



CITY COUNCIL MEETING

Tuesday, December 03, 2024
Regular Meeting - 6:00 PM
City Hall – City Council Chambers
425 Webster Street, Colusa, CA 95932

AGENDA

Zoom Information:

<https://us06web.zoom.us/j/89890717467>
Meeting ID: 898 9071 7467 Passcode: 726926
Mobile: 669-444-9171, ID 89890717467

Mayor – Daniel Vaca
Mayor Pro Tem – Ryan Codorniz
Council Member – Denise Conrado
Council Member – Greg Ponciano
Council Member – Dave Markss

ROLL CALL

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMENTS *(The public to address any item of City business NOT appearing on this Agenda. Speakers must limit their comments to three (3) minutes each. Please note that per Government Code Section 54954.3(a), the City Council cannot take action or express a consensus of approval or disapproval on any public comments regarding matters which do not appear on the printed agenda)*

CONSENT CALENDAR - *All items listed on the Consent Calendar are considered by the Council to be routine in nature and will be enacted by one motion unless an audience member or Council member requests otherwise, in which case, the item will be removed for separate consideration.*

- 1. Receive and File** - Code Enforcement November report
- 2. Approve** - Street closure for Christmas Tyme in Colusa event on Friday, December 6, 2024

COUNCIL MEMBER /CITY MANAGER REPORTS AND STAFF COMMENTS

COUNCIL CONSIDERATION

- 3.** Consideration of a Resolution authorizing the City Manager to hire and add a new employee to the Public Works Department

Recommendation: Council to adopt a Resolution authorizing the City Manager to hire and add a new employee to the Public Works Department
- 4.** Consideration of three Resolutions for BC&E USA Colusa 1 LLC Lease Agreements for the Pirelli Building and 10 acres of the wastewater treatment property.

Recommendations: Council to adopt a Resolution approving the Lease Agreement with BC&E USA Colusa 1 LLC for part of the North side of the Pirelli building.

Council to adopt a Resolution approving the Lease Agreement with BC&E USA Colusa 1 LLC for part of the South side of the Pirelli building.

Council to adopt Resolution approving the Lease Agreement with BC&E USA Colusa 1 LLC for part of the Wastewater Land.

FUTURE AGENDA ITEMS

ADJOURNMENT



SHELLY KITTLE, CITY CLERK

Notice of Meetings and Agendas

The Regular Colusa City Council meetings are held the first and third Tuesdays of each month at 6:00 pm in the Colusa City Council Chambers located at 425 Webster Street, Colusa California unless otherwise noted above. Copies of open session agenda packets, which are distributed to the City Council, are on file at the front desk of the City at 425 Webster Street, Colusa, California, and are available for public inspection beginning 72 hours in advance, during normal business hours (7:00 am – 5:00 pm., Monday through Thursday except for City holidays). Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection at the front desk of the City and on the day of the meeting in the Council Chambers.

Americans with Disabilities Act

In compliance with the Americans with Disabilities Act, persons requiring accommodations for a disability at a public meeting should notify the City Clerk at least 48 hours prior to the meeting at (530) 458-4941 in order to allow the City sufficient time to make reasonable arrangements to accommodate participation in this meeting.

“This institution is an equal opportunity employer and provider”

Code Enforcement Monthly Report

11/01/ 2024 to 11/30/2024

Total Violation Files: 2

Active: 0

Pending: 0

Compliance / Closed: 2

Complaints Received: - 0 (via landline) / - 4 (email portal) *resolved in the field* / - 0 (In Person)

*Continuous Parking 11-8(z) / Abandoned Junk / Animals / Homeless Encampment (s) / Sec. 31-04-
Prohibited Signs*

Letters: 2

In the field findings:

Shopping Carts: (5) (Sav Mor / (0) Rite Aid (0) Dollar General; All Returned / Tagged Vehicles – **Towed (0)**
Vehicles

Types of Violations:

Weed Abatement / Vehicle - *Parking Issues* / Nuisance Junk / Animals – Dogs / No Camping / Yard Sale
Signs (abandoned)

Continuous Follow Ups Conducted Daily – *Compliance in Progress*

Training / Education

Continue Community & Resource Relations / Translating Codes / Ordinance(s) into Spanish while
interacting with Hispanic Community / Future Joint Training with Butte County Code Enforcement, (Date
TBD)

Notes:

Daily drive-bys / Walkthrough of Cannabis Locations (odor inspections) -Equipment Inspections /
Cannabis Facility Walk Through's / Pending projects: Nuisance / Checked in with Cannabis Partners /
Continuous Research of relevant trainings / Attended Staff and Council Meetings



City of Colusa California

STAFF REPORT

DATE: December 3, 2024
TO: Mayor Vaca and Members of the City Council
FROM: Joshua Fitch, Police Chief, via Jesse Cain, City Manager

AGENDA ITEM:

Street closure to facilitate Christmas Tyme in Colusa Event.

Recommendation:

Authorize street closure in connection with the 2024 Christmas Tyme in Colusa event, sponsored by Colusa Lions Club, Colusa Rotary, and Colusa Chamber of Commerce on Friday, December 6, 2024.

BACKGROUND ANALYSIS:

A perennial event, this year's celebration will be changed to be held on Main Street. The requested closure is from 3:00 p.m. to 12:00 a.m. The event will require the closure of Main Street between 5th and 9th Streets. Additionally, 5th Street will be closed between Main Street and Market Street and 6th, 7th, and 8th Streets will be closed from Main Street south to the alleyways. Market Street will be the detour route for through traffic.

BUDGET IMPACT:

Budget impact for this event is estimated to be around \$3,500 for staff time, including overtime for extra police and street department staff for traffic control and clean up.

STAFF RECOMMENDATION:

Staff is recommending that the Council authorize the street closure as outlined above.

ATTACHMENT:

Event application.

City of Colusa

Application for

Temporary Street Closure, Parades, Special Events and Festivals

Office Use Only		Item 2.
Date Received	_____	
Routing Date	_____	
Date approved	_____	
Notice Sent	_____	
Insurance Cert. Rec'd	_____	

NAME OF EVENT: <u>Christmas Tyme in Colusa</u>
DATE OF EVENT: <u>December 6, 2024</u>

Please read carefully:

- Application must be filed with the city clerk at least 30 days prior to the event to allow time for review and council action.
- Applications will be returned if incomplete
- There are no fees for street closure services
- Complete in the space provided a narrative explaining the specific purpose of the event including garbage clean-up plans.
- Submit a map in the space provided outlining the event's location and all street and/or parking lot closings
- Submit copies of flyers, posters or other materials that will advertise the event. The organizer is responsible for ensuring that all flyers, posters, etc. advertising the event are removed from public facilities. Failure to comply may impact approvals for future applications.
- **Applicants must provide prior to the event a certificate of insurance meeting city insurance requirements—a minimum of \$1 million per occurrence naming the city as additional insured. Limit is subject to increase depending on event. The description must read: "The City of Colusa, its officials, employees and agents are named as Additional Insured with Waiver of Subrogation with respect to general liability."**
- All applications are subject to approval by the city council
- Applicants will be notified when the request has been approved or if additional information is required. Inquiries about the status of an application may be directed to the city manager's office.
- All street closures must maintain adequate clearance for emergency vehicle access.
- If event will take place on the state highway, attach a copy of the Caltrans encroachment permit

Contact Information: (Please print)

Organization <u>Rotary, Lions, Chamber</u>	Phone (day) <u>979-574-5092</u>
Contact Person <u>Antonio Ortiz</u>	Phone (evening) _____
Address <u>PO Box 410</u>	Fax _____
City <u>Colusa</u>	E-mail Address <u>antonio@ortizclan.com</u>
Zip Code <u>95932</u>	
Alternate Contact <u>Mickey Lutz</u> <u>530-301-7232</u>	

(It is highly recommended that an alternate name & telephone number be provided)

Event Details:

Location of Event	Start Date MM/DD/YY (Incl. set up)	Start Time	Finish Date MM/DD/YY (Incl. tear down)	Finish Time
<u>Main St 10th to 5th</u>	<u>Dec 06 2024</u>	<u>3:00</u> <input type="checkbox"/> am <input checked="" type="checkbox"/> pm	<u>12/06/24</u>	<u>12:00</u> <input type="checkbox"/> am <input checked="" type="checkbox"/> pm

Electrical: Yes No
 Selling Liquor: Yes No
 Sound Amplification: Yes No
 Food & Beverage: Yes No
 Open Fire: Yes No (If yes, please explain (permit may be required)) Boy Scouts hosting smores station

Type of Event:

Parade	<input type="checkbox"/>	Cycling	<input type="checkbox"/>	Event/Festival	<input checked="" type="checkbox"/>	Please Specify _____
Walkathon	<input type="checkbox"/>	Run	<input type="checkbox"/>	Other	<input type="checkbox"/>	

Attendance:

Number of Participants	<u>3000 to 5000</u>	Number of Floats	<u>0</u>
Number of Booths/Stalls	<u>50 to 80</u>	*Please provide best estimates*	
Number of Vehicles	_____		
Number of Bands	<u>2</u>		

Narrative and Map of Event:

(Be specific and include garbage clean-up plans, detailed map, route and/or site plan. Attach extra page if necessary)

Narrative:
 Christmas Tyme in Colusa 2024
 Holiday Themed Festival that is free to attendees and non-profit vendors to attract people to Colusa.

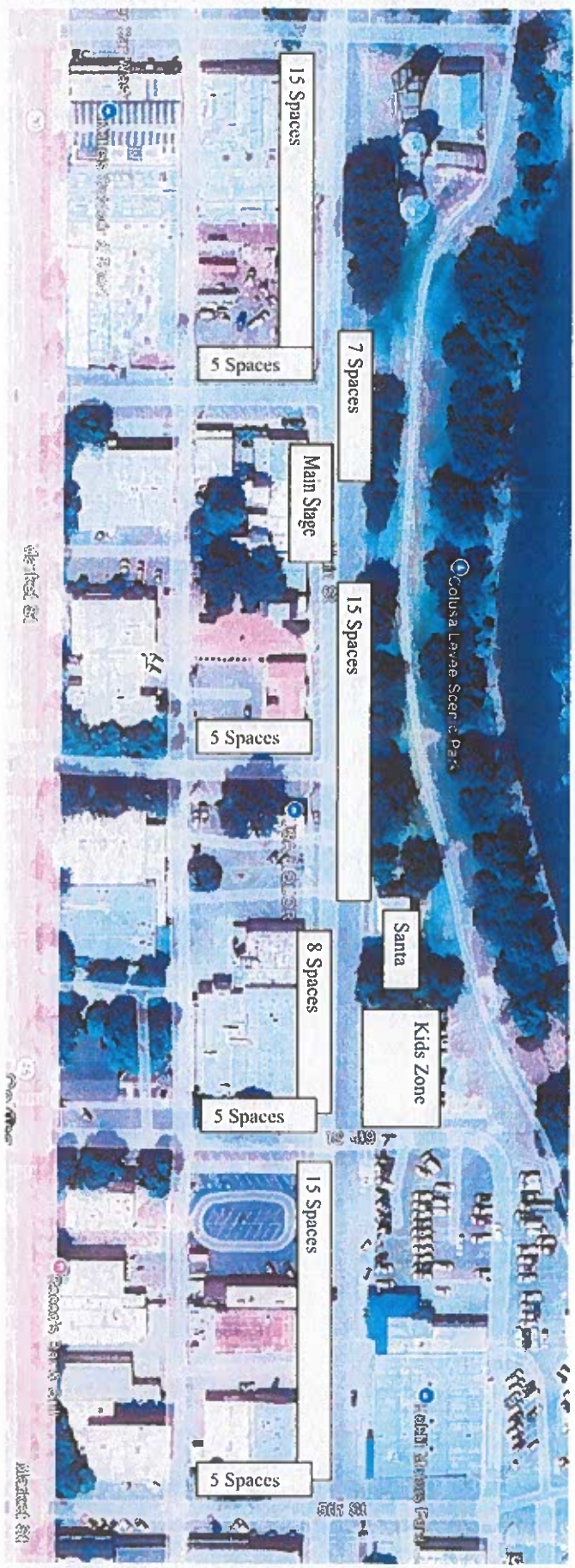
Map, route, and/or site plan: (If insufficient space, please attach on separate sheet)
 Map attached.
 Overflow parking in State Park.

Signature of Person Submitting Application: _____

Date: _____

Office Use Only

Public Works <u>[Signature]</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	Date: _____
Comments: _____			
Recreation _____	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	Date: _____
Comments: _____			
Street/Parks <u>[Signature]</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	Date: _____
Comments: _____			
Fire Dept. _____	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	Date: _____
Comments: _____			
Police Dept. <u>[Signature]</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	Date: <u>11-25-24</u>
Comments: _____			
City Manager Review <u>[Signature]</u>			Date: _____
Comments: _____			





City of Colusa California

STAFF REPORT

DATE: December 3, 2024
TO: Mayor and Members of the Council
FROM: Jesse Cain, City Manager

AGENDA ITEM: Consideration of a Resolution authorizing the City Manager to hire and add a new employee to the public works department

Recommendation: Council to adopt a Resolution authorizing the City Manager to hire and add a new employee to the public works department

BACKGROUND ANALYSIS: The City of Colusa City public works department is falling behind on projects and the basic maintenance needs of the city to keep the city operating in good faith. Over the last few months, we have had a couple of employees leave work due to injuries on- and on-the-job injuries. The city has been very fortunate over the last three years being able to utilize the One stop program allowing us to have additional employees at no cost to the City. That program is still in effect, and we are currently using it.

I would like to add one full-time position to the public works division (Street Department) this will help the city to start being able to make much needed repairs to our sidewalks, curbs and gutters. This position is not in our current budget, and it will increase the budget at mid-year along with next year's budget.

This is a step in the right direction working on being properly staff

BUDGET IMPACT: \$58,080.00 for this budget year

STAFF RECOMMENDATION: Council to approve Resolutions 24-

ATTACHMENT:

Resolution 24-

RESOLUTION NO. 24-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA APPROVING
ADDING A NEW POSITION TO THE PUBLIC WORKS DEPARTMENT**

WHEREAS, the City of Colusa City Council agrees to hire one more employee for the public works department and;

WHEREAS, on December 3rd, 2024, the City of Colusa City Council approves adding one position to the Public Works Department (Streets Division) ;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLUSA DOES HEREBY
RESOLVE:**

1. Recitals. The foregoing recitals are true and correct and made part of this Resolution.
2. Approval. The City of Colusa City Council approves the resolution authorizing the City Manager to hire one street employee, and:
3. Effective Date. This Resolution shall be effective immediately.

The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

Passed and adopted this 3rd day of December 2024, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

DANIEL VACA, MAYOR

Shelly Kittle, City Clerk



City of Colusa California

STAFF REPORT

DATE: December 3, 2024
TO: Mayor and Members of the Council
FROM: Jesse Cain, City Manager

AGENDA ITEM: Consideration of three Resolutions for BC&E USA Colusa 1 LLC Lease agreements for the Pirelli Building and 10 acres of the wastewater treatment property.

Recommendation: Council to adopt the following Resolutions:

1. Resolution approving the Lease Agreement with BC&E USA Colusa 1 LLC for part of the North side of the Pirelli building
2. Resolution approving the Lease Agreement with BC&E USA Colusa 1 LLC for part of the South side of the Pirelli building
3. Resolution approving the Lease Agreement with BC&E USA Colusa 1 LLC for part of the Wastewater Land

BACKGROUND ANALYSIS: The City of Colusa City obtained what is known as the Pirelli Building a couple years ago with Grants and a loan from the water department. To create some type of biomaterials facility that would create jobs and help farmers with their ag waste and to better our local economy.

The City of Colusa has been working with BC&E USA Colusa 1 LLC for a couple years now to try and bring a biomaterials energy plant to Colusa, The City of Colusa has entered into a Purchase power agreement with them as well, which requires them to complete and receive a Bio mat application and contract for power purchases with PGE to ensure that the City will not be out any money.

BC&E Colusa now would like to lease 75,000 square feet of the Northside of the building and 75,000 square feet of the South side as well with the same lease terms. They would also be entering into a lease for 10 acres of the wastewater treatment plant with the option to move the lease to east Clay Street once we complete the property swap.

Please see attached leases for the terms of the lease

BUDGET IMPACT: None at this time

STAFF RECOMMENDATION: Council to approve Resolutions 24-

ATTACHMENTS:

Resolution 24- Lease Agreement North Side

Resolution 24- Lease Agreement South Side

Resolution 24- Lease Agreement 10 acres of the wastewater property

Lease Agreement North Side

Lease Agreement South Side

Lease Agreement for 10 acres of the wastewater treatment property.

RESOLUTION NO. 24-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA APPROVING THE LEASE AGREEMENT WITH BC&E USA COLUSA 1 LLC

WHEREAS, the City of Colusa City Council agrees to enter into a five-year lease with BC&E USA Colusa 1 LLC and three five-year extensions and;

WHEREAS, on December 3, 2024, the City of Colusa City Council approves the lease agreement for part of the North side of the Pirelli building with BC&E Colusa 1 LLC.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLUSA DOES HEREBY RESOLVE:

1. Recitals. The foregoing recitals are true and correct and made part of this Resolution.
2. Approval. The City of Colusa City Council approves the resolution authorizing the City Manager to sign the lease agreement with BC&E USA Colusa 1 LLC, and:
3. Effective Date. This Resolution shall be effective immediately.

The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

Passed and adopted this Third Day of December 2024, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

DANIEL VACA, MAYOR

Shelly Kittle, City Clerk

**COMMERCIAL SPACE LEASE
LOCATED AT
1480 WILL S. GREEN AVENUE, NORTHSIDE PROPERTY, COLUSA, CALIFORNIA**

THIS LEASE OF REAL PROPERTY ("Lease"), dated as of the latter of the Parties' signatures herein, is made and entered into by and between the City of Colusa, a Municipal Corporation ("Landlord"), BC&E USA Colusa 1 LLC ("Tenant"). Each of Landlord and Tenant shall be described herein from time to time as a "Party," and collectively as the "Parties."

1. Recitals.

This Lease is entered into based upon the following facts, circumstances and understandings:
current

- 1.1. City of Colusa, ("**Landlord**") is the owner of that certain parcel of improved real property of approximately forty-eight (48) acres in size and located at 1480 Will S. Green Avenue, Colusa, CA, (such parcel, together with all improvements thereon, and all appurtenant rights and easements, the "**Northside Property**") and incorporated herein by this reference.

