



CITY COUNCIL MEETING

Tuesday, December 19, 2023
Regular Meeting - 6:00 PM
City Hall – City Council Chambers
425 Webster Street, Colusa, CA 95932

AGENDA

Two ways to view the meeting: In Person or on Zoom

<https://us06web.zoom.us/j/88039280059>

Zoom: - Passcode: 007745

Or by phone: (669) 444-9171, - Webinar ID: 880 3928 0059

Mayor – Greg Ponciano
Mayor Pro Tem – Julie Garofalo
Council Member – Denise Conrado
Council Member – Ryan Codorniz
Council Member – Daniel Vaca

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS *(The public may comment on items scheduled to be heard during the Closed Session Meeting)*

CLOSED SESSION MEETING – 5:30 PM

- CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Significant exposure to litigation pursuant to California Government Code Section 54956.9(d)(2) One case

REGULAR MEETING – 6:00 PM

REPORT ON CLOSED SESSION

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. Approve - Council Draft Minutes of November 21st and December 5th

2. **Receive and File** - Police Department November report
3. **Receive and File** - Code Enforcement November report
4. **Receive and File** - Treasurer's October report
5. **Adopt** - Ordinance 563 repeal the current Article 39 and replace it with updated Article 39 that has been updated to comply with the new NFIP guidelines

COUNCIL MEMBER /CITY MANAGER REPORTS AND STAFF COMMENTS

COUNCIL CONSIDERATION

6. Consideration of a Resolution approving the use of ARPA funds the Parks, Recreation, and Tree Commission (PRT) is requesting for C.D. Semple Park.

Recommendation: Council to adopt the Resolution approving the use of ARPA Funds that PRT requested.

7. Consideration of the Resolution to initiate proceedings for the annexation of approximately 509.78 acres of City-owned property adjacent to the wastewater treatment plant.

Recommendation: Council to adopt the Resolution requesting the Local Agency Formation Commission to begin proceedings for the annexation of property now located in the unincorporated territory of the County of Colusa to the incorporated territory of the City of Colusa (APN's 017-020-024,025,026,027 & 017-030-079,080)

8. Consideration of a Resolution approving and authorizing the City Manager to sign the Hybrid Renewable Electric Energy Power Purchase Agreement with Glanris, Colusa LLC.

Recommendation: Council to adopt the Resolution authorizing the City Manager to sign the Hybrid Renewable Electric Energy Power Purchase Agreement with Glanris, Colusa LLC.

DISCUSSION ITEMS

Premiere Mushroom update on the Building progress

FUTURE AGENDA ITEMS

COUNCIL REORGANIZATION

Nomination and Selection of Mayor

Nomination and Selection of Mayor Pro-Tem

Remarks from newly selected Mayor and Mayor Pro-Tem

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) 458-4740 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”



CITY COUNCIL MEETING

Tuesday, November 21, 2023
Regular Meeting - 6:00 PM
City Hall – City Council Chambers
425 Webster Street, Colusa, CA 95932

MINUTES

CALL TO ORDER – Mayor Ponciano called the meeting to order at 5:00 pm

ROLL CALL - Council Members Conrado, Vaca, Codorniz, Garofalo and Mayor Ponciano were present.

PUBLIC COMMENTS – None.

CLOSED SESSION MEETING – 5:00 PM

- PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§ 54957) Title: City Manager
- CONFERENCE WITH LABOR NEGOTIATORS (Section 54957.6) Agency designated representatives: City Manager Jesse Cain and Ryan Jones, City Attorney. Memorandum of Understandings (MOU’s) for:

-Department Heads and Professional Firefighters Association

REGULAR MEETING – 6:00 PM

REPORT ON CLOSED SESSION – Mayor Ponciano stated there was no reportable action.

ROLL CALL – All present.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA -There was council consensus on the approval of the agenda.

PUBLIC COMMENTS - Citizen Sally Paul requested assistance with her water meter valve.

