prepared to ensure that the development of this lot adheres to this lot layout illustrated on Attachment 8.

Project Review by Outside Agencies

The proposed map, site plan and project description were circulated to interested/affected outside agencies for informal consultation. Comments from agencies have either been addressed through the processing of the Project or have been included in the proposed Conditions of Approval. Comments received include the following:

- The Placer County Water Agency (PCWA) submitted comments regarding the requirements needed in order for PCWA to serve future development of the parcels with water;
- Placer County Environmental Health provided comments regarding their standard conditions for a Phase I Site Assessment;
- Central Valley Regional Water Quality Control Board commented on their requirements;
- Placer County Flood Control – commented on the availability of the Stormwater Management Manual available to the project applicant;
- United Auburn Indian Community visited the site on January 17, 2018. The UAIC had no additional comments.

- Cal Fire – staff has had numerous conversations with the Deputy Fire Marshall Woessner regarding emergency access routes for this project. In addition to the emergency vehicle access (EVA) agreement required for the Sierra Oaks project that will allow emergency access to/from the cul-de-sac at the southern line of the project to Sierra Oaks Drive, as outlined in condition 66d, the applicant will be required to establish and record an EVA from the normally locked gate (Knox Box key accessible) at Pine Top Apartments through the project site to Chase Court. This will be accomplished by utilizing Village Oaks Drive and an easement approximately along the line of the easement established for the PCWA waterline. The Owner may have to increase the width of PCWA easement and construct an all-weather surface. The gate at the southern terminus of Sierra Oaks Drive at Hill Haven will be normally locked (Knox Box key accessible).

ENVIRONMENTAL ANALYSIS:

The previously adopted Mitigated Negative Declaration was reviewed and because there are no new or substantially more severe impacts, an addendum to the previously adopted Mitigated Negative Declaration was prepared. No formal noticing or recirculation of the 2016 IS/MND is required since conditions permitting adoption of an addendum are satisfied. Mitigation measures identified in the Negative Declaration have been included in the project as conditions numbered 12 – 25.

STAFF RECOMMENDATION:

Staff recommends the City Council adopt the attached Resolution to Approve the Village Oaks Community Vesting Tentative Subdivision Map creating 39 single family lots.

ATTACHMENTS:

1. Resolution No. 07-2018
2. Conditions of Approval
3. Location/Vicinity Map
4. Previously approved Reimbursement Agreement
5. Mitigation Impact Fee Analysis
6. Vesting Tentative Subdivision Map (and other exhibits totaling 5 pages)
7. Site Plan of Lot 39 illustrating building area

City of Colfax

City Council

Resolution № 07-2018

APPROVING THE 39-LOT VESTING TENTATIVE SUBDIVISION MAP FOR THE VILLAGE OAKS DEVELOPMENT PROJECT

WHEREAS, the property owner/applicant, Village Oaks Community LLC, a California limited liability company, has submitted an application for a Vesting Tentative Subdivision Map; and

WHEREAS, Notice of the meeting has been given at the time and in the manner required by State Law and City Code; and

WHEREAS, an Addendum to the previously adopted Mitigated Negative Declaration has prepared in-accordance with CEQA requirements; and

WHEREAS, the project as proposed is consistent with the City's General Plan, Zoning and the Colfax Municipal Code; and

WHEREAS, the proposed Vesting Tentative Subdivision map with the conditions of approval is consistent with the City's Subdivision Ordinance and the Subdivision Map Act; and

WHEREAS, the Reimbursement Agreement adopted as part of the Vesting Tentative Subdivision map pursuant to Resolution 48-2016 is to be amended such that the previously planned 76-unit multifamily project is replaced with the 39-lot single family lots in accordance with this Resolution.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED at the Regular Meeting of the City Council of the City of Colfax held on the 14th day of February 2018 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Will Stockwin, Mayor

ATTEST:

Lorraine Cassidy, City Clerk

Village Oaks Community
VESTING TENTATIVE SUBDIVISION MAP
TSM17-001

PLANNING

1. The applicant shall submit final site development plans to the City that substantially conform to the exhibits referenced in the staff report dated February 14, 2018.
2. The owner/applicant shall consult with the Sheriff's Department to incorporate all practical and reasonable crime prevention measures. The following security/safety measures shall be considered:
 - a. A security guard on-duty at all times at the site or a six-foot security fence shall be constructed around the perimeter of the construction areas.
 - b. Security measures for the safety of all construction
 - c. Landscaping shall not cover exterior doors or windows, block line-of-site at intersections or screen overhead lighting.
3. Prior to grading and/or construction, a Traffic Control Plan for Iowa Hill Road at the project entry shall be prepared. The traffic control plan shall be reviewed and approved by the City prior to grading and/or construction. The Traffic Control Plan shall designate haul routes and comply with requirements in the encroachment permits issued by Placer County Public Works. The Traffic Control shall, at minimum, include the following measures: Maintaining the maximum amount of travel lane capacity during non-construction periods possible, and advanced notice to drivers through the provision of construction signage
4. Construction equipment noise shall be minimized during project construction by muffling and shielding intakes and exhaust on construction equipment (per the manufacturer's specifications) and by shrouding or shielding impact tools, where used. The City's construction specifications shall also require that the contractor select staging areas as far as feasibly possible from sensitive receptors.
5. Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. If feasible, noise barriers shall be used at the construction site and staging area. Temporary walls, stockpiles of excavated materials, or moveable sound barrier curtains would be appropriate in instances where construction noise would exceed 90 dBA and occur within less than 50 feet from a sensitive receptor. The final selection of noise barriers will be subject to the City's approval and shall provide a minimum 10 dBA reduction in construction noise levels.
6. No amplified sources (e.g., stereo "boom boxes") shall be used in the vicinity of existing residences during project construction.

7. Prior to the commencement of grading and/or construction activities, the owner/applicant shall submit an erosion control plan to the City for review and approval. The plan shall identify protective measures to be taken during excavation, temporary stockpiling, any reuse or disposal, and revegetation. These measures shall conform to geotechnical reports, the City of Colfax requirements and the County of Placer Erosion and Sedimentation Control Standards and Specifications.
8. The owner/applicant shall comply with the Tree Preservation Guidelines (Colfax Municipal Code section 17.110) to the satisfaction of the Planning Director.
9. Prior to issuance of a building permit for Lot 39, a site plan illustrating the building footprint shall be submitted for review and approval by the planning department. The location of the building (footprint) shall be in substantial compliance with Attachment 7 of the staff report dated February 14, 2018.
10. The owner/applicant shall be required to participate in a Mitigation Monitoring Program (MMP) pursuant to Public Resources Code Section 21081.6 and as outlined in condition nos. 12 - 25.
11. The previously approved Reimbursement Agreement (Resolution No. 32-2017) and negotiated mitigation impact fee rates shall be applied to the 39 single-family lots of this project. The Reimbursement Agreement shall be amended to reflect the change from 76 apartment units to 39 single-family.

Mitigation Monitoring Program

12. A thorough site-walk of the project site shall be conducted to determine the presence or absence of the coast horned lizard and the following special-status plants during the appropriate bloom season: Sierra bluegrass (blooms April – June), western viburnum (blooms May – July), and Stebbin’s phacelia (blooms May – July). The site-walk shall be conducted by a qualified biologist prior to any clearing or site work. (MM BIO-1)
13. If any tree removal or adjacent construction activity takes place during the associated breeding/nesting season for raptors (typically February through August), preconstruction surveys shall be conducted by a qualified biologist no more than 15 days prior to initiation of proposed development activities. If active nests are found on or immediately adjacent to the site, CDFW shall be contacted to determine appropriate avoidance measures. If no nesting is found to occur, necessary tree removal could then proceed. This survey shall not be necessary if tree removal and vegetation clearing occur outside of the nesting period. (MM Bio-2)

14. If archaeological or paleontological resources are discovered during ground disturbing activities for the proposed project, work shall be halted in that area within 50 feet of the find and a qualified paleontologist shall be notified immediately to evaluate the find. (MM CUL-1)
15. If human remains are discovered during ground disturbing activities for the proposed project, work shall be halted and the County Coroner shall be notified of the find immediately. No further work shall occur until the County Coroner has made a determination of origin and disposition pursuant to PRC Section 5097.98. If the human remains are determined to be of Native American origin, the County Coroner shall notify the NAHC, which will determine and notify the a Most Likely Descendent (MLD). The MLD shall complete the inspection of the site within 48 hours of notification and may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials. (MM CUL-2)
16. The applicant of the proposed project shall be responsible for preparing and implementing an Erosion and Sediment Control Plan prior to any construction activities. (MM GEO-1)
17. Grading shall not be performed during the rainy season, between October 15 and April 15. (MM GEO-2)
18. A revegetation plan shall be prepared by a licensed landscape architect to be submitted with the improvement plans for approval. The plan shall address all disturbed areas on the site, revegetation materials, methodology, schedule, proposed irrigation systems for open space areas, and the landscaping along Iowa Hill Road. All cut and fill areas shall be revegetated as soon as possible following grading activities, using native seed mixed and compatible plantings. (MM GEO-3)
19. Fill within two feet of finished grade in building areas supporting conventional foundations shall consist of relatively low expansive soil, defined as having an Expansion Index less than 50. Expansive soil shall not be placed in the upper two feet of building pads. Potentially expansive soil shall be blended with soil that is more granular or weathered rock to create relatively low expansive conditions. (MM GEO-4)
20. The proposed project shall implement the following measures to reduce operational GHG emissions: (MM GHG-1)
 - a. Only energy efficient appliances shall be installed, including Energy Star refrigerators, clothes washers, dishwashers, and ceiling fans.
 - b. Only low-flow bathroom and kitchen faucets, toilets, and showers shall be installed.

- c. All public street, area, and residential lighting (including all rooms in residences) installed on the site shall be considered high efficiency lighting.
21. The applicant shall submit a final Drainage Study with the proposed project improvement plans. The final Drainage Study shall meet the requirements for submittals contained in the Placer County Flood Control and Water Conservation District's Stormwater Management Manual. (MM HYD-1)
22. Drainage facilities shall be designed and constructed in accordance with the Placer County Flood Control and Water Conservation District's Stormwater Management Manual, latest edition, Placer County Land Development Manual, latest edition, and the City's requirements. Improvement plans shall be submitted to the Flood Control District for review and approval of the drainage facilities. (MM HYD-2)
23. Detention basins and the drainage system shall be designed to maintain runoff from the site at pre-development rates. The final Drainage Study shall include a detailed analysis of the ability of the detention basins to attenuate flood flows (pre- and post-development hydrograph comparison) and a discussion of the significance of the proposed reduction of flood flows offsite of the proposed site using the 2-, 10- and 25-year flows. (MM HYD-3)
24. The stormwater drainage collection system shall be designed to intercept runoff at all intersections, and at intermediate locations as required so that gutter flow does not exceed a run of four hundred feet before reaching a drain inlet. The total length of run tributary to a drain inlet from each direction shall not exceed six hundred feet. (MM HYD -4)
25. The minimum allowable pipe diameter for the storm drainage system shall be 12 inches. (MM HYD-5)

PUBLIC WORKS/ENGINEERING

26. The applicant shall be responsible for all City map check, plan check and inspection costs. The Applicant shall establish a Developer Deposit Account with the City upon the initiation of plan check services. The amount of the initial deposit shall be determined by the City Engineer. Additional funds may be required based upon actual plan check and inspection costs.
27. All improvements shall be designed in accordance with the City of Colfax Municipal Code, and applicable City, County and Placer County Water Agency (PCWA) public works standards (Public Works Standards), except as specifically noted otherwise in these conditions. Approvals depicting improvements that do not conform to the City's Municipal Code or the Public Works Standards do not constitute approval of an

exception this requirement unless explicitly authorized herein or in other approvals from the City Engineer, City Manager or City Council.

28. All existing and proposed new utilities to serve the project, both on-site and along project frontages, shall be placed underground. Exceptions may be allowed for surface mounted transformers, pedestal mounted terminal boxes, water facilities approved or required by PCWA and meter cabinets.
29. Unless otherwise explicitly permitted, all existing wells, septic tanks and/or underground fuel storage tanks shall be abandoned under permit and inspection of Placer County Department of Environmental Health or other designated agency. If there are none, the project engineer shall provide a letter documenting and describing the scope of the search done to make this determination.
30. A detailed Soils Investigation/Geotechnical Report shall be prepared and submitted for review. The report shall address, at a minimum, potential geologic hazards in the area, potential historic mine shafts and vents, possible presence of asbestos-bearing rock, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.
31. Dust control specifications shall be included on the improvement plans to minimize dust nuisance during construction. Dust control measures shall be developed to take into account the possible presence of asbestos bearing rock formations and the measures necessary to deal with this type of dust.
32. The applicant shall re-vegetate cut and fill areas as soon as possible using native seed mixes and compatible plantings as approved by the City.
33. The applicant shall conduct all soil stabilization activities pursuant to City Engineering Department and Soil Conservation Service practices and techniques. Stabilization details shall be shown on the improvement plans for temporary and permanent conditions.
34. Any retaining walls necessary as a part of the site grading shall be included on the grading plan for review and approval of the City Engineer. Any retaining walls in excess of 3-ft in exposed height or that may be influenced by adjacent structures (existing or future structures) shall have design calculations prepared and submitted to the City Engineer and Building Department for review and approved prior to grading activities.
35. A drainage report prepared by a California Registered Civil Engineer shall be submitted for review with the initial submittal of the Improvement Plans for the entire subdivision. The report shall include hydrologic and hydraulic calculations to support the design and sizing of all public and private drainage facilities including storm drains, detention facilities and weirs.

36. The drainage plans shall include ditches or swales as required by the City Engineer to eliminate cross lot drainage to the extent possible. Cross lot drainage may be allowed in areas where drainage easements are provided in any recorded CCRs and Maintenance Agreements.
37. Storm-water detention shall be provided per the requirements of the final on-site project drainage analysis and meet local and State drainage requirements. Design of storm water detention facilities shall be subject to City standards and the review and approval of the City Engineer. Stormwater plans shall include the following:
- a. The velocity of concentrated storm flows from impervious surfaces should be reduced by the use of energy dissipaters. These structures should be placed so that the velocity reduction occurs before water enters existing erodible areas such as wetlands, creeks or ditches.
 - b. Water pollution control devices shall be placed at the appropriate locations in the project's drainage system. The design and placement of the devices should be performed by a qualified engineer with demonstrated experience in the design of Storm Drainage Best Management Practices. The placement of the devices should be such that drainage from large paved areas is intercepted prior to discharge to the natural on-site or off-site drainage systems. These systems may be eliminated with the adequate use of water quality basins as approved by the City Engineer.
 - c. Any proposed on-site (outside of public right-of-way) storm drainage systems shall be private. The maintenance of the on-site system shall be the responsibility of the appropriate property owner or a responsible owners' association in accordance with recorded CCRs or Maintenance Agreements.
 - d. The developer shall be responsible for the acquisition of all storm drain easements that are required for the construction and maintenance of any perimeter and/or off-site drainage improvements.
 - e. The perimeter of the development shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.
38. A detailed Post-Construction Stormwater Control Plan (SWCP) that identifies and sizes all permanent post-construction stormwater treatment BMPs shall be prepared and submitted for review approval. The Plan shall be prepared in accordance with the latest requirements of the State Water Resources Control Board Phase II Municipal Separate Storm Water System (MS4) General Permit (Order 2013-0001 DWQ).

39. A Post Construction Stormwater Operations and Maintenance Plan that provides a color-coded plan sheet showing all storm drain and water quality infrastructure that is to be maintained, along with detailed instructions and schedules for the ongoing maintenance and operation of all post-construction stormwater BMPs shall be submitted for review and approval by the City Engineer. Once approved, the property owner shall enter into an agreement (recorded with the County Recorder and transferrable to future Homeowner's Association) with the City that provides the terms, conditions, and security associated with the ongoing requirements of the Post Construction Stormwater Best Management Practices.
40. For the construction phase, the applicant shall comply with Placer County Air Pollution Control District regulations.
41. The project applicant shall prepare a Fugitive Dust Control Plan to acknowledge the state and local fugitive dust emission laws and approved fugitive dust control measures for implementation. The Plan shall be submitted prior to issuance of grading permits.
42. The Final Map, as defined in the Subdivision Map Act, shall be prepared by a licensed surveyor or civil engineer for the entire project or for each proposed phase. Final Maps shall show all parcels, rights-of-way, and easement(s), and shall be submitted to the City Engineer for review. Final Maps shall be in substantial conformance with the approved Vesting Tentative Map and all applicable conditions of approval. Final Maps are not valid until they have been approved by the City and recorded. Closure calculations shall be provided at the time of initial Final Map submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the Final Map shall be directly verifiable by information shown on the closure calculation printout. The point(s) of beginning shall be clearly defined. All lot acreages shall be shown on the Final Map and shall be verifiable from information shown on the closure calculation printout. A current title report (within past 30 days) shall be submitted at the time of initial Final Map submittal.
43. The Applicant shall secure all necessary rights-of-way and public and private easements for both onsite and offsite improvements to the satisfaction of the City Engineer. Rights-of-way shall and easements shall be dedicated on the map or granted by separate instrument. The Applicant shall prepare all necessary legal descriptions and deeds, and be responsible for all recording activities.

To the extent any offsite public improvements require the acquisition of property not currently owned by the Applicant, City or County, the Applicant shall first make a good-faith effort to acquire the necessary property rights, however if the Applicant makes such an effort and is unable to acquire such rights, then the Applicant may request the City acquire the necessary property rights through the exercise of eminent domain provided that the Applicant enters first into an agreement with the City to pay for all costs incurred by the

City to attempt to acquire such rights and if the City does not acquire the rights necessary to allow the offsite public improvements to be completed by the Applicant within statutory timeline provided by law, then the Applicant shall be relieved of the obligation to construct those off-site improvements only to the extent they require property not currently owned by the Applicant or the City. The Applicant shall make a good-faith effort to identify and acquire the necessary property rights at the earliest opportunity.

44. The Applicant shall transmit by certified mail a copy of the conditionally approved Vesting Tentative Map together with a copy of Section 66436 of the State Subdivision Map Act to each public entity or public utility that is an easement holder of record.
45. Applicant shall submit site Improvement Plans, prepared by a registered Civil Engineer, for review and approval of the City. No final grading or other construction shall be performed until the Improvement Plans have been approved. The applicant shall not begin clearing, grubbing, or rough grading at the site prior to approval of the Improvement Plans, unless explicitly approved by the City. Securities for grading, erosion control, winterization operations and site restoration and any necessary inspection fees shall be posted prior to permit issuance.
46. If construction includes blasting or the use of controlled explosives, the grading contractor and the applicant shall comply with all applicable laws and regulations and the conditions provided by the City, which include, but are not limited to, the following:
 - a. Make all test hole logs available to road and underground contractors.
 - b. Require that the blasting contractor be licensed, bonded and insured.
 - c. Contractor shall communicate in person and in writing with occupants of all neighboring properties to advise them of the estimated schedule for blasting and to explain the warning signals.
 - d. Insure that the conventional OSHA signals for blasting are followed prior to and while firing each shot, with a sufficient air whistle that can be heard for a minimum of 2,000 feet.
 - e. Set signs indicating a blasting area on nearby streets. Flag persons shall be used.
 - f. Cover shallow shots on exposed rock with soil and/or a blasting mat to mitigate flying rock. Soil should be free of round boulders or cobbles.
 - g. A pre-blast survey of all surrounding structures and facilities shall be prepared along with a blasting program including blast peak velocity limits at various points for the blasting required to create roads and major utility lines. The blasting program and pre-blast survey shall be kept on file with the Police Department. Blasting operations shall be coordinated with the Fire Chief.
 - h. The contractor must secure a valid blasting permit prior to using explosives.

47. An Encroachment Permit is required for any work within City or County rights-of-way. Encroachment Permits will not be issued prior to the approval of the Improvement Plans.
48. All private streets, water mains, sewer mains, and storm drains shall be clearly labeled as "Private" on the Improvement Plans, along with clear demarcation points where they become public.
49. All public water service laterals or services (domestic water and fire water supply) shall include approved backflow prevention devices.
50. The Applicant shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.
51. The developer, at his sole expense, shall repair existing public and private facilities damaged during the course of construction to the satisfaction of the City Engineer.
52. If any hazardous material is encountered during the construction of this project, all work shall be immediately stopped and the Cal Fire, Placer County Department of Environmental Health or other designated agency, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies.
53. Public utilities, Cable TV, sanitary sewers, and water lines, shall be installed in a manner that will not disturb the street pavement, curb, gutter and sidewalk, when future service connections or extensions are made. Prior to final preparation of the road subgrade and placement of road base materials, all underground utilities shall be installed and service connections terminated (stubbed-out) to a point at least behind the planned sidewalk or, in the case where no sidewalk is planned, a point at least 5 feet beyond the edge of the street or road.
54. Where soil or geologic conditions encountered in grading operations are different from that anticipated in the soil and/or geologic investigation report, or where such conditions warrant changes to the recommendations contained in the original soil investigation, a revised soil or geologic report shall be submitted for approval by the City Engineer. Additionally, if field conditions warrant installation of any subdrains, the location, size and construction details must be provided to the City for review and approval prior to construction and documented on as-built plans.
55. All new fire hydrants shall be securely covered with burlap sacks or heavy duty plastic until the hydrants have been tested and found to be in conformance with City flow requirements. No storage of combustible materials or construction of building shall be permitted until all hydrants meet City flow requirements.

56. Prior to placing the final lift of asphalt, all public/private storm drain and sanitary sewer lines shall be video inspected at the Applicant's expense. All video recordings shall be submitted to the City Engineer for review. If any deficiencies or inadequacies are found, they shall be repaired prior to the placement of the final lift of asphalt.
57. All streets, curbs, gutters, sidewalks or other public facilities damaged in the course of construction associated with this Project shall be the responsibility of the Applicant and shall be repaired to the satisfaction of the City Engineer at the Applicant's expense.
58. After all of the new underground utilities within existing public streets have been installed, the affected areas shall be milled and repaved (overlaid) to present a neat finished and smooth pavement area. Multiple trench patches are not acceptable.
59. All construction stormwater pollution prevention best management practices (BMP's) shall be installed as the first order of work and in accordance with the *State Water Resources Control Board's General Construction Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Order 2009-0009-DWQ)* and the Applicant's Storm Water Pollution Prevention Plan (SWPPP). All stormwater BMP's shall be maintained to the satisfaction of the Qualified SWPPP Developer (QSD), Qualified SWPPP Practitioner (QSP), and the City Engineer.
60. All construction and grading activities on the site shall be governed by the City's noise ordinance and be limited to between 7:00 a.m. and 6:00 p.m. Monday through Friday. Work on weekends and holidays requires written approval from the City Engineer. If weekends and holiday work is approved, construction and grading activities on the site shall be limited to between 8:00 a.m. to 5:00 p.m. on Saturdays, Sundays as well as State and Federal holidays.
61. The applicant shall submit improvement plans prepared by a registered Civil Engineer (Engineer of Record) in substantial conformance with the Vesting Tentative Map.
62. All on-site (defined as: within the subdivision boundaries) streets, sidewalks, streetlights, domestic water facilities, sewers, storm drain facilities and stormwater quality facilities shall be privately owned and maintained with the exception of the following on-site Public Improvements:
 - Existing and new City-owned sewer trunk main and associated manholes.
 - PCWA water distribution facilities
 - Any underground power and communication facilities
63. Rough grading shall be performed over the subdivision for future building pads to the extent necessary to prevent the need for future final grading across newly created lot lines.

64. The Applicant shall construct all of the on-site and off-site **Public Improvements** generally shown on the Vesting Tentative Map and/or more specifically described below.
- a. **Colfax-Iowa Hill Road Improvements:**
- Construction of a public sidewalk along the entire subdivision frontage of Colfax-Iowa Hill Road unless such has previously been completed as part of the Sierra Oaks construction. Sidewalk shall be the same width and join the existing sidewalk near the northwesterly corner of the subdivision.
- b. **Rehabilitation, Upsizing or Replacement of Sewer Mains in the Project Vicinity:**
Based on an engineering evaluation by the City, the Applicant may be required to rehabilitate, upsize or replace existing City owned sewer mains and manholes that are within or in the vicinity of the Project. The Applicant shall enter into a reimbursement agreement defining the scope of the improvements, estimated costs and terms of reimbursement for the design and construction of said improvements. The applicant will be responsible for constructing any sewer improvement and the City shall be responsible for reimbursing the Applicant for any costs associated with said improvements that are not the direct result of the subdivision. The City may reimburse the Applicant directly, through fee credits or other means acceptable to both parties. This condition is satisfied upon the completion by Pinetop Properties LLC (or its successor) of the Sewer Improvements as accepted by City Council and described in the Reimbursement Agreement dated August 9, 2017 pursuant to City Council Resolution 32-2017.
- c. **Emergency Vehicle Access (“EVA”):**
Supplemental emergency ingress and egress shall be provided from the northwesterly corner of the Village Oaks Subdivision at the south line of Pinetop Apartments to Chase Court within the adjacent Sierra Oaks Subdivision. (There already exists an EVA easement granted to the City of Colfax through Parcel A of the Pinetop Apartments HOA to Iowa Hill Rd.) The EVA shall utilize Village Oaks Drive and an EVA easement roughly coincident with the PCWA easement located between lots 5 and 7. This route shall include an all-weather surface at least 20-foot in width as approved by the City Engineer and Cal Fire. Any EVA easement necessary to connect to Chase Ct within the adjacent Sierra Oaks Subdivision shall be provided.
- d. **Fire Hydrants:**
Fire hydrants shall be installed in easements at locations and in a manner as approved by Cal Fire.

65. The Applicant shall construct all of the on-site Private Improvements generally shown on the Vesting Tentative Map and more specifically described below. All private streets, water, sewer, recycled water, storm drainage and stormwater quality improvements shall be designed in accordance with the City standards, except as specifically noted otherwise in these conditions.

a. Street Improvements:

The private on-site streets identified on the Vesting Tentative Map shall be constructed on the Vesting Tentative Map and as approved by the City Engineer.

Private streets shall have signage and/or red painted curbs or pavement markings prohibiting parking along one side of the street.

b. Water Mains:

All water mains shall be constructed to meet PCWA standards. Larger services from water mains may be required to achieve adequate fire flow for fire sprinkler systems. Sample fire flow calculations shall be submitted with water infrastructure improvement plans to demonstrate that fire flow to residential and commercial buildings can be achieved with the proposed system.

c. Sewer Collection Facilities:

The on-site private sewer collection facilities shall be separated from the City's sewer system by establishing a definitive point of connection by the installation of manholes where private sewer collection mains connect to City mains. All sanitary sewer mains shall be constructed with a minimum 8-inch diameter pipe with 4-inch minimum laterals.

d. Storm Drain Facilities:

Construct private on-site drainage facilities, detention facilities, weirs and other appurtenances to collect and convey all surface drainage to an approved outfall. Provide for the positive drainage of all adjacent upstream or upgrade properties to prevent ponding. Off-site peak storm water discharge shall not exceed 90% of the undeveloped peak flow from the 24-hour, 100-year event.

e. Stormwater Quality Facilities:

Permanent on-site private post-construction stormwater treatment BMPs shall be designed and constructed in accordance with the approved SWCP and contained in easements in favor, control of, maintenance of, and responsibility of the HOA.

66. Prior to SUBMITTAL OF THE IMPROVEMENT PLANS, the applicant shall:

- a. Pay an initial cash deposit for City plan check services in amount to be determined by the City prior to the time of submittal. The Project engineer shall contact City staff to discuss submittal details to determine initial deposit amount.
- b. Pothole and physically determine (by way of a survey performed by the Engineer of record) the actual horizontal location and vertical depth of all existing underground utilities throughout the proposed area of work and provide the design of all new utility installations required to serve the project including a schedule for implementation of such work as to prevent disrupting of utility service to adjacent properties.
- c. Provide a preliminary report and schematic plan prepared by a registered Civil Engineer of the proposed public potable water system with sufficient detail for PCWA to perform a hydraulic model of the proposed improvements to verify its ability to meet all of the system requirements.
- d. Provide a report, including calculations, demonstrating sufficient water pressure and flow for operation of fire hydrants and individual fire sprinklers systems to each building can be provided.

67. Prior to APPROVAL OF THE IMPROVEMENT PLANS, the applicant shall:

- a. Provide written acknowledgment by the Geotechnical Engineer of Record that the Plans incorporate all design and construction criteria and recommendations specified in the Geotechnical Report.
- b. Furnish proof of the acquisition of all rights of entry and/or temporary and permanent easements necessary to construct the project and the location of all such rights on the Plans.
- c. Submit a copy of the Notice of Intent and WDID# for coverage under the State Water Resources Control Board' General Construction Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Order 2009-0009-DWQ).
- d. To the satisfaction of the PCWA, provide a final PS&E (plans, specifications, and estimate) package for the water system improvements, mains, valves and all associated piping.
- e. Provide the following:
 - 1) Public Street Repair Plan
 - 2) Utility Plan and Joint Trench Plan
 - 3) Construction Storm Water Pollution Prevention Plan (SWPPP)

- 4) Drainage Report
- 5) Post-Construction Stormwater Runoff Management Plan (SRMP)
- 6) Geotechnical Report
- 7) Construction Traffic Control Plan.

68. Prior to COMMENCEMENT OF CONSTRUCTION ACTIVITIES, the Applicant shall:

- a. Pay off all current cash deposit account balances with the City.
- b. Pay an inspection fee in an amount to be determined at the time of commencement for the City's inspection of the public improvements.
- c. Conduct a pre-construction meeting with representatives of the City whereby the Applicant, the Legally Responsible Party (LRP), Qualified SWPPP Practitioner (QSP), Qualified SWPPP Developer (QSD), and/or the Contractor provides the following:
 - (1) Six (6) full-size bond copies of the approved Improvement Plans for the City's use.
 - (2) One (1) job-site copy of the latest edition of the Public Works Standards for the Contractor use.
 - (3) One (1) job-site copy of the SWPPP for use by the LRP, QSP, QSD, and Contractor.

69. Prior to RECORDATION OF THE FINAL MAP, the Applicant shall:

- a. Record any unanticipated Lot Line Adjustments or easements.
- b. Construct all public and private improvements to the satisfaction of the City Engineer. Alternatively, the Applicant may enter into a Subdivision Improvement Agreement with the City agreeing for completion all of the public and private Improvements prior to occupancy of the first unit. Such an agreement will require the Applicant to provide bonds, proof of workers compensation insurance, and general liability insurance in the forms and amounts as deemed satisfactory to the City.
- c. Establish a Homeowner's Association (HOA) in accordance with State law with recorded Codes, Covenants, & Restrictions (CC&Rs) that are satisfactory to the City to provide long-term and ongoing maintenance of all of the private improvements identified above. Specifically, the HOA will be responsible for the long-term and ongoing maintenance of the private streets, sidewalks, streetlights, storm drain facilities (including the detention basin) and stormwater quality facilities within the limits of the subdivision. The City will have enforcement authority over the HOA's maintenance obligations and the

obligation to review and approved proposed changes amendments to the CC&R's. The CC&R's shall require the HOA to create and maintain a separate maintenance reserve fund in the amount of a percentage of the cost of constructing the HOA maintained improvements listed above. Said percentage will be determined by the City prior to recordation of the CC&Rs.

- d. Generally, in substantial conformance with that which is shown on the approved Vesting Tentative Map, convey all easements and dedications, public and private, for the construction, use and/or maintenance of, roads, trails, or other access, on the Final Map, or by separate instrument recorded concurrently and referenced on the Final Map. All dedications to the City shall be Irrevocable Offers of Dedication. Dedications to the City over the adjacent parcels for emergency access shall be made by separate instrument.
- e. Abandon any existing easements that are relocated or otherwise no longer needed.
- f. Submit signed deeds with Certificates of Acceptance for all dedications to the City of Colfax.
- g. Include the following easements on the Final Map or provide evidence of recorded easements for easements not included with the final map:
 - i. Road and utilities from project entry to Colfax-Iowa Hill Road
 - ii. landscape easement along Colfax-Iowa Hill Road
 - iii. 20-ft sewer easement along City sewer trunk main
 - iv. utility easements along internal streets
 - v. internal road and utility easements
 - vi. easements to PCWA
 - vii. reciprocal emergency access easements serving Sierra Oaks Estates and Village Oaks (or its successor)

70. Prior to APPROVAL OF A BUILDING PERMIT, the Applicant shall:

- a. Pay all cash deposit account balances and current City, PCWA, School and Fire fees (Mitigation & Capacity) based on the rate in effect at the time of permit issuance, irrespective of the date of vesting of the Vesting Tentative Map.
- b. Complete the required PCWA water system improvements and all necessary piping up to, and including the points of connection to the private water system. Said improvements shall be tested to the satisfaction of the PCWA, City Engineer and Fire.