2. **Grant and Acceptance of Lease.** Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by Tenant, does hereby lease to Tenant and Tenant hereby leases and takes from the Landlord the property described in section 3 below and depicted in Exhibit "B" attached hereto, for Tenant's proposed use, subject to the following terms and conditions for the Term.

3. Leased Area.

- 3.1. Premises. Landlord leases to Tenant and Tenant leases from Landlord the premises described as a portion of the building located at 1480 Will S. Green Avenue, Northside Property, Colusa, CA 95932 consisting of 75,000 square feet of interior space as depicted on the attached Exhibit B (including exterior space).
- 3.2. Additional leased area. The tenant has the right to lease additional square footage of leased premises at any time during the first five years of this lease at the current rent per square foot subject to all scheduled rent amounts and increases set forth in this lease provided tenant gives landlord 30 days advance notice to exercise this option for additional space and additional space is still available. Landlord is under no obligation to reserve any portion of Landlord's property for future use by Tenant. However, Tenant shall have a first right of refusal to match any offer to rent any portion of Landlord's property that Landlord offers to rent to any entity not a party to this Lease.
- 3.3. Additional Yard Area: Tenant is also leased the fenced in Yard Area as part of the Premises and as depicted on Exhibit B. The Rent for the Yard Area is included in the

Rent charged pursuant to paragraph 5. Tenant shall pay for, and be responsible for, the clean-up of any contamination caused by Tenant's use of the storage yard. The Yard Area is currently a gravel surface and Tenant may install asphalt paving or other improvements to the Yard Area, provided Tenant complies with all applicable law, rules, regulations and obtains all required government approvals and permits.

- 3.4. Condition of Property. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Property except as specifically stated in this Lease.
- 3.5. Condition of Premises: Tenant has examined the Premises and acknowledges that Premise is as is, in operative condition, and suitable for occupancy by Tenant.
- 3.6. Zoning And Land Use: Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representation or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.

4. Term; Commencement Date.

- 4.1. The provisions of this Lease are effective as of the Commencement Date.
- 4.2. Duration of Term: Fifteen(15) years with one five (5) year extension from the Commencement Date, subject to Term extensions as set forth in Section 4.4 below.
- 4.3. Commencement Date: The Commencement Date of this Lease is the date of approval of the Lease by the City Council of the City of Colusa.
- 4.4. Lease Term Expiration Date: The lease Term shall expire at 5:00 pm Pacific Time on December 31, 2044. Tenants will have the option to renew lease one time under the conditions and payment obligations set forth in Section 5. Intention to renew shall be given in writing six (6) months before the end of the lease term. Any holding over after the term of this agreement expires, which requires Landlord's consent, shall create a month-to-month tenancy and may revert to market rate, at the sole discretion of Landlord. Either party may terminate the hold over tenancy by giving written notice to the other at least thirty (30) days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.

5. Rent.

- 5.1. Definition: ("Rent") shall mean all monetary obligations of Tenant to Landlord under the terms of this agreement, except the security deposit. A security deposit in the amount of \$25,000 shall be collected when the lease is executed.

Year 1-10 \$9,000,000 Payment to the City by December 31st 2024	
Year 10 through 15, a one-time payment of \$2,000,000 payment due by December 31, 2034. Year 15 through 20 a one time payment of \$2,000.000 due by December 31, 2039	
Total Paid lease over 20 years \$13,000,000.	

5.2. The Parties agree that any tenant improvements that the Tenant performs that relate to compliance with any governmental regulations or requirements, including but not limited to safety or environmental matters, on the City’s behalf may be reimbursed during years 1-15 of the Lease, and deducted from any annual lease payment subsequently, provided a signed authorization letter has been issued from the City authorizing the improvements.

5.3. Payment: Rent shall be paid to City of Colusa, 425 Webster St., Colusa, CA 95932, or at any other location specified by Landlord in writing to Tenant.

6. Late Charge; Interest; NSF Checks: Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received

by Landlord within 5 calendar days after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, \$5,000 as late charge, plus 10% interest per annum on the delinquent amount and \$5,000 as an NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest, or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 5 or prevent Landlord from exercising any other rights and remedies under this agreement, and as provided by law.

7. Permitted Uses.

- 7.1. The Premises are for the sole use as commercial and industrial uses. Hours of operation may include 3 shifts for 24 hours per day of continuous operation.
- 7.2. No other use is permitted without Landlord's prior written consent. If any use by Tenant causes an increase in the premium on Landlord's existing property insurance, Tenant shall pay for the increased cost.
- 7.3. Tenant will comply with all Laws affecting its use of the Premises.
- 7.4. Tenant shall be restricted from any access to or utilization of the groundwater under the Property for any purpose.
- 7.5. Ongoing Access to Property. During the Term of this Lease, Tenant grants Owner and Landlord the right of access, Owner agrees to provide reasonable notice to Tenant, and Tenant and Owner shall mutually agree upon a reasonable schedule, to access and inspect, over, under and across the Property (including, if necessary, the existing building on the Property and any other improvements that may be constructed on the Property) and the Premises for its employees and agents during normal business hours, at no charge to Owner or Landlord as necessary or desirable for Owner to conduct its environmental investigation, monitoring and remediation activities. Such grant of access shall allow Owner and Landlord to engage in any and all activities related to its environmental investigation, monitoring and remediation activities, including, but not limited to, drilling soil borings, installing groundwater monitoring wells, excavating contaminated soils, installing engineering control and remediation systems, including, by way of example only, soil or pavement covers and groundwater extraction. In exercising its use of the Property and Premises herein, Owner and Landlord agree to cooperate with any reasonable security or access control procedures utilized by Tenant and further agrees not to unduly disturb or interfere with the business or other activities of Tenants engaged in industrial uses and operations within the building.

8. Tenant's Work, Maintenance, Repairs and Restoration.

- 8.1.** Tenant may undertake all necessary tenant improvements and install, place, use, modify, operate and remove at the Premises furniture, trade fixtures and equipment ("FF&E") as Tenant deems necessary for its business operations at the Premises.
- 8.2.** Any improvements made by Tenant, and all demolition, construction and installation work at the Premises, shall be performed at Tenant's sole cost and expense and in a good and workmanlike manner, and in compliance with all applicable codes and governmental regulations.
- 8.3.** Tenant shall provide prior written notice to Landlord at least five (5) business days before undertaking any demolition, construction, improvements, installation of signage, or change out of locks or security systems. Notwithstanding anything in this section to the contrary, no portion of the existing building or other improvements on the Property may be demolished, nor any alterations to the Building structure, roof, HVAC system or electrical or plumbing systems, be made, without Landlord's prior written consent in each instance, which consent may not be unreasonably withheld, and which consent shall be given or denied within five (5) business days from receipt of written request thereof from the Tenant or its agents or representatives. If no response is given by Landlord within such 5-business day period, such consent will be deemed given.
- 8.4.** Tenant shall maintain the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations, including and any and all security lighting or appliances installed. Landlord will maintain, or to make repairs or replacements to, the primary building shell consisting of the exterior walls, except as specifically modified by Tenant's improvements, foundation, and the roof, primary electrical feed to Tenant's main power panel, or primary building water and wastewater systems or any other component thereof. Tenant acknowledges and agrees that all improvements done by Tenant to facilitate Tenant's operations and not within Landlord's responsibility as stated in this section, shall be at the sole cost and expense of Tenant both for initial improvements and ongoing maintenance and repair during the Term of this Lease. Any and all roof penetrations shall require Landlord's express written consent and supervision, or at Landlord's option, Landlord shall utilize Landlord's preferred contractor for roofing repairs necessary for Tenant's equipment, and will invoice such costs to Tenant, which invoice shall be due and payable within 10 business days of receipt.
- 8.5.** Tenant, at Tenant's expense, shall be required to make all repairs to the Premises due to damage caused by Tenant, its agents or contractors.
- 8.6.** Upon the expiration, cancellation or termination of this Lease, Tenant shall surrender the Premises, together with all improvements and alterations, but not FF&E, installed during the Term by Tenant, in good condition and repair, less ordinary wear and tear and casualty not caused by Tenant, its agents or contractors. Tenant shall not permit or suffer any mechanic's or materialmen's liens to be lodged against the Property or

Premises and will defend, indemnify and hold harmless Landlord from and against all claims, liabilities, costs and expenses associated with any such liens. Further, Tenant and any applicable subtenant will post notices of non-responsibility or local equivalent with respect to any work performed on the Property or Premises indicating that the applicable work is being done by or under Tenant and that Landlord does not consent to the fee interest in the Property being subject to any liens or claims of lien.

- 8.7.** If Tenant or its sublessees intend to excavate soils on the Property and relocate those excavated soils either elsewhere on the Property or to an off-site location, Tenant shall give Landlord at least thirty (30) days' notice prior to such excavation and cooperate with reasonable requests of Landlord in connection with the management of such soils.

9. Title to Tenant's Facilities.

- 9.1.** Title to FF&E placed on the Premises by Tenant shall be held by and remain with Tenant. All FF&E (as opposed to improvements, alterations and fixtures constituting real property under applicable law) shall remain the property of Tenant and are not fixtures. Tenant, or any other lawful tenants or occupants of the Property, have the right to remove all FF&E at their sole expense on or before the expiration or termination of this Lease.

- 9.2.** Any such FF&E not removed by the expiration of the Term shall be deemed abandoned and Landlord may dispose of the same or arrange for its storage at Tenant's cost.

- 9.3.** Landlord acknowledges that Tenant may enter into financing arrangements including promissory notes and financial and security agreements for the financing of FF&E (the "Collateral") with a third-party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Landlord (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved FF&E; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, whether arising at law or otherwise, including, but not limited to any statutory landlord's lien; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

- 10. Signs.** Tenant signage will be in compliance with all applicable City codes and will be located and/or installed in the areas depicted on Exhibit B and/or Exhibit C. Tenant will be responsible for maintenance of all Tenant installed signage. Signs shall be maintained in a manner so their appearance is in a substantially new condition and shall not be allowed to fade or deteriorate in appearance. All Tenant signage must be removed within 30 days of termination or expiration of this Lease. If Tenant signage is not removed within the 30-day time period, City may remove or cause the signage to be removed and the cost of such removal shall be invoiced to Tenant for payment within 10 days of receipt of the invoice.

11. Tenant Environmental Law Compliance and Indemnity.

- 11.1.** Tenant shall not create, collect, store except in reasonable quantities directly related to Tenant's operations and in compliance with all laws and regulations for said storage, treat, dispose of or cause to be released or otherwise discharged any Hazardous Materials on the Property except in such minute quantities as are found in everyday cleaning supplies in compliance with Environmental Laws (capitalized terms are defined in Section 12.5 below) and shall notify Landlord within forty eight (48) hours after discovering or being informed of the presence of any Hazardous Materials on the Property either in violation of Environmental Laws.
- 11.2.** Except to the extent caused by Landlord, or environmental conditions in the building or at the site existing prior to the occupancy by Tenant, before vacating the Property, Tenant shall clean up any releases of Hazardous Materials or environmental contamination by Hazardous Materials caused by Tenant occurring on or migrating from the Property during the Term of this Lease and located on, under, or adjacent to the Property, wherever located, in accordance with the requirements of all Environmental Laws and to Landlord's satisfaction and the Property shall remain in its cleaned-up condition through the time Tenant vacates the Property. Should Tenant not fulfill its obligations under this Section 13.2, Tenant shall reimburse Landlord for all such clean-up costs and shall indemnify Landlord for all such costs and all other Indemnified Losses under Section 13.3 of this Lease. Should any activities on the Property during the Term by Tenant or any of its agent, representative, successors, assigns or subtenants exacerbate or disrupt Landlord's ongoing environmental investigation, monitoring, and remediation activities at the Property, Tenant shall reimburse Landlord for any and all additional costs created by the activities of Tenant any subtenant, or any of their respective agents, contractors, employees, invitees, successors and/or assigns and shall indemnify Landlord for all such costs and all other Indemnified Losses under Section 13.3 of this Lease.
- 11.3.** Notwithstanding any other provision of this Lease, Tenant agrees to and does hereby defend, indemnify and hold harmless Landlord, its directors, officers, shareholders, employees, representatives, agents, successors and assigns (each, an "Indemnified Party") from and against any and all Indemnified Losses (as defined in Section 13.5) below) (including strict liability), which may now or in the future (whether during or after the Term) be paid, incurred or suffered by or asserted against Landlord by any person or entity or Agencies for, with respect to, or as a direct or indirect result of, (a) acts or omissions of Tenant or any subtenant of the Tenant, and their respective agents, employees, directors, officers, shareholders, contractors, representatives, and/or invitees, on or in connection with the Property, (b) the spill, disposal or release of Hazardous Materials on, under, in or from the Property during the Term and not caused by Landlord or any of its employees, agents or contractors and (c) any and all breaches of the covenants, representations and warranties set forth in this Section 13. The covenants and indemnifications contained in this Section 13 shall survive the expiration or other termination of this Lease.

11.4. In the event of any permitted sublease of the Property, or any part thereof, Tenant shall include the Tenant obligations set forth in this Section 13 in all permitted subleases.

11.5. Definitions.

"Agencies" means any federal, state, or local governmental authorities, agencies, or other administrative bodies with jurisdiction over Landlord or the Property.

"Corrective Work" shall mean the cleanup, removal, relocation, elimination, remediation, encapsulation, disposal at a licensed facility or any other treatment of Hazardous Materials of or from all or any portion of (i) the Property or any other property owned and/or leased by Landlord (necessary to maintain or bring the Property into compliance with Environmental Laws) and (ii) surrounding areas of the Property and/or any other property owned and/or leased by Landlord (necessary to maintain or bring the Property into compliance with Environmental Laws) and, to the extent thereby required, the reconstruction and rehabilitation of the Property or any other property owned and/or leased by Landlord performed by any person or entity, including, without limitation, Landlord, Tenant, any Indemnified Party, or any of their respective agents, contractors, subcontractors, employees and any governmental entity for any reason, including, without limitation, pursuant to any Environmental Laws. Corrective Work also includes all fees of consultants to investigate, identify, characterize, monitor and develop corrective action plans with respect to Hazardous Materials or any Corrective Work.

"Environmental Laws" means any federal, state, or local environmental, health, or safety-related laws, regulations, standards, court decisions, ordinances, rules, codes, orders, decrees, directives, guidelines, permits, or permit conditions, currently existing and as amended, enacted, issued, or adopted in the future that are or become applicable to Landlord or the Property.

"Hazardous Material" means any chemical, substance, material, controlled substance, object, condition, waste, living organism, or combination that is or may be hazardous to human health or to the safety of the environment due to its radioactivity, flammability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms, or combinations that are now or become in the future listed, defined, or regulated in any manner by any Environmental Laws based upon, directly or indirectly, their properties or effects.

"Indemnified Losses" shall mean incurred and potential claims, damages, losses,

liabilities, costs and expenses of Corrective Work, any other clean-up or response costs (which, without limitation, shall include costs to cause the Property to come into compliance with Environmental Laws), investigation costs (including fees of consultants, legal counsel and other experts in connection with any environmental investigation, testing, audits or studies), and any other incurred or potential obligations, penalties, fines, impositions, fees, levies, lien removal or bonding costs, claims, litigation, demands, causes of action (including, without limitation, any common law cause of action), liabilities, losses (including, without limitation, any reduction in the value of the Property), damages (expressly excluding any indirect or consequential damages), defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind and nature whatsoever (including, without limitation, attorneys' and experts' or other consultants' fees), including interest thereon.

14. Utilities.

14.1. **Tenant Responsibility for all Utilities.** Tenant shall pay directly to the relevant utility all charges for electricity, gas, waste collection, pest control, telephone and other communication services, utility deposits, and tap or connection charges for services requested. Tenant shall pay to the Landlord water and sewer fees based on the City's fee schedule right now the charges, are \$48.14 per month, sewer charges, are \$99.27 per month: and will be changed based on the fee schedule. tap or connection charges for services requested, metering fees or other charges paid by for Tenant If any additional services requested by Tenant result in sewer service charges, tap or connection charges for services requested, metering fees or other charges, Tenant shall be responsible for paying such charges. Landlord shall have no responsibility for any interruption in utility services. Tenant agrees to promptly pay all charges and related expenses for such utilities as they become due, and all payments shall be made directly to the entity entitled to such payment. No interruption of utility service shall be construed as either a constructive or an actual eviction of Tenant, nor work by Tenant an abatement of Rent, nor relieve Tenant from fulfilling any covenant or condition of this Lease.

14.2. **Landlord Responsibility for Utilities.** Landlord will provide water and wastewater service to the site and building. Tenant will pay their fair share as set forth above.

15. Maintenance Expenses and Responsibilities. Landlord will maintain the building shell and roof, and the parking lot and storage yard area, except those areas of the parking lot and storage yard area specifically leased to Tenant. Tenant shall maintain all interior areas of the leased premises, all tenant improvements installed by Tenant, and the fenced yard area.

16. Taxes. Tenant shall pay personal property taxes assessed against FF&E and shall pay when due all possessory interest taxes which may become due attributable to the Premises and this Lease. Tenant shall pay all taxes prior to delinquency; in the event that taxes become delinquent, Tenant shall pay all interest and penalties due and owing. Landlord shall pay all

real estate taxes and other taxes associated with the Property.