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. **Approve** - Council Draft Minutes of November 7th
2. **Receive and File** - Police Department October Report
3. **Receive and File** - Finance Department October Report
4. **Receive and File** - October Warrants List
5. **Approve**- Additional Street closure for Christmas Tyme in Colusa on December 1st.

6. **Adopt** - Resolution approving a 5-year contract with Hunters Service for the injection of the Elm and Hackberry trees.
7. **Adopt** - Resolution approving to waive the request for the proposal process and purchase a 2023 Ford Hybrid Truck from Hoblit Motors using Prop 64 Funds
8. **Adopt** - Resolution approving a 5-year tentative parcel subdivision map request for an extension on the Cheney-Wilson tentative subdivision map
9. **Adopt** - Ordinance 559 amending Appendix A-Zoning by repealing and replacing Sections 21.5 and 33.03 of the Colusa Municipal Code regarding Commercial Cannabis Regulations
10. **Adopt** - Ordinance 560 repealing Chapter 12E of the Colusa Municipal Code entitled "Medical Marijuana Cultivation" and reenacting Chapter 12E to be retitled "Personal Cannabis Cultivation"
11. **Adopt** - Ordinance 561 amending Section 12 by repealing and replacing Sections 12D and 12F of the Colusa Municipal Code regarding Cannabis Dispensaries and Cannabis Businesses Regulatory Permits

ACTION: Motion by Council Member Vaca, seconded by Council Member Codorniz to approve the consent items. Motion passed unanimously.

COUNCIL MEMBER /CITY MANAGER REPORTS AND STAFF COMMENTS

Council Members reported on meetings they each attended.

City Manager Cain reported on meetings he attended.

Code Enforcement Officer Manual Soto introduced himself and provided updates in his department.

Finance Director Aziz-Khan provided updates in her department.

Police Chief Fitch provided updates in his department.

City Engineer Swartz provided an update in his department.

Grant Writer Ash provided updates on grants and community events.

CONTINUED PUBLIC HEARINGS

12. Consideration of a Resolution approving a Conditional Use Permit/Cannabis Special Use Permit for special planning area #4 Located at the northeast corner of Colusa east of D street (between East Clay Ave and Sacramento River levee)

City Manager Cain and Mayor Ponciano reported the workshop was beneficial for all parties at was on November 15th. Applicant Mike Olivas was present if anyone had any questions.

Public Hearing Closed at 6:17 pm with no public comments.

ACTION: Motion by Council Member Conrado, seconded by Council Member Codorniz to adopt **Resolution 23-62** approving a Conditional Use Permit/Cannabis Special Use Permit for special planning area #4 located at the northeast corner of Colusa east of D Street (between East Clay Ave and Sacramento River levee). Motion passed 4-1 with the following roll-call vote:

AYES: Codorniz, Conrado, Vaca, and Ponciano.

NOES: Garofalo.

13. Consideration of an Ordinance approving the Development Agreement (“D.A.”) in support of cannabis manufacturing uses in the northeast corner of the city, bordered by the Sacramento River on the north, Clay Street on the south, and D Street on the west in Colusa on property zoned in the Light Industrial (M1) District

City Manager Cain reported the amended Development Agreement (DA) was an update to the DA in the agenda packet. Mayor Pro-Tem Garofalo noted a few minor changes to the amended DA. City Manager Cain will update the amended DA.

Public Hearing Comments: Applicant Mike Olivas requested a final copy of the DA.

Citizen John Stuck commented by thanking those involved for their prompt resolution.

Public Hearing closed at 6:23 pm

ACTION: Motion by Mayor Ponciano seconded by Council Member Conrado to introduce, read by title only, and waive the full first reading of the **Ordinance 562** approving the updated amended Development Agreement between the City of Colusa and Colusa Riverbend Estates L.P. and Pomona Rio Property, LLC relative to the operation of a Cannabis Center Business Park located at the Northeast Corner of the City, boarded by the Sacramento River on the North, Clay Street on the South and D Street on the West in Colusa. Motion passed 4-1 with the following roll-call vote:

AYES: Codorniz, Conrado, Vaca and Ponciano.