71. Prior to OCCUPANCY OF ANY BUILDING, the Applicant shall:

- a. Submit an inspector's punch list indicating that all of the improvements for each phase are constructed to the satisfaction of the City Engineer.
- b. Restore all adjacent off-site road surfaces to pre-project conditions.
- c. Submit a certification by the Geotechnical Engineer of Record that all the work has been completed in substantial conformance with the recommendations in Soils Investigation/Geotechnical Report.
- d. Submit testing certification all backflow devices installed.
- e. Provide a Mylar and digital copy of the Improvement Plans that include all as-built or field changes, in digital AutoCAD (.dwg) and (.shp) format (void of any AutoCAD block entities preventing full editing capabilities of the drawings), compatible with the City's current version, and tied to the City's coordinate system.
- f. Provide a letter stating that all of the Developer's Conditions of Approval have been met.
- g. Provide a letter from the Civil Engineer of Record certifying that all the site improvements were constructed and inspected in substantial conformance with the approved plans and City Standards.
- h. Provide letter(s) from the Architect of Record, Structural Engineer of Record and all other design professionals who signed the building permit plan submittal indicating that all the building improvements have been constructed in substantial conformance with their plans.
- i. Either enter into and record a Post-Construction Stormwater Operations and Maintenance Agreement with the City that shall be transferrable to the established HOA, or include the post construction stormwater operations and maintenance obligation in the CC&Rs.



Project Location / Vicinity Map

**CITY OF COLFAX
REIMBURSEMENT AGREEMENT
FOR THE SIERRA OAKS ESTATES/VILLAGE OAKS PROJECT**

1. PARTIES AND DATE

This Agreement is made this 9th day of August, 2017 by and between the City of Colfax, a municipal corporation and California general law city (the “City”), and Pinetop Properties, LLC, a California Limited Liability Company (the “Owner”).

2. RECITALS

2.1 On December 14, 2016, the City adopted its Resolution 48-2016 whereby it approved the Sierra Oaks Estates and Village Oaks Apartments development projects which include 34 lots for a single family residential subdivision and five lots for 76 multifamily apartments all located within the boundaries of the approximately 34 acre site consisting of Parcels 1, 2, 3 and 4 at Book 35 of Parcel Maps, Page 103 Placer County Records (the “Project”).

2.2 The Project approvals include a Vesting Tentative Subdivision map, design review permit, sign permit, and a lot line adjustment, all of which are subject to conditions of approval, and mitigated negative declaration.

2.3 Condition of Approval 65b provides that the extent of sewer improvements are to be established by the City, that the Owner is responsible for constructing all sewer improvements the City establishes, that the City shall reimburse the Owner for any costs associated with sewer improvements that are not the direct result of the subdivision, and that the City and Owner shall enter into a reimbursement agreement defining the scope of the improvements, estimated costs and terms of reimbursement for the design and construction of those improvements.

2.4 One of the City’s primary sewer mains runs through the Project area. That sewer main has insufficient capacity to serve the Project in addition to the other areas of the City it serves and needs to be upsized.

2.5 In accordance with Project Condition of Approval 65b, the scope of Project sewer improvements is the engineering, design and construction required to upsized the existing sewer system to a 15 inch line between manholes 18 and 23 including but not limited to constructing new sewer pipelines, new sewer manholes, retrofitting existing manholes, making bypass connections, bypass pumping, parallel sewer mains, abandoning existing facilities, acquiring any necessary easements or rights of way, and any other work necessary pursuant to engineering plans approved by the City (the “Sewer Improvements”). The location, nature and route of the Sewer Improvements are generally depicted on the 15” Sanitary Sewer Bypass Plan & Profile for Village Oaks and Sierra Oaks Estates attached as Exhibit A to this Agreement, consisting of pages C10.1,

C10.2 and C10.3 on plans by RFE Engineering, Inc. dated June 29, 2017 (the “Sewer Bypass Profile”). The associated right of way to be recorded is depicted on Exhibit B to this Agreement.

2.6 Owner is willing to have designed, constructed, and installed the Sewer Improvements and to advance all costs of designing, bonding, financing, constructing, installing, managing, inspecting and completing the Sewer Improvements, subject to reimbursement by the City in accordance with this Agreement.

2.7 Project Condition of Approval 71a requires the Owner to pay all current City, PCWA, School, and Fire fees (Mitigation and Capacity) based on the rate in effect at the time of permit issuance. The City and Owner have reached agreement on the amount of the City mitigation impact fees and that they will remain unmodified until and including August 10, 2020.

2.8 The City has found that this Agreement is in accordance with California Government Code Sections 66485 through 66489 (Subdivision Map Act sections discussing rules for local agency reimbursements to developers) and with other applicable provisions of California Law and that reimbursing the Owner for the Sewer Improvements as provided in this Agreement is in the City’s best interests.

3. SEWER IMPROVEMENTS

3.1 Design and Construction of Sewer Improvement. The Owner shall, at the Owner’s sole cost and expense, and as conditions precedent to the City’s reimbursement obligations hereunder, have designed and constructed the Sewer Improvements. Owner’s obligation to have designed and constructed the Sewer Improvements is contingent on Owner commencing to construct the Project’s on-site underground utilities as a material component of its on-site Project improvements (within the boundaries of the Project as defined above, but excluding incidental components directly related to the construction of off-site improvements) pursuant to plans approved by the City. City shall cooperate with Owner’s efforts to complete the Sewer Improvements including timely responses to all Owner’s inquiries.

3.2 Basis for Reimbursable Costs: The City will reimburse Owner for all Owner’s actual costs for designing, easement acquisition, permitting, constructing and installing the Sewer Improvements incurred by Owner through the Final Completion Inspection and Notice of Completion, as well as the cost to Owner to carry the insurance and bonds (if any) required hereunder (the “Owner’s Reimbursable Costs”). Owner shall provide to the City such information and documentation as is reasonably necessary and appropriate to substantiate Owner’s Reimbursable Costs as defined hereunder. If actual costs exceed a good faith estimate by 10%, the Owner is required to provide notice and the parties shall meet and confer to reconcile who is responsible for the cost overrun. If the reconciliation cannot be amicably resolved within twenty (20) days between the parties, the parties may proceed through dispute resolution under Section 5.4. Owner shall provide City with a good faith estimate of Owner’s Reimbursable Costs no fewer

than 20 days prior to commencement of construction of the Sewer Improvements and shall update the estimate periodically as actual costs are incurred. Within fifteen (15) days of receipt of each good faith estimate from Owner, City shall notify Owner if there are any costs the City disputes. If City does not timely notify Owner of any disputed costs, such costs shall be deemed accepted by the City, subject only to reconciliation with the actual total final costs incurred at Notice of Completion. Design changes and resulting construction cost increases, if any, requested by the City will be the financial responsibility of the City whether such costs accrue or are charged during the Project or after completion.

3.3 Method of Reimbursement. (a) The City and Owner have agreed that the sewer impact fee payable by Owner to City shall be as follows (the “Sewer Impact Fees):

a. \$8,260.00 for each single-family residence in the Project that is connected to the sewer system (each such single-family residence a “Unit”); and

b. \$8,260.00 for the first apartment in each multiple family building in the Project that is connected to the sewer system plus \$6,608.00 ($\$8,260.00 \times 0.80 = \$6,608.00$) for each additional apartment in each such multiple family building (each such multiple family building a “Unit”).

The Sewer Impact Fees shall not be increased before August 10, 2020. The Sewer Impact Fees for each Unit shall become due and payable when Owner submits an application for a building permit for each Unit. In lieu of actually paying the Sewer Impact Fees for each Unit, the Owner shall receive a credit equal to the Sewer Impact Fees against Owner’s Reimbursable Costs until the cumulative amount of such credits equals the total of Owner’s Reimbursable Costs, without interest. The amount of each credit for each Unit shall be the Sewer Impact Fee in effect at the time of application for a building permit for each Unit. Thereafter, when the total of Owner’s Reimbursable Costs has been credited to Owner, Owner shall pay the Sewer Impact Fees for each Unit when Owner applies for a building permit for each Unit.

3.4 Inspections.

(a.) During Construction. During Owner’s installation and construction of the Sewer Improvements, the City shall have the right to inspect such work as is customary and appropriate for such work to insure compliance with the approved plans and specifications. The City shall promptly and in good faith perform all inspections and approvals required of it under this Agreement. All inspection fees shall be waived for inspections of the Sewer Improvements.

(b.) Upon Completion. When Owner considers its installation and construction of the Sewer Improvements complete and in substantial accordance with the applicable plans and specifications, Owner shall notify the City in writing of such completion (“Owner’s Completion Notice”). Within ten (10) days after the City receives Owner’s Completion Notice, the parties shall conduct a joint inspection of The Sewer Improvements (the “First Completion Inspection”).

i. If, after the First Completion Inspection, the City determines that the Sewer Improvements are complete and in accordance with the applicable plans and specifications, the City shall promptly provide Owner with written notice (the "Notice of Completion") to that effect. The Notice of Completion shall constitute the City's agreement that Owner has completely installed and constructed all of the Sewer Improvements in accordance with the applicable plans and specifications, and that Owner has fulfilled and met all of its obligations hereunder with respect to the installation and construction of the Sewer Improvements.

ii. If, after the First Completion Inspection, the City determines that the Sewer Improvements are not complete and/or are not in accordance with the applicable plans and specifications, the City shall notify Owner in writing, by no later than ten (10) days after the First Completion Inspection, of each reason for the City's determination and what, in the City's view, must be done to complete and/or correct such items (the "Punch List Notice"). The City shall be deemed to have accepted as complete all items or components of the Sewer Improvements not set forth in the Punch List Notice. Owner shall, within ten (10) days after receiving the Punch List Notice, notify the City in writing of any objection by Owner to any item(s) set forth therein and the reasons for Owner's objection. The parties shall attempt in good faith to resolve Owner's objections through negotiation. If the parties have not resolved all of Owner's objections within ten (10) days after the City receives such objections, the parties shall, on the request of either party, submit the disputed objections to the dispute resolution procedures set forth in this Agreement.

iii. Owner shall have corrected or completed all items in the Punch List Notice by an appropriate contractor, except for those that are subsequently determined, either by the parties' agreement or through the dispute resolution process, not to require any correction or completion. Upon Owner's completion of all such items, Owner shall notify the City in writing of such completion ("Owner's Punch List Completion Notice"). Within five (5) days after the City receives Owner's Punch List Completion Notice, the parties shall conduct a joint inspection of the punch list items (the "Final Completion Inspection"). The Final Completion Inspection shall be limited to those items from the Punch List Notice that Owner must complete or correct and shall be further limited to whether Owner has satisfactorily had all work or tasks completed all that either the Punch List Notice stated must be performed for those items to which Owner did not object, or that it was determined Owner would perform for those items to which Owner objected. Unless the City reasonably determines that Owner has not adequately completed all punch list items as required hereunder and has so provided written notice to Owner of same, the City, within five (5) days after the Final Completion Inspection, shall issue to Owner the Notice of Completion. Any dispute between the parties with respect to Owner's completion of such items shall, if not resolved by the parties within five (5) days after the Final Completion Inspection, be submitted, at the request of either party, to the dispute resolution process set forth in this Agreement.

3.5 Indemnity and Insurance

(a) Owner shall, at its sole cost and expense, defend, indemnify and hold City, its elected officials, officers, employees, and agents free and harmless from any and all liability from loss, damage, or injury to or death of persons or property in any manner arising out of or incident to Owner's performance of this Agreement, provided that such liability, loss, damage, injury or death result from the negligence of Owner or Owner's agents. The obligations under this Section 5 shall not include liability or the defense and indemnity of the City, its elected officials, officers, employees, and agents for any active negligence or willful misconduct pursuant to CC §2782(b)(2).

(b) Owner shall require all persons doing work on the Sewer Improvements, including its contractors and subcontractors, to obtain and maintain insurance of the types and in the amounts described below in a form and with carriers satisfactory to City.

i. Commercial General Liability Insurance. Occurrence basis commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 (or as otherwise approved, in writing, by the City) per occurrence shall be maintained. If such insurance contains a general limit, that limit shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall:

A. Name the City, its officials, officers, employees and agents as insured by endorsements with respect to performance of this Agreement. The Coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insured.

B. Be primary with respect to any insurance or self-insurance programs covering the City, its officials, officers, employees or agents.

C. Contain standard separation of insured provisions.

ii. Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 each accident shall be maintained. Such insurance shall include coverage for owned, hired and non-owned automobiles and shall contain the provisions set forth in subsection (b) above.

iii. Worker's Compensation Insurance. Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00 each accident shall be maintained.

iv. Other Insurance Requirements. Owner shall:

A. Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance which shall clearly evidence all insurance required in this Section and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to City.

B. Provide to City certified copies of endorsements and policies if requested by the City, and properly executed certificates of insurance evidencing the insurance required herein.

C. Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior to completion and acceptance of the improvements.

D. Maintain all insurance required herein from the time of execution of this Agreement until the acceptance of the improvements.

E. Place all insurance required herein with insurers licensed to do business in California.

3.6 Compliance with Applicable Laws. Owner shall insure that all work performed on the Sewer Improvements is performed in a manner which complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of the City and the City, as these rules and regulations may be modified or changed from time to time. All contractors and subcontractors engaged in any construction of the Sewer Improvements shall pay each respective employee thereof an amount not less than the general prevailing rate of per diem wages established in compliance with Section 1770 et seq of the California Labor Code and as determined by the Director of Industrial Relations to be effective and applicable for the various crafts, trades, or type of worker needed or required to construct the Sewer Improvements.

3.7 Contractor Licenses. All work performed on the Sewer Improvements shall be done only by contractors licensed in the State of California and qualified to perform the type of work required and comply with the City's Business License Ordinance of the City.

3.8 Acceptance of Work. Upon completion of the Sewer Improvements to the satisfaction of City, the Sewer Improvements shall be presented to the City for dedication and acceptance and for authorization to file a Notice of Completion. The City may accept the Sewer Improvements if it determines that the improvements were constructed in substantial accordance with the approved plans, specifications and contract documents that they operate satisfactorily, and that all other requirements of this Agreement have been satisfied. Immediately upon, and as a condition of the expiration

of the guarantee period set forth in this Agreement, Owner shall assign to City all of Owner's rights and remedies, including warranties, as set forth in the approved contract documents, to the extent assignable, and thereafter City shall have the same recourse under said contract documents that City would have had if City itself had engaged Owner's contractor to construct the Sewer Improvements.

3.9 Liability for Work Prior to Formal Acceptance. Until the City has formally accepted the Sewer Improvements, Owner shall be solely responsible for all damage to the work, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the active negligence or willful misconduct of City, its elected officials, officers, employees or agents.

3.10 Guarantee. Owner shall guarantee all work and materials for the Sewer Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of formal acceptance of the work by City. Owner shall cause to be repaired or removed and replaced and all such work, together with any other work, which may be displaced in so doing, this is found to be defective in workmanship or materials within the one (1) year period. In the event Owner fails to comply with the above-mentioned provisions within thirty (30) days after being notified in writing (or, in cases of emergency, immediately) City shall be authorized to proceed to have the defects remedied and made. Such action by City will not relieve Owner of the guarantee required by this section. This section shall not, in any way, limit the liability of Owner or any other party for any design or construction defects in the work subsequently discovered by City.

3.11 Record Drawings. Prior to acceptance of the improvements by the City, Owner shall provide City with one mylar copy of record drawings with certifications by a licensed engineer in the State of California as to accuracy and completeness. Owner shall be solely responsible and liable for ensuring the completeness and accuracy of the record drawings.

3.12 Ownership of the Improvements. From and after acceptance of the improvements by formal action of the City and payment for such improvements, ownership of the improvements shall be vested exclusively in City.

3.13 Abandonment of existing Sewer Easement. Upon the completion and acceptance of the Sewer Improvements and the request of Owner, the City will vacate and abandon all rights to the existing (at the time of execution of this Agreement) sewer right of way on the Project.

4. MITIGATION IMPACT FEES

4.1 Amount of Fees. Owner shall pay the following mitigation impact fees for the Project. All mitigation impact fees imposed by the City on this Project shall not be increased until at least August 10, 2020.

	Negotiated Rate for Sierra Oaks Estates and Village Oaks Apartments	
	Single Family	Multi Family
Roads	\$1802	\$1,301
Drainage Study	0	0
Drainage (E-W Culverts)	N/A	N/A
Trails	\$147	\$263
Parks and Recreation	\$4,298	\$3,008
City Buildings	\$684	\$494
City Vehicles	\$130	\$94
Downtown Parking	0	0
Sewer Impact Fee	\$8,260	\$8,260*
Landfill Equity Buy-in Fee	0	0
Construction Tax	1% of Value	1% of Value

* In accordance with Section 3.3 above, the Multi-Family Sewer Impact Fee is the base rate listed above for the first apartment in each Project multiple family Unit connected to the sewer system plus eighty percent of the base rate for each additional apartment in each such multiple-family Unit.

4.2 Payment of Mitigation Impact Fees. Except for the purpose of credits against the Owner's Reimbursable Costs as provided in 3.3 above, all mitigation impact fees related to the Project shall be due and payable when Owner applies for a building permit for each Unit.

5. GENERAL PROVISIONS

5.1 Notice. Any notices required or desired to be sent pursuant to this Agreement shall be addressed as follows:

CITY:

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

OWNER:

Pinetop Properties, LLC, Box N
6611 Folsom Auburn Rd
Folsom, CA 95630
And by email to erstauss@me.com

5.2 Termination.

In the event that Owner materially defaults in the performance of any of its obligations under this Agreement or materially breaches any of the provisions of this Agreement, City shall have the option to terminate this Agreement, but only in accordance with following provisions. The City shall provide written notice to Owner that sets forth the basis for the City's determination that Owner has defaulted or breached the Agreement. Owner shall have ten (10) days after the date of the City's notice to notify the City in writing either (i) that Owner disputes the City's allegation of a default or breach, or (ii) that Owner will cure the alleged default or breach, in which case Owner will have thirty (30) days after the date of the City's notice to cure the default or breach. If Owner disputes the City's alleged breach or default, the parties shall attempt to resolve the dispute in good faith through negotiation. If the parties have not resolved the dispute within twenty (20) days after the City's notice, the parties shall, on the request of either party, submit the disputed objections to the dispute resolution procedures set forth in this Agreement. If Owner fails to timely cure any material breach or default as set forth in this Agreement, the City may immediately terminate this Agreement by written notice to Owner. If this Agreement is terminated under this Section, such termination shall not relieve the City of its obligation hereunder to reimburse Owner for all of Owner's Reimbursable Costs incurred by Owner through the date of termination, less any extra or additional costs incurred by the City to complete the Sewer Improvements over and above what the City would have had to pay to Owner hereunder to complete the Sewer Improvements in the absence of such termination.

5.3 Attorney's Fees / Arbitration Fees. In the event that any party hereto institutes any action or proceeding, including arbitration, for a declaration of the rights of the parties under this Agreement, for an alleged breach or default of, or any other action

arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

5.4 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 fifteen (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 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 Office of the Judicial Arbitration and Mediation Service (JAMS) nearest to Colfax, or at such other similar service that the parties may agree to. If within five (5) 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 San Francisco or 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, or two half days as may be arranged. 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 those arbitrator's resumes, whose availability for an arbitration hearing within one hundred and twenty (120) days after the mediation has been confirmed or as otherwise agreed to by the parties..

(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 San Francisco or Sacramento 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. 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) All proceedings under this paragraph shall be conducted within Placer County, California or at such other location to which the parties may agree in writing.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'DISPUTE RESOLUTION PROCEDURES' PROVISIONS DECIDED BY NEUTRAL MEDIATION AND 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 THE 'DISPUTE RESOLUTION PROCEDURES' PROVISION. 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 THE MATTERS INCLUDED IN THE 'DISPUTE RESOLUTION PROCEDURES' PROVISION TO NEUTRAL ARBITRATION.

Owner's INITIALS  CITY'S INITIALS 

5.5 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. This Agreement shall be construed under and pursuant to the laws of the State of California.

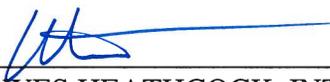
5.6 Assignment. Except as provided herein, this Agreement shall not be assigned without consent of the parties hereto, and any assignment without such written consent shall be void and ineffective. The Owner may assign its right to receive reimbursements and all other benefits hereunder, or assign its rights and duties under this Agreement, in whole or in part, to Sierra Oaks Estates LLC or to Village Oaks Apartments LLC, and/or a successor to Owner or the foregoing entities, by providing City with written notice of such assignment. The written notices shall become effective upon its delivery to the City, provided that the City shall not be responsible for any misdirected written notices under this section.

5.7 Time of Essence. Time is of the essence for this Agreement

5.8 Recitals. All of the Recitals in Article 2 are incorporated into this Agreement and constitute a part hereof.

5.9 Force Majeure. As used in this Agreement, "Force Majeure" shall mean if the performance of any act required by this Agreement to be performed by either party is prevented or delayed by reason of any act of God, any act of the other party, fire, earthquake, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, archeological discovery on the property, or any other similar cause, (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

CITY OF COLFAX

BY: 
WES HEATHCOCK, INTERIM CITY MANAGER

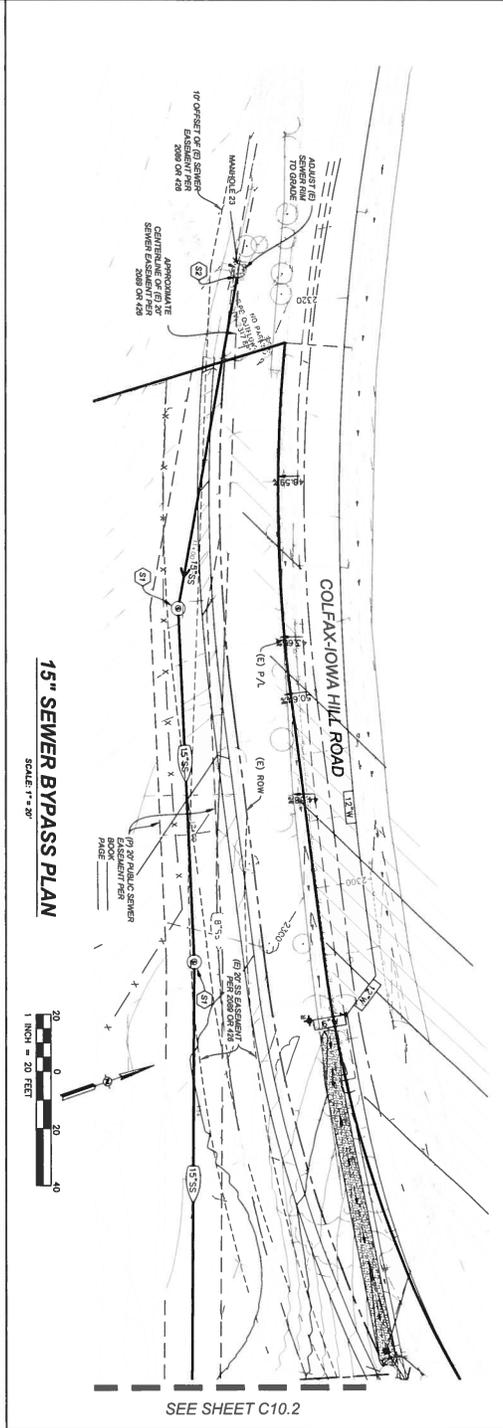
ATTEST:

BY: 
LORRAINE CASSIDY, CITY CLERK

Owner:

PINETOP PROPERTIES, LLC
a California Limited Liability Company
By: Monarch Mine Investments LLC, Member
a California Limited Liability Company,
its Manager

BY: 
ERIC STAUSS, MANAGER



15" SEWER BYPASS PLAN
SCALE: 1" = 30'

SEE SHEET C10.2

SANITARY SEWER CONSTRUCTION KENNOTES

(S1) INSTALL SANITARY SEWER MANHOLE (SMH) PER PLACER COUNTY PLATE #13

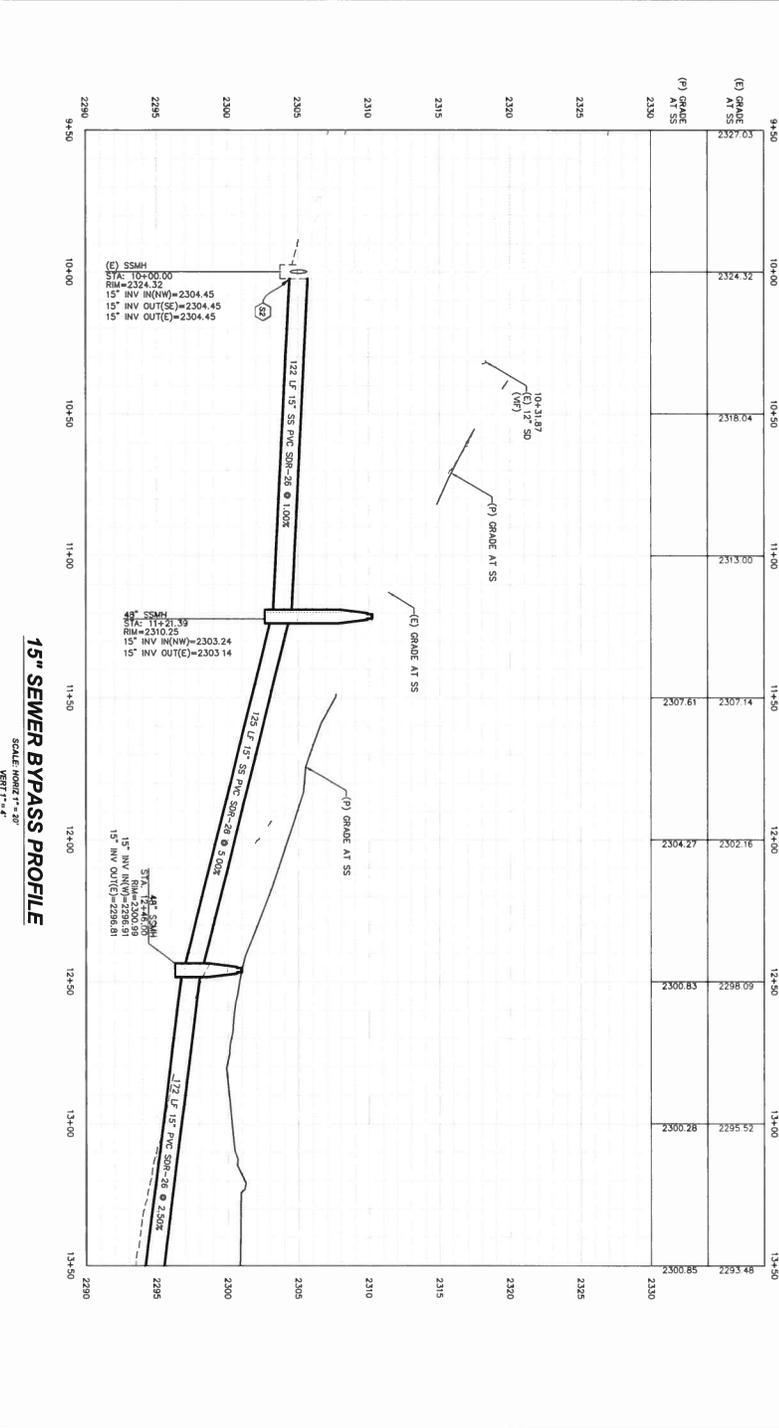
(S2) CONTRACTOR TO DESIGN BYPASS CONNECTION PLAN TO MINIMIZE EXISTING MANHOLE AFTER CONNECTION IS MADE. CONTRACTOR TO MAINTAIN MINIMUM EXISTING SEWER PER CITY REQUIREMENTS.

GENERAL UTILITY NOTES:

1. ALL TRENCHING FOR SANITARY SEWER UTILITIES SHALL COMPLY WITH PLACER COUNTY SPECIFICATIONS, SEE PLACER COUNTY SPECIFICATIONS FOR TRENCHING AND RESTORATION REQUIREMENTS.