17. Fire or Other Casualty.

- 17.1. Notice and Election to Repair. In the event of a fire or other casualty at the Premises (including any casualty for which insurance coverage was not obtained or obtainable), Tenant shall immediately notify Landlord in writing. If, as a result of such fire or casualty, the Premises is damaged or destroyed, in whole or in part, so that Tenant is not able to use the Premises to substantially the same extent and for substantially the same purposes as Tenant used the Premises prior thereto, Landlord will notify Tenant in writing of Landlord's intent to either (i) terminate this Lease, or (ii) restore or replace the damaged or destroyed portion of the Premises, excepting therefrom Tenant's FF&E, to substantially the same condition that existed immediately prior to such damage or destruction. If Landlord elects to repair the Premises and such repairs will take in excess of six months to complete, Tenant shall, within fifteen (15) calendar days after receipt of Landlord's election to repair, give Landlord written notice of either (i) Tenant's acceptance of Landlord's proposal or (ii) Tenant's election to terminate this Lease. In the event that Tenant fails to give notice of acceptance or rejection of Landlord's proposal within said 15-day period, Tenant shall be deemed to have accepted the proposal. Landlord's repair and restoration obligation shall be limited to insurance proceeds made available for such purpose and to returning the damaged portion of the Premises to the condition existing immediately prior to such damage.
- 17.2. Rental Abatement During Construction. If the Premises is to be repaired pursuant to Section 16.1, then, during such time as the Premises, or any portion thereof are being repaired, the Rent shall be proportionately abated as follows: the Rent for the period during which the Premises is being repaired shall be equal to the Rent multiplied by the ratio of (i) the net rentable area of the Premises that Tenant is able to use to substantially the same extent and for substantially the same purposes as Tenant used such space in the Premises prior to such damage or destruction to (ii) the total net rentable area of the Premises prior to such damage or destruction. If the decision is made to restore or replace the damaged or destroyed portions of the Premises, this Lease shall continue in full force and effect in accordance with the terms hereof, except for the Rent abatement referred to above (if applicable), and except that all other obligations of Tenant hereunder shall likewise be abated and that the Term shall be extended by a length of time equal to the period beginning on the date of such damage or destruction and ending upon completion of such restoration or replacement.
- 17.3. Repair of the Premises. If the Premises are to be repaired pursuant to Section 17.1, such restoration or replacement shall be made within a reasonable time, subject to delays arising from *force majeure*. A *force majeure* event shall be any event that prevents or delays Landlord or its agent, representative or contractor from punctually performing such repair due to any strike, lockout, labor dispute, inability to obtain

labor, materials or reasonable substitutes thereof, Acts of God, present or future governmental restrictions, regulations or control, fire or other casualty, insurrection, war, terrorism, or sabotage. Tenant shall turn over to Landlord any and all insurance received by Tenant and relating to the Premises (other than any proceeds relating to any leasehold improvements installed by Tenant that are not to be replaced by Landlord and any proceeds for interruption of Tenant's business). Landlord shall carry out or cause to be carried out the repair of the Premises with Tenant to coordinate the installation, at Tenant's expense, of any leasehold improvements desired by Tenant and acceptable to Landlord.

17.4. Termination Following Casualty. If Landlord terminates this Lease pursuant to Section 17.1, this Lease shall terminate on the last day of the month next following the date the notice of termination is delivered under Section 17.1. and Owner shall reimburse Tenant on a pro rata basis for any remaining period of the Term that has been paid. If Tenant elects to terminate this Lease by rejecting Landlord's proposal to repair the Premises this Lease shall terminate upon Landlord's receipt of such notice. In the event that this Lease is terminated pursuant to Section 17.1, by either Landlord or Tenant, Tenant shall surrender the Premises to Landlord in the then current condition thereof, Landlord shall be entitled to any and all insurance proceeds covering the Premises, and each of Landlord and Tenant agrees, upon the request of the other to execute a full release of this Lease effective as of the date of termination of the Lease under this Section 17.4, except as to provisions which are expressly or otherwise intended to survive termination. All Rent hereunder shall cease as of the date of termination of this Lease.

18. Default by Tenant. Each of the following shall be deemed an "Event of Default" by Tenant hereunder and a material breach of this Lease:

18.1. Tenant shall fail to pay any installment of Rent, or any other sums owed to Landlord when due.

18.2. Tenant shall fail to materially keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent, and Tenant shall fail to commence and take such steps as are necessary to remedy the same within thirty (30) calendar days after Tenant shall have been given a written notice specifying the same, or having so commenced, shall thereafter fail to proceed diligently and with continuity to remedy the same;

18.3. Tenant shall vacate or abandon the Premises; or

18.4. Tenant or any other party shall file a petition naming Tenant as debtor in any bankruptcy or other insolvency proceeding or shall file for the appointment of a liquidator or receiver for all or substantially all of Tenant's Premises or for Tenant's interest in this Lease or Tenant shall admit in writing its inability to meet its obligations

as they become due or make an assignment for the benefit of its creditors.

19. Landlord's Remedies.

19.1. If an Event of Default occurs under this Lease, Landlord shall be entitled to any and all remedies permitted by California Civil Code Sections 1951.2 and 1951.4, as those sections may be amended or renumbered from time to time. Those remedies are specifically set forth in subsections 19.2 and 19.3 below, and the parties agree that such remedies are not exclusive and are cumulative in addition to any remedies now or later allowed by law.

19.2. If Tenant breaches this Lease and abandons the Premises before the end of the Term, or if Landlord terminates Tenant's right to possession due to an Event of Default, this Lease shall terminate, and Landlord shall be entitled to recover from Tenant:

(i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination.

(ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided.

(iii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom.

For purposes of this Lease, "worth at the time of the award" shall have the meaning specified in California Civil Code Section 1951.2(b). Landlord shall be under no obligation to attempt to mitigate damages caused by any breach by Tenant of the Lease, however any efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease do not waive Landlord's right to recover damages as set forth herein. Termination of this Lease pursuant to this section shall not affect Landlord's rights to indemnification as specified in this Lease.

19.3. Notwithstanding any Event of Default by Tenant or abandonment of the Premises, Landlord may elect to continue this Lease in effect and enforce all of Landlord's rights and remedies hereunder, including without limitation the right to collect rent as it becomes due, unless and until Landlord elects to terminate this Lease. During the period that Tenant is in default, Landlord may enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises,

including without limitation brokers' commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting may be for a period shorter or longer than the remainder of the Term. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from reletting after deduction of the costs specified above that remain due and unpaid to Landlord by Tenant. No act by Landlord allowed by this subsection shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. After Tenant's default, and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease subject to the provisions of this Lease, but Tenant shall not be released from liability.

19.4. Tenant acknowledges that late payment by Tenant of Rent or any other amount hereunder will cause Landlord to incur damages not contemplated by this Lease and in an amount that is difficult to determine. Accordingly, in the event any installment of Rent is not received on the date the same is due hereunder, Tenant agrees to pay to Landlord a late fee consistent with Section 7 above.

19.5. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to cure any default and such failure shall continue for thirty (30) days after notice thereof by Landlord, then Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations, make any such payment or perform any such act on Tenant's part. All sums so paid by Landlord and all costs incurred by Landlord in taking such action shall be deemed additional Rent hereunder and shall be paid to Landlord on demand, and Landlord shall have (in addition to all other rights and remedies of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

20. Termination.

20.1. This Lease may be terminated without further liability on thirty (30) days prior written notice by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default.

20.2. Tenant shall have the option to request early termination of this Lease should there be a statewide or nationwide economic downturn event(s) that materially and substantially alters Tenant's ability to continue in business. Upon presentation of substantial evidence of such economic impairment presented to the City Council, the City Council will consider the evidence and make the decision to grant early termination of the Lease. The decision by the City Council to grant early termination of the Lease for economic hardship shall not be unreasonably denied. No prepayment

of lease payment paid to the City shall be paid back due to early lease termination.

20.3. Other than as stated herein, Landlord and Tenant shall not have the right to terminate, revoke or cancel this Lease. If termination of the Lease occurs pursuant to subsection 20.1 of this Lease, Tenant shall immediately discontinue use of the Premises by Tenant and all subtenants.

20.4. **Force Majeure** If and to the extent that a Party's performance of any of its obligations pursuant to this agreement is prevented, hindered or delayed directly or indirectly by fire, flood, earthquake, elements of nature or acts of God, pandemic or epidemic, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, restrictive governmental laws or regulations, change in economic conditions, or any other similar cause beyond the reasonable control of such party (each a 'Force Majeure Event'), the non-performing, hindered or delayed Party shall be excused for such non-performance, hinderance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall promptly notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. During the Force Majeure Event, the non-performing party shall not be in default of any provisions of this Agreement and this Agreement does not exclude rent abatement during such Force majeure Event.

21. Destruction of Property. If the Property is destroyed by natural disaster or by any party other than the Tenant, Tenant may elect to terminate this Lease pursuant to section 16.1 of this Lease, except that no early termination payment shall be paid by Tenant to Landlord.

22. Condemnation. If a condemning authority takes all of the Property, or a portion which in Tenant's sole discretion is sufficient to render the Premises unsuitable for Tenant's ongoing operation, then this Lease shall terminate without further liability of Tenant as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

23. Insurance.

23.1. At all times during the term of this Lease, Tenant shall purchase and maintain, at its sole expense, insurance as described below: dollar amount is subject to change based on the City's risk pool assessments.

23.1.1.1. Commercial General Liability Insurance of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Landlord.

23.1.1.2. Commercial Automobile Liability Insurance to cover all owned, hired and non-owned automobiles owned or operated by Tenant providing

- a minimum combined single limit of Two Million Dollars (\$2,000,000.00) per accident.
- 23.1.1.3. Workers Compensation Insurance as required by the Labor Code of the state of California. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Landlord.
- 23.1.1.4. Employer's Liability Insurance in an amount of at least Two Million Dollars (\$2,000,000.00) per occurrence.
- 23.2. Evidence of required insurance shall be submitted prior to the execution of this Lease. If Tenant fails to maintain insurance which is required pursuant to this Lease, it shall be deemed a material breach. Landlord may give notice to Tenant to reinstate or acquire the affected insurance. Should Tenant fail to reinstate or acquire the affected insurance within five (5) days of Landlord's notice to reinstate or acquire such insurance, Landlord may either terminate this Lease, reinstate or acquire the affected insurance, and Tenant shall reimburse Landlord for the necessary cost at Landlord's option,
- 23.3. If Tenant maintains broader coverage and/or higher limits than the minimums shown above for all policies, the Landlord requires and shall be entitled to the broader coverage and/or higher limits maintained by Tenant or their contractors, sub-contractors, or agents. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.
- 23.4. Landlord, at Landlord's sole cost and expense, shall procure and maintain on the Landlord's Property, bodily injury and property damage insurance with a combined single limit of at least Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Landlord, its employees and agents arising out of or in connection with Landlord's use, occupancy and maintenance of Landlord's Property.
- 23.5. Landlord, officers, employees, and agents shall be named as an additional insured on Tenant's Commercial General Liability and Automobile Liability policies. Each party shall provide to the other a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date. Each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance, and each party shall require such insurance policies to contain a waiver of recovery against the other.
- 23.6. During the Term of the Lease, Landlord shall keep the Premises (to the extent improved as of the date of this Lease) insured against loss or damage by fire and all risks of direct physical loss except the normal exclusions contained in an "all risks" policy for not less than one hundred percent (100%) of the replacement cost thereof. Tenant shall maintain insurance on the FF&E and any leasehold improvements constructed by or under the Tenant during the Term of the Lease against loss or damage by fire and all risks of direct physical loss except the normal exclusions

contained in an "all risks" policy in amounts not less than one hundred percent (100%) of the replacement cost thereof.

23.7. Any insurance required to be maintained by Landlord under this Lease may contain such deductibles and self-insured retentions as Landlord and its affiliates customarily maintain under their enterprise-wide insurance and risk management programs. Further, such insurance may be maintained in the form of blanket policies covering multiple locations.

24. Assignments or Transfers. Tenant intends to use the Premises for industrial, research and storage purposes and is expressly prohibited from subleasing the Premises for any use without obtaining Landlord's consent as to individual tenants, which consent may be withheld in Landlord's sole discretion, subject to the use restrictions of the Premises enumerated above and to the limitations set forth in Section 8 above. Tenant shall not assign or transfer this Lease to any other person or entity without the express written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Notwithstanding anything to the contrary contained in this Lease, Tenant may (with Landlord's consent, not to be unreasonably withheld) assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to grant funds, letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

25. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.

25.1. So long as Tenant is not in default under this Lease, Tenant shall be entitled to quiet enjoyment of the Premises during the term of this Lease or any renewal term, and Tenant shall not be unduly disturbed in its occupancy and use of the Premises or the exercise of its rights and privileges as granted herein, subject to the rights of Landlord to access the Premises stated herein.

25.2. This Lease and each and every deed of trust, mortgage or other security instrument which may now or hereafter affect the Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such lease, Tenant shall execute and deliver promptly any commercially reasonable certificate of Landlord may reasonably request, provided that such certificate acknowledges that this Lease remains in full force and effect, recognizes Tenant's right to non-disturbance and quiet enjoyment of the Premises so long as Tenant is not in default under this Lease, only contains true and accurate statements and Tenant's liability shall be capped at the remaining Rent under this Lease. If any mortgagee or lender succeeds to Landlord's interest in the Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Tenant shall attorn to and recognize such successor as

Landlord under this Lease provided such party similarly agrees not to disturb Tenant's occupancy and use of the Premises or the exercise of its rights and privileges as granted herein.

- 25.3. At any time upon not less than ten (10) days' prior written notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant, a statement in writing certifying that this Lease is in full force and effect, if true, and the status of any continuing defaults under this Lease.

26. Indemnification.

- 26.1. Tenant's Indemnity. Tenant hereby agrees to defend, indemnify and hold Landlord and Landlord's directors, partners, shareholders, officials, officers, and employees free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, costs and expenses including attorney's fees and costs of court, and injuries, including personal injuries or death to the extent caused by Tenant's, or of Tenant's tenants, negligent occupation, use, operation, maintenance or repair of the Premises and FF&E at the Premises, except to the extent caused by the sole negligence or willful misconduct of Landlord or Landlord's Indemnities.

- 25.1.1 As stated in section 3 above, Tenant accepts the condition of the Property and Premises as is, and accordingly Tenant agrees to defend, indemnify and hold Landlord and Landlord's officials, officers, and employees free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, costs and expenses including attorney's fees and costs of court, and injuries, related to claims based on the Americans with Disabilities Act or lack of accessible features in and on the Landlord's Property. However, if Tenant is required to modify the Property to comply with the Americans with Disabilities Act for any reason, then the reasonable costs incurred by Tenant to perform such modifications may be applied to any rents as a credit against such rents.

- 25.2 Landlord's Indemnity. Except as expressly stated in subsection (b) above, Landlord hereby agrees to defend, indemnify and hold Tenant and Tenant's elected and appointed officials, officers, employees, agents, contractors or subcontractors free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, reasonable out-of-pocket costs and expenses (including reasonable external attorney's fees and costs of court) and injuries (including personal injuries or death) to the extent caused by Landlord's negligent use, operation, maintenance or repair of improvements on Landlord's Property, the use of Landlord's Property by other tenants, contractors or lessees of Landlord, any violation of governmental regulations relating to the Property, except to the extent caused by the negligence or willful misconduct of Tenant or Tenant's officials, officers, employees, agents, contractors or subcontractors.

25.3 Special Damages. Notwithstanding any other provision of this Lease, neither Party shall be liable to the other for consequential damages, damages for lost income and profits, exemplary or punitive damages or other special damages, whether in tort, contract or equity.

25.4 Survival of Indemnity Provisions. The indemnity provisions of this Section 25 shall survive the expiration, cancellation or expiration of this Lease for the length of the applicable statute of limitations term during which a claim may be filed plus 30 days, and any claims for indemnification under this Section 25 shall be brought within that period.

26 Rules and Regulations. Tenant must comply with the rules, and any reasonable amendments or additions to those rules, promulgated by Landlord from time to time for the safety, care, and cleanliness of the Premises, Building, and Real Property or for the preservation of good order (Rules and Regulations) as long as:

26.1 The Rules and Regulations do not require Tenant to pay additional Rent.

26.2 No amendment or addition to the Rules and Regulations is binding on Tenant until the tenth (10th) business day after Tenant receives written notice of the change, and no amendment or addition applies retroactively; and

26.3 The Rules and Regulations do not take precedence over the specific terms and conditions of this Lease.

Landlord agrees not to enforce the Rules and Regulations in a manner that discriminates against Tenant. If Landlord acts reasonably, in good faith, and in a nondiscriminatory manner in enforcing the Rules and Regulations, Landlord will not be responsible to Tenant for the failure of any other tenants or occupants of the Property to comply with the Rules and Regulations.

27 Notices and Deliveries. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or by reliable overnight delivery service with a copy delivered by facsimile to the address of the respective parties set forth below:

Landlord:

City of Colusa
 Attention: City Manager
 425 Webster Street
 Colusa, California

With a copy to:
Robert Leslie Norman
802 N Irwin Street Suite 204
Hanford, CA 93230
Telephone: (559) 816-8651

Tenant:

BC&E USA Colusa 1 LLC
Robert Leslie Norman
Managing Member

Landlord or Tenant may from time to time designate any other addressees and addresses for notices or deliveries by written notice to the other party.

27. Bankruptcy.

27.1 Landlord and Tenant hereby expressly agree and acknowledge that it is the intention of both parties that in the event during the term of this Lease, either party shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. §101, *et seq.*, ("Code"), this Lease is and shall be treated as an unexpired lease of nonresidential real property for purposes of §365 of the Code, 11 U.S.C. §365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said §365 (as may be amended).

27.2 Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC §§ 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the

benefit of Landlord and be promptly paid to Landlord.

28 Miscellaneous.

28.1 CASp Inspection. The Premises have not undergone inspection by a Certified Access Specialist (CASp) (as defined in California Civil Code §1938). [change this section if CASp inspection done.

28.1.1 A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

28.1.2 Nothing herein will relieve Tenant's compliance obligations as to the Premises as set forth in Section 8 above.

28.2 Severability. If any provision of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease to retain the economic effect of the invalid or unenforceable provisions.

28.3 Binding Effect. Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease have full power and authority, to execute and deliver this Lease, and that this Lease constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

28.4 Waivers. No provision of this Lease shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease shall be construed to waive or lessen any right to insist upon strict performance of

the terms of this Lease.

- 28.5 **Governing Law, Courts.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Sole venue for any legal claim arising hereunder shall be in the Superior Court of the State of California in Colusa County at the courthouse or in the court district closest to the Property.
- 28.6 **Attorneys' Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and costs and court costs as may be awarded by the court.
- 28.7 **Survival.** Terms, conditions, obligations, and indemnifications of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.
- 28.8 **Memorandum of Lease.** Landlord acknowledges that a Memorandum of Lease substantially in the form annexed hereto as Exhibit C will be recorded by Landlord in the Official Records of the County of Colusa, California.
- 28.9 **Entire Agreement; Amendments.** This Lease constitutes the entire agreement and understanding between the parties regarding Tenant's lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by duly authorized representatives of both parties.
- 28.10 **No Presumptions Regarding Preparation of Lease.** The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Lease are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease.
- 28.11 **Interpretation.**
- 28.11.1 Unless the context of this Lease clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.
- 28.11.2 The headings in this Lease are for reference only and are not incorporated in any term herein.