NOES: Garofalo

COUNCIL CONSIDERATION

14. Consideration of the Resolution approving the Commercial Cannabis application policy.

City Manager Cain reported how the new application policy would assist in managing future applications. Consultant Ash provided details and discussed the grading matrix.

ACTION: With no public comments, motion by Council Member Codorniz, seconded by Council Member Vaca with the noted changes to adopt **Resolution 23-63** approving the Commercial Cannabis application policy. Motion passed 5-0 with the following roll-call vote:

AYES: Codorniz, Conrado, Vaca, Garofalo and Ponciano.

NOES: None.

15. Consideration of a Resolution to work on an agreement with Colusa Riverbend Estates L.P and Pomona Rio Property, LLC

City Manager Cain asked council if he could work with the applicant on a potential property swap and a general agreement within 90 days. City Engineer Swartz stated he would provide three to four different strategies, cost, and timing. He would also work with the applicant on a project description to meet the needs of the strategies.

Public Comments: Janice Bell and Cheryl Goodman said they were proponents of a potential swap.

ACTION: Motion by Council Member Vaca seconded by Council Member Garofalo to adopt **Resolution 23-64** to work on and enter into an agreement for a Property Exchange with Colusa Riverbend Estates L.P. and Pomona Rio Property LLC within 90 days of adopting this Resolution. Motion passed 5-0 with the following roll-call vote:

AYES: Codorniz, Conrado, Vaca, Garofalo and Ponciano.

NOES: None.

FUTURE AGENDA ITEMS

FEMA

Noise Ordinance

ADJOURNED at 6:45 pm.

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk



CITY COUNCIL MEETING

Tuesday, December 05, 2023
 Regular Meeting - 6:00 PM
 City Hall – City Council Chambers
 425 Webster Street, Colusa, CA 95932

MINUTES

CALL TO ORDER – Mayor Ponciano called the meeting to order at 6:00 pm.

ROLL CALL - Council Members Conrado, Vaca, Codorniz, and Mayor Ponciano were present. Mayor Pro-Tem Garofalo was absent/excused.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA - There was council consensus on the approval of the agenda.

PUBLIC COMMENTS – Janice Bell thanked the City for the Christmas Tyme in Colusa event and announced a gathering for a send-off for the Colusa Red Hawks Football Team.

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. **Adopt** - Ordinance 562 approving a Development Agreement between the City of Colusa and Colusa Riverbend Estates L.P. and Pomona Rio Property, LLC relative to the operation of a Cannabis Center Business Park located at the Northeast Corner of the City, boarded by the Sacramento River on the North, Clay Street on the South and D Street on the West
2. **Adopt** - Resolution to authorize the Police Chief to purchase replacement handguns, optics, and related duty equipment from ProForce, an amount not to exceed \$12,500
3. **Adopt** - Resolution approving a 20-year operating agreement with California State Parks
4. **Adopt** - Resolution approving a cannabis manufacturing special use permit and regulatory permit for Colusa Riverbend Estates LP. and Pomona Rio Property, LLC relative to the development of a cannabis manufacturing facility located on East Clay Street next to the Sacramento River
5. **Approve** - City Clerk Side Letter for Human Resources

ACTION: Motion by Council Member Conrado seconded by Council Member Codorniz to approve the consent items. Motion passed unanimously.

COUNCIL MEMBER /CITY MANAGER REPORTS AND STAFF COMMENTS

Council Members reported on meetings they each attended.

City Attorney Jones reported a meeting with Green Leaf Processors and would keep the council updated.

City Manager Cain introduced the new City Planner.

Police Chief Fitch provided updates in his department.

Fire Chief Conley provided updates in his department.

City Planner Mark Tomey introduced himself.