2. MAINTAIN A 12" MINIMUM CLEARANCE BETWEEN ANY CROSSING UTILITY LINES.

NO.	REVISION	DATE	BY	APPROV'D
1	BID ADDENDA NO. 1	6/9/17		



15" SEWER BYPASS PROFILE
SCALE: HORIZONTAL = 1" = 30' VERTICAL = 4'

9+50 10+00 10+50 11+00 11+50 12+00 12+50 13+00 13+50

2327.03 2324.32 2318.04 2313.00 2307.14 2302.16 2300.83 2295.52 2293.48

(E) GRADE AT SS 2327.03

(P) GRADE AT SS 2318.04

122 LF 15" SS PVC SDR-26 @ 1.00%

125 LF 15" SS PVC SDR-26 @ 3.00%

122 LF 15" SS PVC SDR-26 @ 3.00%

SMH STA: 10+00.00
RIM=2324.32
15" INV IN(NW)=2304.45
15" INV OUT(SE)=2304.45

SMH STA: 11+21.33
RIM=2310.23
15" INV IN(NW)=2303.24
15" INV OUT(E)=2303.14

SMH STA: 12+00.00
RIM=2300.83
15" INV IN(E)=2298.81

811 Know what's Below. Call before you dig. or (800) 227-5600

VILLAGE OAKS AND SIERRA OAKS ESTATES (ON-SITE)
SANITARY SEWER BYPASS PLAN & PROFILE

PINETOP PROPERTIES, LLC
6611 FOLSOM AUBURN RD., STE N FOLSOM, CA 95630
PHONE: (916) 808-8052

RFE ENGINEERING, INC.
Civil Engineers - Planners - Surveyors
2500 Oregon Blvd., Suite 100, Roseville, CA 95662
Ph: 916.772.7900 Fax: 916.772.7104
www.rfeengineering.com

RECORD DRAWINGS
Drawing No. 24 C10.1
Sheet 49 of 49
DATE: 06-29-2017

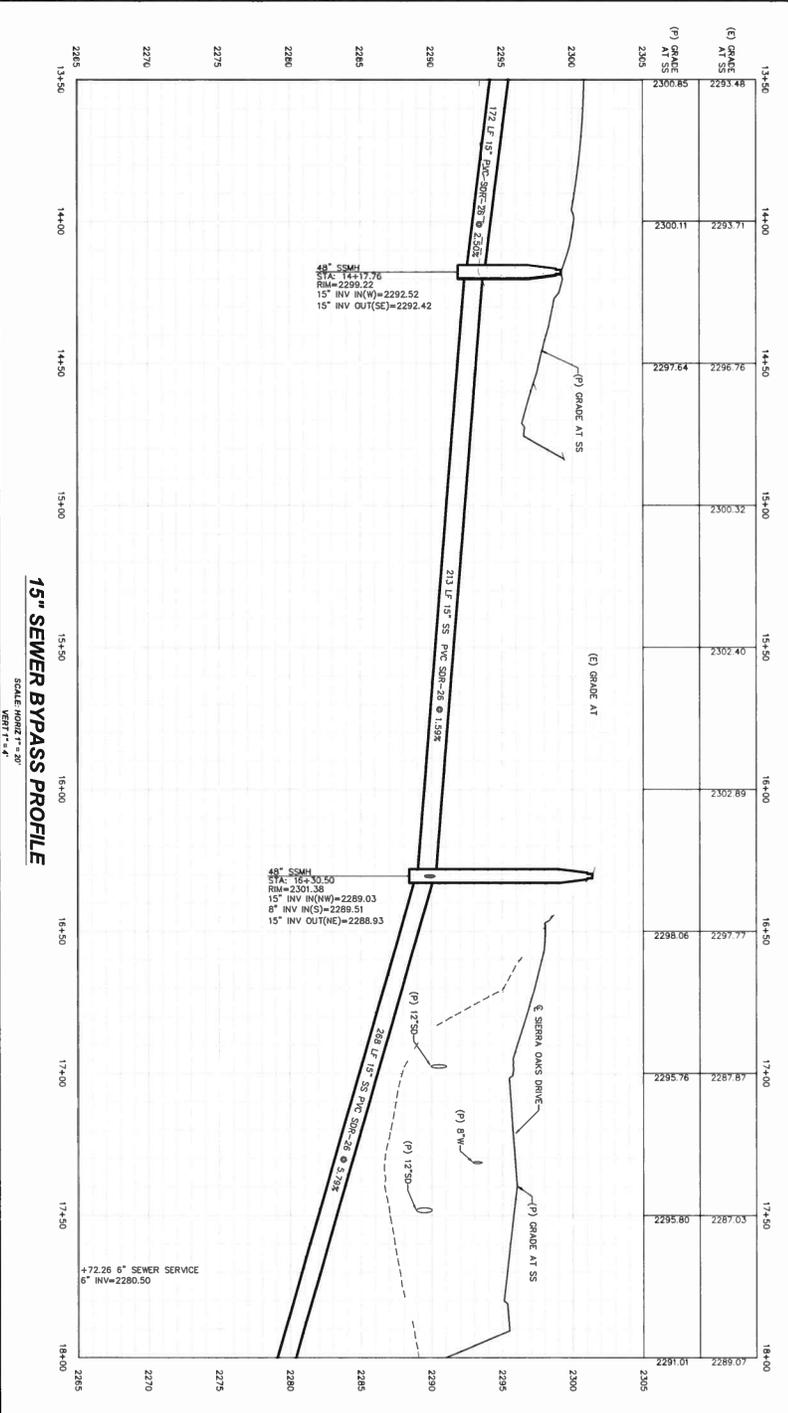
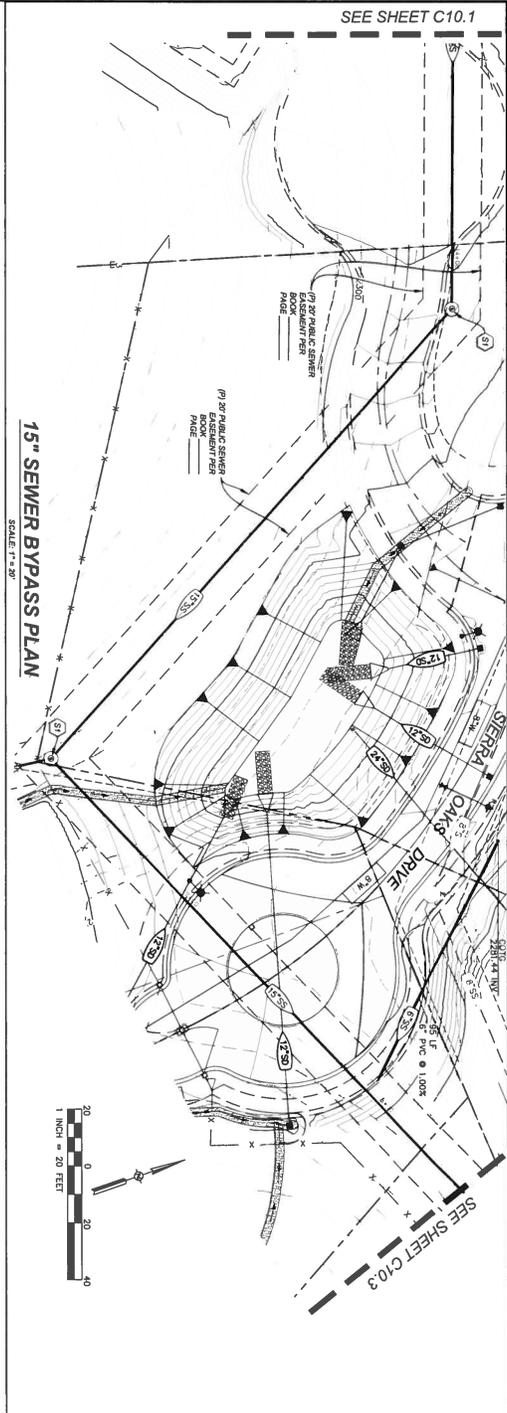


EXHIBIT A
PAGE 2 OF 3

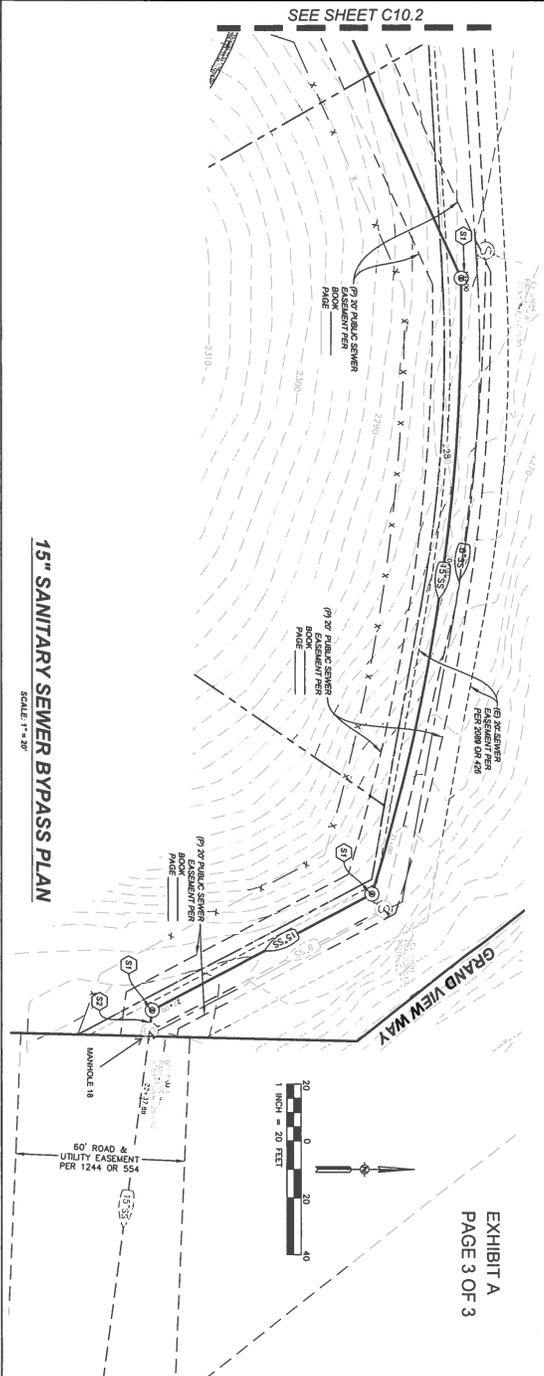
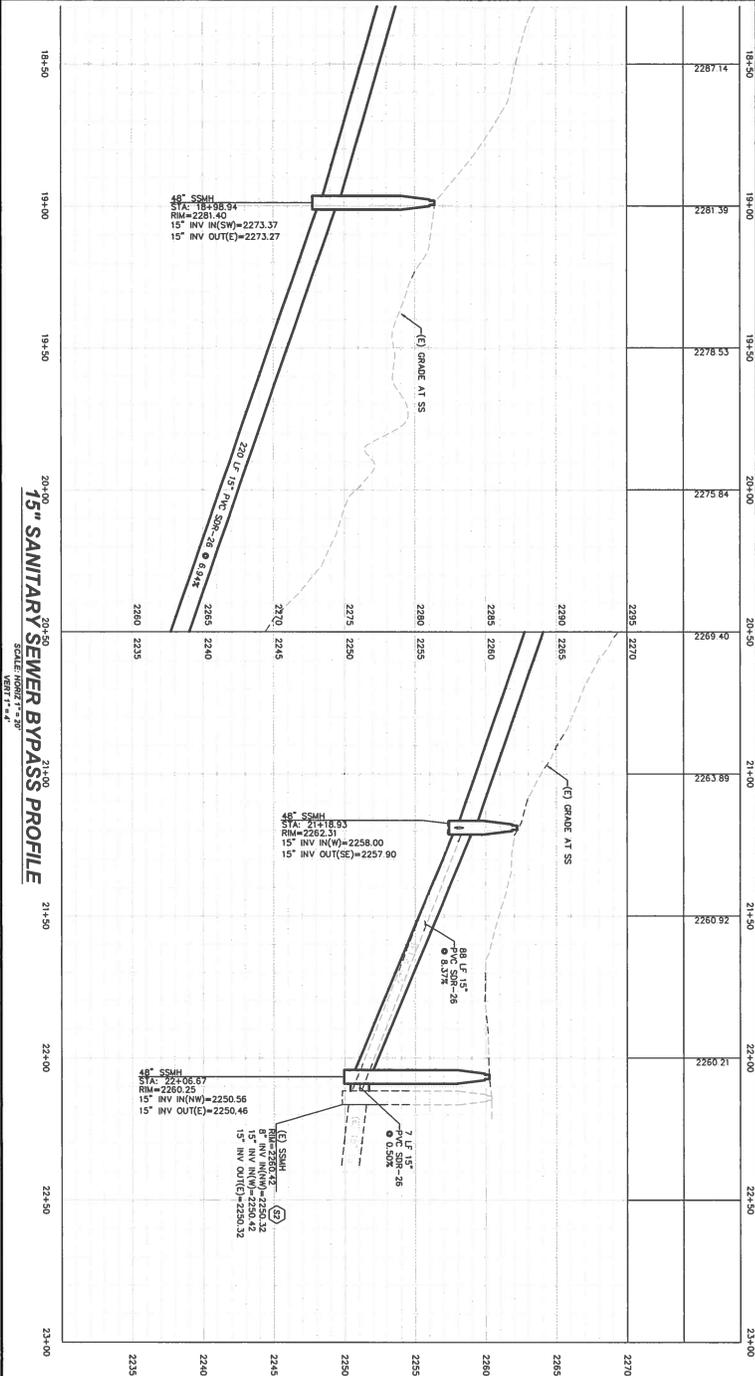
SANITARY SEWER CONSTRUCTION KEYNOTES
 (S) INSTALL SANITARY SEWER MANHOLE (SSM) PER PLACER COUNTY PLATE 413

GENERAL UTILITY NOTES:

1. ALL TRENCHING FOR SANITARY SEWER UTILITIES SHALL COMPLY WITH PLACER COUNTY STANDARDS. SEE PLACER COUNTY STANDARDS FOR SANITARY SEWER TRENCHING AND RESTORATION REQUIREMENTS.
2. MAINTAIN A 12" MINIMUM CLEARANCE BETWEEN ANY CROSSING UTILITY LINES.

<p>RECORD DRAWINGS</p> <p>DATE: 06-29-2017</p> <p>ENGINEER: [Signature]</p>	<p>Know what's below. Call before you dig. or (800) 227-2600</p>	<p>VILLAGE OAKS AND SIERRA OAKS ESTATES (ON-SITE)</p> <p>SANITARY SEWER BYPASS PLAN & PROFILE</p>	<p>PINETOP PROPERTIES, LLC</p> <p>6611 FOLSOM AUBURN RD. STE N FOLSOM, CA 95630 PHONE: (916) 808-8052</p>	<p>RFE ENGINEERING, INC. Civil Engineers • Planners • Surveyors</p> <p>2200 Douglas Blvd. Suite 150, Roseville, CA 95678 Ph: 916.772.7600 Fax: 916.772.7604 www.RFEengineering.com</p>	<table border="1"> <thead> <tr> <th>DESIGN</th> <th>BY</th> <th>CHECK</th> <th>NO.</th> <th>REVISION</th> <th>DATE</th> <th>BY</th> <th>APPRVD</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>TEE</td> <td>RFE</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2</td> <td>TEE</td> <td>RFE</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3</td> <td>QUANT.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>ORIGINAL SCALE IS IN INCHES</p>	DESIGN	BY	CHECK	NO.	REVISION	DATE	BY	APPRVD	1	TEE	RFE						2	TEE	RFE						3	QUANT.						
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3	QUANT.																																				

T:\3706 Projects\16034 Pinetop Estates\WORKING CAD\CAD10 SEWER MAIN BYPASS.Plot.dwg Jun 29, 2017-11:16 am



SEE SHEET C10.2

EXHIBIT A
PAGE 3 OF 3



- SANITARY SEWER CONSTRUCTION KEYNOTES**
- 1. INSTALL SANITARY SEWER MANHOLE (SSMH) PER PLACER COUNTY PLATE #13
 - 2. CONTRIBUTE TO DESIGNER'S SANITARY SEWER CONNECTION PLAN TO MINIMIZE DISRUPTION TO EXISTING SEWER LINES FOR CONNECTION OF NEW LINE TO ABANDONED/EXISTING SEWER PER CITY REQUIREMENTS.
- GENERAL UTILITY NOTES:**
- 1. ALL TRENCHING FOR SANITARY SEWER UTILITIES SHALL COMPLY WITH PLACER COUNTY STANDARDS. SEE PLACER COUNTY STANDARD SPECIFICATIONS FOR SANITARY SEWER TRENCHING AND RESTORATION REQUIREMENTS.
 - 2. MAINTAIN A 12" MINIMUM CLEARANCE BETWEEN ANY CROSSING UTILITY LINES.

Know what's below.
Call before you dig.
or (800) 227-2600

RECORD DRAWINGS
DATE: ENGINEER INITIAL:
26 of 49
C10.3

VILLAGE OAKS AND SIERRA OAKS ESTATES (ON-SITE)
SANITARY SEWER BYPASS PLAN & PROFILE

PINETOP PROPERTIES, LLC
6611 FOLSOM AUBURN RD., STE N
FOLSOM, CA 95630
PHONE: (916) 808-8052

RFE ENGINEERING, INC.
Civil Engineers - Planners - Surveyors
2580 Division Ave. Suite 100, Nevada, CA 95961
PH: 916-772-7800 FAX: 916-772-7804
www.rfe-engineering.com

DESIGN	BY	CHECK	NO.	REVISION	DATE	BY	APPRVD
1	TEE	RFE					
2	RFE						
3	QUANT.						
ORIGINAL SCALE IS IN INCHES							
1. BID ADDENDA NO. 1							
6/9/17							

EXHIBIT B to Reimbursement Agreement

Recording requested by
Pinetop Properties LLC

AND WHEN RECORDED MAIL TO:

Eric R. Stauss for Pinetop Properties, LLC
9724 Wedgewood Place
Granite Bay, CA 95746

Space above this line for recorder's use

SEWER EASEMENT

FOR VALUABLE CONSIDERATION, Pinetop Properties LLC, a California Limited Liability Company, (hereinafter called "GRANTOR") hereby grants to the City of Colfax, a public body, (hereinafter called "CITY") a nonexclusive permanent easement in, on, over, and across that certain real property in the County of Placer, State of California, described in Exhibit "A" attached hereto and incorporated herein by reference, and depicted on Exhibit "B", the map attached hereto showing the boundaries of the easement (hereinafter called the "EASEMENT AREA"). In the event of any conflict between the description of the easement in Exhibit "A" and its depiction on Exhibit "B", the description in Exhibit "A" controls.

The easement granted herein is for city sewer line installation and maintenance by the CITY in, on, over and across the EASEMENT AREA subject to the terms and conditions that follow.

1. GRANTOR grants to the CITY:

- (a) an easement over the EASEMENT AREA for the purpose of installing, replacing and maintaining the city's underground sewer line;
- (b) the right from time to time to trim and to cut down and clear away any and all trees, tree roots, brush and landscaping now or hereafter on the EASEMENT AREA which may interfere, but only to the extent of the interference, with the exercise of the CITY's rights hereunder.
- (c) the right to use, access and open all current and future gates on all streets and roadways within the EASEMENT AREA or which are controlled by

GRANTOR and which control access to the EASEMENT AREA, including any equipment or pass codes needed to unlock any such gates, for the purpose of CITY exercising its rights hereunder.

- (d) the right to pass over adjacent land owned by GRANTOR to the minimum extent required for the purpose of accessing the EASEMENT AREA in performance of activities in accordance with CITY'S rights hereunder.

2. Limited Construction. GRANTOR shall not construct any permanent structure in the EASEMENT AREA. CITY shall not construct any above ground or ground level facility except for sewer manholes used for maintenance of the sewer line.

3. Repairs. The CITY shall promptly repair any and all damage caused to the EASEMENT AREA, landscaping, fencing, and other improvements within and outside the EASEMENT AREA, caused by or related to CITY'S exercise of its rights hereunder.

4. Indemnification. CITY shall indemnify, defend and hold harmless GRANTOR from and against any and all liabilities, damages, claims, costs, actions, or suits, including for personal injury, death, property damage, and reasonable attorney's and consultant's fees and costs, which arise directly or indirectly out of, or in connection with, this Agreement and/or the CITY's use, operation or maintenance of its easement granted herein, unless the liabilities, damages, claims, costs, actions, or suits are solely caused by the active negligence or willful misconduct of GRANTOR. Notwithstanding any other provision hereof, CITY shall not be required to indemnify GRANTOR for any damage to GRANTOR's streets and roadways caused solely by the acts or omissions of GRANTOR.

5. Notice. Any notice between the parties must be in writing and may be personally delivered or sent by certified U.S. mail to the following addresses or other addresses as the parties may from time to time designate in a written notice:

To GRANTOR : Pinetop Properties LLC
 c/o Eric R. Stauss
 9724 Wedgewood Place
 Granite Bay, CA 95604

To CITY: City of Colfax
 33 South Main Street
 Colfax, CA 95713

4. Attorney's Fees. The prevailing party in any action to enforce or interpret this Agreement shall be entitled to recover the full amount of all costs, including reasonable attorney's fees that the prevailing party has incurred as a result of such action.

5. Successors and Assigns. The easement and covenants contained herein shall be and constitute easements and covenants running with the land. Each of the rights and obligations created by this Sewer Easement shall be for the benefit of and shall be binding upon each successor owner of the EASEMENT AREA.

6. Binding Effect. This Emergency Vehicle Access Easement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of GRANTOR and CITY.

IN WITNESS WHEREOF, GRANTOR has executed this Sewer Easement.

GRANTOR

PINETOP PROPERTIES LLC
a California limited liability corporation
By: Monarch Mine Investments LLC,
Member, a California limited liability
corporation, its Manager

By _____
Its Manager

Dated: _____

Accepted:

CITY OF COLFAX

By _____
John Schempf
City Manager

Dated: _____

EXHIBIT "A"

Description of
SEWER EASEMENT

Situated in the City of Colfax, County of Placer, State of California and being a portion of the southwest quarter of the southwest quarter of Section 2, Township 14 North, Range 9 East, M.D.M., being also a portion of that certain Grant Deed to "Pinetop Properties, LLC, a California limited liability company", filed for record in the Office of the Recorder of Placer County in Document No. 2012-0071649 of Official Records, and being also a portion of Parcels 1, 3 and 4 of that certain Parcel Map entitled "Pinetop Estates", filed for record in the Office of said Recorder in Book 35 of Parcel Maps, at Page 103, and described as follows:

Beginning at the northwest corner of said Parcel 4, said POINT OF BEGINNING being also located on the southerly line of Area "K", as said Area "K" is dedicated by and shown on that certain Parcel Map filed for record in the Office of said Recorder in Book 19 of Parcel Maps, at Page 105; thence from said POINT OF BEGINNING along the north line of said Parcel 4, being also the south line of said Area "K", curving to the left on an arc of a 580.00 foot radius curve, said arc having an interior angle of $06^{\circ} 05' 43''$, an arc length of 61.70 feet and being subtended by a chord bearing South $69^{\circ} 11' 06''$ East 61.67 feet; thence leaving said north line and said south line South $60^{\circ} 37' 35''$ East 26.59 feet; thence South $73^{\circ} 21' 43''$ East 123.74 feet; thence South $70^{\circ} 28' 09''$ East 175.80 feet; thence South $28^{\circ} 55' 45''$ East 207.29 feet; thence North $65^{\circ} 33' 42''$ East 261.31 feet; thence curving to the right on an arc of a 711.29 foot radius curve, said arc having an interior angle of $18^{\circ} 28' 28''$, an arc length of 229.35 feet and being subtended by a chord bearing South $81^{\circ} 37' 28''$ East 228.36 feet; thence South $27^{\circ} 52' 19''$ East 86.70 feet; thence South $82^{\circ} 18' 25''$ East 2.96 feet to the east line of said Parcel 1; thence along said east line South $01^{\circ} 16' 59''$ West 20.13 feet; thence North $82^{\circ} 18' 25''$ West 15.49 feet; thence North $27^{\circ} 52' 19''$ West 88.73 feet; thence curving to the left on an arc of a 691.29 foot radius curve, said arc having an interior angle of $17^{\circ} 27' 23''$, an arc length of 210.62 feet and being subtended by a chord bearing North $81^{\circ} 47' 24''$ West 209.80 feet; thence South $65^{\circ} 33' 42''$ West 275.60 feet; thence North $28^{\circ} 55' 45''$ West 218.20 feet; thence North $70^{\circ} 28' 09''$ West 167.71 feet; thence North $73^{\circ} 21' 43''$ West 125.47 feet; thence North $60^{\circ} 37' 35''$ West 84.28 feet to the west line of said Parcel 4; thence along said west line North $02^{\circ} 18' 43''$ East 12.15 feet to the POINT OF BEGINNING.

End of Description


William F. McKinney, PLS 4715



JUNE 29, 2017
Date

EXHIBIT 'B'
SANITARY SEWER EASEMENT
 PORTION OF SW 1/4 OF SW 1/4 OF SECTION 2,
 TOWNSHIP 14 NORTH, RANGE 9 EAST, M.D.M.
 CITY OF COLFAX, PLACER COUNTY, CA

JUNE, 2017 SCALE: 1"=80'
 RFE ENGINEERING, INC.
 SHEET 1 OF 2



William F. McKinney
 JUNE 29, 2017

S69°11'06"E 61.67'
 R=580.00' L=61.70'
 Δ=06°05'43"

POB
 NW CORNER PARCEL 4
 PER 35 PM 103

N02°18'43"E
 12.15'

N60°37'35"W
 84.28'

N02°18'43"E 305.38'

COLFAX-IOWA HILL RD.
 CENTERLINE

S60°37'35"E 26.59'

S73°21'43"E 123.74'

S70°28'09"E 175.80'

N70°28'09"W 167.71'

N73°21'43"W
 125.47'

SEWER
 EASEMENT
 23,320 SF

PARCEL 4
 PER 35 PM 103

SE CORNER OF PARCEL A
 PER 19 PM 105

SEE SHEET 2
 FOR CONTINUATION

S28°55'45"E 207.29'

N28°55'45"W 218.20'
 PARCEL 3
 PER 35 PM 103



**Mitigation Impact Fee Analysis
for the Village Oaks Tentative Subdivision Map**

	Negotiated Rate for Sierra Oaks Estates		Total for 76 MF Units (Neg. rates)	Total for 39 SF lots (Neg. rate)	Delta between 76 Apts and 39 SF lots
	Single Family	Multi Family			
Roads	\$1802	\$1,301	\$98,876	\$70,239	\$28,637
Drainage Study	0	0	0	0	0
Drainage (E-W Culverts)	N/A	N/A	N/A	N/A	
Trails	\$147	\$263	\$19,988	\$5,733	\$14,255
Parks and Recreation	\$4,298	\$3,008	\$228,608	\$167,622	\$60,986
City Buildings	\$684	\$494	\$37,544	\$26,676	\$10,868
City Vehicles	\$130	\$94	\$7,144	\$5,070	\$2,074
Downtown Parking	0	0	0	0	
Sewer Impact Fee	\$8,260	\$8,260	\$533,596	\$322,140	\$211,456
Landfill Equity Buy-in Fee	0	0	0	0	
Construction Tax	1% of Value	1% of Value	1% of Value	1% of Value	

RTY INFORMATION
 APN: 101-170-029
 COLFAX, CA 95713
 AREA: PARCEL 4 OF 35 PM 103
 12.903 AC
 LISTING ZONING: R-M-1
 SE: SINGLE FAMILY
 SE: SINGLE FAMILY
 FR LOTS: 39 TOTAL

VESTING TENTATIVE SUBDIVISION MAP

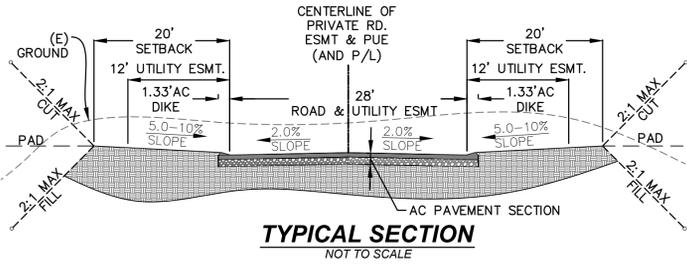
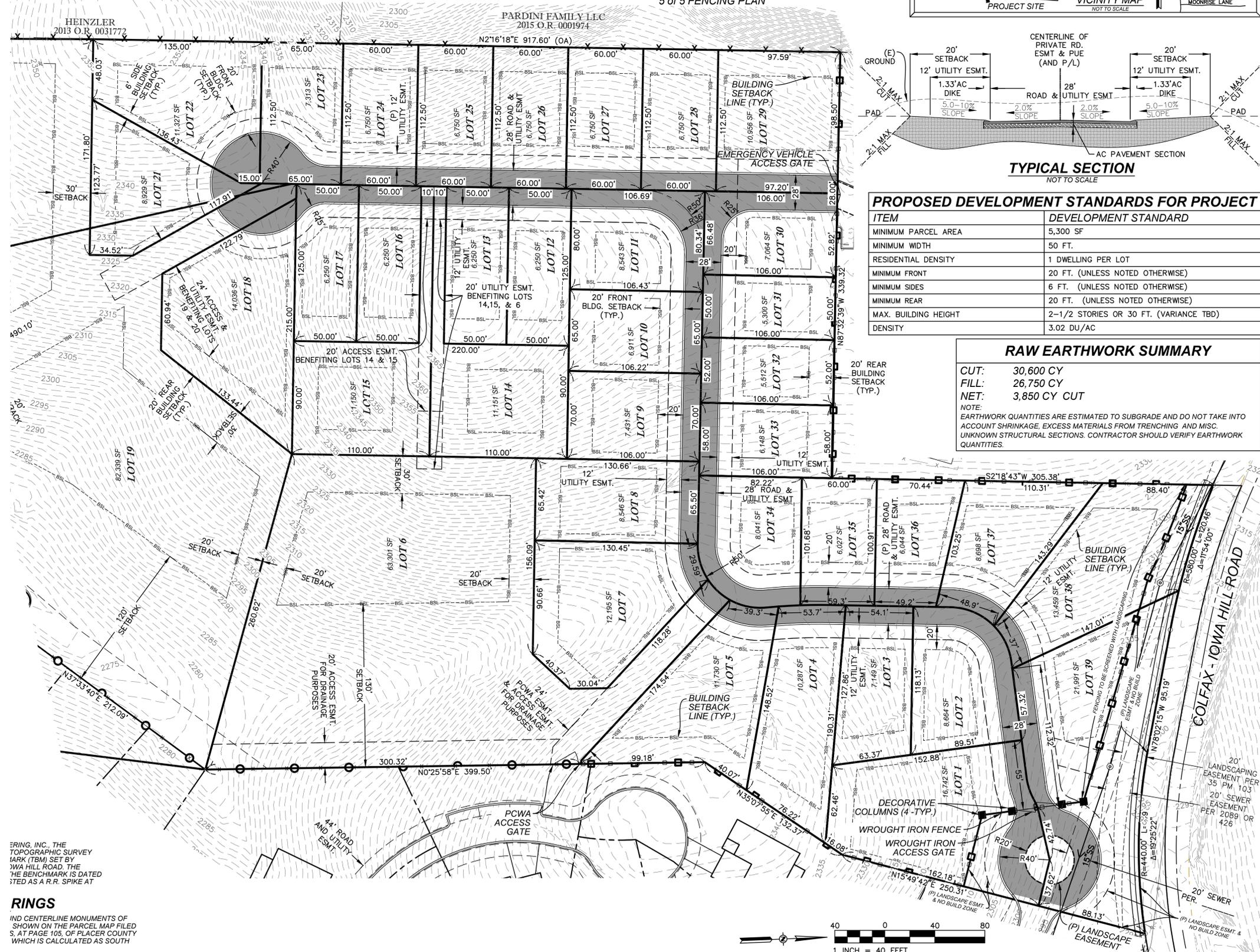
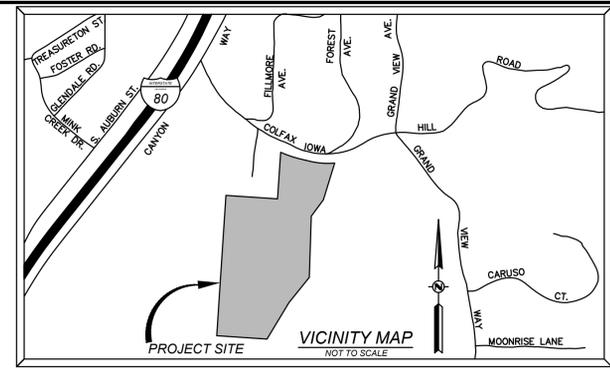
VILLAGE OAKS

COLFAX - IOWA HILL ROAD

COLFAX, CA 95713

APN: 101-170-029

SHEET INDEX:
 1 of 5 VESTING TENTATIVE SUBDIVISION MAP
 2 of 5 POTENTIAL TREE IMPACT
 3 of 5 UTILITY PLAN
 4 of 5 GRADING PLAN
 5 of 5 FENCING PLAN



PROPOSED DEVELOPMENT STANDARDS FOR PROJECT

ITEM	DEVELOPMENT STANDARD
MINIMUM PARCEL AREA	5,300 SF
MINIMUM WIDTH	50 FT.
RESIDENTIAL DENSITY	1 DWELLING PER LOT
MINIMUM FRONT	20 FT. (UNLESS NOTED OTHERWISE)
MINIMUM SIDES	6 FT. (UNLESS NOTED OTHERWISE)
MINIMUM REAR	20 FT. (UNLESS NOTED OTHERWISE)
MAX. BUILDING HEIGHT	2-1/2 STORIES OR 30 FT. (VARIANCE TBD)
DENSITY	3.02 DU/AC

RAW EARTHWORK SUMMARY

CUT: 30,600 CY
 FILL: 26,750 CY
 NET: 3,850 CY CUT

NOTE: EARTHWORK QUANTITIES ARE ESTIMATED TO SUBGRADE AND DO NOT TAKE INTO ACCOUNT SHRINKAGE, EXCESS MATERIALS FROM TRENCHING, AND MISC UNKNOWN STRUCTURAL SECTIONS. CONTRACTOR SHOULD VERIFY EARTHWORK QUANTITIES.

REVISION	DATE	BY	APPRVD

DESIGN	TEE	RFE	TEE	RFE	QUANT.