28.12 No Personal Liability of Officials and Employees of either Party. No elected official, officer, employee, agent, or volunteer of either Party shall be personally liable for any default or liability whatsoever under this Lease, except in instances of criminal negligence.

28.13 Public Document. Tenant is a municipal corporation under the laws of the State of California. Landlord and Tenant acknowledge that this Lease is subject to public disclosure as specified by California Government Code § 6250 *et seq.* and is a "public record" within the meaning of California Government Code § 6252(e).

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease is effective as of the date first above written.

CITY OF COLUSA,
a political subdivision of the State of California

Jesse Cain, City Manager City of Colusa

Approved as to Form:

Ryan R. Jones, City Attorney

Attest:

Shelly Kittle, City Clerk, City of Colusa

TENANT:
BC&E USA Colusa 1 LLC

By: _____

Robert Leslie Norman
Managing Member

EXHIBIT A
DEPICTION OF LEASED BUILDING AREA

EXHIBIT B

SITE MAP

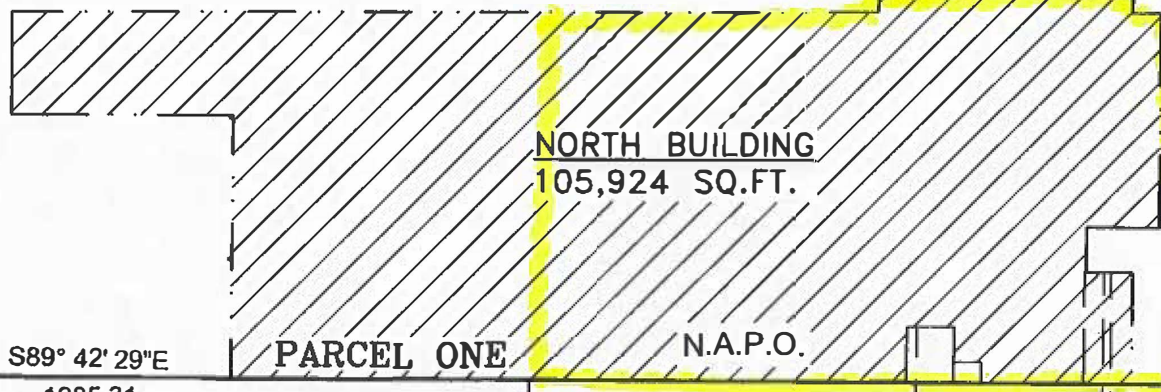
N.A.P.O. N.A.P.O.

P A R K E R S T R E E T

877.74
N89° 39' 25"W

OOOO

N00° 00' 00"E
359.30



WILL S. GREENE AVENUE

N00° 00' 00"E
403.29

LEGEND

- PARCEL BOUNDARY
- ADJACENT LOT LINES
- EASEMENT LINES
- LEASED PARCEL LINE
- NOT A PART OF LEASE
- N.A.P.O. NOT A PART OF



DRAFT

FOR COMMENT

S89° 39' 25"E
1001.73



**CALIFORNIA
ENGINEERING
COMPANY INC**

CIVIL ENGINEERING
LAND SURVEYING
FUNDING PROCUREMENT
CONSTRUCTION ADMINISTRATION
www.cecusa.net

EXHIBIT B
MEMORANDUM OF LEASE

This is a Memorandum of Lease ("**Memorandum**") made and entered into as of this _____ day of _____, 2024, by and between the CITY OF COLUSA, a political subdivision of the State of California ("**Landlord**"), and BC&E USA Colusa 1 LLC, a California Limited Liability Corporation ("**Tenant**"), upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ ("**Lease**"), are hereby incorporated by reference into this Memorandum.
2. **Subject Property.** The Property which is the subject of the Lease is more particularly described and depicted as on Exhibit A, attached hereto.
3. **Subject Premises.** The Premises which is the subject of the Lease is more particularly described and depicted as on Exhibit B, attached hereto.
4. **Commencement Date of Lease.** The Lease shall be deemed to have commenced _____, 2024 as set forth within the terms of the Lease.
5. **Term.** The Term of the Lease shall be fifteen years with three five-year extensions from the Commencement Date as stated in the written Lease. The initial term shall commence on the date hereof and terminate on December 31, 2039.
6. Duplicate copies of the originals of the Lease are in the possession of the Landlord and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for Landlord and Tenant are as follows:

LANDLORD: City of Colusa 425 Webster Street, Colusa, CA 95932

TENANT: BC&E USA Colusa 1 LLC

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum of Lease is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect to the Property and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which governs the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

CITY OF COLUSA:

By: _____
Name: Jesse Cain
Title: City Manager

**TENANT:
BC&E USA Colusa 1 LLC**

By: _____
Name: Robert Leslie Norman
Title: Managing Member

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA APPROVING THE LEASE AGREEMENT WITH BC&E USA COLUSA 1, LLC

WHEREAS, the City of Colusa City Council agrees to enter into a five-year lease with BC&E USA Colusa 1 LLC and three five-year extensions and;

WHEREAS, on December 3, 2024, the City of Colusa City Council approves the lease agreement for part of the South side of the Pirelli building with BC&E Colusa LLC 1;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLUSA DOES HEREBY RESOLVE:

1. Recitals. The foregoing recitals are true and correct and made part of this Resolution.
2. Approval. The City of Colusa City Council approves the resolution authorizing the City Manager to sign the lease agreement with BC&E USA Colusa 1 LLC, and:
3. Effective Date. This Resolution shall be effective immediately.

The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

Passed and adopted this Third Day of December 2024, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

DANIEL VACA, MAYOR

Shelly Kittle, City Clerk

**COMMERCIAL SPACE LEASE
LOCATED AT
1480 WILL S. GREEN AVENUE, SOUTHSIDE PROPERTY, COLUSA, CALIFORNIA**

THIS LEASE OF REAL PROPERTY ("Lease"), dated as of the latter of the Parties' signatures herein, is made and entered into by and between the City of Colusa, a Municipal Corporation ("Landlord"), S. Pirelli BC&E, 1 LLC ("Tenant"). Each of Landlord and Tenant shall be described herein from time to time as a "Party," and collectively as the "Parties."

1. Recitals.

This Lease is entered into based upon the following facts, circumstances and understandings:
current

- 1.1. City of Colusa, ("**Landlord**") is the owner of that certain parcel of improved real property of approximately forty-eight (48) acres in size and located at 1480 Will S. Green Avenue, Colusa, CA, (such parcel, together with all improvements thereon, and all appurtenant rights and easements, the "**Southside Property**") and incorporated herein by this reference.

2. **Grant and Acceptance of Lease.** Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by Tenant, does hereby lease to Tenant and Tenant hereby leases and takes from the Landlord the property described in section 3 below and depicted in Exhibit "A" attached hereto, for Tenant's proposed use, subject to the following terms and conditions for the Term.

3. Leased Area.

- 3.1. Premises. Landlord leases to Tenant and Tenant leases from Landlord the premises described as a portion of the building located at 1480 Will S. Green Avenue, Southside Property, Colusa, CA 95932 consisting of 75,000 square feet of interior space as depicted on the attached Exhibit A (including exterior space).
- 3.2. Additional leased area. The tenant has the right to lease additional square footage of leased premises at any time during the first five years of this lease at the current rent per square foot subject to all scheduled rent amounts and increases set forth in this lease provided tenant gives landlord 30 days advance notice to exercise this option for additional space and additional space is still available. Landlord is under no obligation to reserve any portion of Landlord's property for future use by Tenant. However, Tenant shall have a first right of refusal to match any offer to rent any portion of Landlord's property that Landlord offers to rent to any entity not a party to this Lease.
- 3.3. Additional Yard Area: Tenant is also leased the fenced in Yard Area as part of the Premises and as depicted on Exhibit B. The Rent for the Yard Area is included in the

Rent charged pursuant to paragraph 5. Tenant shall pay for, and be responsible for, the clean-up of any contamination caused by Tenant's use of the storage yard. The Yard Area is currently a gravel surface and Tenant may install asphalt paving or other improvements to the Yard Area, provided Tenant complies with all applicable law, rules, regulations and obtains all required government approvals and permits.

- 3.4. Condition of Property. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Property except as specifically stated in this Lease.
- 3.5. Condition of Premises: Tenant has examined the Premises and acknowledges that Premise is as is, in operative condition, and suitable for occupancy by Tenant.
- 3.6. Zoning And Land Use: Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representation or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.

4. Term; Commencement Date.

- 4.1. The provisions of this Lease are effective as of the Commencement Date.
- 4.2. Duration of Term: Fifteen (15) years with one five (5) year extension from the Commencement Date, subject to Term extensions as set forth in Section 4.4 below.
- 4.3. Commencement Date: The Commencement Date of this Lease is the date of approval of the Lease by the City Council of the City of Colusa.
- 4.4. Lease Term Expiration Date: The lease Term shall expire at 5:00 pm Pacific Time on May 31, 2040. Tenants will have the option to renew lease one time under the conditions and payment obligations set forth in Section 5. Intention to renew shall be given in writing six (6) months before the end of the lease term. Any holding over after the term of this agreement expires, which requires Landlord's consent, shall create a month-to-month tenancy and may revert to market rate, at the sole discretion of Landlord. Either party may terminate the hold over tenancy by giving written notice to the other at least thirty (30) days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.

5. Rent.

- 5.1. Definition: ("Rent") shall mean all monetary obligations of Tenant to Landlord under the terms of this agreement, except the security deposit. A security deposit in the amount of \$25,000 shall be collected when the lease is executed.

Year 1 through 10, a one-time payment of \$9,000,000 due by May 31, 2025	
Year 10 through 15, a one-time payment of \$2,000,000 payment due by December 31, 2034. Year 15 through 20, a one-time payment of \$2,000.000 due by December 31,2039	
Total Paid lease over 20 years \$13,000,000.	

- 5.2. The Parties agree that any tenant improvements that the Tenant performs that relate to compliance with any governmental regulations or requirements, including but not limited to safety or environmental matters, on the City’s behalf may be reimbursed during years 1-10 of the Lease, and deducted from any annual lease payment subsequently, provided a signed authorization letter has been issued from the City authorizing the improvements.

- 5.3. Payment: Rent shall be paid to City of Colusa, 425 Webster St., Colusa, CA 95932, or at any other location specified by Landlord in writing to Tenant.

- 6. **Late Charge; Interest; NSF Checks:** Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are difficult and impractical to determine. These costs may include,

but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within 5 calendar days after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, \$5,000 as late charge, plus 10% interest per annum on the delinquent amount and \$5,000 as an NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest, or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 5 or prevent Landlord from exercising any other rights and remedies under this agreement, and as provided by law.

7. Permitted Uses.

- 7.1. The Premises are for the sole use as commercial and industrial uses. Hours of operation may include 3 shifts for 24 hours per day of continuous operation.
- 7.2. No other use is permitted without Landlord's prior written consent. If any use by Tenant causes an increase in the premium on Landlord's existing property insurance, Tenant shall pay for the increased cost.
- 7.3. Tenant will comply with all Laws affecting its use of the Premises.
- 7.4. Tenant shall be restricted from any access to or utilization of the groundwater under the Property for any purpose.
- 7.5. Ongoing Access to Property. During the Term of this Lease, Tenant grants Owner and Landlord the right of access, Owner agrees to provide reasonable notice to Tenant, and Tenant and Owner shall mutually agree upon a reasonable schedule, to access and inspect, over, under and across the Property (including, if necessary, the existing building on the Property and any other improvements that may be constructed on the Property) and the Premises for its employees and agents during normal business hours, at no charge to Owner or Landlord as necessary or desirable for Owner to conduct its environmental investigation, monitoring and remediation activities. Such grant of access shall allow Owner and Landlord to engage in any and all activities related to its environmental investigation, monitoring and remediation activities, including, but not limited to, drilling soil borings, installing groundwater monitoring wells, excavating contaminated soils, installing engineering control and remediation systems, including, by way of example only, soil or pavement covers and groundwater extraction. In exercising its use of the Property and Premises herein, Owner and Landlord agree to cooperate with any reasonable security or access control procedures utilized by Tenant and further agrees not to unduly disturb or interfere with the business or other activities of Tenants

engaged in industrial uses and operations within the building.

8. Tenant's Work, Maintenance, Repairs and Restoration.

- 8.1.** Tenant may undertake all necessary tenant improvements and install, place, use, modify, operate and remove at the Premises furniture, trade fixtures and equipment ("FF&E") as Tenant deems necessary for its business operations at the Premises.
- 8.2.** Any improvements made by Tenant, and all demolition, construction and installation work at the Premises, shall be performed at Tenant's sole cost and expense and in a good and workmanlike manner, and in compliance with all applicable codes and governmental regulations.
- 8.3.** Tenant shall provide prior written notice to Landlord at least five (5) business days before undertaking any demolition, construction, improvements, installation of signage, or change out of locks or security systems. Notwithstanding anything in this section to the contrary, no portion of the existing building or other improvements on the Property may be demolished, nor any alterations to the Building structure, roof, HVAC system or electrical or plumbing systems, be made, without Landlord's prior written consent in each instance, which consent may not be unreasonably withheld, and which consent shall be given or denied within five (5) business days from receipt of written request thereof from the Tenant or its agents or representatives. If no response is given by Landlord within such 5-business day period, such consent will be deemed given.
- 8.4.** Tenant shall maintain the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations, including and any and all security lighting or appliances installed. Landlord will maintain, or to make repairs or replacements to, the primary building shell consisting of the exterior walls, except as specifically modified by Tenant's improvements, foundation, and the roof, primary electrical feed to Tenant's main power panel, or primary building water and wastewater systems or any other component thereof. Tenant acknowledges and agrees that all improvements done by Tenant to facilitate Tenant's operations and not within Landlord's responsibility as stated in this section, shall be at the sole cost and expense of Tenant both for initial improvements and ongoing maintenance and repair during the Term of this Lease. Any and all roof penetrations shall require Landlord's express written consent and supervision, or at Landlord's option, Landlord shall utilize Landlord's preferred contractor for roofing repairs necessary for Tenant's equipment, and will invoice such costs to Tenant, which invoice shall be due and payable within 10 business days of receipt.
- 8.5.** Tenant, at Tenant's expense, shall be required to make all repairs to the Premises due to damage caused by Tenant, its agents or contractors.
- 8.6.** Upon the expiration, cancellation or termination of this Lease, Tenant shall surrender the Premises, together with all improvements and alterations, but not FF&E, installed during the Term by Tenant, in good condition and repair, less ordinary wear and tear and

casualty not caused by Tenant, its agents or contactors. Tenant shall not permit or suffer any mechanic's or materialmen's liens to be lodged against the Property or Premises and will defend, indemnify and hold harmless Landlord from and against all claims, liabilities, costs and expenses associated with any such liens. Further, Tenant and any applicable subtenant will post notices of non-responsibility or local equivalent with respect to any work performed on the Property or Premises indicating that the applicable work is being done by or under Tenant and that Landlord does not consent to the fee interest in the Property being subject to any liens or claims of lien.

- 8.7.** If Tenant or its sublessees intend to excavate soils on the Property and relocate those excavated soils either elsewhere on the Property or to an off-site location, Tenant shall give Landlord at least thirty (30) days' notice prior to such excavation and cooperate with reasonable requests of Landlord in connection with the management of such soils.

9. Title to Tenant's Facilities.

- 9.1.** Title to FF&E placed on the Premises by Tenant shall be held by and remain with Tenant. All FF&E (as opposed to improvements, alterations and fixtures constituting real property under applicable law) shall remain the property of Tenant and are not fixtures. Tenant, or any other lawful tenants or occupants of the Property, have the right to remove all FF&E at their sole expense on or before the expiration or termination of this Lease.

- 9.2.** Any such FF&E not removed by the expiration of the Term shall be deemed abandoned and Landlord may dispose of the same or arrange for its storage at Tenant's cost.

- 9.3.** Landlord acknowledges that Tenant may enter into financing arrangements including promissory notes and financial and security agreements for the financing of FF&E (the "Collateral") with a third-party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Landlord (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved FF&E; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, whether arising at law or otherwise, including, but not limited to any statutory landlord's lien; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

- 10. Signs.** Tenant signage will be in compliance with all applicable City codes and will be located and/or installed in the areas depicted on Exhibit B and/or Exhibit C. Tenant will be responsible for maintenance of all Tenant installed signage. Signs shall be maintained in a manner so their appearance is in a substantially new condition and shall not be allowed to fade or deteriorate in appearance. All Tenant signage must be removed within 30 days of termination or expiration of this Lease. If Tenant signage is not removed within the 30-day time period, City may remove or cause the signage to be removed, and the cost of such removal shall be invoiced to Tenant for payment within 10 days of receipt of the invoice.