PUBLIC HEARING

6. Consideration of an Ordinance to repeal and replace Article 39 Floodplain Management with an updated version.

City Manager Cain reported FEMA State and Federal requirements. There were minor changes to meet those requirements. Cain stated the FEMA Map would be out soon.

Public Hearing opened and closed at 6:15 pm with no public comments.

ACTION: Motion by Council Member Vaca, seconded by Council Member Conrado to introduce and read by title only **Ordinance 563** to repeal the current Article 39 and replace it with Updated Article 39 that has been updated to comply with new NFIP guidelines. Motion passed 4-0 with the following roll-call vote:

AYES: Codorniz, Conrado, Vaca and Ponciano.

NOES: None.

ABSENT: Garofalo.

FUTURE AGENDA ITEMS

Update on the Mushroom Plant.

ADJOURNED at 6:18 pm

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk

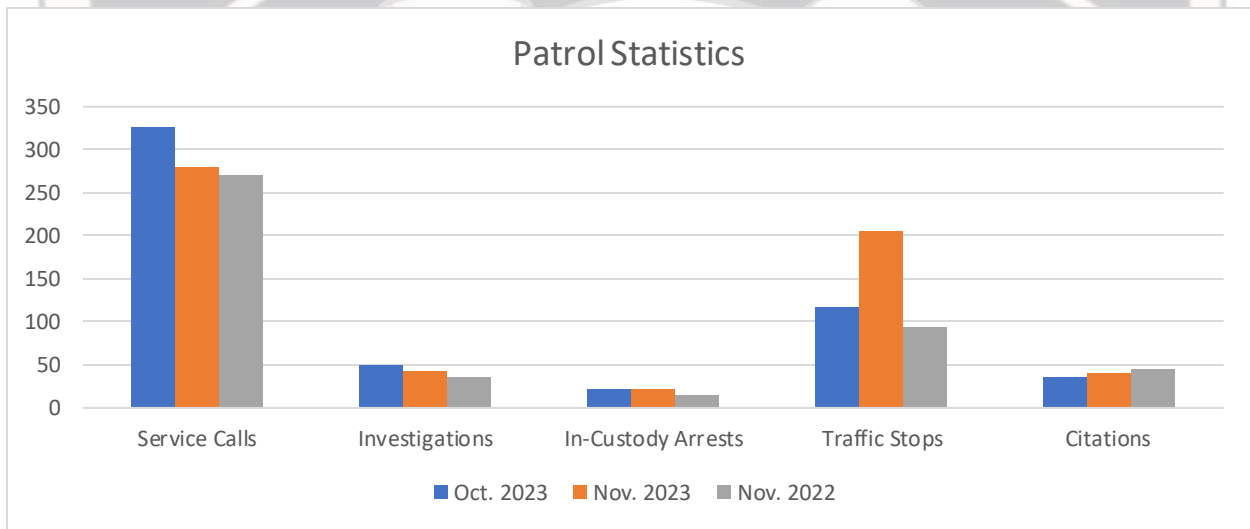
Colusa Police Department

Monthly Report for November 2023

Monthly Activities

- City Council Meetings
- Participated in the Colusa County Office of Education School Attendance Review Board hearing.
- Attended Juvenile Justice Coordinating Council Meeting
- Attended Colusa Community Partnership Meeting

Monthly Statistics



- There were 281 calls for service for patrol officers with 19 agency assists. The call volume notably decreased from the month of October which was 327. In November of 2022, there were 270 calls for service which is lower than the call volume of the current year.
- During November 2023, there were 23 in-custody arrests. There were 3 citations issued in lieu of subjects being booked in jail. There were 3 domestic violence related incidents reported in November. There were 10 DUI related arrests made. There were 44 reports initiated.
- During the month of November, officers initiated 206 traffic enforcement stops. There were 40 citations issued. Several of the citations issued were for registration violations and speeding violations. There was 1 reportable traffic collision with injuries during the month of November.
- The Police Services Manager handled 84 calls for service during the month of November. These calls for service don't include telephone calls handled by the Police Services Manager.