ORIGINAL SCALE IS IN INCHES

1
5

11-14-2017

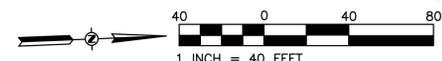
RF ENGINEERING, INC.
 Civil Engineers - Planners - Surveyors
 2260 PLYMOUTH ROAD, SUITE 100
 COLFAX, CA 95713
 PHONE: (916) 772-7800 FAX: (916) 772-7804
 WWW.RFENGINEERING.COM

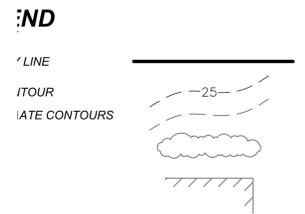
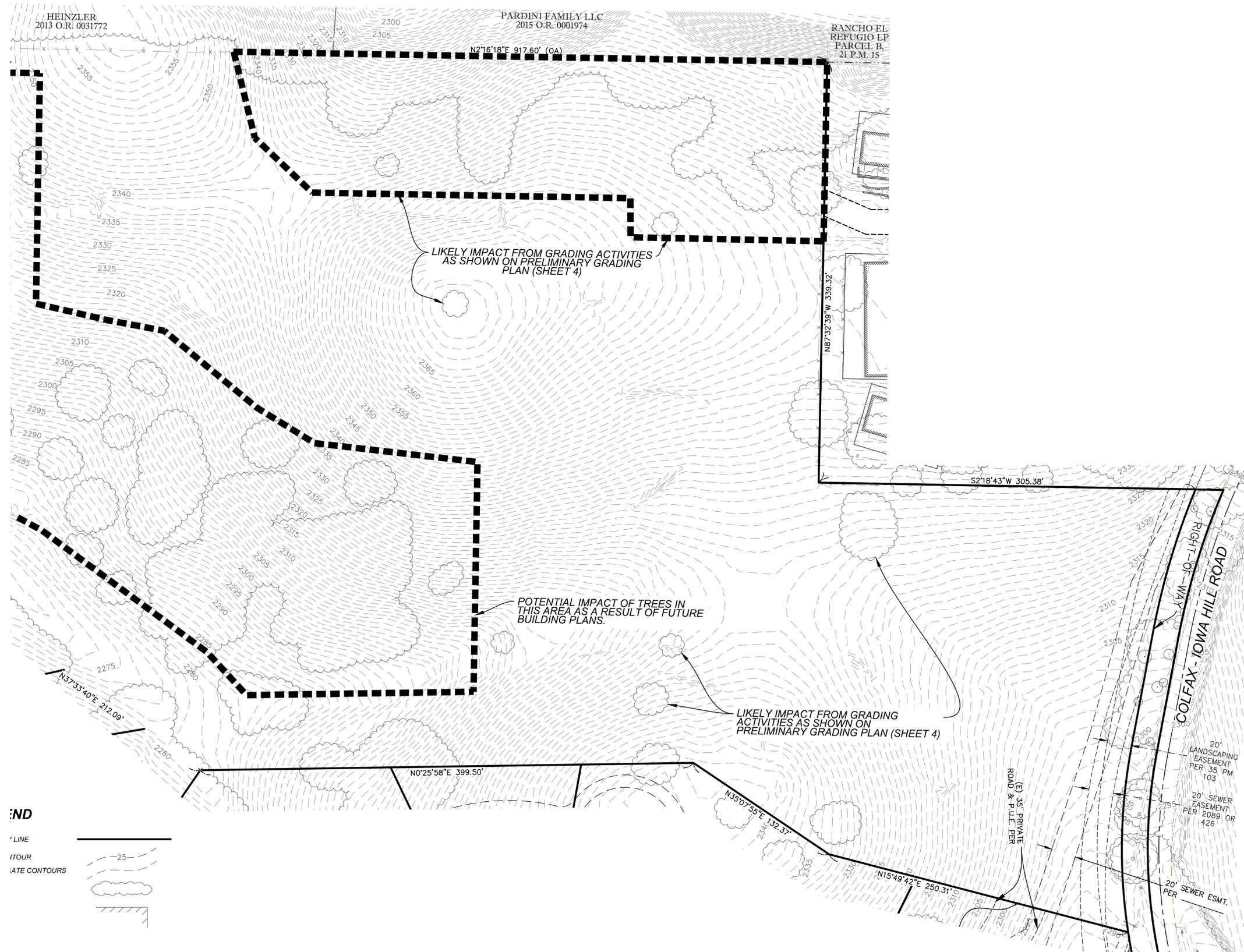
VILLAGE OAKS COMMUNITY, LLC
 6611 FOLSOM ALBURN RD., STE N
 FOLSOM, CA 95630
 PHONE: (916) 802-8052

VILLAGE OAKS (PARCEL 4 OF 35 PM 103)
VESTING TENTATIVE SUBDIVISION MAP

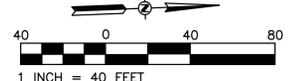
ERING, INC. THE TOPOGRAPHIC SURVEY MARK (TBM) SET BY IWA HILL ROAD, THE BENCHMARK IS DATED 1985 AND IS SET AS A R.R. SPIKE AT THE INTERSECTION OF IWA HILL ROAD AND UTILITY ESMT.

RINGS
 FIND CENTERLINE MONUMENTS OF IWA HILL ROAD, THE BENCHMARK IS DATED 1985 AND IS SET AS A R.R. SPIKE AT THE INTERSECTION OF IWA HILL ROAD AND UTILITY ESMT.





ARBORIST REPORT / TREE INVENTORY:
 SUCCESSFULLY CLEARED PURSUANT TO SIERRA NEVADA ARBORIST REPORT
 2-2015 AND TREE HARVESTING PLAN NO. 2-17-004-PLA.



REVISION	DATE	BY	APPROVED

CHECK NO.	BY	DATE	REVISION

DESIGN	DRAWN	QUANT.

ORIGINAL SCALE IS IN INCHES



RFE ENGINEERING, INC.
 Civil Engineers - Planners - Surveyors
 2280 Pch. #16772-7800 Fax: 916-772-7804
 www.RFEEngineering.com

VILLAGE OAKS COMMUNITY, LLC
 6611 FOLSOM AUBURN RD., STE N
 FOLSOM, CA 95630
 PHONE: (916) 902-8052

VILLAGE OAKS (PARCEL 4 OF 36 PM 103)
POTENTIAL TREE IMPACT

Drawing	Sheet
	2
of	of Total
	5

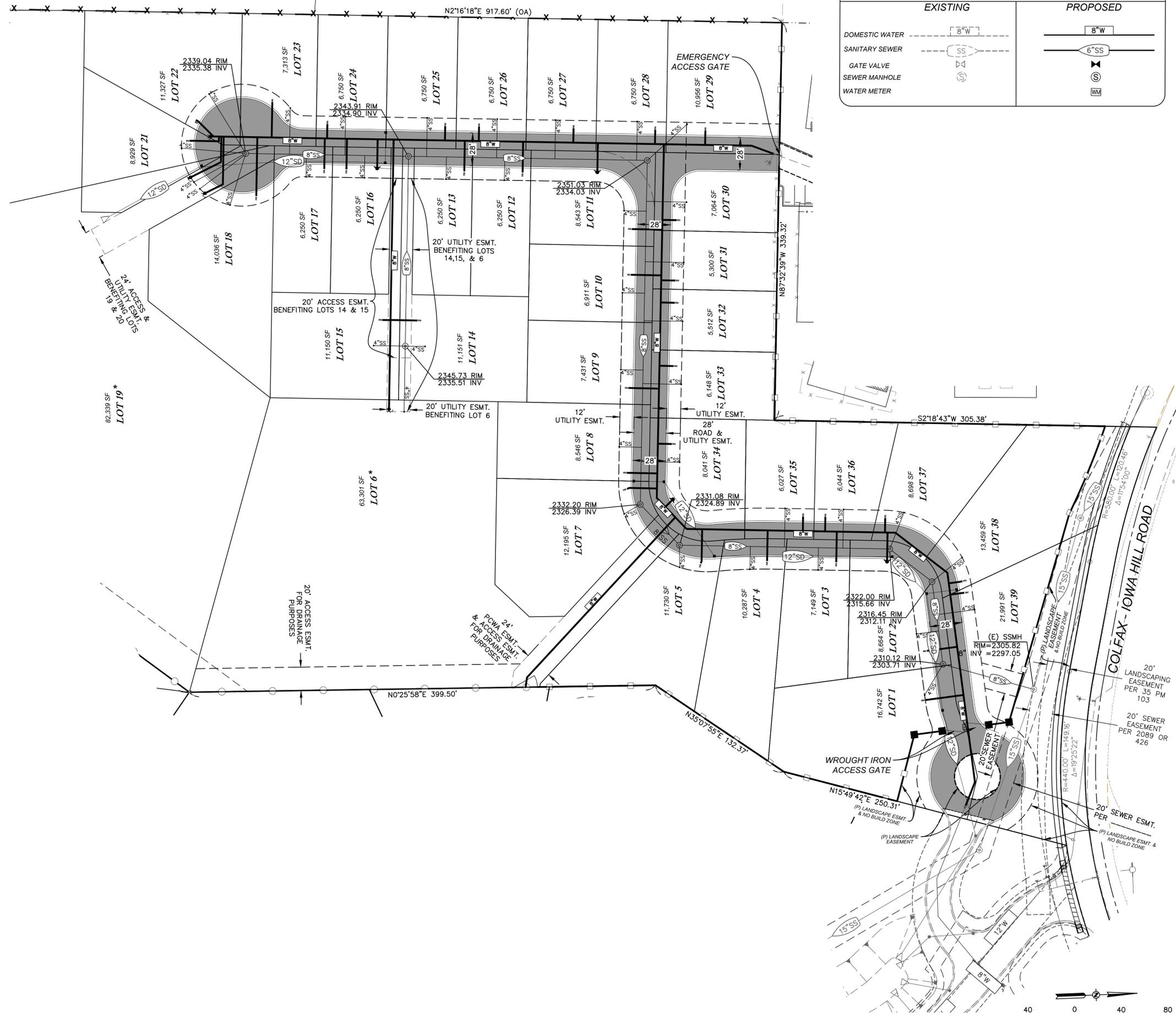
11-14-2017

HEINZLER
2013 O.R. 0031772

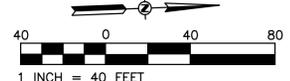
PARDINI FAMILY LLC
2015 O.R. 0001974

UTILITY LEGEND

EXISTING	PROPOSED
DOMESTIC WATER 	
SANITARY SEWER 	
GATE VALVE 	
SEWER MANHOLE 	
WATER METER 	



* SEWER GRINDER PUMP MAY BE REQUIRED.



REVISION	DATE	BY	APPRVD

CHECK NO.	BY	DATE	REVISION

DESIGN	DRAWN	QUANT.	RFE	RFE	RFE

ORIGINAL SCALE IS IN INCHES
1 1/2" = 1' 0"

RFE ENGINEERING, INC.
Civil Engineers - Planners - Surveyors
2800 W. 19th St., Suite 100
Folsom, CA 95630
Phone: (916) 772-7800 Fax: (916) 772-7804
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VILLAGE OAKS COMMUNITY, LLC
6611 FOLSOM AUBURN RD., STE N
FOLSOM, CA 95630
PHONE: (916) 902-8052

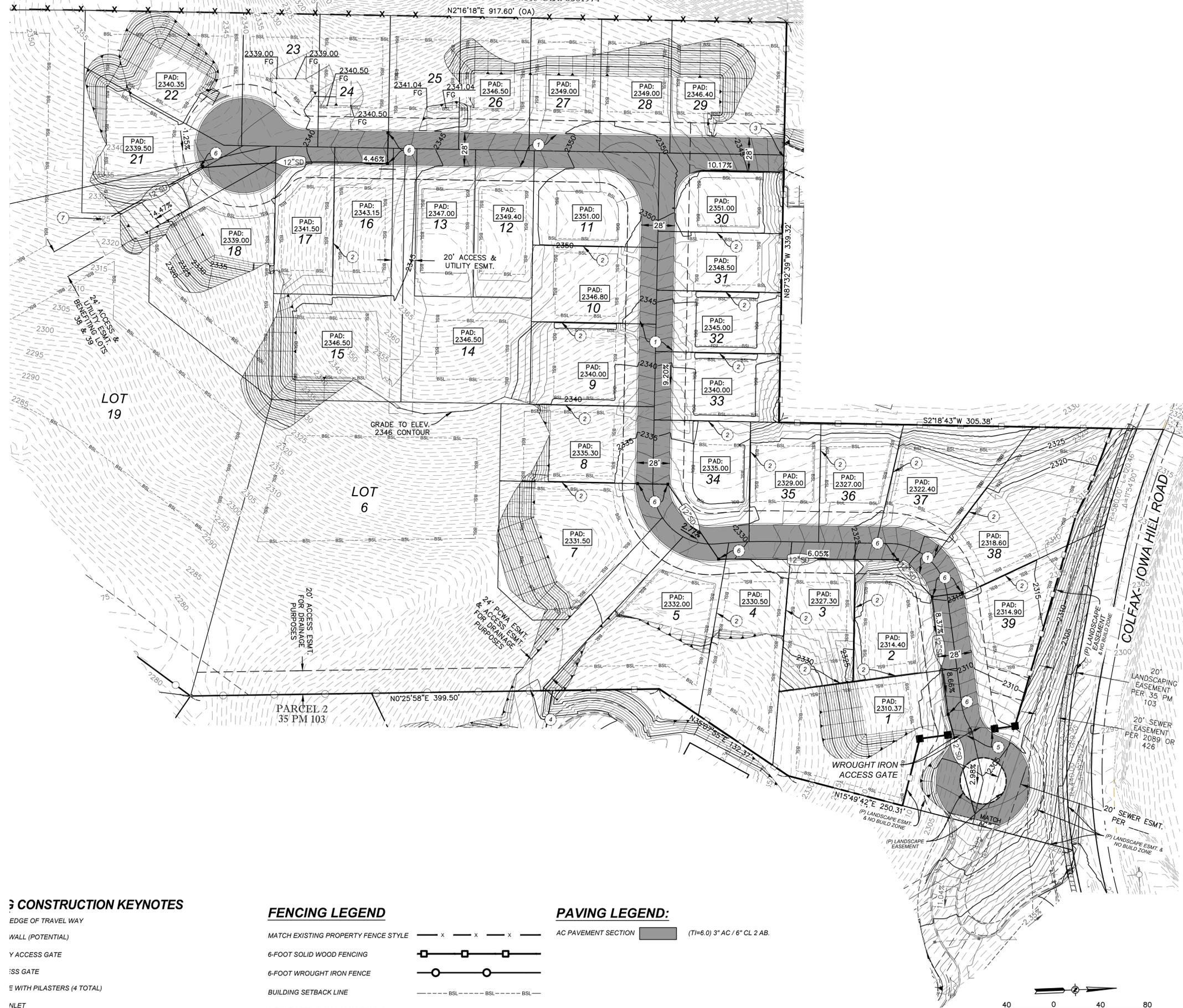
VILLAGE OAKS (PARCEL 4 OF 36 PM 103)
PRELIMINARY UTILITY PLAN

Drawing Sheet
of Total
3 of 5

11-14-2017

HEINZLER
3 O.R. 0031772

PARDINI FAMILY LLC
2015 O.R. 0001974



CONSTRUCTION KEYNOTES

- EDGE OF TRAVEL WAY
- WALL (POTENTIAL)
- Y ACCESS GATE
- :SS GATE
- E WITH PILASTERS (4 TOTAL)
- NLET
- SECTION

FENCING LEGEND

- MATCH EXISTING PROPERTY FENCE STYLE
- 6-FOOT SOLID WOOD FENCING
- 6-FOOT WROUGHT IRON FENCE
- BUILDING SETBACK LINE
- 3-FOOT DETENTION BASIN FENCING

PAVING LEGEND:

AC PAVEMENT SECTION (TI=6.0) 3" AC / 6" CL 2 AB.



REVISION	DATE	BY	APPRVD

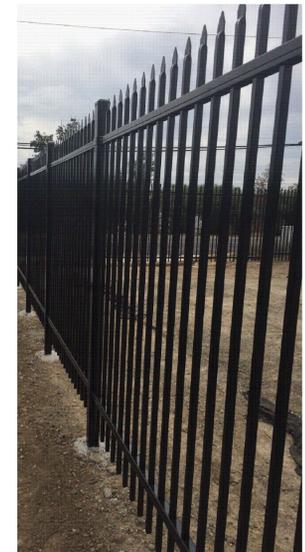
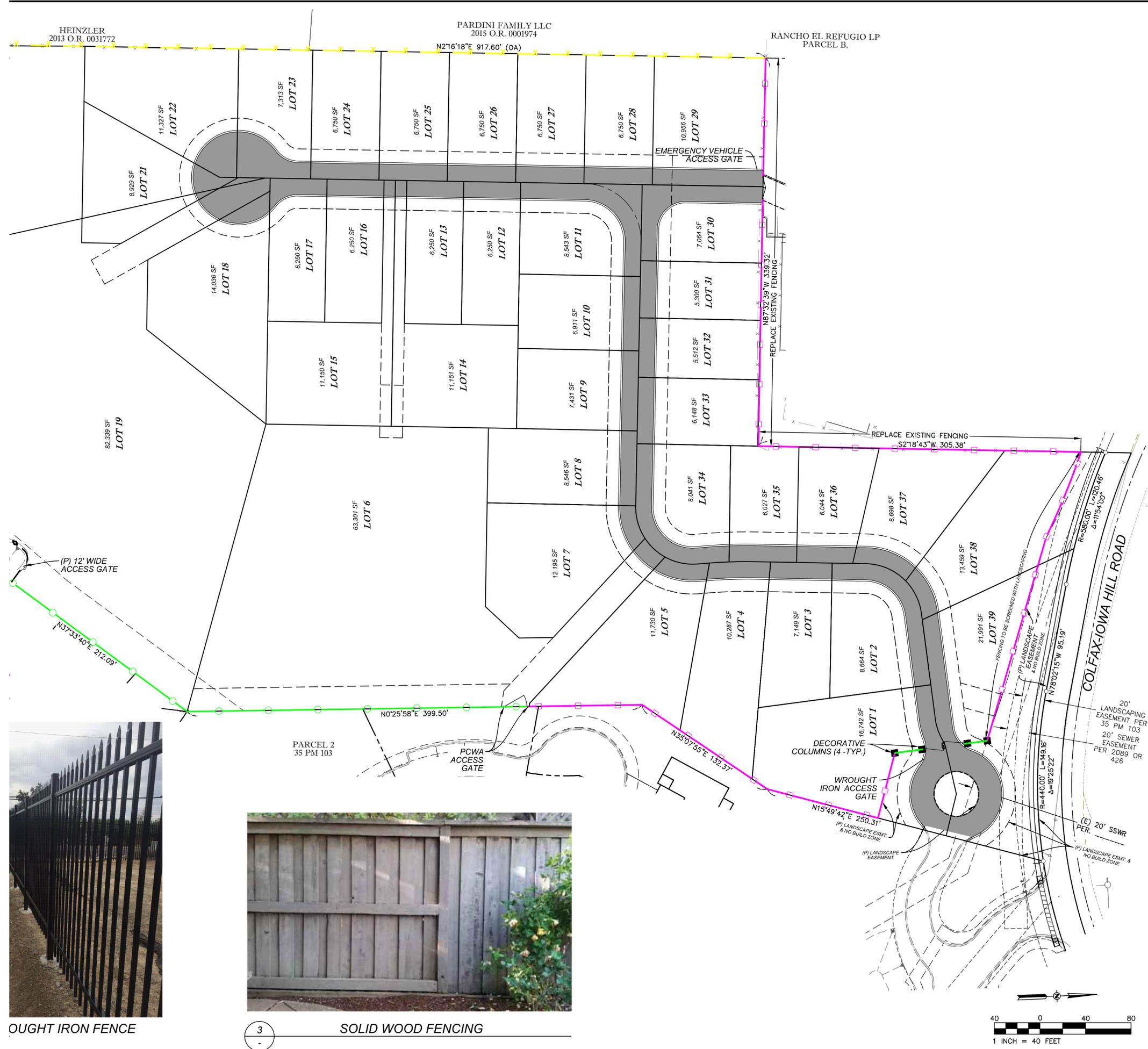
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FOLSOM, CA 95630
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VILLAGE OAKS (PARCEL 4 OF 36 PM 103)
PRELIMINARY GRADING PLAN

Drawing	Sheet
of	4
Total	5

11-14-2017



WROUGHT IRON FENCE

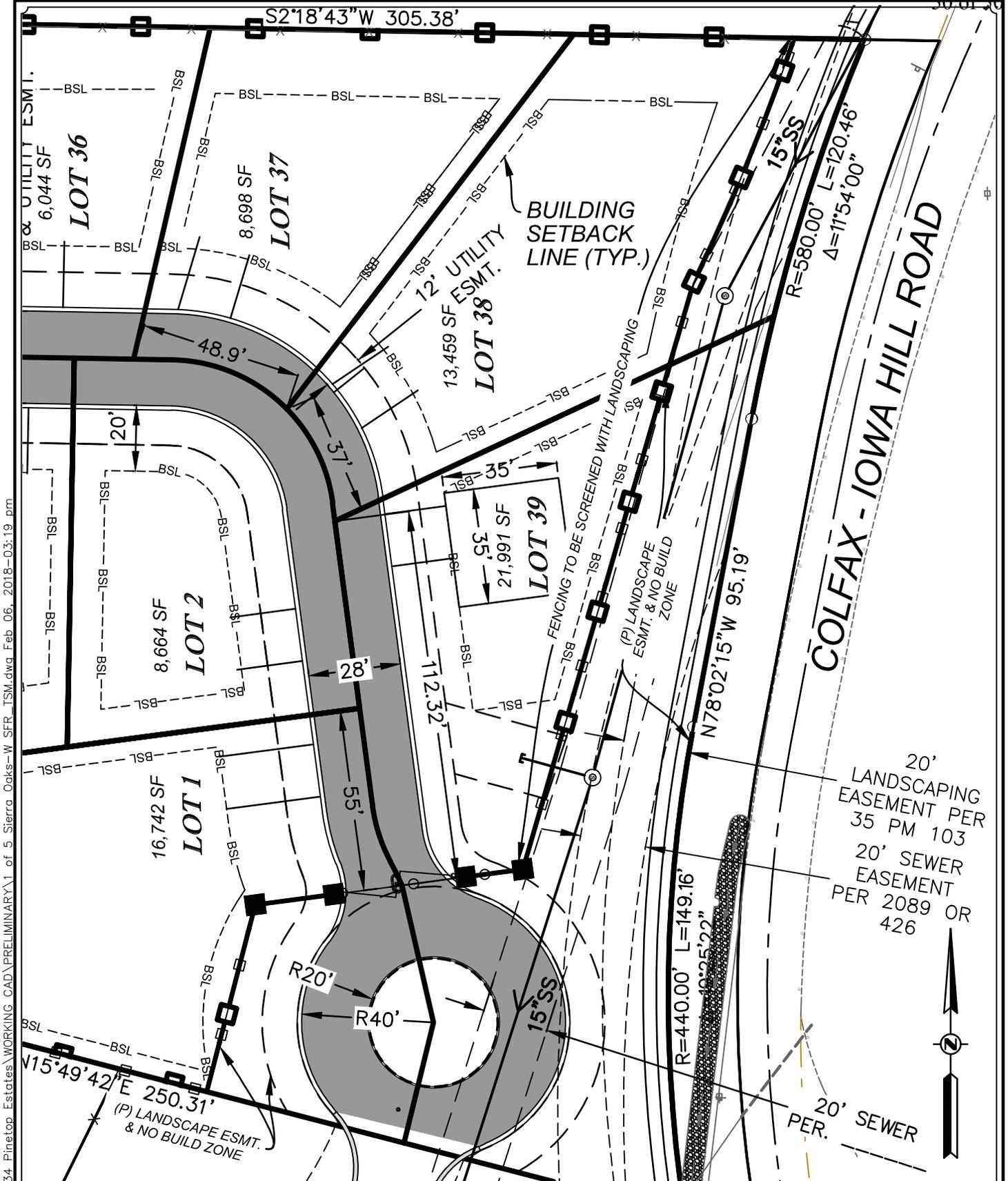


SOLID WOOD FENCING

3



<p>VILLAGE OAKS COMMUNITY, LLC 6611 FOLSOM AUBURN RD., STE N FOLSOM, CA 95630 PHONE: (916) 802-8052</p>		<p>VILLAGE OAKS COMMUNITY, LLC (PARCEL 4 OF 36 PM 103)</p>		<p>FENCING PLAN</p>		<p>Drawing of 5 of Total 5</p>		<p>11-14-2017</p>	
<p>RFE ENGINEERING, INC. Civil Engineers - Planners - Surveyors 2280 Hwy. 916, 772-7800 Fax: 916-772-7804 www.RFEEngineering.com</p>	<p>PROFESSIONAL ENGINEER FOR CALIFORNIA No. 02550 Exp. 3-31-18 RFE ENGINEERING, INC. R. F. ELZE REGISTERED PROFESSIONAL ENGINEER</p>		<p>BY: [Signature]</p>	<p>CHECK NO. []</p>	<p>REVISION []</p>	<p>DATE []</p>	<p>BY: []</p>	<p>APPRVD []</p>	
<p>DESIGN []</p>	<p>DRAWN []</p>	<p>QUANT. []</p>	<p>TEE []</p>	<p>TEE []</p>	<p>TEE []</p>	<p>SCALE IS IN INCHES</p>	<p>0</p>	<p>1</p>	<p>2</p>



Z:\2016 Projects\16034_Pinetop Estates\WORKING CAD\PRELIMINARY\1 of 5 Sierra Oaks-W SFR_TSM.dwg Feb 06, 2018-03:19 pm

RFE ENGINEERING, INC
 Civil Engineers • Planners • Surveyors
 2260 Douglas Blvd, Suite 160, Roseville, CA 95661
 Ph: 916-772-7800 Fax: 916-772-7804
 www.RFEengineering.com

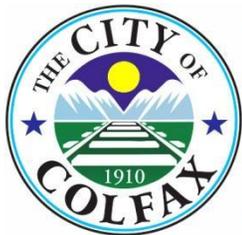
LOT 39 EXHIBIT

SCALE: 1" = 40'

VILLAGE OAKS TENTATIVE MAP
 APN: 101-170-029
 IOWA HILL ROAD
 COLFAX, CALIFORNIA 95713

20' LANDSCAPING EASEMENT PER 35 PM 103
 20' SEWER EASEMENT PER 2089 OR 426





STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE FEBRUARY 14, 2018 REGULAR COUNCIL MEETING

FROM: Alfred A. "Mick" Cabral, City Attorney
PREPARED BY: City Attorney
DATE: February 14, 2018
SUBJECT: Introduction of an Ordinance Establishing Commercial Cannabis Regulations.

X	N/A	FUNDED	UN-FUNDED	AMOUNT: N/A	FROM FUND: N/A
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RECOMMENDED ACTION: Introduce the proposed ordinance by title only, waive the first reading and continue for a second reading, public hearing and possible adoption at the February 28, 2018 regular meeting.

BACKGROUND AND SUMMARY:

The law pertaining to marijuana in California has been evolving for decades. In 1996, California voters approved Proposition 215 which was codified as California Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act" or "CUA"). The intent of the Compassionate Use Act was to enable persons who need marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes.

On January 1, 2004, Senate Bill 420, codified as California Health and Safety Code Sections 11362.7 et seq. and entitled "The Medical Marijuana Program," ("MMP") became effective to clarify the scope of the Compassionate Use Act.

In 2015, three separate bills (AB 266, AB 243 and SB 643) were signed into law. Known as the Medical Cannabis Regulation and Safety Act (MCRSA), those bills essentially created a structure to license, tax and regulate medical cannabis and a mechanism to fund the regulatory agencies to oversee it.

On November 8, 2016, California voters approved Proposition 64, which was commonly known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). The AUMA created a comprehensive regulatory scheme under which adult use of marijuana will be controlled, regulated and taxed. AUMA included provisions regulating marijuana cultivation, distribution, sale and use. AUMA essentially allowed recreational use of marijuana.

On June 27, 2017, the Governor signed the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA, also referred to as SB 94) in an effort to consolidate the laws applicable to medicinal and adult-use of marijuana. MAUCRSA essentially repealed MCRSA and AUMA and incorporated their provisions into a consolidated statutory scheme.

MAUCRSA reserves to cities the right to regulate marijuana, including commercial cannabis activities, cannabis cultivation, cannabis manufacturing, cannabis retailers and cannabis delivery. The authority includes the ability to adopt ordinances that regulate or prohibit commercial cannabis activities, cannabis cultivation, cannabis manufacturing, cannabis retailers and, to a lesser extent, cannabis delivery. Any city that adopts an ordinance regulating or prohibiting cannabis activities must provide a copy to the State of California Bureau of Cannabis Control. An applicant for a license to operate a cannabis business must establish compliance with a local ordinance as a condition to receiving a state-issued license.

On October 25, 2017 the City Council adopted Ordinance 534 which repealed and replaced Colfax Municipal Code Chapter 17.162 to prohibit all commercial cannabis activities, cannabis manufacturing, and cannabis retailers in Colfax, except one medical marijuana retailer that existed and had a valid City business license as of November 27, 2009, which Ordinance 534 conditionally allows. Ordinance 534 prohibits cannabis delivery, except primary caregivers are allowed to deliver medical cannabis to qualified patients or persons with an identification card for whom he or she is the primary caregiver. Ordinance 534 conditionally allows limited indoor or outdoor cannabis cultivation of up to six plants in certain locations by authorized growers, qualified patients and primary caregivers, with several conditions. Any violation is a misdemeanor, infraction or public nuisance subject to extensive enforcement mechanisms and administrative penalties.

When Ordinance 534 was adopted, the State of California was promulgating regulations to implement MAUCRSA and other related provisions of California law that regulate the cannabis industry. Ordinance 534 was intended to preserve the City's regulatory authority and allow the Council to decide which, if any, cannabis-related enterprises it will allow, and, if so, the conditions under which it will do so.

The City Council has since assigned the issue to a committee and hired HdL Companies to develop a cannabis management program. HdL drafted a proposed ordinance which is presented to the Council for first reading. If passed, this ordinance will add Chapter 5.32 to the Colfax Municipal Code and regulate commercial cannabis activities in the City.

If adopted, the proposed ordinance will establish a comprehensive regulatory scheme for medicinal and commercial cannabis activities in Colfax (§5.32.010). It will prohibit the commercial cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery, distribution or transportation (other than as provided under Business & Professions Code section 26090(e)), of cannabis or cannabis products in the City except as authorized by the Ordinance (§5.32.010).

The Ordinance will allow the City to issue two categories of retail cannabis licenses: (1) Retailer-M licenses which are State and City-issued licenses for retail medicinal cannabis activities and (2) Retailer-A licenses which are State and City-issued licenses for retail cannabis activities that are intended for adults 21 years of age and over and who do not possess physician's recommendations. A maximum of two of each license may be issued, but nothing requires the City to issue those licenses (§5.32.050(a), (b), (aj) & (ak); §5.32.080). Each issued permit will expire and be subject to renewal every twelve months (§5.32.100).

Applications for commercial cannabis permits are subject to extensive application and renewal procedures (§§5.32.090 & 5.32.120). The Council will be expected to adopt by resolution a process for selecting individuals or entities eligible to apply for retail cannabis permits (§5.32.170) and will also regulate individuals who are authorized to work in permitted commercial cannabis establishments (§5.32.070).

The proposed ordinance allows the City to regulate virtually every aspect of permitted medicinal and adult-use cannabis facilities within City limits including the location and design of retail commercial cannabis

facilities (§5.32.180 & §5.32.230), permit transfers (§5.32.190), mandatory record keeping and reporting (§5.32.260), security at commercial cannabis establishments (§5.32.270), facility operations (§5.32.310 - 340), packaging and labeling (§5.32.350), community relations (§5.32.370) and more.

The Ordinance also provides extensive inspection and enforcement mechanisms and proceedings. Permits can be revoked for any violation of the ordinance (§5.32.110), if State-issued licenses are suspended or revoked (§5.32.130), and for other valid reasons. Licensees affected by a suspension or revocation are entitled to appeal (§5.32.140, .150 & .160). Violation of the Ordinance can be criminally or civilly enforced or prosecuted as a public nuisance (§5.32.430, .440 & .450). Violators will also be subject to administrative fines and penalties under Colfax Municipal Code Chapter 1.25 adopted March 8, 2017 by Ordinance 532.

The Ordinance does not establish specific fees, but it authorizes the Council (§5.32.300) to set the fees by resolution. It is anticipated that the Council will adopt a comprehensive regulatory fee scheme, so implementation of the Ordinance will be revenue-neutral to the City. It is also anticipated that the City, with HdL's assistance, will place a sales tax measure on the ballot for approval by the City's electorate and generate a reasonable level of sales tax revenues from the sale of cannabis and cannabis products.

This Ordinance does not regulate cannabis cultivation. The provisions of Colfax Municipal Code Chapter 17.162 will continue to regulate indoor and outdoor cannabis cultivation.

Although California has conditionally legalized medicinal and adult-use cannabis, cannabis is still illegal under the federal Controlled Substances Act ("CSA": 21 USC §811). Legally permitted and licensed commercial cannabis facilities remain subject to prosecution under the CSA. Although the Department of Justice under the prior administration issued memoranda, generally referred to as the "Cole" memoranda, that seemed to relax the federal government's intent to enforce the CSA, the current Department of Justice has rescinded those memoranda and indicated an intent to vigorously enforce the CSA.

It is not clear whether the federal government will initiate prosecutions under the CSA, or who prosecutions will focus on. For example, on July 25, 2013, the Contra Costa County District Attorney, in tandem with the Alameda County District Attorney and an earlier opinion issued by the United States Attorney's Office for the Northern District of California, opined that civil and criminal actions can be initiated against licensees, property owners, landlords and financiers, as well as individuals who facilitate cultivation and/or distribution of marijuana, including "individuals who under color of authority issue the licenses and allow the issuance of license (sic) that permit the violation of federal law."

It is unknown whether any such prosecutions have been initiated, but the exposure under the CSA still exists. In 2014, Congress passed the Rohrabacher-Farr amendment that restricts the U.S. Department of Justice from spending federal money prosecuting medical marijuana violations if the activities are allowed under state law. It took more than a decade for Rohrabacher-Farr to get passed, and it must be renewed with each budget cycle. Last year, President Trump indicated that his administration may ignore the amendment and enforce federal law. In late 2017, the Republicans blocked a vote to renew it in the House Rules Committee. It has been included in all temporary federal spending measures since then, but they expire on February 8, 2018. Even if the amendment is renewed, it applies only to medicinal marijuana, not recreational marijuana.