11. Tenant Environmental Law Compliance and Indemnity.

- 11.1. Tenant shall not create, collect, store except in reasonable quantities directly related to Tenant's operations and in compliance with all laws and regulations for said storage, treat, dispose of or cause to be released or otherwise discharged any Hazardous Materials on the Property except in such minute quantities as are found in everyday cleaning supplies in compliance with Environmental Laws (capitalized terms are defined in Section 12.5 below) and shall notify Landlord within forty eight (48) hours after discovering or being informed of the presence of any Hazardous Materials on the Property either in violation of Environmental Laws.
- 11.2. Except to the extent caused by Landlord, or environmental conditions in the building or at the site existing prior to the occupancy by Tenant, before vacating the Property, Tenant shall clean up any releases of Hazardous Materials or environmental contamination by Hazardous Materials caused by Tenant occurring on or migrating from the Property during the Term of this Lease and located on, under, or adjacent to the Property, wherever located, in accordance with the requirements of all Environmental Laws and to Landlord's satisfaction and the Property shall remain in its cleaned-up condition through the time Tenant vacates the Property. Should Tenant not fulfill its obligations under this Section 13.2, Tenant shall reimburse Landlord for all such clean-up costs and shall indemnify Landlord for all such costs and all other Indemnified Losses under Section 13.3 of this Lease. Should any activities on the Property during the Term by Tenant or any of its agent, representative, successors, assigns or subtenants exacerbate or disrupt Landlord's ongoing environmental investigation, monitoring, and remediation activities at the Property, Tenant shall reimburse Landlord for any and all additional costs created by the activities of Tenant any subtenant, or any of their respective agents, contractors, employees, invitees, successors and/or assigns and shall indemnify Landlord for all such costs and all other Indemnified Losses under Section 13.3 of this Lease.
- 11.3. Notwithstanding any other provision of this Lease, Tenant agrees to and does hereby defend, indemnify and hold harmless Landlord, its directors, officers, shareholders, employees, representatives, agents, successors and assigns (each, an "Indemnified Party") from and against any and all Indemnified Losses (as defined in Section 13.5 below) (including strict liability), which may now or in the future (whether during or after the Term) be paid, incurred or suffered by or asserted against Landlord by any person or entity or Agencies for, with respect to, or as a direct or indirect result of, (a) acts or omissions of Tenant or any subtenant of the Tenant, and their respective agents, employees, directors, officers, shareholders, contractors, representatives, and/or invitees, on or in connection with the Property, (b) the spill, disposal or release of Hazardous Materials on, under, in or from the Property during the Term and not caused by Landlord or any of its employees, agents or contractors and (c) any and all breaches of the covenants, representations and warranties set forth in this Section 13. The covenants and indemnifications contained in this Section 13 shall survive the expiration

or other termination of this Lease.

11.4. In the event of any permitted sublease of the Property, or any part thereof, Tenant shall include the Tenant obligations set forth in this Section 13 in all permitted subleases.

11.5. Definitions.

"Agencies" means any federal, state, or local governmental authorities, agencies, or other administrative bodies with jurisdiction over Landlord or the Property.

"Corrective Work" shall mean the cleanup, removal, relocation, elimination, remediation, encapsulation, disposal at a licensed facility or any other treatment of Hazardous Materials of or from all or any portion of (i) the Property or any other property owned and/or leased by Landlord (necessary to maintain or bring the Property into compliance with Environmental Laws) and (ii) surrounding areas of the Property and/or any other property owned and/or leased by Landlord (necessary to maintain or bring the Property into compliance with Environmental Laws) and, to the extent thereby required, the reconstruction and rehabilitation of the Property or any other property owned and/or leased by Landlord performed by any person or entity, including, without limitation, Landlord, Tenant, any Indemnified Party, or any of their respective agents, contractors, subcontractors, employees and any governmental entity for any reason, including, without limitation, pursuant to any Environmental Laws. Corrective Work also includes all fees of consultants to investigate, identify, characterize, monitor and develop corrective action plans with respect to Hazardous Materials or any Corrective Work.

"Environmental Laws" means any federal, state, or local environmental, health, or safety-related laws, regulations, standards, court decisions, ordinances, rules, codes, orders, decrees, directives, guidelines, permits, or permit conditions, currently existing and as amended, enacted, issued, or adopted in the future that are or become applicable to Landlord or the Property.

"Hazardous Material" means any chemical, substance, material, controlled substance, object, condition, waste, living organism, or combination that is or may be hazardous to human health or to the safety of the environment due to its radioactivity, flammability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms, or combinations that are now or become in the future listed, defined, or regulated in any manner by any Environmental Laws based upon, directly or indirectly, their properties or effects.

“Indemnified Losses” shall mean incurred and potential claims, damages, losses, liabilities, costs and expenses of Corrective Work, any other clean-up or response costs (which, without limitation, shall include costs to cause the Property to come into compliance with Environmental Laws), investigation costs (including fees of consultants, legal counsel and other experts in connection with any environmental investigation, testing, audits or studies), and any other incurred or potential obligations, penalties, fines, impositions, fees, levies, lien removal or bonding costs, claims, litigation, demands, causes of action (including, without limitation, any common law cause of action), liabilities, losses (including, without limitation, any reduction in the value of the Property), damages (expressly excluding any indirect or consequential damages), defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind and nature whatsoever (including, without limitation, attorneys' and experts' or other consultants' fees), including interest thereon.

14. Utilities.

14.1. Tenant Responsibility for all Utilities. Tenant shall pay directly to the relevant utility all charges for electricity, gas, waste collection, pest control, telephone and other communication services, utility deposits, and tap or connection charges for services requested. Tenant shall pay to the Landlord water and sewer fees based on the City's fee schedule right now the charges, are \$48.14 per month, sewer charges, are \$99.27 per month: and will be changed based on the fee schedule. tap or connection charges for services requested, metering fees or other charges paid by for Tenant If any additional services requested by Tenant result in sewer service charges, tap or connection charges for services requested, metering fees or other charges, Tenant shall be responsible for paying such charges. Landlord shall have no responsibility for any interruption in utility services. Tenant agrees to promptly pay all charges and related expenses for such utilities as they become due, and all payments shall be made directly to the entity entitled to such payment. No interruption of utility service shall be construed as either a constructive or an actual eviction of Tenant, nor work by Tenant an abatement of Rent, nor relieve Tenant from fulfilling any covenant or condition of this Lease.

14.2. Landlord Responsibility for Utilities. Landlord will provide water and wastewater service to the site and building. Tenant will pay their fair share as set forth above.

15. Maintenance Expenses and Responsibilities. Landlord will maintain the building shell and roof, and the parking lot and storage yard area, except those areas of the parking lot and storage yard area specifically leased to Tenant. Tenant shall maintain all interior areas of the leased premises, all tenant improvements installed by Tenant, and the fenced yard area.

16. Taxes. Tenant shall pay personal property taxes assessed against FF&E and shall pay when due all possessory interest taxes which may become due attributable to the Premises and this

Lease. Tenant shall pay all taxes prior to delinquency; in the event that taxes become delinquent, Tenant shall pay all interest and penalties due and owing. Landlord shall pay all real estate taxes and other taxes associated with the Property.

17. Fire or Other Casualty.

- 17.1. Notice and Election to Repair. In the event of a fire or other casualty at the Premises (including any casualty for which insurance coverage was not obtained or obtainable), Tenant shall immediately notify Landlord in writing. If, as a result of such fire or casualty, the Premises is damaged or destroyed, in whole or in part, so that Tenant is not able to use the Premises to substantially the same extent and for substantially the same purposes as Tenant used the Premises prior thereto, Landlord will notify Tenant in writing of Landlord's intent to either (i) terminate this Lease, or (ii) restore or replace the damaged or destroyed portion of the Premises, excepting therefrom Tenant's FF&E, to substantially the same condition that existed immediately prior to such damage or destruction. If Landlord elects to repair the Premises and such repairs will take in excess of six months to complete, Tenant shall, within fifteen (15) calendar days after receipt of Landlord's election to repair, give Landlord written notice of either (i) Tenant's acceptance of Landlord's proposal or (ii) Tenant's election to terminate this Lease. In the event that Tenant fails to give notice of acceptance or rejection of Landlord's proposal within said 15-day period, Tenant shall be deemed to have accepted the proposal. Landlord's repair and restoration obligation shall be limited to insurance proceeds made available for such purpose and to returning the damaged portion of the Premises to the condition existing immediately prior to such damage.
- 17.2. Rental Abatement During Construction. If the Premises is to be repaired pursuant to Section 16.1, then, during such time as the Premises, or any portion thereof are being repaired, the Rent shall be proportionately abated as follows: the Rent for the period during which the Premises is being repaired shall be equal to the Rent multiplied by the ratio of (i) the net rentable area of the Premises that Tenant is able to use to substantially the same extent and for substantially the same purposes as Tenant used such space in the Premises prior to such damage or destruction to (ii) the total net rentable area of the Premises prior to such damage or destruction. If the decision is made to restore or replace the damaged or destroyed portions of the Premises, this Lease shall continue in full force and effect in accordance with the terms hereof, except for the Rent abatement referred to above (if applicable), and except that all other obligations of Tenant hereunder shall likewise be abated and that the Term shall be extended by a length of time equal to the period beginning on the date of such damage or destruction and ending upon completion of such restoration or replacement.
- 17.3. Repair of the Premises. If the Premises are to be repaired pursuant to Section 17.1, such restoration or replacement shall be made within a reasonable time, subject to delays arising from *force majeure*. A *force majeure* event shall be any event that

prevents or delays Landlord or its agent, representative or contractor from punctually performing such repair due to any strike, lockout, labor dispute, inability to obtain labor, materials or reasonable substitutes thereof, Acts of God, present or future governmental restrictions, regulations or control, fire or other casualty, insurrection, war, terrorism, or sabotage. Tenant shall turn over to Landlord any and all insurance received by Tenant and relating to the Premises (other than any proceeds relating to any leasehold improvements installed by Tenant that are not to be replaced by Landlord and any proceeds for interruption of Tenant's business). Landlord shall carry out or cause to be carried out the repair of the Premises with Tenant to coordinate the installation, at Tenant's expense, of any leasehold improvements desired by Tenant and acceptable to Landlord.

17.4. **Termination Following Casualty.** If Landlord terminates this Lease pursuant to Section 17.1, this Lease shall terminate on the last day of the month next following the date the notice of termination is delivered under Section 17.1. and Owner shall reimburse Tenant on a pro rata basis for any remaining period of the Term that has been paid. If Tenant elects to terminate this Lease by rejecting Landlord's proposal to repair the Premises this Lease shall terminate upon Landlord's receipt of such notice. In the event that this Lease is terminated pursuant to Section 17.1, by either Landlord or Tenant, Tenant shall surrender the Premises to Landlord in the then current condition thereof, Landlord shall be entitled to any and all insurance proceeds covering the Premises, and each of Landlord and Tenant agrees, upon the request of the other to execute a full release of this Lease effective as of the date of termination of the Lease under this Section 17.4, except as to provisions which are expressly or otherwise intended to survive termination. All Rent hereunder shall cease as of the date of termination of this Lease.

18. Default by Tenant. Each of the following shall be deemed an "Event of Default" by Tenant hereunder and a material breach of this Lease:

- 18.1. Tenant shall fail to pay any installment of Rent, or any other sums owed to Landlord when due.
- 18.2. Tenant shall fail to materially keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent, and Tenant shall fail to commence and take such steps as are necessary to remedy the same within thirty (30) calendar days after Tenant shall have been given a written notice specifying the same, or having so commenced, shall thereafter fail to proceed diligently and with continuity to remedy the same;
- 18.3. Tenant shall vacate or abandon the Premises; or
- 18.4. Tenant or any other party shall file a petition naming Tenant as debtor in any bankruptcy or other insolvency proceeding or shall file for the appointment of a

liquidator or receiver for all or substantially all of Tenant's Premises or for Tenant's interest in this Lease or Tenant shall admit in writing its inability to meet its obligations as they become due or make an assignment for the benefit of its creditors.

19. Landlord's Remedies.

19.1. If an Event of Default occurs under this Lease, Landlord shall be entitled to any and all remedies permitted by California Civil Code Sections 1951.2 and 1951.4, as those sections may be amended or renumbered from time to time. Those remedies are specifically set forth in subsections 19.2 and 19.3 below, and the parties agree that such remedies are not exclusive and are cumulative in addition to any remedies now or later allowed by law.

19.2. If Tenant breaches this Lease and abandons the Premises before the end of the Term, or if Landlord terminates Tenant's right to possession due to an Event of Default, this Lease shall terminate, and Landlord shall be entitled to recover from Tenant:

(i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination.

(ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided.

(iii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom.

For purposes of this Lease, "worth at the time of the award" shall have the meaning specified in California Civil Code Section 1951.2(b). Landlord shall be under no obligation to attempt to mitigate damages caused by any breach by Tenant of the Lease, however any efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease do not waive Landlord's right to recover damages as set forth herein. Termination of this Lease pursuant to this section shall not affect Landlord's rights to indemnification as specified in this Lease.

19.3. Notwithstanding any Event of Default by Tenant or abandonment of the Premises, Landlord may elect to continue this Lease in effect and enforce all of Landlord's rights and remedies hereunder, including without limitation the right to collect rent as it becomes due, unless and until Landlord elects to terminate this Lease. During the period that Tenant is in default, Landlord may enter the Premises and relet them, or

any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including without limitation brokers' commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting may be for a period shorter or longer than the remainder of the Term. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from reletting after deduction of the costs specified above that remain due and unpaid to Landlord by Tenant. No act by Landlord allowed by this subsection shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. After Tenant's default, and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease subject to the provisions of this Lease, but Tenant shall not be released from liability.

19.4. Tenant acknowledges that late payment by Tenant of Rent or any other amount hereunder will cause Landlord to incur damages not contemplated by this Lease and in an amount that is difficult to determine. Accordingly, in the event any installment of Rent is not received on the date the same is due hereunder, Tenant agrees to pay to Landlord a late fee consistent with Section 7 above.

19.5. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to cure any default and such failure shall continue for thirty (30) days after notice thereof by Landlord, then Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations, make any such payment or perform any such act on Tenant's part. All sums so paid by Landlord and all costs incurred by Landlord in taking such action shall be deemed additional Rent hereunder and shall be paid to Landlord on demand, and Landlord shall have (in addition to all other rights and remedies of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

20. Termination.

20.1. This Lease may be terminated without further liability on thirty (30) days prior written notice by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default.

20.2. Tenant shall have the option to request early termination of this Lease should there be a statewide or nationwide economic downturn event(s) that materially and substantially alters Tenant's ability to continue in business. Upon presentation of substantial evidence of such economic impairment presented to the City Council, the City Council will consider the evidence and make the decision to grant early

termination of the Lease. The decision by the City Council to grant early termination of the Lease for economic hardship shall not be unreasonably denied. No prepayment of lease payment paid to the City shall be paid back due to early lease termination.

20.3. Other than as stated herein, Landlord and Tenant shall not have the right to terminate, revoke or cancel this Lease. If termination of the Lease occurs pursuant to subsection 20.1 of this Lease, Tenant shall immediately discontinue use of the Premises by Tenant and all subtenants.

20.4. Force Majeure If and to the extent that a Party's performance of any of its obligations pursuant to this agreement is prevented, hindered or delayed directly or indirectly by fire, flood, earthquake, elements of nature or acts of God, pandemic or epidemic, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, restrictive governmental laws or regulations, change in economic conditions, or any other similar cause beyond the reasonable control of such party (each a 'Force Majeure Event'), the non-performing, hindered or delayed Party shall be excused for such non-performance, hinderance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall promptly notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. During the Force Majeure Event, the non-performing party shall not be in default of any provisions of this Agreement and this Agreement does not exclude rent abatement during such Force majeure Event.

21. Destruction of Property. If the Property is destroyed by natural disaster or by any party other than the Tenant, Tenant may elect to terminate this Lease pursuant to section 16.1 of this Lease, except that no early termination payment shall be paid by Tenant to Landlord.

22. Condemnation. If a condemning authority takes all of the Property, or a portion which in Tenant's sole discretion is sufficient to render the Premises unsuitable for Tenant's ongoing operation, then this Lease shall terminate without further liability of Tenant as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

23. Insurance.

23.1. At all times during the term of this Lease, Tenant shall purchase and maintain, at its sole expense, insurance as described below: dollar amount is subject to change based on the City's risk pool assessments.

23.1.1.1. Commercial General Liability Insurance of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Landlord.

- 23.1.1.2. Commercial Automobile Liability Insurance to cover all owned, hired and non-owned automobiles owned or operated by Tenant providing a minimum combined single limit of Two Million Dollars (\$2,000,000.00) per accident.
- 23.1.1.3. Workers Compensation Insurance as required by the Labor Code of the state of California. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Landlord.
- 23.1.1.4. Employer's Liability Insurance in an amount of at least Two Million Dollars (\$2,000,000.00) per occurrence.
- 23.2. Evidence of required insurance shall be submitted prior to the execution of this Lease. If Tenant fails to maintain insurance which is required pursuant to this Lease, it shall be deemed a material breach. Landlord may give notice to Tenant to reinstate or acquire the affected insurance. Should Tenant fail to reinstate or acquire the affected insurance within five (5) days of Landlord's notice to reinstate or acquire such insurance, Landlord may either terminate this Lease, reinstate or acquire the affected insurance, and Tenant shall reimburse Landlord for the necessary cost at Landlord's option,
- 23.3. If Tenant maintains broader coverage and/or higher limits than the minimums shown above for all policies, the Landlord requires and shall be entitled to the broader coverage and/or higher limits maintained by Tenant or their contractors, sub-contractors, or agents. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.
- 23.4. Landlord, at Landlord's sole cost and expense, shall procure and maintain on the Landlord's Property, bodily injury and property damage insurance with a combined single limit of at least Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Landlord, its employees and agents arising out of or in connection with Landlord's use, occupancy and maintenance of Landlord's Property.
- 23.5. Landlord, officers, employees, and agents shall be named as an additional insured on Tenant's Commercial General Liability and Automobile Liability policies. Each party shall provide to the other a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date. Each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance, and each party shall require such insurance policies to contain a waiver of recovery against the other.
- 23.6. During the Term of the Lease, Landlord shall keep the Premises (to the extent improved as of the date of this Lease) insured against loss or damage by fire and all risks of direct physical loss except the normal exclusions contained in an "all risks" policy for not less than one hundred percent (100%) of the replacement cost thereof. Tenant shall maintain insurance on the FF&E and any leasehold improvements

constructed by or under the Tenant during the Term of the Lease against loss or damage by fire and all risks of direct physical loss except the normal exclusions contained in an "all risks" policy in amounts not less than one hundred percent (100%) of the replacement cost thereof.

23.7. Any insurance required to be maintained by Landlord under this Lease may contain such deductibles and self-insured retentions as Landlord and its affiliates customarily maintain under their enterprise-wide insurance and risk management programs. Further, such insurance may be maintained in the form of blanket policies covering multiple locations.

24. Assignments or Transfers. Tenant intends to use the Premises for industrial, research and storage purposes and is expressly prohibited from subleasing the Premises for any use without obtaining Landlord's consent as to individual tenants, which consent may be withheld in Landlord's sole discretion, subject to the use restrictions of the Premises enumerated above and to the limitations set forth in Section 8 above. Tenant shall not assign or transfer this Lease to any other person or entity without the express written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Notwithstanding anything to the contrary contained in this Lease, Tenant may (with Landlord's consent, not to be unreasonably withheld) assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to grant funds, letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

25. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.