Items of Interest

- With the holiday season upon us, many folks will be attending parties and other gatherings where cocktails and other beverages containing alcohol will be served. The number of DUI arrests doubled during the month of November as compared to October. Some of these arrests have included juveniles. It is illegal to operate a motor vehicle with a Blood Alcohol Content (BAC) of .08%. However, it is illegal to operate a motor vehicle with a BAC in excess of .01% under the age of 21. It is important to have a designated driver if partaking in alcoholic beverages.
- It is not uncommon for the Colusa Police Department to receive complaints about vehicles parked along public roadways that are inoperable or even abandoned. If a vehicle's registration has been expired for more than 6 months, it can be towed pursuant to section 22651(o) of the California Vehicle Code. A vehicle can't be parked on a public roadway more than 120 hours on a per section 11-8(Z) of the Colusa City Code. This excludes vehicles on private property. Should you notice a yellow 'warning' tag on vehicle, if the vehicle is not moved quickly, it will be towed. Often it will be tagged without further notice.
- The Colusa Police Department continues to investigate the murder of Giovanni Alcaraz. Alcaraz was murdered on 3/26/2020, on Wescott Road in front of the Colusa Garden Apartments. The shooting that ultimately claimed the life of Alcaraz occurred in the late afternoon, in broad daylight. The United States Marshal Service is attempting to locate the suspect, Christian Suarez. Suarez is 5-09 in height, 120 pounds, with black hair and brown eyes. He is from the Arbuckle area. An arrest warrant has been issued for Suarez who is pictured below. While the Colusa Police Department will occasionally receive investigative leads, we continue to ask for the public's assistance since it is strongly believed that Suarez remains in contact with family and some friends.

The integrity of Alcaraz's murder investigation is paramount. It is for this reason that specific details surrounding the events that led up to and the murder itself aren't made public. The Colusa Police Department will not engage nor comment on speculation put forth on social media. If anyone has any information related to the location of Suarez and/or the murder of Giovanni Alcaraz, please contact the Colusa Police Department.





Code Enforcement Monthly Report 11/01/2023 to 11/30/2023

Total Cases: 7

Active: 3

Compliance / Closed: 4

Complaints: 4 (via landline and email)

Animals – Sec 4-7 / Nuisance / Expired Vehicles within the City Streets 4000(a)(1) CVC / Continuous Parking 11-8(z)

Letters:

Courtesy Letters (Notice of Violations) Sent - 10

In the field findings:

Towed (1) and (1) Motorhome – 2

Tagged Vehicles / Vessels / Utility Trailer – 17

Transient Community – (Communication and Education)

Types of Violations:

Weed Abatement / Vehicle - Abatement / Parking Issues

Continuous Follow Ups Conducted Daily – *Compliance in Progress*

Training / Education

Familiarizing with City / Cannabis Ordinance – Demographics – Community / Resource Relations / Online Trainings (Comcate / CEOSF / CLETS and Webinars)

New Vehicle – F-150

Researched Vendors for Decals – Moved Forward with Vendor out of Roseville (Seal Signs) = \$1,075 + tax. Installed.



CITY OF COLUSA
425 Webster Street
Colusa, CA 95932
(530) 458-4941
Fax: (530) 458-8674

ITEM FOR DECEMBER 19, 2023

To: Colusa City Council Members

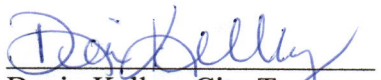
Re: Treasurer's Report for month ending October 2023

Please find the attached financial reports for your review. Based on the information provided to me by the finance department, this report represents the financial record as of October 31, 2023.