Staff is available to answer any questions or provide additional information.

ATTACHMENTS:

- a. Proposed ordinance

CITY OF COLFAX

ORDINANCE NO. 536

**AN ORDINANCE OF THE CITY OF COLFAX ADDING MUNICIPAL CODE
CHAPTER 5.32 ESTABLISHING COMMERCIAL CANNABIS REGULATIONS**

The City Council of the City of Colfax does ordain as follows:

Section 1:

Colfax Municipal Code Chapter 5.32 is hereby added to the Colfax Municipal Code in the form and substance contained in the Ordinance attached hereto as Exhibit A which is incorporated herein by this reference.

Section 2. Superceding Provisions

The provisions of this Ordinance and any resolution adopted pursuant hereto shall supersede and repeal any previous Ordinance or resolution to the extent the same is in conflict herewith.

Section 3. Severability

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by the final judgment of any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such holding shall not affect the validity of the remaining portions hereof.

Section 4. California Environmental Quality Act Findings

The City of Colfax finds that, if the provisions of the California Environmental Quality Act, Public Resources Code §21000 et seq (hereinafter "CEQA") apply, the title of this ordinance 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 (the "CEQA Guidelines").

FINDING OF NO PROJECT

The City of Colfax finds that adoption of this ordinance 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. 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: The action falls within the exemptions provided by Senate Bill 94, and 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 adoption of this ordinance and its provisions cannot possibly have a significant effect on the environment.

Section 5. Effective Date

This Ordinance, and all of its provisions, shall take effect thirty (30) days after its adoption and shall, within 15 days after its adoption, be published or posted in accordance with Section 36933 of the Government Code of the State of California with the names of those City Council members voting for and against it.

The foregoing Ordinance was introduced at a duly held regular meeting of the City Council of the City of Colfax held on the 14th day of February 2018, and passed at a duly held regular meeting of the City Council held on the 28th day of February, 2018, by the following vote:

AYES:
NOES:
ABSENT:

Will Stockwin, Mayor

APPROVED AS TO FORM:

ATTEST:

Alfred Cabral
City Attorney

Lorraine Cassidy
City Clerk

CITY OF COLFAX

ORDINANCE NO. 536

**AN ORDINANCE OF THE CITY OF COLFAX ADDING MUNICIPAL CODE
CHAPTER 5.32 ESTABLISHING COMMERCIAL CANNABIS REGULATIONS****Chapter 5.32 COMMERCIAL CANNABIS ACTIVITY.****Section 5.32.010 Purpose and Intent**

It is the purpose and intent of this Chapter to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) to accommodate the needs of medically-ill persons in need of and provide access to cannabis for medicinal purposes only as recommended by their health care provider(s) while imposing sensible regulations on the use of land to protect the City’s residents, neighborhoods, and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this Chapter to regulate the retail sale of medicinal cannabis and adult-use cannabis and cannabis products in a responsible manner to protect the health, safety, and welfare of the residents of Colfax and to enforce rules and regulations consistent with state law. It is the further purpose of intent of this Chapter to require all commercial cannabis operators to obtain and renew annually a permit to operate within Colfax. Nothing in this Chapter is intended to authorize the possession, use, or provision of cannabis for purposes that violate state or federal law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to conduct business in the City, and are in addition to any permits, licenses and approval required under state, county, or other law.

Section 5.32.020. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act (hereinafter “MAUCRSA”), any subsequent state legislation and/or regulations regarding same, the City of Colfax is authorized to adopt ordinances that establish standards, requirements and regulations for the licensing and permitting of commercial medicinal and adult-use cannabis activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Colfax to all commercial cannabis activity.

Section 5.32.030. Cannabis Cultivation and Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.

Except as specifically authorized in this Chapter, the commercial cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery, distribution

or transportation (other than as provided under Bus. & Prof. Code section 26090(e)), of cannabis or cannabis product is expressly prohibited in the City of Colfax.

Section 5.32.040. Compliance with Laws.

It is the responsibility of the owners and operators of any commercial cannabis business to ensure that it is, always, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions that violate federal, state law or local law with respect to the operation of a commercial cannabis business. It shall be the responsibility of the owners and the operators of the commercial cannabis business to ensure that the commercial cannabis business is, at all times, operating in a manner compliant with all applicable federal, state and local laws, including for as long as applicable, the Compassionate Use Act (“Prop. 215”), the Medical Cannabis Program Act (“MMPA”) and the 2008 Attorney General Guidelines for the Security and Non-Diversion of Cannabis for Medical Purposes (“AG Guidelines”) (collectively “the Medical Cannabis Collective Laws”), any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the commercial cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions that violate federal or state law regarding the operation of a commercial cannabis business.

Section 5.32.050 Definitions.

Section 5.32.050. When used in this Chapter, the following words shall have the meanings ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder, and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

- (a) “A-license” means a valid state license issued under this Chapter for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations.
- (b) “A-licensee” means any person holding a license under this Chapter for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations.
- (c) “Applicant” means an owner applying for a state license pursuant to this Chapter.
- (d) “Batch” means a specific quantity of homogeneous cannabis or cannabis product that is one of the following types:
 - (1) “Harvest batch” means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals, and harvested at the same time.
 - (2) “Manufactured cannabis batch” means either of the following:

(A) An amount of cannabis concentrates or extract that is produced in one production cycle using the same extraction methods and standard operating procedures.

(B) An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.

(e) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(f) “Cannabis” means all parts of the *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

(g) “Cannabis accessories” has the same meaning as in Section 11018.2 of the Health and Safety Code.

(h) “Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this Chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or drug, as defined by Section 109925 of the Health and Safety Code.

(i) “Cannabis product” means a product containing cannabis or cannabis extract, including, but not limited to, manufactured cannabis, that is intended to be sold for use by cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code (as the same may be amended from time-to-time) or pursuant to the Adult Use of Cannabis Act. For purposes of this Chapter, “cannabis” does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(j) “Cannabis products” has the same meaning as in Section 11018.1 of the Health and Safety Code.

(k) “Caregiver” or “primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

(l) “Child resistant” means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for

normal adults to use properly

(m) “City” or “City of Colfax” means the City of Colfax, a California General Law City.

(n) “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in this Chapter.

(o) “Commercial cannabis business” means any business or operation which engages in medicinal or adult-use commercial cannabis activity.

(p) “Commercial cannabis business permit” means a regulatory permit issued by the City of Colfax pursuant to this Chapter to a commercial cannabis business and is required before any commercial cannabis activity may be conducted in the City. The initial permit and annual renewal of a commercial cannabis business permit is made expressly contingent upon the business’ ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the commercial cannabis activity at issue.

(q) “Customer” means a natural person 21 year of age or over or a natural person 18 year of age or older who possesses a physician’s recommendation.

(r) “Day care center” has the same meaning as in Section 1596.76 of the Health and Safety Code.

(s) “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

(t) “Director” means the Director of Consumer Affairs.

(u) “Dispensing” means any activity involving the retail sale of cannabis or cannabis products from a retailer.

(v) “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between licensees.

(w) “Distributor” means a person holding a valid commercial cannabis state license for distribution, required by state law to engage in the business of purchasing cannabis from a licensed cultivator, or cannabis products from a license manufacturer, for sale to a licensed retailer.

(x) “Dried flower” means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(y) “Edible cannabis product” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(z) “Fund” means the Cannabis Control Fund established pursuant to Health & Safety Code Section 26210.15

(aa) “Kind” means applicable type or designation regarding a particular cannabis variant or cannabis product type, including, but not limited to, strain name or other grower trademark, or growing area designation.

(ab) “Labeling” means any label or other written, printed, or graphic matter upon a cannabis product, upon its container.

(ac) “Labor peace agreement” means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant’s employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(ad) “License” means a state license issued under this Chapter, and includes both an A-license and an M-license, as well as a testing laboratory license.

(ae) “Licensee” means any person holding a license under this Chapter, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.

(af) “Licensing authority” means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the licensee.

(ag) “Live plants” means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ah) “Local jurisdiction” means a city, county, or city and county.

(ai) “Lot” means a batch or a specifically identified portion of a batch.

(aj) “M-license” means a state license issued under this Chapter for commercial cannabis activity involving medicinal cannabis.

(ak) “M-licensee” means any person holding a license under this Chapter for commercial cannabis activity involving medicinal cannabis.

(al) “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

(am) “Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, extraction or other manufactured product intended for internal consumption through inhalation or oral ingestion or for topical application.

(an) “Manufacturer” means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or container.

(ao) “Manufacturing site” means a location that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and

is owned and operated by a person issued a valid commercial cannabis business permit for manufacturing from the City of Colfax and, a valid state license as required for manufacturing of cannabis products.

(ap) “Medicinal cannabis” or “medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

(aq) “Natural person” is an individual living human being.

(ar) “Operation” means any act for which licensure is required under the provisions of this Chapter, or any commercial transfer of cannabis or cannabis products.

(as) “Owner” means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) An individual who will be participating in the direction, control, or management of the person applying for a license.

(at) “Package” means any container or receptacle used for holding cannabis or cannabis products.

(au) “Patient” or “qualified patient” shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5.

(av) “Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(aw) “Person with an identification card” shall have the meaning given that term by California Health and Safety Code Section 11362.7.

(ax) “Physician’s recommendation” means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

(ay) “Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

(az) “Purchaser” means the customer who is engaged in a transaction with a licensee for purposes of obtaining cannabis or cannabis products.

(ba) “Retailer” means a commercial cannabis business facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment (whether fixed or mobile) that

delivers, pursuant to express authorization, cannabis and cannabis products as part of a retail sale, and where the operator holds a valid commercial cannabis business permit from the City of Colfax authorizing the operation of a retailer, and a valid state license as required by state law to operate a retailer.

(bb) “Sell,” “sale,” and “to sell” include any transaction whereby, for any consideration, title to cannabis or cannabis products are transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

(bc) “State License” means a valid permit or license issued by the State of California, or one of its departments or divisions, under MAUCRSA and any subsequent State of California legislation or regulations regarding the same to engage in commercial cannabis activity.

(bd) “Testing laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.

(2) Licensed by the bureau.

(be) “Topical cannabis” means a product intended for external application and/or absorption through the skin. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

(bf) “Transport” means the transfer of cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized by MAUCRSA which may be amended or repealed by any subsequent State of California legislation regarding the same.

(bg) “Unique identifier” means an alphanumeric code or designation used for reference to a specific plant on a licensed premises and any cannabis or cannabis product derived or manufactured from that plant.

(bh) “Youth center” has the same meaning as in Section 11353.1 of the Health and Safety Code.

Section 5.32.060. Commercial Cannabis Business Permit Required to Engage in a Retail Commercial Cannabis Business.

- (a) No person may engage in any retail commercial cannabis activity within the City of Colfax to sell or dispense cannabis or a cannabis product unless the person (1) has a valid commercial cannabis business permit from the City of Colfax; (2) has a valid Seller’s Permit; and (3) is currently in compliance with all applicable state and local laws and regulations pertaining to the commercial cannabis business and the commercial

cannabis activities, including the duty to obtain any required state licenses.

- (b) Until Health & Safety Code Section 11362.775, subdivision (a), is repealed, the City intends that person's eligible to operate collectives or cooperatives under that subdivision shall be eligible to apply for a City conditional permit to conduct commercial cannabis activities, but only to the degree those activities are authorized under state law for collectives and cooperatives. When the Health & Safety Code Section 11362.775, subdivision (a), is repealed, or as soon as collectives and cooperatives are no longer permitted to engage in commercial cannabis activity without a state license under state law, any conditional permit issued to a commercial cannabis business that has not obtained a state license for the commercial cannabis activities shall expire and shall be null and void. Such businesses shall no longer be authorized to engage in any commercial cannabis activities in the City until they obtain both a City issued commercial cannabis business permit and a state license for that commercial cannabis activity.

Section 5.32.070. Cannabis Employee Permit Required.

- (a) Any person who is an employee or who otherwise works within a commercial cannabis business must be legally authorized to do so under applicable state law.
- (b) Any person who is an employee or who otherwise works within a commercial cannabis business must obtain a commercial cannabis employee work permit from the City prior to performing any work at any commercial cannabis business.
- (c) Applications for a commercial cannabis employee work permit shall be developed, made available, and processed by the City Manager or his/her designee(s), and shall include, but not be limited to, the following information:
 - (1) Name, address, and phone number of the applicant;
 - (2) Age and verification of applicant. A copy of a birth certificate, driver's license, government issued identification card, passport or other proof that the applicant is at least twenty-one (21) years of age must be submitted with the application;
 - (3) Name, address of the commercial cannabis businesses where the person will be employed, and the name of the primary manager of that business;

- (4) A list of any crimes enumerated in California Business and Professions Code Section 26507(b)(4) for which the applicant has been convicted;
 - (5) Name, address, and contact person for any previous employers from which the applicant was fired, resigned, or asked to leave and the reasons for such dismissal or firing;
 - (6) The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the City Manager or his/her designee(s).
 - (7) A signed statement under penalty of perjury that the information provided is true and correct.
 - (8) If applicable, verification that the applicant is a qualified patient or primary caregiver.
 - (9) A fee paid in an amount set by resolution of the City Council in an amount necessary to cover the costs of administering the employee work permit programs. The fee is non-refundable and shall not be returned in the event the work permit is denied or revoked.
- (d) The City Manager or his/her designee(s) shall review the application for completeness, shall conduct a background check to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant:
- (1) Is dishonest; or
 - (2) Has committed any felony, or any misdemeanor involving fraud, deceit, embezzlement; or
 - (3) Was convicted of a violent felony or crime involving moral turpitude; or
 - (4) The illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, except for cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.

Discovery of these facts showing that the applicant is dishonest or has been convicted of those types of crimes are grounds for denial of the permit. Where the applicant's sentence (including any term of probation, incarceration, or supervised release) for possession of, possession for

sale, sale, manufacture, transportation, or cultivation of a controlled substance is completed, such underlying conviction shall not be the sole ground for denial of a commercial cannabis work permit. Furthermore, an applicant shall not be denied a permit if the denial is based solely on any of the following (i) a conviction for any crime listed in subsection (d) (4) above for which the applicant has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the California Penal Code or (ii) a conviction that was subsequently dismissed pursuant to Sections 1203.4, 1203.4a, or 1203.41 of the California Penal Code or any other provision of state law allowing for dismissal of a conviction.

- (e) The City Manager or his/her designee(s) shall issue the commercial cannabis work permit or a written denial to the applicant within thirty (30) days of the date the application was deemed complete. In the event the cannabis work permit can't be issued within this time period then the City Manager or his/her designee(s) may issue a temporary work permit for an employee upon completing a preliminary background check and if the business can demonstrate to the City Manager or his/her designee(s) that the employee is necessary for the operation of the business. The temporary permit may be immediately revoked by the City Manager or his/her designee(s) upon determination that the applicant has failed the background check or upon the issuance of the permanent work permit.
- (f) A work permit shall be valid for a twelve (12) month period and must be renewed on an annual basis. Renewal applications shall contain all the information required in subsection 5.32.070 (c) above including the payment of a renewal application fee in an amount to be set by resolution of the City Council.
- (g) In the event a person changes employment from one commercial cannabis business in the City to another, the work permit holder shall notify the City Manager or his/her designee(s) in writing of the change within ten (10) days, or the work permit shall be suspended or revoked, and such person shall not be permitted to work at any commercial cannabis business in the City.
- (h) The City may immediately revoke the commercial cannabis work permit should the permit holder be convicted of a crime listed in subsection (c) and (d) above or if facts become known to the City Manager or his/her designee(s) that the permit holder has engaged in activities showing that he or she is dishonest.
- (i) The City Manager or his/her designee(s) is hereby authorized to promulgate all regulations necessary to implement the work permit process and requirements.

- (j) The applicant may appeal the denial or revocation of a commercial cannabis work permit by filing a notice of appeal with the City Clerk within ten (10) days of the date the applicant received the notice of denial, which appeal shall be conducted as set forth in Section 5.32.140 of this Chapter.
- (k) The City Manager or his/her designee(s) shall issue a permit in the form of a personal identification card that can be worn in a prominent and visible location. The identification card shall be maintained in good and readable condition at all times.

Section 5.32.080 Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.

Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted. The number of each type of commercial cannabis business that shall be permitted to operate in the City at any one given time shall be as follows:

- (1) Retailer M-type License; maximum of two (2); and
- (2) Retailer A-type License: maximum of two (2)

Section 5.32.080 is only intended to create a maximum number of commercial cannabis businesses that may be issued permits to operate in the City under each category. Nothing in this Chapter creates a mandate that the City Council must issue any or all of the commercial cannabis business permits if it is determined that the applicants do not meet the standards which are established in the application requirements or further amendments to the application process.

- (a) Each year following the City Council's initial award of permits, if any, or at any time in the City Council's discretion, the City Council may reassess the number of commercial cannabis business permits which are authorized for issuance. The City Council, in its discretion, may determine by resolution that the number of commercial cannabis permits should stay the same, be reduced or be expanded.

Section 5.32.090 Initial Application Procedure.

- (a) The City Council shall adopt by resolution the procedures to govern the application process, and the manner in which the decision will ultimately be made regarding the issuance of any commercial cannabis business permit(s), which resolution shall include or require the City Manager to provide detailed objective review criteria to be evaluated on a point system or equivalent quantitative evaluation scale tied to each set of review criteria ("Review Criteria"). The resolution shall authorize the City Manager or his/her designee(s) to prepare the necessary forms, adopt any necessary rules to the application, regulations and processes, solicit

applications, conduct initial evaluations of the applicants, and to ultimately provide a final recommendation to the City Council.

- (b) At the time of filing, each applicant shall pay an application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.
- (c) After the initial review, ranking, and scoring under the Review Criteria, the City Manager or his/her designee(s) will make a recommendation to the City Council, and the City Council shall make a final determination in accordance with Chapter 5.32.090.
- (d) THE CITY'S RESERVATION OF RIGHTS:

The City reserves the right to reject any or all applications. Prior to permit issuance, the City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California state law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application. In addition to any other justification provided, including a failure to comply with other requirements in this Chapter, an application RISKS BEING REJECTED for any of the following reasons:

- (1) Proposal received after designated time and date.
- (2) Proposal not containing the required elements, exhibits, nor organized in the required format.
- (3) Proposal considered not fully responsive to this request for permit application.

Section 5.32.100. Expiration of Commercial Cannabis Business Permits.

Each commercial cannabis business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. Commercial cannabis permits may be renewed as provided in Section 5.32.120.

Section 5.32.110. Revocation of Permits.

Commercial cannabis business permits may be revoked for any violation of any law and/or any rule, regulation and/or standard adopted pursuant to this Chapter or Section 5.32.130.

Section 5.32.120. Renewal Applications.

- (a) An application for renewal of a commercial cannabis business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.
- (b) The renewal application shall contain all the information required for new applications.
- (c) The applicant shall pay a fee in an amount to be set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.
- (d) An application for renewal of a commercial cannabis business permit shall be rejected if any of the following exists:
 - (1) The application is filed less than sixty (60) days before its expiration.
 - (2) The commercial cannabis business permit is suspended or revoked at the time of the application.
 - (3) The commercial cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application.
 - (4) The commercial cannabis business has failed to conform to the requirements of this Chapter, or of any regulations adopted pursuant to this Chapter.
 - (5) The permittee fails or is unable to renew its State of California license.
 - (6) If the City or state has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of this Chapter, of the City's Municipal Code, or of the state rules and regulations, and the City or state has determined that the violation is grounds for termination or revocation of the commercial cannabis business permit.

- (e) The City Manager or his/her designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the City Manager or his/her designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the City Manager or his/her designee(s) shall be handled pursuant to Chapter 5.32.140.
- (f) If a renewal application is rejected, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

Section 5.32.130. Effect of State License Suspension, Revocation, or Termination.

Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a commercial cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a commercial cannabis business, such revocation or termination shall also revoke or terminate the ability of a commercial cannabis business to operate within the City of Colfax.

Section 5.32.140. Appeals

Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the City Manager or his/her designee(s), the appeal shall be conducted as prescribed in this Chapter.

Section 5.32.150. Written request for Appeal.

- (a) Within ten (10) calendar days after the date of a decision of the City Manager or his/her designee(s) to revoke, suspend or deny a permit, or to add conditions to a permit, an aggrieved party may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.
- (b) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

Section 5.32.160. Appeal Hearing.

- (a) Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council. The City Council shall hear the matter de novo, and shall conduct the hearing pursuant to the procedures set forth by the City.

- (b) The appeal shall be held within a reasonable time after the filing the appeal, but in no event later than ninety (90) days from the date of such filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.
- (c) At the hearing, the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.
- (d) At the conclusion of the hearing the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be final.

Section 5.32.170 Permittee Selection Process.

- (a) The City Council shall adopt by resolution a procedure guideline and Review Criteria by which the top applicants in each category of each commercial cannabis business will be presented to the City Council for a final determination at a public hearing.
- (b) The top final applicants for each category may be invited to attend the City Council meeting, where they may be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as determined to be necessary.
- (c) At least ten (10) days prior to the hearing, notice of the hearing shall be sent to all property owners located within three hundred (300) feet of the proposed business locations of each of the finalists to be considered by the City Council.
- (d) The City Council shall either deny or approve the final candidates and shall select the top candidates in each category of the commercial cannabis businesses. The City Council's decision as to the selection of the prevailing candidates shall be final.
- (e) Official issuance of the commercial cannabis business permit(s), however, is conditioned upon the prevailing candidate(s) obtaining all required land use approvals. Following the Council's selection, the prevailing candidate(s) shall apply to the City's Planning Department to obtain any required land use approvals or entitlements for the permittee's location, if any. Land use approvals shall include compliance with all applicable provisions of CEQA. The City Manager or his/her designee(s) shall formally issue the commercial cannabis business permit(s) once the City

Planning Director or his/her designee(s) affirms that all of the required land use approvals have been obtained.

- (f) Issuance of a commercial cannabis business permit does not create a land use entitlement. The commercial cannabis business permit shall only be for a term of twelve (12) months, and shall expire at the end of the twelve (12) month period unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with. Until a state license is available and obtained by the City-permitted operator, this means compliance with all provisions of the Medical Cannabis Collective Laws as set forth at Section 5.32.060.
- (g) Notwithstanding anything in this Chapter to the contrary, the City Council reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a commercial cannabis business permit until a permit is actually issued, and then only for the duration of the permits term. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.
- (h) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.
- (i) Each person granted a commercial cannabis business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the commercial cannabis business permit program created in this Chapter.

5.32.180 Change in location; updated registration form.

- (a) Any time the retail location specified in the regulatory permit has changed, the applicant shall re-register with the City Manager or his/her designee(s). The process and the fees for re-registration shall be the same as the process and fees set forth for registration in sections 5.32.090 and 5.32.120.
- (b) Within fifteen (15) calendar days of any other change in the information provided in the registration form or any change in status of compliance with the provisions of this chapter, including any change in the commercial cannabis business ownership or management members, the applicant shall file an updated registration form with the City Manager or his/her designee(s) for review along with a registration amendment fee, as set forth in section 5.32.090 and 5.32.120.

Section 5.32.190. Transfer of Cannabis Business Permit.

- (a) The owner of a cannabis business permit shall not transfer ownership or control of the permit to another person or entity unless and until the transferee obtains an amendment to the permit from the City Council stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Manager in accordance with all provisions of this Chapter (as though the transferee were applying for an original cannabis business permit) accompanied by a transfer fee in an amount set by resolution of the City Council (or if not set, shall be the same amount as the application fee), and the City Council determines, after hearing, in accordance with this section that the transferee passed the background check required for permittees and meets all other requirements of this Chapter.
- (b) Commercial cannabis business permits issued through the grant of a transfer by the City Council shall be valid for a period of one year beginning on the day the City Council approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this Chapter.
- (c) Changes in ownership of a permittee's business structure or a substantial change in the ownership of a permittee business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the City Council through the transfer process contained in this subsection (a). Failure to comply with this provision is grounds for permit revocation.
- (d) A permittee may change the form of business entity without applying to the City Council for a transfer of permit, provided that either:
 - 1. The membership of the new business entity is substantially similar to original permit holder business entity (at least 51% of the membership is identical), or
 - 2. If the original permittee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and to comply with Section 5.32.060, subdivision (b), provided that the Board of Directors (or in the case of an unincorporated association, the individual(s) listed on the City permit application) of the original permittee entity are the same as the new business entity.

Although a transfer is not required in these two circumstances, the permit holder is required to notify the City Manager in writing of the

change within ten (10) days of the change. Failure to comply with this provision is grounds for permit revocation.

- (e) No commercial cannabis business permit may be transferred when the City Manager or his/her designee has notified the permittee that the permit has been or may be suspended or revoked.
- (f) Any attempt to transfer a commercial cannabis business permit either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

Section 5.32.200. City Business License.

Prior to commencing operations, a commercial cannabis business shall obtain a City of Colfax business license.

Section 5.32.210. Building Permits and Inspection.

Prior to commencing operations, a commercial cannabis business shall be subject to a mandatory building inspection, and must obtain all required permits and approvals which would otherwise be required for any business of the same size and intensity operating in that zone. This includes but is not limited to obtaining any required building permit(s), Fire Department approvals, Health Department approvals and other zoning and land use permit(s) and approvals.

Section 5.32.220. Certification from the City Planning Director.

Prior to commencing operations, a commercial cannabis business must obtain a certification from the City Planning Director or his/her designee(s) certifying that the business is located on a site that meets all of the requirements of Title 17 of the City's Municipal Code.

Section 5.32.230 Location and Design of Cannabis Businesses

Commercial cannabis businesses shall be permitted to engage in Retail M-type License and or Retail A-type License activity. However, they shall only be operated at the same location by the same operator who dispenses cannabis and cannabis products and shall be subject to the following zoning and locational requirements:

- (a) The Retail cannabis business must be located on property zoned CR (Retail Commercial), CH (Highway Commercial), or I (Industrial) and must meet all of the requirements for development in that zone; and
- (b) The property on which the retail cannabis business is located must also meet all of the following distance requirements:

- (1) It shall be no closer than two hundred (200) feet of any residentially zoned parcel in the City, including any legal non-conforming residential uses as of the date the cannabis business permit is issued. The distance between the cannabis business and the residential parcel shall be measured from the outer boundaries of the residential parcel to the first structure on the property seeking the commercial cannabis permit.
- (2) It shall be no closer than six hundred (600) feet from any parcel containing any of the following:
 - A. A school providing instruction in kindergarten or any grades 1 through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12);
 - B. A commercial daycare center licensed by the County or City that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius.
 - C. A youth center that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius.
 - D. A church or a city, county or Federal government building unless the State licensing authority or the City specifies a different radius.
- (c) Each proposed cannabis business project shall:
 - (1) Conform with the City's general plan, any applicable specific plans, master plans, and design requirements.
 - (2) Comply with all applicable zoning and related development standards.
 - (3) Be constructed in a manner that minimizes odors to surrounding uses, and promotes quality design and construction, and consistency with the surrounding properties.
 - (4) Be adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and all items required for the development.
 - (5) Be served by highways adequate in width and improved as necessary to carry the kind and quantity of traffic such use will generate.
 - (6) Be provided with adequate electricity, sewerage, disposal, water, fire protection and storm drainage facilities for the intended purpose.

Section 5.32.240. Right to Occupy and to Use Property.

As a condition precedent to the City's issuance of a commercial cannabis business permit pursuant to this Chapter, any person intending to open and to operate a commercial cannabis business shall provide sufficient evidence of the legal right to occupy and to use the proposed location. In the event the proposed location will be leased from another person, the applicant shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read this Chapter and consents to the operation of the commercial cannabis business on the owner's property.

Section 5.32.250. Limitations on City's Liability.

To the fullest extent permitted by law, the City of Colfax shall not assume any liability whatsoever with respect to having issued a commercial cannabis business permit pursuant to this Chapter or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any commercial cannabis business permit, the applicant shall be required to meet all of the following conditions before they can receive the commercial cannabis business permit:

- (a) They must execute an agreement, in a form approved by the city attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Colfax, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the commercial cannabis business permit, the City's decision to approve the operation of the commercial cannabis business or activity, to process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the commercial cannabis business or any of its officers, employees or agents.
- (b) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the city attorney.
- (c) Reimburse the City of Colfax for all costs and expenses, including but not limited to attorney fees and costs and court costs, which the City of Colfax may be required to pay as a result of any legal challenge related to the City's approval of the applicant's commercial cannabis business permit, or related to the City's approval of a commercial cannabis activity. The City of Colfax may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

Section 5.32.260. Records and Recordkeeping.

- (a) Each owner and operator of a commercial cannabis business shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a commercial cannabis business permit issued pursuant to this Chapter), or at any time upon reasonable request of the City, each commercial cannabis business shall file a sworn statement detailing the number of sales by the commercial cannabis business during the previous twelve-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid. On an annual basis, each owner and operator shall submit to the City a financial audit of the business's operations conducted by an independent certified public accountant. Each permittee shall be subject to a regulatory compliance review and financial audit as determined by the City Manager or his/her designee(s).
- (b) Each owner and operator of a commercial cannabis business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the commercial cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the commercial cannabis business. The register required by this paragraph shall be provided to the City Manager or his/her designee(s) upon a reasonable request.
- (c) Prior to state licensing, each commercial cannabis business shall maintain a record of all persons, patients, collectives and primary caregivers served by the commercial cannabis business, for a period of no less than four (4) years. Once a state license is obtained, the commercial cannabis business must maintain such records only to the extent permitted or required by the MAUCRSA.
- (d) All commercial cannabis businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing and distribution processes until purchase as set forth MAUCRSA.
- (e) Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPPA) regulations, each commercial cannabis business shall allow City of Colfax officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted commercial cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than

twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware.

Section 5.32.270. Security Measures.

- (a) A permitted commercial cannabis business shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent the theft of cannabis or cannabis products at the commercial cannabis business. Except as may otherwise be determined by the City Manager or his/her designee(s), these security measures shall include, but shall not be limited to, all of the following:
- (1) Preventing individuals from remaining on the premises of the commercial cannabis business if they are not engaging in an activity directly related to the permitted operations of the commercial cannabis business.
 - (2) Establishing limited access areas accessible only to authorized commercial cannabis business personnel.
 - (3) Except for live growing plants which are being cultivated at a cultivation facility, all cannabis and cannabis products shall be stored in a secured and locked room, safe, or vault. All cannabis and cannabis products, including live plants that are being cultivated, shall be kept in a manner as to prevent diversion, theft, and loss,
 - (4) Installing 24-hour security surveillance cameras of at least HD-quality to monitor all entrances and exits to and from the premises, all interior spaces within the commercial cannabis business which are open and accessible to the public, all interior spaces where cannabis, cash or currency, is being stored for any period of time on a regular basis and all interior spaces where diversion of cannabis could reasonably occur. The commercial cannabis business shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the City Manager or his/her designee(s), and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the City Manager or his/her designee(s). Video recordings shall be maintained for a minimum of forty-five (45) days, and shall be made available to the City Manager or his/her designee(s) upon request. Video shall be of sufficient quality for effective prosecution

- of any crime found to have occurred on the site of the commercial cannabis business.
- (5) Sensors shall be installed to detect entry and exit from all secure areas.
 - (6) Panic buttons shall be installed in all commercial cannabis businesses.
 - (7) Having a professionally installed, maintained, and monitored alarm system.
 - (8) Any bars installed on the windows or the doors of the commercial cannabis business shall be installed only on the interior of the building.
 - (9) Security personnel shall be on-site 24 hours a day or alternative security as authorized by the City Manager or his/her designee(s). Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the City Manager or his/her designee(s), with such approval not to be unreasonably withheld.
 - (10) Each commercial cannabis business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
- (b) Each commercial cannabis business shall identify a designated security representative/liaison to the City of Colfax, who shall be reasonably available to meet with the City Manager or his/her designee(s) regarding any security related measures or and operational issues.
 - (c) As part of the application and permitting process each commercial cannabis business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all cannabis, cannabis products, and any currency.
 - (d) The commercial cannabis business shall cooperate with the City whenever the City Manager or his/her designee(s) makes a request, upon reasonable notice to the commercial cannabis business, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.