25.1. So long as Tenant is not in default under this Lease, Tenant shall be entitled to quiet enjoyment of the Premises during the term of this Lease or any renewal term, and Tenant shall not be unduly disturbed in its occupancy and use of the Premises or the exercise of its rights and privileges as granted herein, subject to the rights of Landlord to access the Premises stated herein.

25.2. This Lease and each and every deed of trust, mortgage or other security instrument which may now or hereafter affect the Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such lease, Tenant shall execute and deliver promptly any commercially reasonable certificate of Landlord may reasonably request, provided that such certificate acknowledges that this Lease remains in full force and effect, recognizes Tenant's right to non-disturbance and quiet enjoyment of the Premises so long as Tenant is not in default under this Lease, only contains true and accurate statements and Tenant's liability shall be capped at the remaining Rent under this Lease. If any mortgagee or lender succeeds to

Landlord's interest in the Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Tenant shall attorn to and recognize such successor as Landlord under this Lease provided such party similarly agrees not to disturb Tenant's occupancy and use of the Premises or the exercise of its rights and privileges as granted herein.

- 25.3. At any time upon not less than ten (10) days' prior written notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant, a statement in writing certifying that this Lease is in full force and effect, if true, and the status of any continuing defaults under this Lease.

26. Indemnification.

- 26.1. Tenant's Indemnity. Tenant hereby agrees to defend, indemnify and hold Landlord and Landlord's directors, partners, shareholders, officials, officers, and employees free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, costs and expenses including attorney's fees and costs of court, and injuries, including personal injuries or death to the extent caused by Tenant's, or of Tenant's tenants, negligent occupation, use, operation, maintenance or repair of the Premises and FF&E at the Premises, except to the extent caused by the sole negligence or willful misconduct of Landlord or Landlord's Indemnities.

- 25.1.1 As stated in section 3 above, Tenant accepts the condition of the Property and Premises as is, and accordingly Tenant agrees to defend, indemnify and hold Landlord and Landlord's officials, officers, and employees free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, costs and expenses including attorney's fees and costs of court, and injuries, related to claims based on the Americans with Disabilities Act or lack of accessible features in and on the Landlord's Property. However, if Tenant is required to modify the Property to comply with the Americans with Disabilities Act for any reason, then the reasonable costs incurred by Tenant to perform such modifications may be applied to any rents as a credit against such rents.

- 25.2 Landlord's Indemnity. Except as expressly stated in subsection (b) above, Landlord hereby agrees to defend, indemnify and hold Tenant and Tenant's elected and appointed officials, officers, employees, agents, contractors or subcontractors free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, reasonable out-of-pocket costs and expenses (including reasonable external attorney's fees and costs of court) and injuries (including personal injuries or death) to the extent caused by Landlord's negligent use, operation, maintenance or repair of improvements on Landlord's Property, the use of Landlord's Property by other tenants, contractors or lessees of Landlord, any violation of governmental regulations relating to the Property, except to the extent caused by the negligence or willful misconduct of Tenant or Tenant's officials,

officers, employees, agents, contractors or subcontractors.

25.3 **Special Damages.** Notwithstanding any other provision of this Lease, neither Party shall be liable to the other for consequential damages, damages for lost income and profits, exemplary or punitive damages or other special damages, whether in tort, contract or equity.

25.4 **Survival of Indemnity Provisions.** The indemnity provisions of this Section 25 shall survive the expiration, cancellation or expiration of this Lease for the length of the applicable statute of limitations term during which a claim may be filed plus 30 days, and any claims for indemnification under this Section 25 shall be brought within that period.

26 Rules and Regulations. Tenant must comply with the rules, and any reasonable amendments or additions to those rules, promulgated by Landlord from time to time for the safety, care, and cleanliness of the Premises, Building, and Real Property or for the preservation of good order (Rules and Regulations) as long as:

26.1 The Rules and Regulations do not require Tenant to pay additional Rent.

26.2 No amendment or addition to the Rules and Regulations is binding on Tenant until the tenth (10th) business day after Tenant receives written notice of the change, and no amendment or addition applies retroactively; and

26.3 The Rules and Regulations do not take precedence over the specific terms and conditions of this Lease.

Landlord agrees not to enforce the Rules and Regulations in a manner that discriminates against Tenant. If Landlord acts reasonably, in good faith, and in a nondiscriminatory manner in enforcing the Rules and Regulations, Landlord will not be responsible to Tenant for the failure of any other tenants or occupants of the Property to comply with the Rules and Regulations.

27 Notices and Deliveries. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or by reliable overnight delivery service with a copy delivered by facsimile to the address of the respective parties set forth below:

Landlord:

City of Colusa
 Attention: City Manager
 425 Webster Street
 Colusa, California

With a copy to:
Ryan R. Jones, City Attorney
425 Webster Street
Colusa, California

Tenant:

S. Pirelli BC&E, 1 LLC
Wayne Herling
3391 Mendenaro CT
Fallbrook, CA 92028
Managing Member

Landlord or Tenant may from time to time designate any other addressees and addresses for notices or deliveries by written notice to the other party.

27. Bankruptcy.

- 27.1 Landlord and Tenant hereby expressly agree and acknowledge that it is the intention of both parties that in the event during the term of this Lease, either party shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. §101, *et seq.*, ("Code"), this Lease is and shall be treated as an unexpired lease of nonresidential real property for purposes of §365 of the Code, 11 U.S.C. §365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said §365 (as may be amended).
- 27.2 Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC §§ 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not

constitute property of the Tenant or of the estate of Tenant within the meaning of the Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

28 Miscellaneous.

28.1 CASp Inspection. The Premises have not undergone inspection by a Certified Access Specialist (CASp) (as defined in California Civil Code §1938). [change this section if CASp inspection done.

28.1.1 A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

28.1.2 Nothing herein will relieve Tenant's compliance obligations as to the Premises as set forth in Section 8 above.

28.2 Severability. If any provision of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease to retain the economic effect of the invalid or unenforceable provisions.

28.3 Binding Effect. Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease have full power and authority, to execute and deliver this Lease, and that this Lease constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

28.4 Waivers. No provision of this Lease shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom

enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease.

- 28.5 **Governing Law, Courts.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Sole venue for any legal claim arising hereunder shall be in the Superior Court of the State of California in Colusa County at the courthouse or in the court district closest to the Property.
- 28.6 **Attorneys' Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and costs and court costs as may be awarded by the court.
- 28.7 **Survival.** Terms, conditions, obligations, and indemnifications of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.
- 28.8 **Memorandum of Lease.** Landlord acknowledges that a Memorandum of Lease substantially in the form annexed hereto as Exhibit C will be recorded by Landlord in the Official Records of the County of Colusa, California.
- 28.9 **Entire Agreement; Amendments.** This Lease constitutes the entire agreement and understanding between the parties regarding Tenant's lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by duly authorized representatives of both parties.
- 28.10 **No Presumptions Regarding Preparation of Lease.** The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Lease are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease.
- 28.11 **Interpretation.**
- 28.11.1 Unless the context of this Lease clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.

28.11.2 The headings in this Lease are for reference only and are not incorporated in any term herein.

28.12 No Personal Liability of Officials and Employees of either Party. No elected official, officer, employee, agent, or volunteer of either Party shall be personally liable for any default or liability whatsoever under this Lease, except in instances of criminal negligence.

28.13 Public Document. Tenant is a municipal corporation under the laws of the State of California. Landlord and Tenant acknowledge that this Lease is subject to public disclosure as specified by California Government Code § 6250 *et seq.* and is a "public record" within the meaning of California Government Code § 6252(e).

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease is effective as of the date first above written.

CITY OF COLUSA,
a political subdivision of the State of California

Jesse Cain, City Manager City of Colusa

Approved as to Form:

Ryan R. Jones, City Attorney

Attest:

Shelly Kittle, City Clerk, City of Colusa

TENANT:
S. Pirelli BC&E, LLC

By: _____

Name: Wayne Herling
Managing Member

EXHIBIT A
DEPICTION OF LEASED BUILDING AREA

EXHIBIT SA

SITE MAP

N.A.P.O.

N.A.P.O.

P A R K E R S T R E E T

877.74

N89° 39' 25"W

OOOO

NORTH BUILDING
105,924 SQ.FT.

S89° 42' 29"E
1085.31

PARCEL ONE

PARCEL TWO

N.A.P.O.






SOUTH BUILDING
60,641 SQ.FT.

N00° 00' 00"E
359.30

W I L L S . G R E E N E A V E N U E

N00° 00' 00"E
403.29

LEGEND

-  PARCEL BOUNDARY
-  ADJACENT LOT LINES
-  EASEMENT LINES
-  LEASED PARCEL LINE
-  NOT A PART OF LEASE
- N.A.P.O. NOT A PART OF



DRAFT

S89° 39' 25"E

FOR COMMENT

1001.73



**CALIFORNIA
ENGINEERING
COMPANY INC**

CIVIL ENGINEERING
LAND SURVEYING
FUNDING PROCUREMENT
CONSTRUCTION ADMINISTRATION
www.cacus.net

EXHIBIT B
MEMORANDUM OF LEASE

This is a Memorandum of Lease ("**Memorandum**") made and entered into as of this _____ day of _____, 2024, by and between the CITY OF COLUSA, a political subdivision of the State of California ("**Landlord**"), and S. Pirelli BC&E, 1 LLC, a California Limited Liability Corporation ("**Tenant**"), upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ ("**Lease**"), are hereby incorporated by reference into this Memorandum.
2. **Subject Property.** The Property which is the subject of the Lease is more particularly described and depicted as on Exhibit A, attached hereto.
3. **Subject Premises.** The Premises which is the subject of the Lease is more particularly described and depicted as on Exhibit B, attached hereto.
4. **Commencement Date of Lease.** The Lease shall be deemed to have commenced _____, 2024 as set forth within the terms of the Lease.
5. **Term.** The Term of the Lease shall be fifteen years with one five-year extensions from the Commencement Date as stated in the written Lease. The initial term shall commence on the date hereof and terminate on December 31, 2039.
6. Duplicate copies of the originals of the Lease are in the possession of the Landlord and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for Landlord and Tenant are as follows:

 LANDLORD: City of Colusa 425 Webster Street, Colusa, CA 95932

 TENANT: S. Pirelli BC&E, 1 LLC
6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum of Lease is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect to the Property and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which governs the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

CITY OF COLUSA:

By: _____
Name: Jesse Cain
Title: City Manager

**TENANT:
S. Pirelli BC&E, 1 LLC**

By: _____
Name: Wayne Herling
Title: Managing Member

RESOLUTION NO. 24-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA APPROVING THE LEASE AGREEMENT WITH BC&E USA COLUSA 1, LLC

WHEREAS, the City of Colusa City Council agrees to enter into a five-year lease with BC&E USA Colusa 1, LLC and three five-year extensions and;

WHEREAS, on December 3, 2024, the City of Colusa City Council approves the lease agreement for part of the Wastewater Land with BC&E Colusa 1 LLC.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLUSA DOES HEREBY RESOLVE:

1. Recitals. The foregoing recitals are true and correct and made part of this Resolution.
2. Approval. The City of Colusa City Council approves the resolution authorizing the City Manager to sign the lease agreement with BC&E USA Colusa 1 LLC, and:
3. Effective Date. This Resolution shall be effective immediately.

The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

Passed and adopted this Third Day of December 2024, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

 DANIEL VACA, MAYOR

 Shelly Kittle, City Clerk

**VACNAT LAND LEASE
LOCATED AT
2820 WILL S. GREEN AVENUE, COLUSA, CALIFORNIA**

THIS LEASE OF REAL PROPERTY ("Lease"), dated as of the latter of the Parties' signatures herein, is made and entered into by and between the City of Colusa, a Municipal Corporation ("Landlord"), BC&E USA Colusa 1 LLC ("Tenant"). Each of Landlord and Tenant shall be described herein from time to time as a "Party," and collectively as the "Parties."

1. Recitals.

This Lease is entered into based upon the following facts, circumstances and understandings:
current

- 1.1. City of Colusa, ("**Landlord**") is the owner of parcels of improved real property of approximately five hundred (500) acres in size and located at 2820 Will S. Green Avenue, Colusa, CA, (such parcel, together with all improvements thereon, and all appurtenant rights and easements, the "**Wastewater property**") and incorporated herein by this reference.

2. **Grant and Acceptance of Lease.** Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by Tenant, does hereby lease to Tenant and Tenant hereby leases and takes from the Landlord the property described in section 3 below and depicted in Exhibit "C" attached hereto, for Tenant's proposed use, subject to the following terms and conditions for the Term.

3. **Leased Area.**
 - 3.1. Premises. Landlord leases to Tenant and Tenant leases from Landlord the premises described as a portion of the land located at 2820 Will S. Green Avenue, Colusa, CA 95932 consisting of 10 Acres of land as depicted on the attached Exhibit C.

 - 3.2. Condition of Property. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Property except as specifically stated in this Lease.

 - 3.3. Condition of Premises: Tenant has examined the Premises and acknowledges that Premise is as is, in operative condition, and suitable for occupancy by Tenant.

 - 3.4. Zoning And Land Use: Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representation or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.

3.5. This lease to be transferable to East Clay in the event that the property exchange completed.

4. Term; Commencement Date.

4.1. The provisions of this Lease are effective as of the Commencement Date.

4.2. Duration of Term: Ten(10) years with one five (5) year extensions from the Commencement Date, subject to Term extensions as set forth in Section 4.4 below.

4.3. Commencement Date: The Commencement Date of this Lease is the date of approval of the Lease by the City Council of the City of Colusa.

4.4. Lease Term Expiration Date: The lease Term shall expire at 5:00 pm Pacific Time on December 31, 2040. Tenants will have the option to renew lease one time under the conditions and payment obligations set forth in Section 5. Intention to renew shall be given in writing six (6) months before the end of the lease term. Any holding over after the term of this agreement expires, which requires Landlord's consent, shall create a month-to-month tenancy and may revert to market rate, at the sole discretion of Landlord. Either party may terminate the hold over tenancy by giving written notice to the other at least thirty (30) days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.

5. Rent.

5.1. Definition: ("Rent") shall mean all monetary obligations of Tenant to Landlord under the terms of this agreement, except the security deposit. A security deposit in the amount of \$25,000 shall be collected when the lease is executed.

Year 1-15 \$5,000,000 Payment to the City by May 1st 2025	
Year 15 through 20, a one-time payment of \$1,000,000 payment due by July 31, 2040.	

Total Paid lease over 20 years \$7,000,000.	

5.2. The Parties agree that any tenant improvements that the Tenant performs that relate to compliance with any governmental regulations or requirements, including but not limited to safety or environmental matters, on the City's behalf may be reimbursed during years 1-15 of the Lease, and deducted from any annual lease payment subsequently, provided a signed authorization letter has been issued from the City authorizing the improvements.

5.3. Payment: Rent shall be paid to City of Colusa, 425 Webster St., Colusa, CA 95932, or at any other location specified by Landlord in writing to Tenant.

6. **Late Charge; Interest; NSF Checks:** Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within 5 calendar days after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, \$5,000 as late charge, plus 10% interest per annum on the delinquent amount and \$5,000 as an NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest, or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 5 or prevent Landlord from exercising any other rights and remedies under this agreement, and as provided by law.

7. **Permitted Uses.**

7.1. The Premises are for the sole use as commercial and industrial uses. Hours of operation may include 3 shifts for 24 hours per day of continuous operation.

- 7.2. No other use is permitted without Landlord's prior written consent. If any use by Tenant causes an increase in the premium on Landlord's existing property insurance, Tenant shall pay for the increased cost.
- 7.3. Tenant will comply with all Laws affecting its use of the Premises.
- 7.4. Tenant shall be restricted from any access to or utilization of the groundwater under the Property for any purpose.
- 7.5. Ongoing Access to Property. During the Term of this Lease, Tenant grants Owner and Landlord the right of access, Owner agrees to provide reasonable notice to Tenant, and Tenant and Owner shall mutually agree upon a reasonable schedule, to access and inspect, over, under and across the Property (including, if necessary, the existing building on the Property and any other improvements that may be constructed on the Property) and the Premises for its employees and agents during normal business hours, at no charge to Owner or Landlord as necessary or desirable for Owner to conduct its environmental investigation, monitoring and remediation activities. Such grant of access shall allow Owner and Landlord to engage in any and all activities related to its environmental investigation, monitoring and remediation activities, including, but not limited to, drilling soil borings, installing groundwater monitoring wells, excavating contaminated soils, installing engineering control and remediation systems, including, by way of example only, soil or pavement covers and groundwater extraction. In exercising its use of the Property and Premises herein, Owner and Landlord agree to cooperate with any reasonable security or access control procedures utilized by Tenant and further agrees not to unduly disturb or interfere with the business or other activities of Tenants engaged in industrial uses and operations within the building.

8. Tenant's Work, Maintenance, Repairs and Restoration.

- 8.1. Tenant may undertake all necessary tenant improvements and install, place, use, modify, operate and remove at the Premises furniture, trade fixtures and equipment ("FF&E") as Tenant deems necessary for its business operations at the Premises.
- 8.2. Any improvements made by Tenant, and all demolition, construction and installation work at the Premises, shall be performed at Tenant's sole cost and expense and in a good and workmanlike manner, and in compliance with all applicable codes and governmental regulations.
- 8.3. Tenant shall provide prior written notice to Landlord at least five (5) business days before undertaking any demolition, construction, improvements, installation of signage, or change out of locks or security systems. Notwithstanding anything in this section to the contrary, no portion of the existing building or other improvements on the Property may be demolished, nor any alterations to the Building structure, roof, HVAC system or electrical or plumbing systems, be made, without Landlord's prior written consent in each

instance, which consent may not be unreasonably withheld, and which consent shall be given or denied within five (5) business days from receipt of written request thereof from the Tenant or its agents or representatives. If no response is given by Landlord within such 5-business day period, such consent will be deemed given.