I have included a summary below:

Bank Balance as of October 31, 2023	\$6,746,587.33
Outstanding payables	(256,534.54)
LAIF Balance as of October 31, 2023	11,037,179.79
Petty Cash	500.00
Total Balance as of October 31, 2023	<u>\$17,527,732.58</u>

Respectfully submitted,


 Devin Kelley, City Treasurer

**CITY OF COLUSA, CALIFORNIA
BANK RECONCILIATION
FOR THE MONTH OCTOBER 2023**

Bank Records:

Wells Fargo Bank Balance - October 31, 2023	\$ 6,746,587.33
Wells Fargo Escrow Account Balance - October 31, 2023	-
 ADD / SUBTRACT:	
Outstanding Accounts Payable	(254,752.27)
Outstanding Payroll Payable	(1,782.27)
Reconciling Items:	-
<hr/>	
Reconciled Checking Balance - Wells Fargo Bank - October 31, 2023	6,490,052.79
LAIF Balance - October 31, 2023	11,037,179.79
Petty Cash Balance - October 31, 2023	500.00
<hr/>	
Total Reconciled Bank Balances - October 31, 2023	<u><u>\$ 17,527,732.58</u></u>

City Records (Post Journal Entries):

10200 - Wells Fargo Bank Operating / USDA Loan Escrow	\$ 6,490,764.61
10995 - LAIF	11,037,179.79
10100 - Petty Cash	500.00
<hr/>	
Total Checking and LAIF	\$ 17,528,444.40
 ADD / SUBTRACT:	
Credit Card Deposits in MOMS - Not In Bank	(1,125.80)
Rec.Desk not posted - In Bank	40.00
Credit card Pmt	373.98
 <hr/>	
Total Reconciled Book Balance - October 31, 2023	<u><u>\$ 17,527,732.58</u></u>

ORDINANCE NO. 563

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLUSA AMENDING APPENDIX A – ZONING BY REPEALING AND REPLACING ARTICLE 39 - FLOODPLAIN MANAGEMENT OF THE COLUSA MUNICIPAL CODE

WHEREAS, FEMA has completed a Flood Insurance Study (FIS), of the County of Colusa region, and has updated and adjusted the information on the Flood Insurance Rate Maps (FIRM),

WHEREAS, With the adoption of the new Colusa County Flood Rate Insurance Maps (FIRM), FEMA Region IX Regional Service Center conducted an audit of the cities floodplain development ordinance.

WHEREAS, the City is updated Article 39 of Appendix A – Zoning Code, relative to floodplain management.

WHEREAS, the City of Colusa City Council has considered public comment at a duly noticed public hearing.

The City Council of the City of Colusa, State of California does hereby ordain as follows:

Article 39. Floodplain Management.

Sec. 39.01. Statutory authorization, findings of fact, purpose and method.

- (a) **Statutory Authorization.** The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local government units authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Colusa does hereby adopt the following floodplain management regulations.
- (b) **Findings of Fact.**
 1. The flood hazard areas of the City of Colusa are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 2. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to the flood loss.
- (c) **Statement of Purpose.** It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
 1. Protect human life and health.

2. Minimize expenditure of public money for costly flood control projects.
 3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
 4. Minimize prolonged business interruptions.
 5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in areas of special flood hazard.
 6. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage.
 7. Ensure that potential buyers are notified that property is in an area of special flood hazard.
 8. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- (d) **Methods of Reducing Flood Losses.** In order to accomplish its purposes, this ordinance includes methods and provisions to:
1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities.
 2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters.
 4. Control filling, grading, dredging, and other development which may increase flood damage.
 5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

Sec. 39.02. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

"Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel

does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard"- see "Special flood hazard area."

"Base flood" means a flood which has a one percent chance of being equalled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.

"Basement" means any area of the building having its floor below ground level on all sides.

"Building" - see "Structure"

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood, flooding, or flood water" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source.
2. The condition resulting from flood-related erosion - see "Flood-related erosion".

"Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source - see "Flooding".

"Floodplain administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible,

natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"Floodplain management regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to non-residential structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway".

"Floodway fringe" is that area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.