- (e) A commercial cannabis business shall notify the City Manager or his/her designee(s) within twenty-four (24) hours after discovering any of the following:
 - (1) Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the City Manager or his/her designee(s).
 - (2) Diversion, theft, loss, or any criminal activity involving the commercial cannabis business or any agent or employee of the commercial cannabis business.
 - (3) The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or employees or agents of the commercial cannabis business.
 - (4) Any other breach of security.

Section 5.32.280. Restriction on Alcohol & Tobacco Sales.

- (a) No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the commercial cannabis business.
- (b) No person shall cause or permit the sale of tobacco products on or about the premises of the commercial cannabis business.

Section 5.32.290. Compliance with Laws.

It is the responsibility of the owners and operators of the commercial cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions that violate state law or local law with respect to the operation of a commercial cannabis business. It shall be the responsibility of the owners and the operators of the commercial cannabis business to ensure that the commercial cannabis business is, at all times, operating in a manner compliant with all applicable state and local laws, the 2008 Attorney General Guidelines, any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the commercial cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions which violate state law with regard to the operation of a commercial cannabis business.

Section 5.32.300. Fees and Charges.

- (a) No person may commence or continue any commercial cannabis activity in the City, without timely paying in full all fees and charges required for the operation of a commercial cannabis activity. Fees and charges associated with the operation of a commercial cannabis activity shall be established by resolution of the City Council which may be amended from time to time.
- (b) All commercial cannabis businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, state and local law. Each commercial cannabis business shall cooperate with City with respect to any reasonable request to audit the commercial cannabis business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.
- (c) Prior to operating in the city and as a condition of issuance of a regulatory permit, the operator of the commercial cannabis business shall enter into a development agreement with the city setting forth the terms and conditions under which the commercial cannabis business will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

Section 5.32.310. Miscellaneous Operating Requirements.

- (a) Commercial cannabis businesses may operate only during the hours specified in the commercial cannabis business permit issued by the City.
- (b) Restriction on Customer Consumption. Cannabis shall not be consumed by any retail customer on the premises of any commercial cannabis businesses.
- (c) No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a commercial cannabis business permit, or on any of the vehicles owned or used as part of the commercial cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
- (d) Reporting and Tracking of Product and of Gross Sales. Each commercial cannabis business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the commercial cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale)

and other information which may be deemed necessary by the City. The commercial cannabis business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the City Manager or his/her designee(s) prior to being used by the permittee.

- (e) There shall not be a physician located in or around any commercial cannabis business at any time for the purpose of evaluating patients for the issuance of a cannabis recommendation or card where applicable.
- (f) Prior to dispensing medicinal cannabis or medicinal cannabis products where applicable to any person, the commercial cannabis business shall obtain verification from the recommending physician that the person requesting medicinal cannabis or medicinal cannabis products is a qualified patient.
- (g) Emergency Contact. Each commercial cannabis business shall provide the City Manager or his/her designee(s) with the name, telephone number (both land line and mobile, if available) of an on-site employee or owner to whom emergency notice can be provided at any hour of the day.
- (h) Signage and Notices.
 - (1) In addition to the requirements otherwise set forth in this section, business identification signage for a commercial cannabis business shall conform to the requirements of the Colfax Municipal Code, including, but not limited to, seeking the issuance of a City sign permit.
 - (2) No signs placed on the premises of a commercial cannabis business shall obstruct any entrance or exit to the building or any window.
 - (3) Each entrance to a commercial cannabis business shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the commercial cannabis business is prohibited except as provided in 5.32.300(c).
 - (4) Business identification signage shall be limited to that needed for identification only, and shall not contain any logos or information that identifies, advertises, or lists the services or the products offered. No commercial cannabis business shall advertise by having a person holding a sign and advertising the business to

passersby, whether such person is on the premises of the commercial cannabis business or elsewhere including, but not limited to, the public right-of-way.

- (5) Signage shall not be directly illuminated, internally or externally. No banners, flags, billboards or other prohibited signs may be used at any time.
 - (6) In accordance with state law and regulations or as stipulated in the Colfax regulatory permit, holders of a commercial cannabis business permit shall agree that, as an express and ongoing condition of permit issuance and subsequent renewal, the holder of the permit shall be prohibited from advertising any commercial cannabis business located in the City of Colfax utilizing a billboard (fixed or mobile), bus shelter, placard, aircraft, or other similar forms of advertising, anywhere in the state. This paragraph is not intended to place limitations on the ability of a commercial cannabis business to advertise in other legally authorized forms, including on the internet, in magazines, or in other similar ways.
- (i) Minors.
- (1) Persons under the age of eighteen (18) years shall not be allowed on the premises of a commercial cannabis business. It shall be unlawful and a violation of this Chapter for any person to employ any person at a commercial cannabis business who is not at least eighteen (18) years of age.
 - (2) The entrance to the commercial cannabis business shall be clearly and legibly posted with a notice that no person under the age of eighteen (18) years of age is permitted to enter upon the premises of the commercial cannabis business.
- (k) Odor Control. Odor control devices and techniques shall be incorporated in all commercial cannabis businesses to ensure that odors from cannabis are not detectable off-site. Commercial cannabis businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the commercial cannabis business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. As such, commercial cannabis businesses must install and maintain the following equipment, or any other

equipment which the City Planning Director or his/her designee(s) determine is a more effective method or technology:

- (1) An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;
 - (2) An air system that creates negative air pressure between the commercial cannabis business's interior and exterior, so that the odors generated inside the commercial cannabis business are not detectable on the outside of the commercial cannabis business.
- (l) Display of Permit and City Business License. The original copy of the commercial cannabis business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the commercial cannabis business in a location readily-visible to the public.
- (m) Background Check. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which authorizes city authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorizes access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every person listed as an owner, manager, supervisor, employee or volunteer, of the commercial cannabis business must submit fingerprints and other information deemed necessary by the Sheriff or his/her designee(s) for a background check by the Placer County Sheriff's Office. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which requires that there be a requirement or exclusion from employment, licensing or certification based on specific criminal conduct on the part of the subject of the record. No person shall be issued a permit to operate a commercial cannabis business or a related work permit unless they have first cleared the background check, as determined by the Sheriff or his/her designee(s), as required by this section. A fee for the cost of the background investigation, which shall be the actual cost to the City of Colfax to conduct the background investigation as it deems necessary and appropriate, shall be paid at the time the application for a commercial cannabis business permit is submitted.
- (n) Loitering. The owner and/or operator of a commercial cannabis business shall prohibit loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises.
- (o) Permits and other Approvals. Prior to the establishment of any commercial cannabis business or the operation of any such business, the person intending to establish a commercial cannabis business must first obtain all

applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such commercial cannabis business intends to establish and to operate.

- (p) If a commercial cannabis business permittee is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), members of the applicant authorized to possess cannabis shall sign an agreement with the commercial cannabis business which states that members shall not distribute cannabis or cannabis products to non-members which violate any applicable state and local laws, regulations, or guidelines.
- (q) If the commercial cannabis business permittee is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), the commercial cannabis business shall terminate the membership of any member violating any of the provisions of this Chapter.

Section 5.32.320. Other Operational Requirements.

The City Manager or his/her designee may develop other commercial cannabis business operational requirements or regulations as are determined to be necessary to protect the public health, safety and welfare.

Section 5.32.330. Operating Requirements for Retailer Facilities.

- (a) Retailer M-type License Owners and Operators are required to verify the age and the necessary documentation of each medical customer to ensure the customer is not under the age of eighteen (18) years, and to verify that the potential customer has a valid doctor's recommendation. Doctor recommendations are not to be obtained or provided at the retail location.
- (b) Operating hours of the Retailer M-type License and or Retailer A-type License shall be limited between the hours of 6:00 a.m. through 10:00 p.m., seven days a week.
- (c) The commercial cannabis retailer shall only sell cannabis or cannabis products to a natural person 21 year of age or older or to a natural person 18 year of age or older who possesses a physician's recommendation.
- (d) Entrances into the dispensary shall be locked at all times with entry strictly controlled. A "buzz-in" electronic/mechanical entry system shall be utilized to limit access to and entry to the dispensary, to separate it from the reception/lobby area.

- (e) Uniformed licensed security personnel shall be employed to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities. The City Manager or his/her designee at their discretion may authorize or approve the carrying of a firearm by licensed security personnel which shall be specified in the terms of the regulatory permit.
- (f) The commercial cannabis retailer may have on-site, in the retail sales area of the Licensed facility, only that quantity of cannabis and cannabis products reasonably anticipated to meet the daily demand readily available for sale.
- (g) All restroom facilities shall remain locked and under the control of management.

Section 5.32.340. Retailer Non-Store Front and Delivery Services shall not be permitted.

- (a) It shall be unlawful for any person, limited liability company, corporation, collective, cooperative or any other entity to manage or operate a non-store front facility or a delivery service which sells, exchanges, barter, transfers, delivers and/or promotes, any cannabis or cannabis products in the City for commercial purpose unless they have been issued a commercial cannabis permit pursuant to Section 5.32.230 and are in compliance with Section 5.32.330.

Section 5.32.350. Packaging and Labeling.

- (a) Before a retailer of commercial cannabis sells any edible cannabis or edible cannabis product to a customer, it shall be labeled and placed in tamper-evident packaging which at least meets the requirements of the MAUCRSA and all implementing rules and regulations.
- (b) Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package.
- (c) A warning that the item is a medication and not a food must be clearly legible on the front of the package and/or must comply with state packing requirements.
- (d) The package must have a label warning that the product is to be kept away from children.
- (e) The label must also state that the product contains cannabis and must specify the date of manufacture.

- (f) Any edible cannabis product that is made to resemble a typical food product must be in a properly labeled opaque (non-see-through) package before it leaves the commercial cannabis retail business.
- (g) Retail sales must be in a properly labeled opaque package when purchased.

The City Council may impose additional packaging and labeling requirements on cannabis or cannabis products by resolution, as permitted by law.

Section 5.32.360. Promulgation of Regulations, Standards and Other Legal Duties.

- (a) In addition to any regulations adopted by the City Council, the City Manager or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of commercial cannabis business permits, the ongoing operation of commercial cannabis businesses and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.
- (b) Regulations shall be published on the City's website.
- (c) Regulations promulgated by the City Manager shall become effective upon date of publication. Commercial cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager or his designee.

Section 5.32.370. Community Relations.

- (a) Each commercial cannabis business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the commercial cannabis business can be provided. Each commercial cannabis business shall also provide the above information to all businesses and residences located within one hundred (100) feet of the commercial cannabis business.
- (b) During the first year of operation pursuant to this Chapter, the owner, manager, and community relations representative from each commercial cannabis business holding a permit issued pursuant to this Chapter shall attend a quarterly meeting with the City Manager or his/her designee(s) and other interested parties as deemed appropriate by the City Manager, to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of operation, the

owner, manager, and community relations representative from each such commercial cannabis business shall meet with the City Manager or his/her designee(s) when and as requested by the City Manager or his/her designee(s).

- (c) Commercial cannabis businesses to which a permit is issued pursuant to this Chapter shall develop a City approved public outreach and educational program for youth organizations and educational institutions that outlines the risks of youth addiction to cannabis, and that identifies resources available to youth related to drugs and drug addiction.

Section 5.32.380. Fees Deemed Debt to City of Colfax.

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City of Colfax that is recoverable via an authorized administrative process as set forth in the Municipal Code, or in any court of competent jurisdiction.

Section 5.32.390. Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City of Colfax, whether committed by the permittee or any employee or agent of the permittee, which violations occur in or about the premises of the commercial cannabis business whether or not said violations occur within the permit holder's presence.

Section 5.32.400. Inspection and Enforcement.

- (a) The City Manager, or his/her designee(s) charged with enforcing the provisions of the Colfax Municipal Code, or any provision thereof, may enter the location of a commercial cannabis business at any time, without notice, and inspect the location of any commercial cannabis business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.
- (b) It is unlawful for any person having responsibility over the operation of a commercial cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a commercial cannabis business under this Chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a commercial cannabis business under this Chapter or under state or local law.

- (c) The City Manager, Sheriff or his/her designee(s) charged with enforcing the provisions of this Chapter may enter the location of a commercial cannabis business at any time during the hours of operation and without notice to obtain samples of the cannabis to test for public safety purposes. Any samples obtained by the City of Colfax shall be logged, recorded, and maintained in accordance with the Sheriff's Office standards for evidence.

Section 5.32.420. Compliance with State Regulation.

It is the stated intent of this Chapter to regulate commercial cannabis activity in the City of Colfax in compliance with all provisions MAUCRSA and any subsequent state legislation.

Section 5.32.430. Violations declared a public nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

Section 5.32.440. Each violation a separate offense.

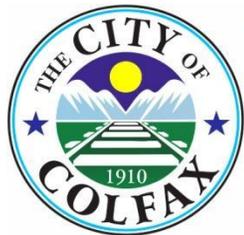
Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all administrative citations and fines provided for in Colfax Municipal Code Chapter 1.25 together with all other remedies and enforcement measures authorized by the Colfax Municipal Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, any permit issued pursuant to this Chapter being deemed null and void, disgorgement and payment to the City of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City of Colfax may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial cannabis business or persons related to, or associated with, the commercial cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the City Manager, Sheriff or his/her designee(s), may take immediate action to temporarily suspend a commercial cannabis business permit issued by the City, pending a hearing before the City Council. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 5.32.450. Criminal Penalties.

Each and every violation of the provisions of this Chapter may in the discretion of the District Attorney or the City Attorney be prosecuted as a misdemeanor and upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for a period of not more than twelve (12) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 5.32.460. Remedies cumulative and not exclusive.

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE FEBRUARY 14, 2018 REGULAR COUNCIL MEETING

FROM: Alfred A. “Mick” Cabral, City Attorney
PREPARED BY: City Attorney
DATE: February 14, 2018
SUBJECT: Introduction of an ordinance amending Colfax Municipal Code Chapter 17.162.

X	N/A		FUNDED		UN-FUNDED	AMOUNT: N/A	FROM FUND: N/A
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RECOMMENDED ACTION: Introduce the proposed ordinance by title only, waive the first reading and continue for a second reading, public hearing and possible adoption at the February 28, 2018 regular meeting

BACKGROUND AND SUMMARY:

On October 25, 2017 the City Council adopted Ordinance 534 which repealed and replaced Colfax Municipal Code Chapter 17.162 to prohibit all commercial cannabis activities, cannabis manufacturing, and cannabis dispensaries in Colfax, except one medical marijuana dispensary that existed and had a valid City business license as of November 27, 2009, which Ordinance 534 conditionally allows. Ordinance 534 prohibits cannabis delivery, except primary caregivers are allowed to deliver medical cannabis to qualified patients or persons with an identification card for whom he or she is the primary caregiver. Ordinance 534 conditionally allows limited indoor or outdoor cannabis cultivation of up to six plants in certain locations by authorized growers, qualified patients and primary caregivers, with several conditions. Any violation is a misdemeanor, infraction or public nuisance subject to extensive enforcement mechanisms and administrative penalties.

When Ordinance 534 was adopted, the State of California was promulgating regulations to implement the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), also referred to as SB 94, and other related provisions of California law that regulate the cannabis industry. Ordinance 534 was intended to preserve the City’s regulatory authority and allow the Council to decide which, if any, cannabis-related enterprises it will allow, and, if so, the conditions under which it will do so.

The City Council has since assigned the issue to a committee and hired HdL Companies to develop a cannabis management program. HdL drafted a proposed ordinance which will also be on the February 14, 2018 agenda for first reading. If passed, the ordinance prepared by HdL will add Chapter 5.32 to the Colfax Municipal Code and regulate commercial cannabis activities in the City.

If the ordinance prepared by HdL is approved, then Ordinance 534 will have to be amended because Ordinance 534 prohibits all commercial cannabis activities and manufacturing, prohibits marijuana dispensaries except one, and prohibits cannabis delivery except by a qualified primary caregiver. The proposed Chapter 5.32, Section 5.32.030, precludes commercial cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery,

distribution or transportation except as specifically authorized in Chapter 5.32, and allows but regulates commercial cannabis activities. Ordinance 534 allows limited indoor and outdoor cannabis cultivation whereas Chapter 5.32 does not specifically address cultivation.

The proposed changes will harmonize the two ordinances. Specifically, commercial cannabis activity, cannabis retail, cannabis manufacturing, cannabis cultivation, and cannabis delivery will only be allowed if permitted under Chapter 5.32.

The proposed changes to Ordinance 534 are simple. Sections 17.162.060 (commercial cannabis activity), 17.162.070 (cannabis manufacturing), 17.162.080 (cannabis retail), 17.162.040 (cannabis cultivation), and 17.162.090 (cannabis delivery) will be outlawed unless those activities are specifically permitted under new Chapter 5.32. The Ordinance 534 provisions that pertain to the existing retailer are being eliminated because retailers will be regulated by Chapter 5.32 and those provisions are no longer needed. No changes are proposed to the Ordinance 534 provisions that relate to indoor and outdoor cultivation, which will continue to be regulated under Colfax Municipal Code Chapter 17.162.

Staff is available to answer any questions or provide additional information.

ATTACHMENTS:

- a. Proposed ordinance

CITY OF COLFAX

ORDINANCE NO. 535

**AN ORDINANCE OF THE CITY OF COLFAX AMENDING MUNICIPAL CODE
CHAPTER 17.162 PERTAINING TO CANNABIS REGULATIONS**

The City Council of the City of Colfax does ordain as follows:

Section 1:

Colfax Municipal Code Chapter 17.162 is hereby amended as reflected in the Ordinance attached hereto as Exhibit A which is incorporated herein by this reference.

Section 2. Superceding Provisions

The provisions of this Ordinance and any resolution adopted pursuant hereto shall supersede and repeal any previous Ordinance or resolution to the extent the same is in conflict herewith.

Section 3. Severability

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by the final judgment of any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such holding shall not affect the validity of the remaining portions hereof.

Section 4. California Environmental Quality Act Findings

The City of Colfax finds that, if the provisions of the California Environmental Quality Act, Public Resources Code §21000 et seq (hereinafter "CEQA") apply, the title of this ordinance 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 (the "CEQA Guidelines").

FINDING OF NO PROJECT

The City of Colfax finds that adoption of this ordinance 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. 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: The action falls within the exemptions provided by Senate Bill 94, and 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 adoption of this ordinance and its provisions cannot possibly have a significant effect on the environment.

Section 5. Effective Date

This Ordinance, and all of its provisions, shall take effect thirty (30) days after its adoption and shall, within 15 days after its adoption, be published or posted in accordance with Section 36933 of the Government Code of the State of California with the names of those City Council members voting for and against it.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Colfax held on the 14th day of February, 2018, and passed at a regular meeting of the City Council held on the 28th day of February, 2018, at a duly held regular meeting of the City of Colfax, by the following vote:

AYES:
NOES:
ABSENT:

Will Stockwin, Mayor

APPROVED AS TO FORM:

ATTEST:

Alfred Cabral
City Attorney

Lorraine Cassidy
City Clerk

~~COLFAX MUNICIPAL CODE~~
~~CHAPTER 17.162~~
~~CANNABIS REGULATIONS~~CITY OF COLFAX
ORDINANCE NO. 535

AN ORDINANCE OF THE CITY OF COLFAX AMENDING MUNICIPAL CODE CHAPTER 17.162
PERTAINING TO CANNABIS REGULATIONS

Colfax Municipal Code Chapter 17.162 is hereby amended as follows:

17.162.010 Application

The provisions of this chapter shall apply generally to all property throughout the City of Colfax wherein any of the conditions herein specified are found to exist. However, nothing in this chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act of 1996, codified as California Health and Safety Code Section 11362.5 (the “CUA”), the Medical Marijuana Program codified as California Health and Safety Code Sections 11362.7 et seq., (the “MMP”), the Medical Cannabis Regulation and Safety Act (“MCRSA”) or the Adult Use Of Marijuana Act passed and adopted by the voters in November, 2016 (the “AUMA”) as the MCRSA and AUMA were enacted or as they have been repealed or amended by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”).

17.162.020 Administration.

The City Manager, the Placer County Sheriff, the Placer County Chief Building Official and any employee designated by any of those persons, are authorized to administer and enforce this chapter to ensure compliance.

17.162.030 Definitions

As used herein, the following definitions shall govern the construction of this chapter:

“Abatement costs” mean any costs or expenses reasonably related to the abatement of conditions which violate this chapter, and shall include, but not be limited to, enforcement, investigation, attorneys’ fees, collection and administrative costs, and the costs associated with removal or correction of the violation.

“Accessory structure” means a structure that is accessory to any principal structure and customarily a part thereof, which is clearly incidental and secondary to the principal structure and is significantly smaller in area than the principal structure and does not change the character of the principal structure or principal use of the premises.

“Administrative costs” mean the cost of City staff time and Placer County Sheriff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets, and the time expended by the code enforcement officer or designee to calculate the above costs and prepare itemized invoices, may also be recovered.

“Authorized grower” means any person, including a person with an identification card, primary caregiver, or qualified patient, who is authorized by state law to grow cannabis for personal medical or non-medical use in compliance with local and state laws that authorize such cannabis cultivation.

“Cannabis,” “marijuana” “medical cannabis,” “medical marijuana,” and/or “marijuana products” shall be used interchangeably and means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this ~~division~~ [Chapter](#), “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

“Cannabis plant” means any mature or immature cannabis plant (and/or cannabis plant clone), or any cannabis seedling, unless otherwise specifically provided herein.

“Child care center” means any licensed child care center, or any daycare center, or childcare home, or any preschool.

“Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

“Commercial cannabis activity” includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transporting, delivery or sale of cannabis or cannabis products.

“Cultivation” means any activity involving the planting, growing, trimming, harvesting, drying, curing, grading, processing or storage of one or more cannabis plants or any part thereof in any location, indoor or outdoor, including a fully enclosed and secure structure or accessory structure.

“[DispensaryRetailer](#)” means any facility, location, establishment or similar entity that distributes, delivers, or supplies cannabis for any purpose and shall include but not be limited to a dispensing collective or cooperative.

“Code enforcement officer” means any person authorized by the City of Colfax to administer this chapter or his or her authorized deputies or designees, each of whom is independently authorized to enforce this chapter.

“Fence (solid)” means a barrier constructed of wood or other materials which form an opaque screen.

“Fence (other than solid)” means a barrier constructed of posts made of wood, metal or any other rigid material connected with wire, fabric, boards or other materials which is intended to demarcate a boundary, separate land uses, secure animals, enclose property, exclude people and animals from a designated area, and the like, and which does not form a visually opaque screen.

“Fully enclosed and secure structure” means a space within a building that has been approved by the City of Colfax and complies with the California Building Code, as adopted by the City of Colfax, or if exempt from the permit requirements of the California Building Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof; a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secured against unauthorized entry; and is accessible through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily penetrated or breached, such as two-inch by four-inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical, and Fire Codes as adopted or applied by the City of Colfax. Any detached, fully-enclosed and secure structure used for the cultivation of marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure except through the ventilation and filtration system. Such structure shall be located in the rear yard area of a legal parcel or premises, maintain the setbacks set forth in the Colfax Municipal Code and the area surrounding the structure or back yard must be enclosed by a solid fence at least six feet in height. When this chapter allows that cultivation of marijuana occur indoors, the harvest of such marijuana shall also be accomplished indoors.

“Harvest” includes but is not limited to the drying, processing, or storage of marijuana which may only occur within a fully enclosed and secure structure or accessory structure.

“Immature cannabis plant” means a cannabis plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

“Indoors” means within a fully enclosed and secure structure or accessory structure.

“Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container.

“Manufacturing” means the producing, preparing, propagating, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container.

“Mature cannabis plant” means a cannabis plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

“Medical marijuana collective” means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by agreement, or form a cooperative within the City in order to collectively or cooperatively cultivate marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include “cooperative” unless the context clearly indicates otherwise.

“Outdoor” or “outdoors” means any location within the City of Colfax that is not within a fully enclosed and secure structure or accessory structure as defined herein.

“Parcel” means a “legal parcel” as defined herein and a property assigned a separate parcel number by the Placer County assessor.

“Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, cooperative or combination of the above in whatever form or character.

“Premises” means a single, legal parcel of property that includes an occupied legal residence, such as a house, an apartment, a condominium, a mobile home or other similar dwelling, which is a dwelling in compliance with the Colfax Municipal Code and has also met the requirements of this chapter. Where contiguous legal parcels are under common control or ownership, such contiguous legal parcels shall be counted as a single “premises” for purposes of this chapter.

“Primary caregiver” shall have the meaning set forth in Health and Safety Code Section 11362.7(d), as may be amended.

“Private residence” means a house, a duplex, an apartment unit, a condominium, a townhouse, a mobile home or other similar dwelling or premises.

“Qualified patient” shall have the meaning set forth in Health and Safety Code Section 11362.7(f), as may be amended.

“Recommendation” means a written current recommendation signed by a licensed California physician pursuant to Health and Safety Code Sections 11362.5 and 11362.7.

“Residential treatment facility” means a facility provided for treatment of drug and alcohol dependency, including any “sober living facility” run by treatment providers for the benefit of transitional living.

“School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

“Youth-oriented facility” means elementary school, middle school, junior high school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a day care or preschool facility.

17.162.040 Outdoor Cannabis Cultivation

A. When authorized by state law, an authorized grower shall be allowed to cultivate cannabis outdoors for personal use only, subject to the regulations in this chapter and elsewhere in the Colfax Municipal Code and the following restrictions:

1. The regulations of this chapter and the Colfax Municipal Code shall apply to all outdoor cultivation of cannabis; and

2. A maximum of six plants on no more than one-hundred (100) square feet in total is allowed for outdoor cultivation of cannabis per parcel with a private residence. Cannabis plants may be cultivated on no more than one-hundred (100) square feet in total per parcel with a private residence, regardless of the number of authorized growers, qualified patients or primary caregivers residing in a private residence on the parcel. The total combined outdoor cultivation of cannabis per parcel with a private residence shall not exceed one-hundred (100) square feet at any time. For the purposes of this section, the area used to cultivate cannabis shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises; and

3. All outdoor cultivation of cannabis may only occur on a parcel with the private residence of the authorized grower, and the authorized grower may only cultivate cannabis on one parcel and may not cultivate outdoors if there is any indoor cannabis cultivation occurring on the parcel; and

4. All outdoor cultivation shall be setback by a minimum of ten (10) feet from all parcel property lines; and

5. All outdoor cultivation shall not be closer to an existing private residence on an adjoining property than to the private residence of the authorized grower on the parcel whereon the outdoor cultivation site is located; and

6. All outdoor cultivation shall be screened from all public rights-of-way, private access easements, and exterior property lines of the parcel where the outdoor cultivation takes place to prevent being easily visible to individuals on adjoining parcels or to individuals either passing through or by the subject parcel, and to prevent members of the public from gaining access; and

7. The use of volatile solvents is prohibited. For purposes of this ordinance, “volatile solvent” means volatile organic compounds, including but not limited to: (1) explosive gasses such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O₂ or H₂; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.

8. The parcel where the outdoor cannabis is cultivated shall not be located within six hundred (600) feet of any school, church, park, library, child care center, or youth-oriented facility. Such distance shall be measured in a straight line from the fence or other enclosure to the nearest boundary line of the premises upon which the school, church, park, child care center, or youth-oriented facility is located. For the purposes of this chapter, a youth-oriented facility is any facility used for and predominantly occupied by individuals under eighteen (18) years of age, including (but not limited to) a boys or girls club, an indoor or outdoor soccer field, a little league baseball field, an amusement park, and a community swimming facility; and

9. The area for the outdoor cultivation of cannabis shall not adversely affect the health or safety of the occupants of the parcel or any other property by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, mold, or other impacts, and shall not be maintained so as to constitute a hazard due to use or storage of materials, processes, products or wastes; and

10. All outdoor cultivation shall be in accordance with applicable regulations set forth in the Colfax Municipal Code and any codes incorporated therein; and

11. All outdoor cultivation which exists prior to the enactment of this ordinance must be in compliance with applicable regulations set forth in the Colfax Municipal Code and any codes incorporated therein, and the regulations in this chapter.

B. It is hereby declared to be unlawful, a public nuisance and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Colfax to cause or allow such parcel to be used for the outdoor cultivation of cannabis, unless the person is authorized by state law to grow cannabis, and such authorized grower is

complying with the Colfax Municipal Code and any codes incorporated therein, and the regulations in this chapter.

C. A public nuisance may also be deemed to exist, if such activity produces: (1) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; (2) repeated responses to the parcel or residence from enforcement officers; (3) a repeated disruption to the free passage of persons or vehicles in the immediate neighborhood, (4) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; and (5) any other impacts on the neighborhood which are disruptive of normal activity in the area.

17.162.050 Indoor Cannabis Cultivation

A. When authorized by state law, an authorized grower shall be allowed to cultivate cannabis indoors for personal use, subject to the following restrictions:

1. The regulations of this chapter and the Colfax Municipal Code shall apply to all indoor cultivation of cannabis; and

2. The indoor cultivation of cannabis is on a parcel upon which the private residence of the authorized grower is located. Each authorized grower may use only one private residence for the cultivation of cannabis. If the parcel and private residence are not owned by the authorized grower, the authorized grower must have a legal right to occupy and use the parcel and private residence to cultivate cannabis. The authorized grower shall obtain a written statement from the owner or owners of the parcel and private residence as proof to demonstrate that the owner or owners have acknowledged, consented to and granted permission to the authorized grower for the cultivation of cannabis in an amount in accordance with this chapter. Nothing provided in this chapter requires the owner or owners of the parcel and private residence to consent to and allow the cultivation of cannabis by an authorized grower. Nothing provided in this chapter authorizes the cultivation of cannabis in violation of the rules of a home owner's association, deed restrictions, or other property conditions and covenants. If there is more than one owner of the parcel and private residence, all owners must have acknowledged, consented to and granted permission to the authorized grower for the cultivation of cannabis in an amount in accordance with this chapter. The written statement shall be dated and signed by the owner or owners of the parcel and private residence. The written statement shall be valid for twelve (12) months from the signing of the written statement. If ownership of the parcel or private residence changes during the twelve (12) month period after the previous owner or owners had granted permission for the cultivation of cannabis, the authorized grower must obtain, within thirty (30) days of the change of ownership, a new permission statement from the new owner or owners of the parcel and private residence. Upon request by a code enforcement officer, the authorized grower shall provide the written statement from the owner or owners of the parcel and private residence as proof that the owner or owners have acknowledged, consented to and granted permission to the authorized grower for the cultivation of cannabis; and

3. All indoor cultivation of cannabis may only occur inside a private residence that is a fully enclosed and secure structure located on the parcel or inside an accessory structure to a

private residence that is a fully enclosed and secure structure on the parcel. There shall be no indoor cannabis cultivation if there is any outdoor cannabis cultivation occurring on the parcel at the same time; and

4. A maximum of six plants on no more than one-hundred (100) square feet is allowed for cultivation of cannabis in total per parcel inside a private residence that is a fully enclosed and secure structure or inside an accessory structure to a private residence that is a fully enclosed and secure structure on a parcel. Cannabis plants may be cultivated on no more than one-hundred (100) square feet in total per parcel inside a private residence that is a fully enclosed and secure structure or inside an accessory structure to a private residence that is a fully enclosed and structure on a parcel, regardless of the number of authorized growers, qualified patients or primary caregivers residing in a private residence on the parcel. The total combined indoor cultivation of cannabis per parcel with a private residence shall not exceed one-hundred (100) square feet at any time. For the purposes of this section, the area used to cultivate cannabis shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises; and

5. The area used for cultivation complies with applicable California Building, Plumbing, Mechanical, Electrical and Fire Codes, and the parcel has: (1) a permitted permanent water well or connection to a public water source drawing water, (2) does not engage in unlawful or unpermitted surface drawing of water for such cultivation, (3) does not permit illegal discharges of water from the parcel, (4) the parcel where the cultivation of cannabis takes place shall either be connected to a public sewer system or have a City or Placer County inspected and permitted sewage disposal system; and

6. The use of volatile solvents is prohibited. For purposes of this ordinance, “volatile solvent” means volatile organic compounds, including but not limited to: (1) explosive gasses such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O₂ or H₂; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.; and

7. The cultivation of cannabis is concealed/secured so that it is not visible from the exterior of the private residence or accessory structure, the parcel, the public right-of-way, and/or neighboring properties, and is not accessible by underaged occupants or the general public; and

8. The area for the cultivation of cannabis shall not adversely affect the health or safety of the occupants of the private residence or the parcel or any other property by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, mold, or other impacts, and shall not be maintained to constitute a hazard due to use or storage of materials, processes, products or wastes; and

9. All indoor cultivation is in accordance with applicable regulations set forth in the Colfax Municipal Code and any codes incorporated therein, and the regulations in this chapter; and

10. All indoor cultivation which exists prior to the enactment of this ordinance must be in compliance with applicable regulations set forth in the Colfax Municipal Code and any codes incorporated therein, and the regulations in this chapter.