- 8.4.** Tenant shall maintain the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations, including and any and all security lighting or appliances installed. Landlord will maintain, or to make repairs or replacements to, the primary building shell consisting of the exterior walls, except as specifically modified by Tenant's improvements, foundation, and the roof, primary electrical feed to Tenant's main power panel, or primary building water and wastewater systems or any other component thereof. Tenant acknowledges and agrees that all improvements done by Tenant to facilitate Tenant's operations and not within Landlord's responsibility as stated in this section, shall be at the sole cost and expense of Tenant both for initial improvements and ongoing maintenance and repair during the Term of this Lease. Any and all roof penetrations shall require Landlord's express written consent and supervision, or at Landlord's option, Landlord shall utilize Landlord's preferred contractor for roofing repairs necessary for Tenant's equipment, and will invoice such costs to Tenant, which invoice shall be due and payable within 10 business days of receipt.
- 8.5.** Tenant, at Tenant's expense, shall be required to make all repairs to the Premises due to damage caused by Tenant, its agents or contractors.
- 8.6.** Upon the expiration, cancellation or termination of this Lease, Tenant shall surrender the Premises, together with all improvements and alterations, but not FF&E, installed during the Term by Tenant, in good condition and repair, less ordinary wear and tear and casualty not caused by Tenant, its agents or contractors. Tenant shall not permit or suffer any mechanic's or materialmen's liens to be lodged against the Property or Premises and will defend, indemnify and hold harmless Landlord from and against all claims, liabilities, costs and expenses associated with any such liens. Further, Tenant and any applicable subtenant will post notices of non-responsibility or local equivalent with respect to any work performed on the Property or Premises indicating that the applicable work is being done by or under Tenant and that Landlord does not consent to the fee interest in the Property being subject to any liens or claims of lien.
- 8.7.** If Tenant or its sublessees intend to excavate soils on the Property and relocate those excavated soils either elsewhere on the Property or to an off-site location, Tenant shall give Landlord at least thirty (30) days' notice prior to such excavation and cooperate with reasonable requests of Landlord in connection with the management of such soils.

9. Title to Tenant's Facilities.

- 9.1.** Title to FF&E placed on the Premises by Tenant shall be held by and remain with Tenant. All FF&E (as opposed to improvements, alterations and fixtures constituting real property under applicable law) shall remain the property of Tenant and are not

fixtures. Tenant, or any other lawful tenants or occupants of the Property, have the right to remove all FF&E at their sole expense on or before the expiration or termination of this Lease.

9.2. Any such FF&E not removed by the expiration of the Term shall be deemed abandoned and Landlord may dispose of the same or arrange for its storage at Tenant's cost.

9.3. Landlord acknowledges that Tenant may enter into financing arrangements including promissory notes and financial and security agreements for the financing of FF&E (the "Collateral") with a third-party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Landlord (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved FF&E; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, whether arising at law or otherwise, including, but not limited to any statutory landlord's lien; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. Signs. Tenant signage will be in compliance with all applicable City codes and will be located and/or installed in the areas depicted on Exhibit B and/or Exhibit C. Tenant will be responsible for maintenance of all Tenant installed signage. Signs shall be maintained in a manner so their appearance is in a substantially new condition and shall not be allowed to fade or deteriorate in appearance. All Tenant signage must be removed within 30 days of termination or expiration of this Lease. If Tenant signage is not removed within the 30-day time period, City may remove or cause the signage to be removed and the cost of such removal shall be invoiced to Tenant for payment within 10 days of receipt of the invoice.

11. Tenant Environmental Law Compliance and Indemnity.

11.1. Tenant shall not create, collect, store except in reasonable quantities directly related to Tenant's operations and in compliance with all laws and regulations for said storage, treat, dispose of or cause to be released or otherwise discharged any Hazardous Materials on the Property except in such minute quantities as are found in everyday cleaning supplies in compliance with Environmental Laws (capitalized terms are defined in Section 12.5 below) and shall notify Landlord within forty eight (48) hours after discovering or being informed of the presence of any Hazardous Materials on the Property either in violation of Environmental Laws.

11.2. Except to the extent caused by Landlord, or environmental conditions in the building or at the site existing prior to the occupancy by Tenant, before vacating the Property, Tenant shall clean up any releases of Hazardous Materials or environmental contamination by Hazardous Materials caused by Tenant occurring on or migrating from the Property during the Term of this Lease and located on, under, or adjacent to the Property, wherever located, in accordance with the requirements of all Environmental Laws and to Landlord's satisfaction and the Property shall remain in its cleaned-up

condition through the time Tenant vacates the Property. Should Tenant not fulfill its obligations under this Section 13.2, Tenant shall reimburse Landlord for all such clean-up costs and shall indemnify Landlord for all such costs and all other Indemnified Losses under Section 13.3 of this Lease. Should any activities on the Property during the Term by Tenant or any of its agent, representative, successors, assigns or subtenants exacerbate or disrupt Landlord's ongoing environmental investigation, monitoring, and remediation activities at the Property, Tenant shall reimburse Landlord for any and all additional costs created by the activities of Tenant any subtenant, or any of their respective agents, contractors, employees, invitees, successors and/or assigns and shall indemnify Landlord for all such costs and all other Indemnified Losses under Section 13.3 of this Lease.

11.3. Notwithstanding any other provision of this Lease, Tenant agrees to and does hereby defend, indemnify and hold harmless Landlord, its directors, officers, shareholders, employees, representatives, agents, successors and assigns (each, an "Indemnified Party") from and against any and all Indemnified Losses (as defined in Section 13.5) below) (including strict liability), which may now or in the future (whether during or after the Term) be paid, incurred or suffered by or asserted against Landlord by any person or entity or Agencies for, with respect to, or as a direct or indirect result of, (a) acts or omissions of Tenant or any subtenant of the Tenant, and their respective agents, employees, directors, officers, shareholders, contractors, representatives, and/or invitees, on or in connection with the Property, (b) the spill, disposal or release of Hazardous Materials on, under, in or from the Property during the Term and not caused by Landlord or any of its employees, agents or contractors and (c) any and all breaches of the covenants, representations and warranties set forth in this Section 13. The covenants and indemnifications contained in this Section 13 shall survive the expiration or other termination of this Lease.

11.4. In the event of any permitted sublease of the Property, or any part thereof, Tenant shall include the Tenant obligations set forth in this Section 13 in all permitted subleases.

11.5. Definitions.

"Agencies" means any federal, state, or local governmental authorities, agencies, or other administrative bodies with jurisdiction over Landlord or the Property.

"Corrective Work" shall mean the cleanup, removal, relocation, elimination, remediation, encapsulation, disposal at a licensed facility or any other treatment of Hazardous Materials of or from all or any portion of (i) the Property or any other property owned and/or leased by Landlord (necessary to maintain or bring the Property into compliance with Environmental Laws) and (ii) surrounding areas of the Property and/or any other property owned and/or leased by Landlord (necessary to maintain or bring the Property into compliance with Environmental Laws) and, to the extent thereby required, the reconstruction and rehabilitation of

the Property or any other property owned and/or leased by Landlord performed by any person or entity, including, without limitation, Landlord, Tenant, any Indemnified Party, or any of their respective agents, contractors, subcontractors, employees and any governmental entity for any reason, including, without limitation, pursuant to any Environmental Laws. Corrective Work also includes all fees of consultants to investigate, identify, characterize, monitor and develop corrective action plans with respect to Hazardous Materials or any Corrective Work.

"Environmental Laws" means any federal, state, or local environmental, health, or safety-related laws, regulations, standards, court decisions, ordinances, rules, codes, orders, decrees, directives, guidelines, permits, or permit conditions, currently existing and as amended, enacted, issued, or adopted in the future that are or become applicable to Landlord or the Property.

"Hazardous Material" means any chemical, substance, material, controlled substance, object, condition, waste, living organism, or combination that is or may be hazardous to human health or to the safety of the environment due to its radioactivity, flammability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms, or combinations that are now or become in the future listed, defined, or regulated in any manner by any Environmental Laws based upon, directly or indirectly, their properties or effects.

"Indemnified Losses" shall mean incurred and potential claims, damages, losses, liabilities, costs and expenses of Corrective Work, any other clean-up or response costs (which, without limitation, shall include costs to cause the Property to come into compliance with Environmental Laws), investigation costs (including fees of consultants, legal counsel and other experts in connection with any environmental investigation, testing, audits or studies), and any other incurred or potential obligations, penalties, fines, impositions, fees, levies, lien removal or bonding costs, claims, litigation, demands, causes of action (including, without limitation, any common law cause of action), liabilities, losses (including, without limitation, any reduction in the value of the Property), damages (expressly excluding any indirect or consequential damages), defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind and nature whatsoever (including, without limitation, attorneys' and experts' or other consultants' fees), including interest thereon.

14. Utilities.

14.1. Tenant Responsibility for all Utilities. Tenant shall pay directly to the relevant utility

all charges for electricity, gas, waste collection, pest control, telephone and other communication services, utility deposits, and tap or connection charges for services requested. Tenant shall pay to the Landlord water and sewer fees based on the City's fee schedule right now the charges, are \$48.14 per month, sewer charges, are \$99.27 per month: and will be changed based on the fee schedule. tap or connection charges for services requested, metering fees or other charges paid by for Tenant If any additional services requested by Tenant result in sewer service charges, tap or connection charges for services requested, metering fees or other charges, Tenant shall be responsible for paying such charges. Landlord shall have no responsibility for any interruption in utility services. Tenant agrees to promptly pay all charges and related expenses for such utilities as they become due, and all payments shall be made directly to the entity entitled to such payment. No interruption of utility service shall be construed as either a constructive or an actual eviction of Tenant, nor work by Tenant an abatement of Rent, nor relieve Tenant from fulfilling any covenant or condition of this Lease.

14.2. Landlord Responsibility for Utilities. Landlord will provide water and wastewater service to the site and building. Tenant will pay their fair share as set forth above.

15. Maintenance Expenses and Responsibilities. Landlord will maintain the building shell and roof, and the parking lot and storage yard area, except those areas of the parking lot and storage yard area specifically leased to Tenant. Tenant shall maintain all interior areas of the leased premises, all tenant improvements installed by Tenant, and the fenced yard area.

16. Taxes. Tenant shall pay personal property taxes assessed against FF&E and shall pay when due all possessory interest taxes which may become due attributable to the Premises and this Lease. Tenant shall pay all taxes prior to delinquency; in the event that taxes become delinquent, Tenant shall pay all interest and penalties due and owing. Landlord shall pay all real estate taxes and other taxes associated with the Property.

17. Fire or Other Casualty.

17.1. Notice and Election to Repair. In the event of a fire or other casualty at the Premises (including any casualty for which insurance coverage was not obtained or obtainable), Tenant shall immediately notify Landlord in writing. If, as a result of such fire or casualty, the Premises is damaged or destroyed, in whole or in part, so that Tenant is not able to use the Premises to substantially the same extent and for substantially the same purposes as Tenant used the Premises prior thereto, Landlord will notify Tenant in writing of Landlord's intent to either (i) terminate this Lease, or (ii) restore or replace the damaged or destroyed portion of the Premises, excepting therefrom Tenant's FF&E, to substantially the same condition that existed immediately prior to such damage or destruction. If Landlord elects to repair the Premises and such repairs will take in excess of six months to complete, Tenant shall, within fifteen (15) calendar days after receipt of Landlord's election to repair, give Landlord written notice of either (i) Tenant's acceptance of Landlord's proposal or (ii) Tenant's election

to terminate this Lease. In the event that Tenant fails to give notice of acceptance or rejection of Landlord's proposal within said 15-day period, Tenant shall be deemed to have accepted the proposal. Landlord's repair and restoration obligation shall be limited to insurance proceeds made available for such purpose and to returning the damaged portion of the Premises to the condition existing immediately prior to such damage.

- 17.2. **Rental Abatement During Construction.** If the Premises is to be repaired pursuant to Section 16.1, then, during such time as the Premises, or any portion thereof are being repaired, the Rent shall be proportionately abated as follows: the Rent for the period during which the Premises is being repaired shall be equal to the Rent multiplied by the ratio of (i) the net rentable area of the Premises that Tenant is able to use to substantially the same extent and for substantially the same purposes as Tenant used such space in the Premises prior to such damage or destruction to (ii) the total net rentable area of the Premises prior to such damage or destruction. If the decision is made to restore or replace the damaged or destroyed portions of the Premises, this Lease shall continue in full force and effect in accordance with the terms hereof, except for the Rent abatement referred to above (if applicable), and except that all other obligations of Tenant hereunder shall likewise be abated and that the Term shall be extended by a length of time equal to the period beginning on the date of such damage or destruction and ending upon completion of such restoration or replacement.
- 17.3. **Repair of the Premises.** If the Premises are to be repaired pursuant to Section 17.1, such restoration or replacement shall be made within a reasonable time, subject to delays arising from *force majeure*. A *force majeure* event shall be any event that prevents or delays Landlord or its agent, representative or contractor from punctually performing such repair due to any strike, lockout, labor dispute, inability to obtain labor, materials or reasonable substitutes thereof, Acts of God, present or future governmental restrictions, regulations or control, fire or other casualty, insurrection, war, terrorism, or sabotage. Tenant shall turn over to Landlord any and all insurance received by Tenant and relating to the Premises (other than any proceeds relating to any leasehold improvements installed by Tenant that are not to be replaced by Landlord and any proceeds for interruption of Tenant's business). Landlord shall carry out or cause to be carried out the repair of the Premises with Tenant to coordinate the installation, at Tenant's expense, of any leasehold improvements desired by Tenant and acceptable to Landlord.
- 17.4. **Termination Following Casualty.** If Landlord terminates this Lease pursuant to Section 17.1, this Lease shall terminate on the last day of the month next following the date the notice of termination is delivered under Section 17.1. and Owner shall reimburse Tenant on a pro rata basis for any remaining period of the Term that has been paid. If Tenant elects to terminate this Lease by rejecting Landlord's proposal to repair the Premises this Lease shall terminate upon Landlord's receipt of such notice. In the event that this Lease is terminated pursuant to Section 17.1, by either

Landlord or Tenant, Tenant shall surrender the Premises to Landlord in the then current condition thereof, Landlord shall be entitled to any and all insurance proceeds covering the Premises, and each of Landlord and Tenant agrees, upon the request of the other to execute a full release of this Lease effective as of the date of termination of the Lease under this Section 17.4, except as to provisions which are expressly or otherwise intended to survive termination. All Rent hereunder shall cease as of the date of termination of this Lease.

18. Default by Tenant. Each of the following shall be deemed an "Event of Default" by Tenant hereunder and a material breach of this Lease:

- 18.1. Tenant shall fail to pay any installment of Rent, or any other sums owed to Landlord when due.
- 18.2. Tenant shall fail to materially keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent, and Tenant shall fail to commence and take such steps as are necessary to remedy the same within thirty (30) calendar days after Tenant shall have been given a written notice specifying the same, or having so commenced, shall thereafter fail to proceed diligently and with continuity to remedy the same;
- 18.3. Tenant shall vacate or abandon the Premises; or
- 18.4. Tenant or any other party shall file a petition naming Tenant as debtor in any bankruptcy or other insolvency proceeding or shall file for the appointment of a liquidator or receiver for all or substantially all of Tenant's Premises or for Tenant's interest in this Lease or Tenant shall admit in writing its inability to meet its obligations as they become due or make an assignment for the benefit of its creditors.

19. Landlord's Remedies.

- 19.1. If an Event of Default occurs under this Lease, Landlord shall be entitled to any and all remedies permitted by California Civil Code Sections 1951.2 and 1951.4, as those sections may be amended or renumbered from time to time. Those remedies are specifically set forth in subsections 19.2 and 19.3 below, and the parties agree that such remedies are not exclusive and are cumulative in addition to any remedies now or later allowed by law.
- 19.2. If Tenant breaches this Lease and abandons the Premises before the end of the Term, or if Landlord terminates Tenant's right to possession due to an Event of Default, this Lease shall terminate, and Landlord shall be entitled to recover from Tenant:
 - (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination.

(ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided.

(iii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom.

For purposes of this Lease, "worth at the time of the award" shall have the meaning specified in California Civil Code Section 1951.2(b). Landlord shall be under no obligation to attempt to mitigate damages caused by any breach by Tenant of the Lease, however any efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease do not waive Landlord's right to recover damages as set forth herein. Termination of this Lease pursuant to this section shall not affect Landlord's rights to indemnification as specified in this Lease.

19.3. Notwithstanding any Event of Default by Tenant or abandonment of the Premises, Landlord may elect to continue this Lease in effect and enforce all of Landlord's rights and remedies hereunder, including without limitation the right to collect rent as it becomes due, unless and until Landlord elects to terminate this Lease. During the period that Tenant is in default, Landlord may enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including without limitation brokers' commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting may be for a period shorter or longer than the remainder of the Term. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from reletting after deduction of the costs specified above that remain due and unpaid to Landlord by Tenant. No act by Landlord allowed by this subsection shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. After Tenant's default, and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease subject to the provisions of this Lease, but Tenant shall not be released from liability.

19.4. Tenant acknowledges that late payment by Tenant of Rent or any other amount hereunder will cause Landlord to incur damages not contemplated by this Lease and in an amount that is difficult to determine. Accordingly, in the event any installment of Rent is not received on the date the same is due hereunder, Tenant agrees to pay to Landlord a late fee consistent with Section 7 above.

19.5. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to cure any default and such failure shall continue for thirty (30) days after notice thereof by Landlord, then Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations, make any such payment or perform any such act on Tenant's part. All sums so paid by Landlord and all costs incurred by Landlord in taking such action shall be deemed additional Rent hereunder and shall be paid to Landlord on demand, and Landlord shall have (in addition to all other rights and remedies of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

20. Termination.

20.1. This Lease may be terminated without further liability on thirty (30) days prior written notice by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default.

20.2. Tenant shall have the option to request early termination of this Lease should there be a statewide or nationwide economic downturn event(s) that materially and substantially alters Tenant's ability to continue in business. Upon presentation of substantial evidence of such economic impairment presented to the City Council, the City Council will consider the evidence and make the decision to grant early termination of the Lease. The decision by the City Council to grant early termination of the Lease for economic hardship shall not be unreasonably denied. No prepayment of lease payment paid to the City shall be paid back due to early lease termination.

20.3. Other than as stated herein, Landlord and Tenant shall not have the right to terminate, revoke or cancel this Lease. If termination of the Lease occurs pursuant to subsection 20.1 of this Lease, Tenant shall immediately discontinue use of the Premises by Tenant and all subtenants.

20.4. Force Majeure If and to the extent that a Party's performance of any of its obligations pursuant to this agreement is prevented, hindered or delayed directly or indirectly by fire, flood, earthquake, elements of nature or acts of God, pandemic or epidemic, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, restrictive governmental laws or regulations, change in economic conditions, or any other similar cause beyond the reasonable control of such party (each a 'Force Majeure Event'), the non-performing, hindered or delayed Party shall be excused for such non-performance, hinderance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall promptly notify the other Party of the occurrence of

the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. During the Force Majeure Event, the non-performing party shall not be in default of any provisions of this Agreement and this Agreement does not exclude rent abatement during such Force majeure Event.

21. Destruction of Property. If the Property is destroyed by natural disaster or by any party other than the Tenant, Tenant may elect to terminate this Lease pursuant to section 16.1 of this Lease, except that no early termination payment shall be paid by Tenant to Landlord.

22. Condemnation. If a condemning authority takes all of the Property, or a portion which in Tenant's sole discretion is sufficient to render the Premises unsuitable for Tenant's ongoing operation, then this Lease shall terminate without further liability of Tenant as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

23. Insurance.

23.1. At all times during the term of this Lease, Tenant shall purchase and maintain, at its sole expense, insurance as described below: dollar amount is subject to change based on the City's risk pool assessments.

23.1.1.1. Commercial General Liability Insurance of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Landlord.

23.1.1.2. Commercial Automobile Liability Insurance to cover all owned, hired and non-owned automobiles owned or operated by Tenant providing a minimum combined single limit of Two Million Dollars (\$2,000,000.00) per accident.

23.1.1.3. Workers Compensation Insurance as required by the Labor Code of the state of California. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Landlord.

23.1.1.4. Employer's Liability Insurance in an amount of at least Two Million Dollars (\$2,000,000.00) per occurrence.

23.2. Evidence of required insurance shall be submitted prior to the execution of this Lease. If Tenant fails to maintain insurance which is required pursuant to this Lease, it shall be deemed a material breach. Landlord may give notice to Tenant to reinstate or acquire the affected insurance. Should Tenant fail to reinstate or acquire the affected insurance within five (5) days of Landlord's notice to reinstate or acquire such insurance, Landlord may either terminate this Lease, reinstate or acquire the affected insurance, and Tenant shall reimburse Landlord for the necessary cost at Landlord's option,

23.3. If Tenant maintains broader coverage and/or higher limits than the minimums

shown above for all policies, the Landlord requires and shall be entitled to the broader coverage and/or higher limits maintained by Tenant or their contractors, sub-contractors, or agents. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.

- 23.4. Landlord, at Landlord's sole cost and expense, shall procure and maintain on the Landlord's Property, bodily injury and property damage insurance with a combined single limit of at least Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Landlord, its employees and agents arising out of or in connection with Landlord's use, occupancy and maintenance of Landlord's Property.
- 23.5. Landlord, officers, employees, and agents shall be named as an additional insured on Tenant's Commercial General Liability and Automobile Liability policies. Each party shall provide to the other a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date. Each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance, and each party shall require such insurance policies to contain a waiver of recovery against the other.
- 23.6. During the Term of the Lease, Landlord shall keep the Premises (to the extent improved as of the date of this Lease) insured against loss or damage by fire and all risks of direct physical loss except the normal exclusions contained in an "all risks" policy for not less than one hundred percent (100%) of the replacement cost thereof. Tenant shall maintain insurance on the FF&E and any leasehold improvements constructed by or under the Tenant during the Term of the Lease against loss or damage by fire and all risks of direct physical loss except the normal exclusions contained in an "all risks" policy in amounts not less than one hundred percent (100%) of the replacement cost thereof.
- 23.7. Any insurance required to be maintained by Landlord under this Lease may contain such deductibles and self-insured retentions as Landlord and its affiliates customarily maintain under their enterprise-wide insurance and risk management programs. Further, such insurance may be maintained in the form of blanket policies covering multiple locations.

24. Assignments or Transfers. Tenant intends to use the Premises for industrial, research and storage purposes and is expressly prohibited from subleasing the Premises for any use without obtaining Landlord's consent as to individual tenants, which consent may be withheld in Landlord's sole discretion, subject to the use restrictions of the Premises enumerated above and to the limitations set forth in Section 8 above. Tenant shall not assign or transfer this Lease to any other person or entity without the express written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Notwithstanding anything to the contrary contained in this Lease, Tenant may (with

Landlord's consent, not to be unreasonably withheld) assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to grant funds, letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

25. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.

25.1. So long as Tenant is not in default under this Lease, Tenant shall be entitled to quiet enjoyment of the Premises during the term of this Lease or any renewal term, and Tenant shall not be unduly disturbed in its occupancy and use of the Premises or the exercise of its rights and privileges as granted herein, subject to the rights of Landlord to access the Premises stated herein.

25.2. This Lease and each and every deed of trust, mortgage or other security instrument which may now or hereafter affect the Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such lease, Tenant shall execute and deliver promptly any commercially reasonable certificate of Landlord may reasonably request, provided that such certificate acknowledges that this Lease remains in full force and effect, recognizes Tenant's right to non-disturbance and quiet enjoyment of the Premises so long as Tenant is not in default under this Lease, only contains true and accurate statements and Tenant's liability shall be capped at the remaining Rent under this Lease. If any mortgagee or lender succeeds to Landlord's interest in the Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Tenant shall attorn to and recognize such successor as Landlord under this Lease provided such party similarly agrees not to disturb Tenant's occupancy and use of the Premises or the exercise of its rights and privileges as granted herein.

25.3. At any time upon not less than ten (10) days' prior written notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant, a statement in writing certifying that this Lease is in full force and effect, if true, and the status of any continuing defaults under this Lease.

26. Indemnification.

26.1. Tenant's Indemnity. Tenant hereby agrees to defend, indemnify and hold Landlord and Landlord's directors, partners, shareholders, officials, officers, and employees free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, costs and expenses including attorney's fees and costs of court, and injuries, including personal injuries or death to the extent caused by Tenant's, or of Tenant's tenants, negligent occupation, use, operation, maintenance

or repair of the Premises and FF&E at the Premises, except to the extent caused by the sole negligence or willful misconduct of Landlord or Landlord's Indemnities.

25.1.1 As stated in section 3 above, Tenant accepts the condition of the Property and Premises as is, and accordingly Tenant agrees to defend, indemnify and hold Landlord and Landlord's officials, officers, and employees free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, costs and expenses including attorney's fees and costs of court, and injuries, related to claims based on the Americans with Disabilities Act or lack of accessible features in and on the Landlord's Property. However, if Tenant is required to modify the Property to comply with the Americans with Disabilities Act for any reason, then the reasonable costs incurred by Tenant to perform such modifications may be applied to any rents as a credit against such rents.

25.2 Landlord's Indemnity. Except as expressly stated in subsection (b) above, Landlord hereby agrees to defend, indemnify and hold Tenant and Tenant's elected and appointed officials, officers, employees, agents, contractors or subcontractors free and harmless from and against any and all losses, claims, liabilities, damages, actions, causes of action, reasonable out-of-pocket costs and expenses (including reasonable external attorney's fees and costs of court) and injuries (including personal injuries or death) to the extent caused by Landlord's negligent use, operation, maintenance or repair of improvements on Landlord's Property, the use of Landlord's Property by other tenants, contractors or lessees of Landlord, any violation of governmental regulations relating to the Property, except to the extent caused by the negligence or willful misconduct of Tenant or Tenant's officials, officers, employees, agents, contractors or subcontractors.

25.3 Special Damages. Notwithstanding any other provision of this Lease, neither Party shall be liable to the other for consequential damages, damages for lost income and profits, exemplary or punitive damages or other special damages, whether in tort, contract or equity.

25.4 Survival of Indemnity Provisions. The indemnity provisions of this Section 25 shall survive the expiration, cancellation or expiration of this Lease for the length of the applicable statute of limitations term during which a claim may be filed plus 30 days, and any claims for indemnification under this Section 25 shall be brought within that period.

26 Rules and Regulations. Tenant must comply with the rules, and any reasonable amendments or additions to those rules, promulgated by Landlord from time to time for the safety, care, and cleanliness of the Premises, Building, and Real Property or for the preservation of good order (Rules and Regulations) as long as:

26.1 The Rules and Regulations do not require Tenant to pay additional Rent.

- 26.2 No amendment or addition to the Rules and Regulations is binding on Tenant until the tenth (10th) business day after Tenant receives written notice of the change, and no amendment or addition applies retroactively; and
- 26.3 The Rules and Regulations do not take precedence over the specific terms and conditions of this Lease.

Landlord agrees not to enforce the Rules and Regulations in a manner that discriminates against Tenant. If Landlord acts reasonably, in good faith, and in a nondiscriminatory manner in enforcing the Rules and Regulations, Landlord will not be responsible to Tenant for the failure of any other tenants or occupants of the Property to comply with the Rules and Regulations.

- 27 Notices and Deliveries.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or by reliable overnight delivery service with a copy delivered by facsimile to the address of the respective parties set forth below:

Landlord:

City of Colusa
Attention: City Manager
425 Webster Street
Colusa, California

With a copy to:

Ryan R. Jones, City Attorney
802 N Irwin Street Suite 204
Hanford ca 93230
Telephone: (559) 816-8651

Tenant:

BC&E USA Colusa 1 LLC
Robert Leslie Norman
Managing Member

Landlord or Tenant may from time to time designate any other addressees and addresses for notices or deliveries by written notice to the other party.

27. Bankruptcy.

27.1 Landlord and Tenant hereby expressly agree and acknowledge that it is the intention of both parties that in the event during the term of this Lease, either party shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. §101, *et seq.*, ("Code"), this Lease is and shall be treated as an unexpired lease of nonresidential real property for purposes of §365 of the Code, 11 U.S.C. §365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said §365 (as may be amended).

27.2 Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC §§ 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

28 Miscellaneous.

28.1 CASp Inspection. The Premises have not undergone inspection by a Certified Access Specialist (CASp) (as defined in California Civil Code §1938). [change this section if CASp inspection done.

28.1.1 A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

28.1.2 Nothing herein will relieve Tenant's compliance obligations as to the Premises as set forth in Section 8 above.

- 28.2 **Severability.** If any provision of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease to retain the economic effect of the invalid or unenforceable provisions.
- 28.3 **Binding Effect.** Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease have full power and authority, to execute and deliver this Lease, and that this Lease constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.
- 28.4 **Waivers.** No provision of this Lease shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease.
- 28.5 **Governing Law, Courts.** This Lease shall be governed by and construed in accordance with the laws of the State of California. Sole venue for any legal claim arising hereunder shall be in the Superior Court of the State of California in Colusa County at the courthouse or in the court district closest to the Property.
- 28.6 **Attorneys' Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and costs and court costs as may be awarded by the court.
- 28.7 **Survival.** Terms, conditions, obligations, and indemnifications of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.
- 28.8 **Memorandum of Lease.** Landlord acknowledges that a Memorandum of Lease substantially in the form annexed hereto as Exhibit C will be recorded by Landlord in the Official Records of the County of Colusa, California.

- 28.9 Entire Agreement; Amendments. This Lease constitutes the entire agreement and understanding between the parties regarding Tenant's lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by duly authorized representatives of both parties.
- 28.10 No Presumptions Regarding Preparation of Lease. The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Lease are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease.
- 28.11 Interpretation.
- 28.11.1 Unless the context of this Lease clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.
- 28.11.2 The headings in this Lease are for reference only and are not incorporated in any term herein.
- 28.12 No Personal Liability of Officials and Employees of either Party. No elected official, officer, employee, agent, or volunteer of either Party shall be personally liable for any default or liability whatsoever under this Lease, except in instances of criminal negligence.
- 28.13 Public Document. Tenant is a municipal corporation under the laws of the State of California. Landlord and Tenant acknowledge that this Lease is subject to public disclosure as specified by California Government Code § 6250 *et seq.* and is a "public record" within the meaning of California Government Code § 6252(e).

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease is effective as of the date first above written.

CITY OF COLUSA,
a political subdivision of the State of California

Jesse Cain, City Manager City of Colusa

Approved as to Form:

Ryan R. Jones, City Attorney

Attest:

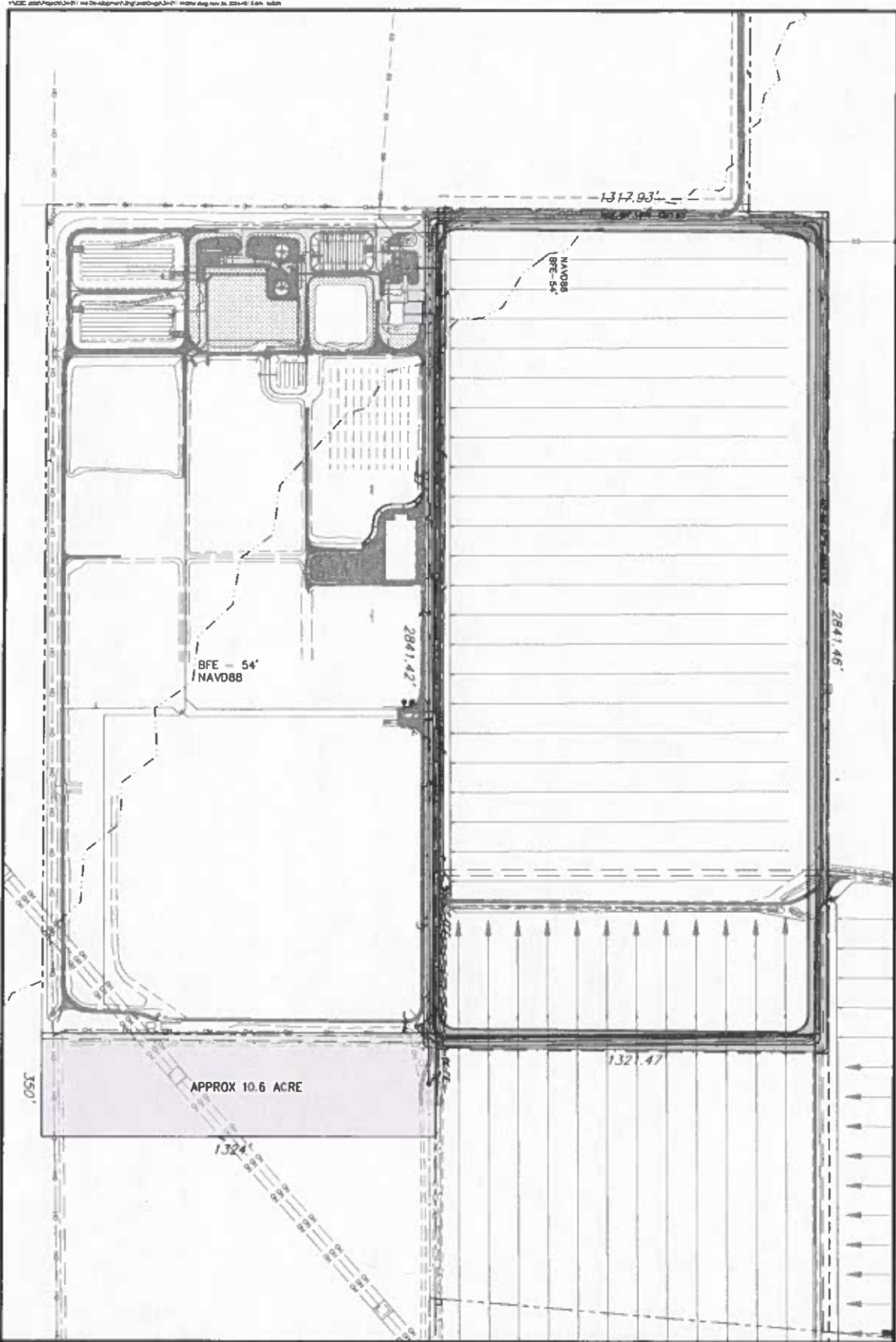
Shelly Kittle, City Clerk, City of Colusa

TENANT:
BC&E USA Colusa 1 LLC

By: _____

Name: _____, CEO

EXHIBIT A
DEPICTION OF LEASED BUILDING AREA



PROJECT NUMBER
24-211

SHEET 1 OF 1

CITY OF COLUSA
EXHIBIT C
10-ACRE PARCEL MAP EXHIBIT

MO DEVELOPMENT AGRICULTURAL
FACILITY IMPROVEMENT PROJECT

CALIFORNIA ENGINEERING COMPANY INC
CIVIL ENGINEERING
LAND SURVEYING
FUNDING PROGRAMS
CONSTRUCTION ADMINISTRATION
www.cen.com

1110 Civic Center Blvd, Suite 404 | Yuba City, CA 95993 | (337) 751-0822 Office

DATE	NO.	DATE	DESCRIPTION
11/24/2024			
SCALE:			
DRAWN BY:	EAC		
DESIGNED BY:	EAC		
CHECKED BY:	SM		

California Engineering Company is not responsible for the accuracy or completeness of reproductions of this document generated by other than electronic media

EXHIBIT B
MEMORANDUM OF LEASE

This is a Memorandum of Lease ("**Memorandum**") made and entered into as of this _____ day of _____, 2024, by and between the CITY OF COLUSA, a political subdivision of the State of California ("**Landlord**"), and BC&E USA Colusa 1 LLC, a California Limited Liability Corporation ("**Tenant**"), upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ ("**Lease**"), are hereby incorporated by reference into this Memorandum.
2. **Subject Property.** The Property which is the subject of the Lease is more particularly described and depicted as on Exhibit A, attached hereto.
3. **Subject Premises.** The Premises which is the subject of the Lease is more particularly described and depicted as on Exhibit B, attached hereto.
4. **Commencement Date of Lease.** The Lease shall be deemed to have commenced _____, 2024 as set forth within the terms of the Lease.
5. **Term.** The Term of the Lease shall be fifteen years with three five-year extensions from the Commencement Date as stated in the written Lease. The initial term shall commence on the date hereof and terminate on December 31, 2039.
6. Duplicate copies of the originals of the Lease are in the possession of the Landlord and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for Landlord and Tenant are as follows:

LANDLORD: City of Colusa 425 Webster Street, Colusa, CA 95932

TENANT: BC&E USA Colusa 1 LLC

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum of Lease is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect to the Property and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which governs the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

CITY OF COLUSA:

By: _____
Name: Jesse Cain
Title: City Manager

**TENANT:
BC&E USA Colusa 1 LLC**

By: _____
Name: _____
Title: _____