B. It is hereby declared to be unlawful, a public nuisance and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Colfax to cause or allow such parcel to be used for the indoor cultivation of cannabis, unless the person is authorized by state law to grow cannabis, and such authorized grower is complying with all requirements of this chapter.

C. A public nuisance may also be deemed to exist, if such activity produces: (1) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; (2) repeated responses to the parcel or residence from enforcement officers; (3) a repeated disruption to the free passage of persons or vehicles in the immediate neighborhood, (4) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; or (5) any other impacts on the neighborhood which are disruptive of normal activity in the area.

17.162.060 Commercial Cannabis Activity Prohibited.

Except as otherwise allowed by Colfax Municipal Code Chapter 5.32, it is unlawful for any person to engage in conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any parcel, premises or location within the City of Colfax, commercial cannabis activity, except for the transportation of medical cannabis, medical cannabis products, marijuana and marijuana products on public roads by a state licensee transporting medical cannabis, medical cannabis products, marijuana or marijuana products in compliance with state law.

17.162.070 Manufacturing Cannabis Activity Prohibited

Except as otherwise allowed by Colfax Municipal Code Chapter 5.32, it is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises or location within the City of Colfax, manufacturing cannabis activity.

17.162.080 Cannabis Dispensaries Prohibited

Except as otherwise allowed by Colfax Municipal Code Chapter 5.32, it is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises or location within the City of Colfax, the operation of a cannabis ~~dispensary~~retailer, and/or processing facility, and/or testing laboratory. ~~The sole exception to this prohibition is that one medical marijuana dispensaryretailer that existed and had a valid City business license as of November 27, 2009 shall be conditionally allowed subject to the provisions of the Colfax Municipal Code, as amended or replaced from time to time. In addition thereto, such dispensaryretailer shall become a prohibited use and shall not be allowed to engage in business in Colfax upon the happening of any of the following events:~~

~~A. The operators of the dispensaryretailer, or any of its owners, are convicted of any crime other than an infraction relating to the operation of the dispensaryretailer;~~

~~B. The dispensaryretailer becomes a public nuisance;~~

~~C. The dispensaryretailer or its operators violate any provision of this Code relating to its operation;~~

~~D. The dispensaryretailer is closed for any reason.~~

~~E. The dispensaryretailer's activities are curtailed by the action of a superior governmental authority, by order of any court of competent jurisdiction, or by other valid legal process; or~~

~~F. The dispensaryretailer becomes a prohibited use by amendment to any provision of the Colfax Municipal Code, any code incorporated therein, or any provision of California law; or~~

~~G. The dispensaryretailer violates any condition of any permit issued by the City of Colfax or any license issued by the State of California.~~

17.162.090 Delivery of Cannabis Prohibited

~~Except as otherwise allowed by Colfax Municipal Code Chapter 5.32, D~~delivery of cannabis or products made from cannabis to or from any person, business, or location in the City of Colfax is prohibited. Notwithstanding the foregoing, a primary caregiver may personally deliver medical cannabis, products made from medical cannabis to a qualified patient or person with an identification card, for whom he or she is the primary caregiver.

17.162.100 Enforcement

A. Public Nuisance. Violation of this chapter is hereby declared to be a public nuisance and subject to the enforcement process as set forth herein.

B. Abatement Authority.

1. The City of Colfax may, in its discretion, abate the violation of this chapter by prosecution of a civil action, including an action for injunctive relief without first going through the administrative procedures set forth herein. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this chapter or requiring compliance with other terms.

2. The City may also abate the violation of this chapter through any lawful abatement process established by California law.

C. Abatement Procedures.

1. Whenever a code enforcement officer determines that a public nuisance (as defined in this chapter) exists, he or she shall post a seventy-two (72) hour notice to abate on the property where the public nuisance exists, and mail a copy of the same to those persons shown on the latest county tax roll or equivalent registry to be the owners of the property. The seventy-two (72) hour notice to abate shall inform the owner and/or tenants of the basis for the violation, and that an administrative penalty of five hundred dollars (\$500.00) per cannabis plant in excess of six plants or five hundred dollars (\$500.00) per every twenty-five (25) square feet of cannabis outside the allowed one-hundred (100) square feet; explain that if the violation is not corrected, the matter will be set for a nuisance abatement hearing, at which time the administrative penalty will increase to one thousand dollars (\$1,000.00) per cannabis plant in excess of six plants or one thousand dollars (\$1,000.00) per every twenty-five (25) square feet of cannabis outside the allowed one-hundred (100) square feet and explain that to prevent the accrual of additional penalties and costs, the owner or tenant must contact the code enforcement officer and arrange a time for a code enforcement officer to inspect the property, and confirm that the violation(s) have been corrected.

2. If the nuisance continues to exist after the expiration of the seventy-two (72) hour period, a code enforcement officer may set the matter for hearing by issuing a notice of nuisance abatement hearing. If the matter is set for hearing, the code enforcement officer shall post the property upon which the public nuisance exists and shall mail, with a proof of service, notices to those persons known to be in possession of the property, if any, and to persons shown on the latest county tax roll or equivalent registry to be the owners of the property at least five days prior to the hearing. The administrative penalty shall increase to one thousand dollars (\$1,000.00) per cannabis plant in excess of six plants or one thousand dollars (\$1,000.00) per every twenty-five (25) square feet of cannabis outside the allowed one-hundred (100) square feet from the date the notice of nuisance abatement hearing is posted on the property.

3. All hearings conducted under this chapter shall be held before a hearing officer designated by the City.

4. At the time and place set for the hearing, the hearing officer shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. Additional procedural rules may be adopted by resolution of the Colfax City Council. The City shall record the hearing, and provide a copy of the recording to the hearing officer following the conclusion of the hearing. The City shall preserve the record of the hearing, and all photographs and demonstrative and documentary evidence at the time of the hearing, for a period of three years.

5. Within three days after the hearing is closed, the hearing officer shall render his or her written decision relating to the existence or nonexistence of the alleged public nuisance. If a violation is found to have existed at the time the notice of nuisance abatement hearing was posted, the decision shall include a statement that the City is entitled to recover its administrative costs and administrative penalties. If the hearing officer determines that the violation continues to exist, the decision shall also order that the owner of the property, or persons known to be in possession of the property, abate the violation within a reasonable time, not to exceed five days from the date the decision is placed in the mail. A copy of the decision shall be mailed by certified mail, return receipt requested, to the person or persons shown on the last City tax roll or

equivalent registry to be the owners of the property which is the subject of the hearing and the occupant of such parcel, if any. All other persons noticed pursuant to this section shall be mailed a copy of the decision by first class mail, postage prepaid. The decision of the hearing officer shall be final and conclusive on the date the decision is deposited in the mail.

6. a. Notwithstanding any other provisions of this code, if a final decision of the hearing officer finds that a violation exists and the public nuisance is not voluntarily abated within five days of said decision being placed in the mail by the hearing officer, the City may abate the public nuisance by cutting and/or removing all cannabis plants from the property, pursuant to a warrant issued by a court of competent jurisdiction. The owner or owners of the property shall be responsible for paying all of the City's abatement costs and administrative costs, and administrative penalties. The code enforcement officer, or designee, shall keep an accounting of the abatement and administrative costs for each case. Upon completion of the abatement of the nuisance, whether by the City or the owner or tenant, the code enforcement officer, or designee, shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the City's abatement and administrative costs, as well as all administrative penalties. The bill shall also state that failure to pay the costs and penalties within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment against the property.

b. If the City's costs and penalties are not paid within fifteen (15) days from service of the bill, the code enforcement officer, or designee, shall render an itemized report to the City Clerk for submittal to the City Council for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property, and an itemized account of the City's abatement costs, administrative costs, and administrative penalties. At least fifteen (15) days prior to said hearing, the City Clerk shall give notice, with proof of service, of said hearing to all persons named in the code enforcement officer, or designee's, report and shall post the property with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Council will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

7. At the time and place fixed in the notice, the City Council shall hear and consider the proposed lien and special assessment together with objections and protests thereto. At the conclusion of the hearing, the City Council may make such modifications and revisions to the proposed lien and special assessment costs it deems just and may order that the proposed lien and special assessment be recorded and specially assessed against the property by the Placer County auditor-controller's office. The lien shall have the same force, priority and effect as a judgment lien and the special assessment shall have the same priority as other City taxes.

8. The notice of lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which the decision of the hearing officer was issued, describe the real property subject to the lien, set forth the amount of the costs and penalties incurred to date and, if applicable, the date upon which the abatement was completed. If the

abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional abatement costs will be incurred in the future.

9. A copy of any notice required by this chapter or decisions of either the hearing officer, City Council or designee as required by this chapter may be recorded in the office of the County Recorder of Placer County.

a. Release of Notice. Where a notice has been served as required by this chapter and a hearing body has determined that sufficient grounds do not exist for nuisance abatement, or where the owner of an affected premises has corrected the condition that was the basis for initiation of enforcement action, the official shall record a satisfaction release and removal of notice of nuisance or notice of nuisance abatement.

b. Payment of Costs Prior to Release. In the event that enforcement costs have been incurred in the investigation/processing of a violation for which a notice is required, the release of such notice shall not be recorded until all such costs have been reimbursed to the City.

c. Attorney Fees. In any action to foreclose on a lien issued pursuant to this chapter, the City shall be entitled to an award of attorney's fees and costs.

D. Abatement Costs—Administrative Costs. In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Summary Abatement. Notwithstanding any other provision of this chapter, when any unlawful cannabis cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in subsection C of this section would not result in abatement of that nuisance within a short enough time period to avoid that threat, the City Manager, Community Services Director or designee may direct any officer or employee of the City to summarily abate the nuisance. The code enforcement officer shall make reasonable efforts to notify the persons identified in subsection C.2 of this section but the formal notice and hearing procedures set forth in this chapter shall not apply. The City may nevertheless recover its costs for abating that nuisance in the manner set forth in this chapter.

17.162.110 Non-Exclusive Remedy

This chapter is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances under this chapter or by applicable law.

17.162.120 Administrative Penalties

It is unlawful and a public nuisance to violate any of the provisions of this chapter and the City shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed in this chapter. The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create

a cause of action for injunctive relief. In addition to the penalties set forth herein, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by City ordinance. Unless otherwise expressly provided, the remedies, procedures and penalties provided by this section are cumulative to each other and to any others available under state law or other City ordinances.

A. For violation of Section 17.162.040 (Outdoor cannabis cultivation), a civil penalty of five hundred dollars (\$500.00) per cannabis plant in excess of six plants or five hundred dollars (\$500.00) per every twenty-five (25) square feet of cannabis cultivation outside the allowed one-hundred (100) square feet; however, if a notice of nuisance abatement hearing is issued, the penalty shall increase to one thousand dollars (\$1,000.00) per cannabis plant in excess of six plants and one thousand dollars (\$1,000.00) per every twenty-five (25) square feet of cannabis cultivation outside the allowed one-hundred (100) square feet.

B. For violation of Section 17.162.050 (Indoor cannabis cultivation), a civil penalty of five hundred dollars (\$500.00) per cannabis plant in excess of six plants or five hundred dollars (\$500.00) per every twenty-five (25) square feet of cannabis cultivation outside the allowed one-hundred (100) square feet; however, if a notice of nuisance abatement hearing is issued, the penalty shall increase to one thousand dollars (\$1,000.00) per cannabis plant in excess of six plants or one thousand dollars (\$1,000.00) per every twenty-five (25) square feet of cannabis cultivation outside the allowed one-hundred (100) square feet.

C. For violation of Section 17.162.060 (Prohibition of commercial cannabis activity), a civil penalty of one thousand dollars (\$1,000.00) per plant for each violation of commercial cannabis cultivation and a civil penalty of five thousand dollars (\$5,000.00) per day for all other violations.

D. For violation of Section 17.162.070 (Prohibition of manufacturing cannabis activity), a civil penalty of five thousand dollars (\$5,000.00) per day for each separate violation.

E. For violation of Section 17.162.080 (Prohibition of cannabis dispensaries), a civil penalty of five thousand dollars (\$5,000.00) per day for each separate violation.

F. For violation of Section 17.162.090 (Prohibition of delivery of cannabis activity), a civil penalty of five hundred dollars (\$500.00) for each separate violation.

G. At the nuisance abatement hearing, the hearing officer shall determine the total amount of administrative penalties that have accrued at the time of the hearing, and that amount shall be reflected in the decision and awarded to the City. Administrative penalties shall not be awarded if the property owner establishes all of the following: (1) that, at the time he or she acquired the property, a violation of this chapter already existed on the property; (2) the property owner did not have actual or constructive notice of the existence of that violation; and (3) prior to the nuisance abatement hearing, the property owner initiates and pursues, with due diligence, good faith efforts, to meet the requirements of this code. In his or her decision, the hearing officer may compromise the amount of any administrative penalties. When determining whether to compromise any penalty amount, the hearing officer shall take into consideration the nature,

circumstances, and gravity of the violation(s), any prior history of violations, the degree of culpability, the financial burden to the person(s) upon whom the penalty has been imposed, the degree to which the proposed compromise will facilitate collection of the penalties without the need for further legal action, and any other matters justice may require. If at the time of the hearing the nuisance has yet to be abated, the decision shall state that the administrative penalties shall continue to accrue as specified in subsections A through F of this section until the nuisance is abated. The decision of the hearing officer shall be final and conclusive on the date the decision is deposited in the mail.

H. Any decision regarding the amount of administrative penalties imposed by a hearing officer pursuant to this chapter may be appealed by any aggrieved person to the Colfax City Council as follows:

1. **Appeal Subject.** Any appeal under this section shall be limited to the amount of administrative penalties imposed by the hearing officer.

2. **Timing and Form of Appeal.** An appeal must be filed within ten (10) days from the date the decision was deposited in the mail. Appeals filed more than ten (10) days after the decision was deposited in the mail shall not be accepted for filing. A notice of appeal shall be in writing, shall include a detailed statement of the factual and/or legal grounds upon which the appeal is being taken and shall include a copy of the decision of the hearing officer. The appeal shall be accompanied by the filing fee set by the most current City fee schedule.

3. **Filing and Processing.** An appeal shall be filed with the City Clerk, who shall process the appeal pursuant to this section, including scheduling the matter before the City Council. The Colfax City Council may designate a subcommittee of two or three members to hear and rule upon any appeal provided for in this section.

4. **Effect of Filing.** In the event of an appeal under this section, only the decision as to the amount of the administrative penalties shall be set aside and have no effect until final action by the appeal body pursuant to this section. The appeal shall have no effect on any other factual or legal determination of the hearing officer.

5. **Report and Scheduling of Hearing.** When an appeal has been filed under this section, the City Manager, or designee, shall prepare a report on the matter and shall schedule the matter for consideration by the City Council (or subcommittee so designated) after completion of the report.

6. This Section intentionally omitted.

7. **Action and Findings.** After an appeal has been scheduled by the City Clerk, the City Council (or subcommittee so designated) shall conduct a public hearing. At the hearing, the City Council (or subcommittee so designated) shall initiate a discussion limited only to the amount of the administrative penalties imposed by the hearing officer and, in addition, the specific grounds for appeal.

a. The City Council (or subcommittee so designated) may affirm, affirm in part, reverse or reverse in part the decision or determination of the hearing officer as to the amount of the administrative penalties imposed based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or noncompliance of the subject of the appeal with the provisions of this chapter.

b. A decision by the City Council (or sub-committee so designated) under this section shall be final.

8. Time Limits on Appeals. Upon receipt of an appeal in proper form, the City Council shall schedule the matter for consideration by the City Council. The City Council, or a subcommittee thereof, shall commence a public hearing on the appeal within ninety (90) days of its proper filing, or within such other time period as may be mutually agreed upon by the appellant, in writing, and the appeal body, in writing. If the public hearing is not commenced within ninety days, or an alternative time period is not agreed upon by the appellant and the appeal body, the decision rendered by the hearing officer shall be deemed affirmed. Once commenced, a public hearing on an appeal may be continued from time to time for good cause.

9. Withdrawal of Appeal—Hearing Decisions. After an appeal of a decision has been filed, an appeal shall not be withdrawn except with the consent of the appropriate hearing body.

I. All money and assets collected in payment for penalties for violations of this chapter and all money and assets collected for recovery of costs of enforcement of this chapter shall be used to offset the cost of enforcement of this chapter.

17.162.130 Criminal Penalty Provisions

A. Violation of any provision of this chapter is a misdemeanor unless (1) the city attorney authorizes issuance of an infraction citation or files, or authorizes the filing of, a complaint charging the offense as an infraction or (2) a court with jurisdiction over the matter, upon recommendation of the city attorney, determines that the offense should be prosecuted as an infraction.

B. Any person who violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes any violation thereof, and shall be penalized accordingly.

17.162.140 No Duty To Enforce

Nothing in this chapter shall be construed as imposing on any code enforcement officer or the City of Colfax any duty to issue a notice to abate, nor to abate any violations of this chapter and neither the code enforcement officer, nor the City, shall be held liable for failure to issue an order to abate any violation of this chapter.

17.162.150 Severability

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE FEBRUARY 14, 2018 COUNCIL MEETING

FROM: Wes Heathcock, City Manager
PREPARED BY: Wes Heathcock, City Manager
DATE: February 7, 2018
SUBJECT: Property Management Contract

<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>	FUNDED	<input type="checkbox"/>	UN-FUNDED	AMOUNT:	FROM FUNDS: 100
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RECOMMENDED ACTION: Adopt Resolution 08-2018 authorizing the City Manager to enter into a professional services agreement with Foothill Properties to set fair market rates, solicit tenants, and manage tenant contracts for City owned properties for a three year term with an option to renew for an additional two years.

Discussion and Summary

In January 2017, Council established various project goals for professional staff to accomplish that reflected the desired community benefits. Council tasked staff to procure professional property management services to set fair market rates, solicit tenants, and manage tenant contracts for City properties that are available for rent. The locations considered for the property management contract are the Railcar and the office suite at the end of the Historic Depot Building, both on Railroad Street. The current tenant in the Railcar has a month to month lease since the most recent agreement with the tenants expired in 2013. The Historic Depot suite is currently unoccupied.

Staff solicited three professional property management firms to provide cost proposals for managing the properties – Sutherland Property Management, Inc, Huber Property Management, and Foothill Properties. The cost proposals from each company charged various fees displayed in the following matrix:

Contractor	Set-up Fees	Annual Fees	Advertising Fees	Leasing Fees	Monthly Fees
Sutherland Property Management	\$200	\$0	\$85	Pre-vacating \$55 Post-vacating \$80 Inspections \$115	\$395 min.
Huber Property Management	\$500	\$75	\$111/wk	\$0	\$89
Foothill Properties	\$0	\$0	\$0	½ month’s rent	*\$8-10% of monthly rent. (\$94)

*Market rate is approximately \$1/ft²

Fees for Sutherland Property Management are significantly higher than for the other two companies. Fees for Huber will vary depending upon the time it takes to rent the facilities. Since Huber’s proposal an open

ended fee arrangement, staff is reluctant to recommend Huber's contract. Staff believes the fee structure provided by Foothill Properties best meets the needs of the City and recommends Council authorize the City Manager to enter into contract with Foothill Properties to set fair market rates, solicit tenants, and manage tenant contract for City owned properties for a three year term with an option to renew for an additional two years.

ATTACHMENTS:

1. Resolution 08-2018
2. Cost Proposals
3. Standard real estate contract

City of Colfax

City Council

Resolution № 08-2018

AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH FOOTHILL PROPERTIES TO SET FAIR MARKET RATES, SOLICIT TENANTS, AND MANAGE TENANT CONTRACTS FOR CITY OWNED PROPERTIES FOR A THREE YEAR TERM WITH AN OPTION TO RENEW FOR AN ADDITIONAL TWO YEARS.

WHEREAS, in January 2017 the City Council of the City Colfax established various project goals for professional staff; and,

WHEREAS, the Council tasked staff to procure professional property management services to set fair market rates, solicit tenants, and manage tenant contracts for City properties that are available for tenancy; and,

WHEREAS, staff solicited three professional property management firms to provide cost proposals for managing the properties and staff asserts the fee structure provided by Foothill Properties best meets the needs of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Colfax authorizes the City Manager to enter into a professional services agreement with Foothill Properties to set fair market rates, solicit tenants, and manage tenant contracts for City owned properties for a three year term with an option to renew for an additional two years.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED at the Regular Meeting of the City Council of the City of Colfax held on the 14th day of February 2018 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Will Stockwin, Mayor

ATTEST:

Lorraine Cassidy, City Clerk



1273 Lincoln Way

Auburn, California, 95603-5004

(530) 885-0664

(530) 885-9013 (fax)

PROPERTY MANAGEMENT SERVICES

Basically, our services are divided into two phases.

First there is the **LEASING** phase. We:

- (1) Advertise the property
- (2) Interview prospective tenants
- (3) Have prospective tenants view the property after they have been verbally qualified
- (4) Have the prospective tenants fill out our Tenant Application, where we obtain three years landlord and work references, obtain a credit report and call at least four personal and family references
- (5) Write up a lease appropriate to the property including any specifics the owner may want included. (If the owner wishes to collect rents and handle their own property from this point on, the lease has the owner's name, address, etc in it, instead of ours and becomes a "Leasing Only" client.
- (6) Collect the rent and security deposit in cash or secured funds.
- (7) FUNDS NEEDED FROM CLIENT: \$150.00 set up charge plus \$100.00 to cover potential costs. \$100.00 goes in our Trust Account and is the owner's money on deposit and will be accounted for (OR returned, in the case of a "Leasing Only" client.)
- (8) COST OF SERVICE: The greater of one half month's rent (MINIMUM OF \$395.00) or 6% of the lease amount. Pre-tenant Statement of Condition inspection included in set-up fee.

FULL SERVICE PROPERTY MANAGEMENT

- (1) If there is a need for a new tenant, we perform the services of LEASING
- (2) We field all the maintenance calls from the tenants, and call the owner, the service people of the owner's choice, an appropriate service company, or use a SUTHERLAND PROPERTY MANAGEMENT, INC. handyman or cleaning person. We will do whichever the owner directs us to do, as we are here to provide a service to the owner.
- (3) At the owner's direction, we pay all, or some, of the normal monthly bills for the property.
- (4) We send the owner a monthly statement, with receipts and invoices itemized.
- (5) We send any account overage to the owner, or owner's bank (keeping the security deposit plus a maintenance reserve in the property account)
- (6) FUNDS NEEDED FROM CLIENT: \$150.00 set up charge (for each vacant unit, negotiated for multiple properties, at least \$100 (depending on cash flow, vacancy etc) and \$35.00 as annual Broker's Liability Insurance (to add property to our umbrella liability insurance--since by authorizing us to act in his behalf in regards to his property, we are exposed to extra liability.) Owner is to add us to their fire and liability insurance, where applicable, AND to provide us with copy of current coverage within fifteen days.
- (7) COST OF SERVICE: Leasing Fee, if leasing is performed, PLUS six per cent of monthly scheduled rents - MINIMUM of \$35.00 (this means that we charge a minimum management fee if the property is vacant.)

CLIENT REFERENCES

FULL SERVICE PROPERTY MANAGEMENT

Ron & Dennis Meyer
299 Nevada Street
Auburn, CA 95603
(530) 885-7072

Lynn Lombard
790 Ridgecrest Drive
Colfax, CA 95713
(530) 637-9000

Arthur and Wanda Daniels
1236 Vintage Way
Auburn, CA 95603
(530) 889-9876

Richard DeMoss
5705 Rudy Drive
San Jose, CA 95124
(408) 445-2348

COMMERCIAL CLIENTS

Linda Lareau
P.O. Box 9053
Auburn, CA 95604
(530) 368-9175

Susan Cupler
195 Flood Road
Auburn, CA 95603
(530) 906-4904

LEASING ONLY CLIENTS

Don and Bobbie Phipps
1636 Willow Grove Lane
Lincoln, CA 95648
(916) 253-7170

Keith Stoneking
P.O. Box 1151
Sausalito, CA 94966
(415) 328-8488

Janet Virgil
3131 Brennans Road
Loomis CA 95650
(916) 652-6285

Ron and Daisy Nedved
P.O. Box 505
Colfax, CA 95713
(530) 346-6285



1273 Lincoln Way

Auburn, California, 95603-5004

(530) 885-0664

(530) 885-9013 (fax)

OWNER INFORMATION

Date: _____ PROPERTY ADDRESS: _____
CITY: _____ ZIP: _____

OWNER(S) NAMES: _____
OWNER(S) NAMES: _____
MAILING ADDRESS(S): _____
MAILING ADDRESS(S): _____
RES. PHONE: _____ WORK PHONE(S) _____
RES. PHONE: _____ WORK PHONE(S) _____
Email: _____
SOCIAL SECURITY NUMBER/TAX I.D. #: _____

EMERGENCY INFORMATION

Please list the name and telephone number of the person(s) we should contact in the event you are unavailable for an extended period of time:

NAME: _____ PHONE: _____
ADDRESS: _____

INSURANCE

COMPANY: _____ POLICY # _____
AGENT: _____ PHONE: _____
Have you contacted your agent and had SUTHERLAND PROPERTY MANAGEMENT, INC. added as additional insured? _____

PAYMENTS TO BE MADE BY SUTHERLAND PROPERTY MANAGEMENT, INC.

We will make payment for you for any of the following: mortgages, taxes, insurance, water, homeowner's association dues/fines, water, sewer, trash, utilities, gardening and pool services. PLEASE INDICATE BELOW THE PAYMENTS YOU WANT US TO MAKE FOR YOU and provide us with all the necessary information to do so and INCLUDE ANY PAYMENT COUPONS.

It would be best if you would contact all of parties and tell them that in the future, all payment coupons, invoices are to be sent to:

YOUR NAME % SUTHERLAND PROPERTY MANAGEMENT, INC.
1273 Lincoln Way
Auburn, CA 95603

COMPANY _____ AMOUNT _____
ADDRESS: _____
ACCOUNT#: _____ TELEPHONE: _____ CONTACT: _____

COMPANY _____ AMOUNT _____
ADDRESS: _____
ACCOUNT#: _____ TELEPHONE: _____ CONTACT: _____

COMPANY _____ AMOUNT _____
ADDRESS: _____
ACCOUNT#: _____ TELEPHONE: _____ CONTACT: _____

MAINTENANCE

Do you want us to call you, a relative or a specific company for certain types of service? If so, who, for what? _____

Do you want us to handle the maintenance for your property? _____

Have you reviewed our TERMINATION GUIDELINES? _____ Will your property pass? _____

OWNER'S CHECKS

If you have an account overage, do you wish us to send it with your monthly statement, or do you want us to direct deposit it for you? For a direct deposit, please be sure that we have a supply of deposit slips.

How should we make out your check: _____

Mailed or direct deposit: _____

(owner must provide pre-printed deposit slips)

GENERAL INFORMATION

Normally, we do not allow pets in condominiums and apartments. In single family homes, depending on the specific circumstances, we will allow "pets" provided that they are not left indoors unattended [including the garage.] The only exception has been declawed, neutered cats. When pets are allowed, the carpets are to be professionally cleaned and flea sprayed when the tenant(s) vacate. Also, unless there are restrictions to the contrary, we do not usually allow more than two persons per bedroom in our rental units.

Will you allow a pet/pets?: _____ Cat: _____ Dog: _____

Comments regarding pets: _____

What utilities (if any) are paid by you? _____

Please list the names of the utility companies that service your property: _____

Are there any warranties in effect? _____ What is covered? _____

Expiration date: _____

Company: _____ Policy # _____ Phone _____

Do all the locks work? _____ Rekeyed recently? _____ We will need **FOUR** keys to every lock. Does the overhead garage

door lock from the inside? _____ Auto garage door opener? _____ # of openers _____ Do all of the windows lock? _____

Are ALL of the screens in good condition and do they fit properly? _____ Have smoke detectors and Carbon Monoxide detectors

been installed on each floor? _____ Are keys being turned over to us now? _____ How many and for which doors? _____

Please list any items that will remain with the house, such as hoses, sprinklers, antenna, lawn mower, gar-bage cans, appliances, ceiling fans, etc. _____

PROPERTY INFORMATION

Is the property currently occupied? _____ By owner or tenant? _____
 If by tenant: NAME(S): _____
 PHONE NUMBERS: (RES) _____ (W) _____
 CURRENT RENT: \$ _____ SECURITY DEPOSIT: \$ _____ PREPAID/LAST MONTH: \$ _____
 Any payment problems or special arrangements made with tenant:7 _____

PLEASE PROVIDE US WITH COPIES OF THE TENANT APPLICATION, RENTAL AGREEMENT, ADDENDUMS AND CORRESPONDENCE.

Has tenant been informed of the change and been given our name, address and phone number. _____

Rent range desired _____ Lowest rent we may accept: _____

ASSESSOR'S PARCEL NUMBER: _____ LOT NUMBER: _____

ASSOCIATION: _____ CC & R'S: _____

(Please provide us with copies of Registration forms [if applicable] and CC & R's so that we can make them a part of the lease.)

Anything else you think we should know or have in our files? Requirements that should be a part of the lease? (e.g. NO SMOKING) _____

Date you wish service to begin: _____

Signatures of owners: _____

Received: _____

SUTHERLAND PROPERTY MANAGEMENT, INC.

Date

MANAGEMENT AGREEMENT

The undersigned Owner hereby employs the undersigned Broker exclusively to rent, lease, operate and manage the real property situated in the City of _____, County of PLACER State of California, described as _____ for a period commencing this date and terminating at midnight of AUGUST 31, 2018, upon the following TERMS AND CONDITIONS:

BROKER'S OBLIGATIONS

Owner hereby confers upon the Broker the following duties, authority and powers:

- 1. LEASING. To advertise the availability for rent of the property or any part thereof and to display "For Rent" or "For Lease" signs thereon; to execute leases for terms not to exceed ONE YEAR, renewals or cancellations of leases relating to the property; to terminate tenancies and to sign and serve for the Owner such notices as Broker deems appropriate; to institute legal actions in the name of the Owner to evict tenants and recover possession of the premises, to recover rents and other sums due; to settle, compromise and release such actions.
2. RENTS. to collect rents and to collect and disburse security and other deposits; to deposit all receipts collected for Owner in a trust account with a qualified banking institution, but Broker shall not incur any liability for bankruptcy or failure of the depository.
3. MAINTENANCE. To employ, supervise and discharge all labor required for the operation and maintenance of the property, it being agreed that all employees shall be deemed to be Owner's employees. See ADDENDUM attached.
4. SERVICE CONTRACTS. To execute contracts for utilities and services for the operation, maintenance and safety of the property, as the Broker shall deem advisable and/or necessary. See ADDENDUM A attached.
5. REPAIRS. To take charge of repairs, decorating and alterations and to purchase supplies therefor. Broker agrees to obtain Owner's prior authorization for any and each expense item in excess of \$100.00, except monthly or recurring operating charges or emergency repairs, or in the event the Owner is not reasonably available for consultation, if the Broker deems such expenditures in excess of this amount necessary for the protection of the property from damage or to perform services to the tenants provided for in their leases.
6. DISBURSEMENTS. To accrue and make disbursements from Owner's funds for: contractual mortgage payments, property and employee taxes, special assessments, premiums for hazard and liability insurance and any other insurance required, except as follows : _____

From time to time there may be cause for a temporary overdraft of the trust account. (i.e.: A client's bill is to be paid on a certain date and the client has advanced funds to cover such charges, but they will not arrive in time to cover the bill that was already paid. If this happened, the payment will have gone out without sufficient funds to cover it at the time the check was cut. However the funds will have arrived within a day or two and the charges would then be covered. This would have created a temporary situation where the Trust account funds as a whole would not balance, or they would be temporarily short sufficient funds to cover the amount paid and also have all of the money of all owners of the funds in trust to be accounted for.)

While it would not be our intention to allow this to happen, it could happen on occasion and the rules and regulations of the BRE require us to have your signature allowing this temporary situation to exist. By signing this agreement, you are giving us your authorization to cover for this unlikely event.

- 7. PERIODIC STATEMENTS. To render monthly itemized statements of receipts, expenses, charges and accruals and to remit to owner receipts less disbursements and accruals for future expenses. In the event disbursements shall exceed receipts, owner shall PROMPTLY remit such excess to Broker. Owner assumes full responsibility for the payment of any expenses and obligations incurred in connection with the exercise of Broker's duties set forth herein.

Initial:

OWNER'S OBLIGATIONS

1. **BROKERAGE FEES.** Owner agrees to pay Broker a fee or fees for services rendered at the rates hereinafter set forth. Owner recognizes Broker as agent in any negotiations relative to the property or any part thereof, which may be have initiated during the term hereof, and if consummated thru the efforts of the Owner, Sutherland Property Management, Inc. or any third party, shall compensate Broker in accordance with the rates hereinafter set forth. Such compensation is due and payable on demand and may be deducted by the Broker from receipts.

Management: PER ADDENDUM B ATTACHED – **LEASING ONLY** or **FULL SERVICE PROPERTY MANAGEMENT**

Leasing: the greater of six percent (6%) of the lease contract or one half month's scheduled rent (Minimum of \$395.00)

Refinancing: See ADDENDUM A attached

Sale or Exchange: 6% of Sales Price

Alteration, Modernization, Redecoration: See ADDENDUM A attached

NOTE: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between the Seller and Broker. If property owner wishes to list property for sale with another agent/broker, the listing must be treated as a referral from Sutherland Property Management, Inc. Referral fee to be negotiated between brokers.

2. **HOLD HARMLESS.** Owner agrees to hold the broker harmless from all damage suits in connection with the management of the herein described property and from liability from injury suffered by any employee or other person whomsoever, and to carry, at his own expense, adequate public liability and workmen's compensation insurance and to name the Broker as co-insured. FULL SERVICE PROPERTY MANAGEMENT Owner to provide Broker with copy of current Fire and Liability insurance within fifteen (15) days. The Broker also shall not be liable for any error of judgment or for any mistake of fact of law, or for anything which he may do or refrain from doing hereunder, except in cases of willful misconduct or gross negligence. If suit is brought to collect the Broker's compensation or if Broker successfully defends any action brought against Broker by owner, relating to the property, or Broker's management thereof, owner agrees to pay all costs incurred by Broker in connection with such action, including a reasonable attorney's fee.

3. **DATA AND RECORDS.** Owner agrees to make available to Broker all data, records and documents pertaining to the property which the Broker may require to properly exercise his duties hereunder.

4. This agreement will renew automatically for annual periods unless terminated by either party by thirty (30) day's written notice.

5. Owner to pay a one time set-up fee of \$150.00 (includes pre-tenant inspection)

6. Owner to deposit up to an additional \$135.00 as reserve for costs outlined in ADDENDUMS A & B.

The Broker accepts this exclusive employment and agrees to use due diligence in the exercise of the duties, authority and powers conferred upon him under the terms hereof.

SUTHERLAND PROPERTY MANAGEMENT, INC.
1273 Lincoln Way
Auburn CA 95603-5004
(530)885-0664 FAX 885-9013
e-mail: suthprop@pacbell.net
DRE#01197627 Broker, Inc. DRE#01770046

Date: _____

OWNER SS#

OWNER SS#

Address
Phone(s):

SUTHERLAND PROPERTY MANAGEMENT, INC. is hereby authorized to perform the majority of the repairs and maintenance on managed properties. The current daytime rate is \$45.00 per hour for general maintenance services, \$55.00 per hour for mold remediation services, \$65.00 per hour for electrical repairs and \$75.00 per hour for plumbing service calls, plus a \$25.00 service call charge. The house/cleaning rate is \$35.00 per hour plus a \$25.00 service call charge. The current gardening/hauling rate is \$35.00 per hour plus a \$25.00 service charge. Mileage will be charged for worker travel round trip from office to properties and to obtain supplies/materials. These charges include overhead and profit.

A reserve for maintenance and repairs shall be established and maintained in Broker's account, over and above the Security Deposit, of a minimum of \$100.00 per unit.

Owner may direct or perform his/her own maintenance and repair work by initialing here:

_____.

However, Owner understands that if he/she is not available for an emergency situation, Broker may use workman or outside repair service at whatever the prevailing rates may be. Professional time will be charged to process after-hours emergency calls.

Names/phone numbers of Owner preferred maintenance personnel:

Additionally, the following charges shall apply to the following circumstances:

1. When outside repairmen/tradesmen are required, Broker will charge \$55.00 per hour with a \$25.00 minimum for the arrangement and supervision thereof, depending upon type of work and level of supervision needed.
2. \$40.00 plus mileage will be charged for "Service of Notice" upon tenant for properties within a ten (10) mile radius, \$50.00 plus mileage will be charged for properties in an eleven to twenty (11-20) mile radius, \$60.00 plus mileage will be charged for properties more than twenty (20) miles from our office. Service to tenant due to non-compliance with lease will be credited to Owner's account when the corresponding charge is collected from the tenant.
3. Personnel time for special requests for emergency after-hours maintenance handling or requests for information/service will be billed at \$45.00 per hour plus actual direct costs and/or mileage, if applicable.
4. Accounting or tax and investment counseling services quoted upon request.
5. Court appearances by any personnel of the management company will be charged at the rate of \$45.00 per hour portal to portal, \$45.00 per hour preparation time, plus mileage.
6. \$50.00 - \$80.00 plus mileage is to be charged for any Statement of Condition inspection and \$35.00 - \$55.00 plus mileage for any Pre-Vacating Walk-through (now mandated by the State of California for any Tenant so requesting), \$75.00 - \$115.00 plus mileage for in-depth annual property inspections, and \$25.00 - \$35.00 (plus mileage) for drive-by inspections. Cost of inspections will be determined by size of unit or distance from office, as applicable.
7. Professional time spent processing Tenant move-outs and security deposit refunds will be charged at \$45.00 per hour for cumulative time spent scheduling work, billing, communicating/negotiating with prior Tenants or property Owners.
8. Advertising – We will post and update ads as needed when properties are scheduled to be vacant, until a new tenant is secured, on our website and craigslist.org, and also maintain a weekly printing of our rent list, available for pickup by prospective tenants.

New ad creation/set up (SPM website/Craigslist + rent list).....	\$40.00
Re-start pre-existing ad with updated text/photos (online changes only).....	\$25.00
Refresh online/reprint rentlist (Craigslist+printed ad sheet).....	\$20.00

These rates are current as of February 1, 2016, and are subject to change without prior notice. Owner's account will be charged when the service is rendered.

Initial:

ADDENDUM B

DEFINITION OF LEASING AND MANAGEMENT SERVICESLEASING ONLY SERVICE

1. Broker will secure a tenant for Owner. In so doing, Broker will investigate the credit, prior landlord references, employment and income sources and other personal data necessary to establish the desirability of the prospective tenant. Property Owner (the "Principal") authorizes Sutherland Property Management, Inc. (the "Property Manager") to remit trust funds of the Principal – which funds may consist in whole or part of rent or rents and other taxable income collected for the Principal by the Property Manager – to the California Franchise Tax Board as and for withholding taxes, **when the Principal is subject to the Non-Resident Withholding Requirement** under the statutory mandate of California Revenue and Taxation Code sections 18662, 18664, 18666, 18668 and 17951. (*Withholding affects Leasing Only clients only if rents exceeding \$1500.00 are collected on behalf of Property Owner.*)
2. Owner shall thereafter assume the collection of rents, payment of all expenses, fielding of maintenance requests and all other aspects of property management.
3. Any service beyond initial tenant selection shall be at Owner's direction and will be subject to a minimum of \$45.00 per hour professional service rate per ADDENDUM A; services could include "Service of Notice," fielding maintenance requests, inspections, etc.

Brokerage Fee: The greater of one half (1/2) month's scheduled rent (minimum of \$395.00) or 6% of the lease amount. Owner shall pay for actual direct costs, i.e., advertising, inspection fee, requested repairs, utilities, etc. Owner shall advance \$100.00 as reserve for said costs and pay a one-time set up fee of \$150.00 (to include initial pre-tenant inspection) (see page one for multiple units). Set up fee for multiple units to be negotiated based upon number/type/location of units. When units stay vacant and reserve is used, Owner to remit balance due for advertising upon demand. Cancellation of this contract prior to a tenant being obtained is subject to a cancellation fee of \$100.00.

FULL SERVICE PROPERTY MANAGEMENT

1. Broker will secure a tenant for Owner. In so doing, Broker will investigate the credit, prior landlord references, employment and income sources and other personal data necessary to establish the desirability of the prospective tenant
2. Broker shall thereafter collect rents, remit payment for any or all of the expenses of the property, field maintenance requests, dispatch SUTHERLAND PROPERTY MANAGEMENT, INC. workmen for repairs and maintenance, supervise outside repairmen/tradesmen (when appropriate) and render a monthly statement reconciling income and expenses. At Owner request, Broker will disburse excess funds from Owner's account to Owner with monthly statement. Property Owner (the "Principal") authorizes Sutherland Property Management, Inc. (the "Property Manager") to remit trust funds of the Principal – which funds may consist in whole or part of rent or rents and other taxable income collected for the Principal by the Property Manager – to the California Franchise Tax Board as and for withholding taxes, **when the Principal is subject to the Non-Resident Withholding Requirement** under the statutory mandate of California Revenue and Taxation Code sections 18662, 18664, 18666, 18668 and 17951.
3. Special circumstances/services will be billed to Owner's account or directly to owner, according to schedule of charges as outlined in ADDENDUM A.
4. Owner will be charged an annual charge for each rental unit as Owner's pro-rata share of liability insurance. Current charges are \$35.00 for a single family residence and \$30.00 per unit for multiple family units.
5. Broker to keep owner informed of changes/problems in units managed and ask Owner for input approval/disapproval on: amount to charge for rent; amount to spend for repairs; whether to proceed with legal action, etc.

Brokerage Fee: The greater of one half (1/2) month's scheduled rent (minimum of \$395.00) or 6% of the lease amount. Owner shall pay for actual direct costs, i.e., advertising, inspection fee (if applicable), requested repairs, utilities, etc. Owner shall advance no less than \$100.00 deposit as reserve for said costs and pay a one-time set up fee of \$150.00 (to include initial pre-tenant inspection)(see page one for multiple units). The monthly management fee will be six (6) per cent of the scheduled rent(s) with a \$35.00 minimum fee per unit. Owners with negative cash flow situations will advance no less than three (3) month's negative cash flow, each and every quarter. Pre-Vacating Tenant Inspections (now mandated by State of California if Tenant requests one) are \$35.00 - \$55.00 plus mileage, full Statement of Condition Inspections (when Tenants vacate) with photo-documentation are \$50.00 - \$80.00 plus mileage, in-depth annual property inspections are \$75.00 - \$115.00 and drive-by inspections are \$25.00 - \$35.00, depending upon size of unit or distance from office, as applicable.

Initial:

Additionally, Owner is aware that Sutherland Property Management, Inc. will be compensated for services over and above those indicated above and in ADDENDUM A in the following manner:

1. Broker charges \$40.00 per adult to prospective tenants as a tenant application fee;
2. Broker charges \$25.00 to \$60.00 for service of notice fees plus mileage. This amount is charged to Owner's account when service is rendered. Tenant rental agreements negotiated by SUTHERLAND PROPERTY MANAGEMENT, INC. allow for this amount to be reimbursed to owner from tenant;
3. Broker charges a late penalty to tenants in lieu of charging Owners for time spent in following up on late paying tenants;
4. Broker charges a minimum of three months management fee if an Owner withdraws early from the Management Agreement as well as retaining \$100.00 to cover the expense of providing year end reports and 1099's.

WAIVER

(a) **No General Waivers.** The failure of any party at any time to require performance of any provision or to resort to any remedy provided under this Agreement shall in no way affect the right of that party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any party of a breach be deemed to be a waiver of any subsequent breach.

(b) **Course of Dealing.** No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

(c) **Written Waivers.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

SUTHERLAND PROPERTY MANAGEMENT, INC.

1273 Lincoln Way

Auburn CA 95603-5004

(530)885-0664 FAX 885-9013

e-mail: suthprop@pacbell.net

DRE#01197627 Broker/corp. DRE#01770046

Date: _____

OWNER _____ SS# _____

OWNER _____ SS# _____

Address _____

Phone(s): _____

ALLISON SMITH LEMLEY

Wes Heathcock

From: HPM INC <hpminc@sbcglobal.net>
Sent: Wednesday, October 25, 2017 9:40 AM
To: Wes Heathcock
Subject: Property Management
Attachments: HPM Brochure.pdf; Senate Best Certificate.pdf

Dear Wes,

Thank you for your interest in our company. We are a well-established full service management company. Our clients include many locals as well as people from throughout California, the United States, and other parts of the world.

Our company is the oldest and most experienced management firm in the Auburn area and as such can tailor and make our services to fit your needs. We are recognized by the National Institute of Real Estate Management, and headed by a CPM®, assuring you of the highest caliber of professional expertise.

Our fees are fair and will depend upon whether you wish us to market, scree, secure a tenant, and thereafter you assume self-management; or if you are interested in on-going full services. Our screening process is very thorough. Our staff of management personnel supported by many additional independent contractors assures you of attentive and capable supervision of your property.

On a "lease-up" option, you would be charged one month's rent, plus advertising costs, for our office to obtain, screen and secure a new tenant for your property. Paperwork is then turned over to you to handle the collection of the rents, and other matters related to the property.

Should you choose full service management, a commercial property management fee per property is \$89.00 per month to handle the financial aspect of the property. We have a one-time set up fee of \$150.00 for each property, and an annual accounting fee of \$75.00 each. Lastly, we will require a maintenance account to be kept at \$500.00 for each property. Required Rental Hotline advertising is \$21.00 per week. Optional newspaper advertising costs are estimated at minimum of \$90.00 per week.

A property critique will allow us to view the commercial property, provide a current rental value, and advise of any needed maintenance. The fee for this inspection is \$125.00 each. This inspection fee is due at the time of service. This service is the first step in any of our property management services. If you prefer to simply begin management services, you may choose our "quick start" option. This would skip the critique, and begin management service thus saving you \$125.00.

We are happy to provide references for you from our list of long time clients. We also encourage you to contact any other local sources whose opinions you value. If you have additional questions, please let us know.

Sincerely,

HUBER PROPERTY MANAGEMENT, INC.

Foothill Properties



January 26, 2018

RE: Property Management Services for The City of Colfax

Dear Wes,

Thank you for stopping in regarding property management services.

As property manager, I not only collect the rents, I also serve as the objective 3rd party. Not only does this take the stress and worry off of the property owners, it often solves any issues that are happening currently, such as late payments etc. I will also keep a watchful eye on your properties. I take pride in being a Property Manager that pays attention.

Foothill Properties will be the Landlord. Tenants will pay Foothill Properties each month. Foothill Properties will then forward a check to The City of Colfax less the agreed upon monthly property management fee at the beginning of each month. At the end of year, you will receive an end-of-year statement to provide to your tax accountant.

If you choose to use my services, please provide me with the following so I can prepare the property management agreements and notices to tenants regarding the "Change in Tenancy".

Property Owner:

Legal Name for Property Mgmt. Agreement & Check
email & contact numbers

Tenant names
Tenant Mailing Address
Tenant email & contact numbers
Copy of leases

Once I have all of the information above, I will provide all notices to tenants regarding the change in tenancy along with an introduction letter.

Thank you for your business and trust!

Sincerely,


Tami L. Hampshire



Date Prepared: _____

_____, ("Owner"), and _____ ("Broker"), agree as follows:

1. APPOINTMENT OF BROKER: Owner hereby appoints and grants Broker (hereinafter "Property Manager") the exclusive right to rent, lease, operate and manage the property(ies) known as _____ City of Colfax, , 95713

_____ and any additional property that may later be added to this Agreement ("Property"), upon the terms below, for the period beginning (date) _____ and ending (date) _____, at 11:59 PM. (If checked:) Either party may terminate this Property Management Agreement ("Agreement") on at least 30 days written notice _____ months after the original commencement date of this Agreement. After the exclusive term expires, this Agreement shall continue as a non-exclusive agreement that either party may terminate by giving at least 30 days written notice to the other.

- 2. PROPERTY MANAGER ACCEPTANCE: Property Manager accepts the appointment and grant, and agrees to:
A. Use due diligence in the performance of this Agreement.
B. Furnish the services of its firm for the rental, leasing, operation and management of the Property.
3. AUTHORITY AND POWERS: Owner grants Property Manager the authority and power, at Owner's expense, to:
A. ADVERTISING: Display FOR RENT/LEASE and similar signs on the Property. Advertise the availability of the Property, or any part thereof, for rental or lease in the Multiple Listing Service and other online media.
B. RENTAL; LEASING: Initiate, sign, renew, modify or cancel rental agreements and leases for the Property, or any part thereof; collect and give receipts for rents, other fees, charges and security deposits. Any lease or rental agreement executed by Property Manager for Owner shall not exceed ___ year(s) or shall be month-to-month. Unless Owner authorizes a lower amount, rent shall be: at market rate; OR a minimum of \$ _____ per _____; OR see attachment.
C. TENANCY TERMINATION: Sign and serve in Owner's name notices that are required or appropriate; commence and prosecute actions to evict tenants; recover possession of the Property in Owner's name; recover rents and other sums due; and, when expedient, settle, compromise and release claims, actions and suits and/or reinstate tenancies. If Landlord permits Tenant to pay rent by direct deposit such as wire or electronic transfer or other online method, Landlord should discuss with a Landlord-Tenant attorney the implications of doing so in the event Tenant defaults and an eviction becomes necessary.
D. REPAIR; MAINTENANCE: Make, cause to be made, and/or supervise repairs, improvements, alterations and decorations to the Property, purchase, and pay bills for, services and supplies. Owner agrees that state and local water use restrictions will supersede any obligation by Property Manager or any Tenant to water/maintain gardens, landscaping trees or shrubs. Property Manager shall obtain prior approval of Owner for all expenditures over \$ _____ for any one item. Prior approval shall not be required for monthly or recurring operating charges or, if in Property Manager's opinion, emergency expenditures over the maximum are needed to protect the Property or other property(ies) from damage, prevent injury to persons, avoid suspension of necessary services, avoid penalties or fines, or suspension of services to tenants required by a lease or rental agreement or by law, including, but not limited to, maintaining the Property in a condition fit for human habitation as required by Civil Code §§ 1941 and 1941.1 and Health and Safety Code §§ 17920.3 and 17920.10.
E. REPORTS, NOTICES AND SIGNS: Comply with federal, state or local law requiring delivery of reports or notices and/or posting of signs or notices.
F. CONTRACTS; SERVICES: Contract, hire, supervise and/or discharge firms and persons, including utilities, required for the operation and maintenance of the Property. Property Manager may perform any of Property Manager's duties through attorneys, agents, employees, or independent contractors and, except for persons working in Property Manager's firm, shall not be responsible for their acts, omissions, defaults, negligence and/or costs of same.
G. EXPENSE PAYMENTS: Pay expenses and costs for the Property from Owner's funds held by Property Manager, unless otherwise directed by Owner. Expenses and costs may include, but are not limited to, property management compensation, fees and charges, expenses for goods and services, property taxes and other taxes, Owner's Association dues, assessments, loan payments and insurance premiums.
H. SECURITY DEPOSITS: Receive security deposits from tenants, which deposits shall be given to Owner, or placed in Property Manager's trust account and, if held in Property Manager's trust account, pay from Owner's funds all interest on tenants' security deposits if required by local law or ordinance. Owner shall be responsible to tenants for return of security deposits and all interest due on security deposits held by Owner.
I. TRUST FUNDS: Deposit all receipts collected for Owner, less any sums properly deducted or disbursed, in a financial institution whose deposits are insured by an agency of the United States government. The funds shall be held in a trust account separate from Property Manager's personal accounts. Property Manager shall not be liable in event of bankruptcy or failure of a financial institution.
J. RESERVES: Maintain a reserve in Property Manager's trust account of \$ _____.
K. DISBURSEMENTS: Disburse Owner's funds held in Property Manager's trust account in the following order:
(1) Compensation due Property Manager under paragraph 8.
(2) All other operating expenses, costs and disbursements payable from Owner's funds held by Property Manager.
(3) Reserves and security deposits held by Property Manager.
(4) Balance to Owner.

Owner's Initials () ()

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Owner Name: _____ Date: 17 of 21

- L. OWNER DISTRIBUTION: Remit funds, if any are available, monthly (or _____), to Owner.
 - M. OWNER STATEMENTS: Render monthly (or Quarterly or _____), and year end statements of receipts, expenses and charges for each Property.
 - N. PROPERTY MANAGER FUNDS: Property Manager shall not advance Property Manager's own funds in connection with the Property or this Agreement.
 - O. KEYSAFE/LOCKBOX: (If checked) Owner authorizes the use of a keysafe/lockbox to allow entry into the Property and agrees to sign a keysafe/ lockbox addendum (C.A.R., Form KLA).
4. OWNER RESPONSIBILITIES: Owner shall:
- A. Provide all documentation, records and disclosures as required by law or required by Property Manager to manage and operate the Property, and immediately notify Property Manager if Owner becomes aware of any change in such documentation, records or disclosures, or any matter affecting the habitability of the Property.
 - B. Indemnify, defend and hold harmless Property Manager, and all persons in Property Manager's firm, as permitted by law, from all costs, expenses, suits, liabilities, damages, attorney fees and claims of every type, including but not limited to those arising out of injury or death of any person, or damage to any real or personal property of any person, including Owner, (i) for any repairs performed by Owner or by others hired directly by Owner; (ii) for those acts relating to the management, leasing, rental, security deposits, or operation of the Property by Property Manager, or any person in Property Manager's firm, or the performance or exercise of any of the duties, powers or authorities granted to Property Manager; or (iii) from any incorrect or incomplete information supplied by Owner, or from any material facts that Owner knows but fails to disclose including dangerous or hidden conditions on the Premises.
 - C. Maintain the Property in a condition fit for human habitation as required by Civil Code §§ 1941 and 1941.1 and Health and Safety Code §§ 17920.3 and 17920.10 and other applicable law.
 - D. Pay all interest on tenants' security deposits if required by local law or ordinance.
 - E. Carry and pay for: (i) public and premises liability insurance in an amount of no less than \$1,000,000; and (ii) property damage and worker's compensation insurance adequate to protect the interests of Owner and Property Manager. Property Manager shall be, and Owner authorizes Property Manager to be, named as an additional insured party on Owner's policies.
 - F. Pay any late charges, penalties and/or interest imposed by lenders or other parties for failure to make payment to those parties, if the failure is due to insufficient funds in Property Manager's trust account available for such payment.
 - G. Immediately replace any funds required if there are insufficient funds in Property Manager's trust account to cover Owner's responsibilities.
5. OWNER REPRESENTATIONS:
- A. Owner represents that, unless otherwise specified in writing, Owner is unaware of: (i) any recorded Notice of Default affecting the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation, or other pending or threatened action that does or may affect the Property or Owners ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Owner shall promptly notify Property Manager in writing if Owner becomes aware of any of these items during the term of this Agreement.
 - B. Owner represents that any and all residential rental unit(s) on the Property contain all permits and government approvals needed to lawfully lease or rent any such unit as a dwelling, except: _____
6. TAX WITHHOLDING:
- A. If Owner is not a California Resident or a corporation or LLC qualified to conduct business in California, Owner authorizes Property Manager to withhold and transmit to California Franchise Tax Board ("FTB") 7% of the GROSS payments to Owner that exceed \$1,500 received by Property Manager, unless Owner completes and transmits to Property Manager FTB form 589, nonresident reduced withholding request, FTB form 588, nonresident withholding waiver, or FTB form 590, withholding exemption certificate.
 - B. If Owner is a nonresident alien individual, a foreign entity, or other non-U.S. person, (Foreign Investor) Owner authorizes Property Manager to withhold and transmit to the Internal Revenue Service (IRS) 30% of the GROSS rental receipts unless Owner elects to treat rental income as "effectively connected income" by submitting to Property Manager a fully completed IRS form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade of Business in the United States. A Foreign investor Owner will need to obtain a U.S. tax payer identification number and file a declaration with the IRS regarding effectively connected income in order to complete the form given to Property Manager. Further, the Foreign Investor Owner will be responsible for making any necessary estimated tax payments.
7. OWNER DISCLOSURE:
- A. LEAD-BASED PAINT:
 - (1) The Property was constructed on or after January 1, 1978.
 - OR (2) The Property was constructed prior to 1978.
 - (i) Owner has no knowledge of lead-based paint or lead-based paint hazards in the housing except: _____
 - (ii) Owner has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing, except the following, which Owner shall provide to Property Manager: _____
 - B. POOL/SPA DRAIN: Any pool or spa on the property does (or, does not) have an approved anti-entrapment drain cover, device or system.
 - C. MOLD: The Property was treated on _____ (month) _____ (year) for elevated levels of mold which was previously detected in the following location(s): _____
 - Owner has no reports or records pertaining to elevated levels of mold in the Property, except: _____
 - Owner has no knowledge of elevated levels of mold currently in the Property, except: _____
 - D. ASBESTOS: Asbestos was removed from the Property in _____ (month) _____ (year) in the following location(s): _____

Owner's Initials () ()



Owner Name: _____ Date: 18 of 21

- Owner has no reports or records pertaining to asbestos in the Property, except: _____
- Owner has no knowledge of asbestos currently in the Property, except: _____

- E. **PEST CONTROL:** Owner has entered into a contract for periodic pest control treatment of the Property. Owner, within 3 days, will provide Property Manager a copy of the notice originally given to owner by the pest control company.
- F. **METH CONTAMINATION:** Owner has received an order from a health official prohibiting occupancy of any part of the Property because of methamphetamine contamination. Owner, within 3 days, will provide Property Manager a copy of the order. Contamination specified in the order has or has not been remedied.
- G. **BED BUG DISCLOSURE:** Owner acknowledges that beginning July 1, 2017, for new tenants and by January 1, 2018, all tenants must be provided a notice regarding bed bugs (C.A.R. Form BBD). Owner further acknowledges that it is unlawful to show, rent, or lease a property if there is a known current bed bug infestation. Owner knows of a current infestation.
- H. **WATER SUBMETERS:** The Property contains two or more units served by a single water meter and Owner has installed a submeter to measure and charge each individual unit for water usage. Effective January 1, 2018, Owner agrees to comply with Civil Code §§ 1954.201 through 1954.219 and authorizes Property Manager to provide the required Water Submeter Addendum (C.A.R. Form WSM).
- I. **CARBON MONOXIDE DETECTORS:** The Premises has a fossil fuel burning heater, appliance, or an attached garage. Landlord has has not installed carbon monoxide detector devices in accordance with legal requirements.
- J. **SMOKE ALARMS:** Owner has has not installed smoke alarm(s) in each bedroom, in the hallway outside of each bedroom and on each floor whether or not a bedroom is located on the floor in compliance with legal requirements.
- K. **WATER CONSERVING PLUMBING FIXTURES:** The Premises was built prior to January 1, 1994. The Owner has has not installed water conserving plumbing fixtures (toilets, shower heads, interior faucets, urinals) as per Civil Code section 1101.1 et seq effective as of 1/1/2017 for single family residential properties and 1/1/2019 for multifamily residential properties.
- L. **WATER HEATERS:** Water heater has has not been braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion.
- M. **PROP. 65 WARNING NOTICE:** Owner has has not posted a Proposition 65 warning notice on the Property.

8. **COMPENSATION:**

- A. Owner agrees to pay Property Manager fees in the amounts indicated below for:
 - (1) Management: _____
 - (2) Renting or Leasing: _____
 - (3) Evictions: _____
 - (4) Preparing Property for rental or lease: _____
 - (5) Managing Property during extended periods of vacancy: _____
 - (6) An overhead and service fee added to the cost of all work performed by, or at the direction of, Property Manager: _____
 - (7) Other: _____
- B. This Agreement does not include providing on-site management services, property sales, refinancing, preparing Property for sale or refinancing, modernization, fire or major damage restoration, rehabilitation, obtaining income tax, accounting or legal advice, representation before public agencies, advising on proposed new construction, debt collection, counseling, attending Owner's Association meetings or _____

If Owner requests Property Manager to perform services not included in this Agreement, a fee shall be agreed upon before these services are performed.

- C. Property Manager may divide compensation, fees and charges due under this Agreement in any manner acceptable to Property Manager.
- D. Owner further agrees that:
 - (1) Property Manager may receive and keep fees and charges from tenants for: (i) requesting an assignment of lease or sublease of the Property; (ii) processing credit applications; (iii) any returned checks and/or (if checked) late payments; and (iv) any other services that are not in conflict with this Agreement.
 - (2) Property Manager may perform any of Property Manager's duties, and obtain necessary products and services, through affiliated companies or organizations in which Property Manager may own an interest. Property Manager may receive fees, commissions and/or profits from these affiliated companies or organizations. Property Manager has an ownership interest in the following affiliated companies or organizations: _____

Property Manager shall disclose to Owner any other such relationships as they occur. Property Manager shall not receive any fees, commissions or profits from unaffiliated companies or organizations in the performance of this Agreement, without prior disclosure to Owner.

(3) Other: _____

- 9. **AGENCY RELATIONSHIPS:** Property Manager may act, and Owner hereby consents to Property Manager acting, as dual agent for Owner and tenant(s) in any resulting transaction. If the Property includes residential property with one-to-four dwelling units and this Agreement permits a tenancy in excess of one year, Owner acknowledges receipt of the "Disclosure Regarding Agency Relationships" (C.A.R. Form AD). Owner understands that Property Manager may have or obtain property management agreements on other property, and that potential tenants may consider, make offers on, or lease through Property Manager, property the same as or similar to Owner's Property. Owner consents to Property Manager's representation of other owners' properties before, during and after the expiration of this Agreement.
- 10. **NOTICES:** Any written notice to Owner or Property Manager required under this Agreement shall be served by sending such notice by first class mail or other agreed-to delivery method to that party at the address below, or at any different address the parties may later designate for this purpose. Notice shall be deemed received three (3) calendar days after deposit into the United States mail OR _____

Owner's Initials () ()



Owner Name: _____ Date: _____

11. DISPUTE RESOLUTION:

- A. **MEDIATION:** Owner and Property Manager agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. Exclusions from this mediation agreement are specified in paragraph 11B.
- B. **ADDITIONAL MEDIATION TERMS:** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation provisions.
- C. **ADVISORY:** If Owner and Property Manager desire to resolve disputes arising between them rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).

- 12. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.
- 13. **ATTORNEY FEES:** In any action, proceeding or arbitration between Owner and Property Manager to enforce the compensation provisions of this Agreement, the prevailing Owner or Property Manager shall be entitled to reasonable attorney fees and costs from the non-prevailing Owner or Property Manager, except as provided in paragraph 11A.
- 14. **ADDITIONAL TERMS:** Keysafe/Lockbox Addendum (C.A.R. Form KLA); Lead-Based Paint and Lead-Based Paint Hazards Disclosure (C.A.R. Form FLD)

15. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed except in writing. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Owner warrants that Owner is the owner of the Property or has the authority to execute this Agreement. Owner acknowledges Owner has read, understands, accepts and has received a copy of the Agreement.

REPRESENTATIVE CAPACITY: This Property Management Agreement is being signed for Owner by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-LL). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. Owner (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

Owner _____ Date _____

Owner _____
Print Name _____ Social Security/Tax ID # (for tax reporting purposes) _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ Email _____

Owner _____ Date _____

Owner _____
Print Name _____ Social Security/Tax ID # (for tax reporting purposes) _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ Email _____

Real Estate Broker (Firm) _____ Cal BRE Lic. #: _____
By (Agent) _____ Cal BRE Lic. #: _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ Email _____

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Published and Distributed by
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Listing Firm to Seller) (As required by the Civil Code) (C.A.R. Form AD, Revised 12/14)

(If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k) and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller.

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer. (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

Buyer Seller Landlord Tenant Date

Buyer Seller Landlord Tenant Date

Agent Real Estate Broker (Firm) BRE Lic. #

By (Salesperson or Broker-Associate) BRE Lic. # Date

Agency Disclosure Compliance (Civil Code §2079.14): When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant. When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here: (SELLER/LANDLORD: DO NOT SIGN HERE)

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Reviewed by Date



AD REVISED 12/14 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained from the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the seller exclusively; or both the buyer and seller.
(Name of Listing Agent)
(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the buyer exclusively; or the seller exclusively; or both the buyer and seller.
(Name of Selling Agent if not the same as the Listing Agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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