"Fraud and victimization" means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

"Governing body" is the local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

"Hardship" means the exceptional hardship that would result from a failure to grant the requested variance. The city council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

"Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement (see "Basement" definition).

1. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation design requirements, including, but not limited to:
 - a. The wet floodproofing standard in Section 39.05(a)(3)(c).
 - b. The anchoring standards in Section 39.05(a)(1).
 - c. The construction materials and methods standards in Section 39.05(a)(2).
 - d. The standards for utilities in Section 39.05(b).
2. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "Basement" definition). This prohibition includes below-grade garages and storage areas.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean sea level" means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NGVD) of 1988 nor other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"New construction", for floodplain management purposes, means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by this community, and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by this community.

"Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

"One-hundred-year flood" or "100-year flood" - see "Base flood."

"Public safety and nuisance" means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational vehicle" means a vehicle which is:

1. Built on a single chassis.
2. Four hundred square feet or less when measured at the largest horizontal projection.
3. Designed to be self-propelled or permanently towable by a light-duty truck.
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Remedy a violation" means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impact may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sheet flow area" - see "Area of shallow flooding".

"Special flood hazard area (SFHA)" means an area having special flood, and shown on a FIRM as Zone A, AO, AI-A30, AE, A99 or AH.

"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Sec. 39.03. General provisions.

- (a) Lands to which this ordinance applies. This shall apply to all areas of special flood hazards within the jurisdiction of the City of Colusa.
- (b) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) dated May 15, 2003 and accompanying Flood Insurance Rate Maps (FIRMs), dated May 15, 2003, and all subsequent amendments and/or revisions, are hereby reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City of Colusa by the Floodplain Administrator. The study and FIRMs are on file at 425 Webster Street, City of Colusa, City Hall, Executive Secretary's Office, Colusa, California 95932.
- (c) Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the term of this ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City of Colusa from taking such lawful action as is necessary to prevent or remedy any violation.
- (d) Abrogation and greater restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (e) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:
 - 1. Considered as minimum requirements.
 - 2. Liberally construed in favor of the governing body.
 - 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
- (f) Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Colusa, any officer or employee thereof, the State of California, or the Federal Insurance Administration, Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- (g) Severability. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be

unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

Sec. 39.04. Administration.

- (a) Establishment of development permit. A development permit shall be obtained before any construction or other development begins within any area of special flood hazard established in Section 39.03(b). Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:
1. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures - in Zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures; or
 2. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, if required in Section 39.05(a)(3)(b); and
 3. All appropriate certifications listed in Section 39.04(c)(4) of this ordinance; and
 4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- (b) Designation of floodplain administrator. The city manager or his or her designee shall serve as city's floodplain administrator and shall administer, implement, and enforce this ordinance by granting or denying development permits in accord with its provisions.
- (c) Duties and responsibilities of the floodplain administrator. The duties and responsibilities of the floodplain administrator shall include, but not be limited to the following:
1. Permit review. Review all development permits to determine that:
 - a. Permit requirements of this ordinance have been satisfied.
 - b. All other required state and federal permits have been obtained.
 - c. The site is reasonably safe from flooding.
 - d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
 2. Review and use of any other base flood data. When base flood elevation data has not been provided in accordance with Section 39.03(b), the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer Section 39.05. Any such information shall be submitted to the city council for adoption.

3. Notification of other agencies. In alteration or relocation of a watercourse:
 - a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation.
 - b. Submit evidence of such notification to the Federal Insurance Administration and Federal Emergency Management agency.
 - c. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
4. Documentation of floodplain development. Obtain and maintain for public inspection and make available as needed the following:
 - a. Certification required by Section 39.05(a)(3)(a) (lowest floor elevations).
 - b. Certification required by Section 39.05(a)(3)(b) (elevation or floodproofing of nonresidential structures).
 - c. Certification required by Section 39.05(a)(3)(c) (engineered foundation openings).
 - d. Certification of elevation required by Section 39.05(c) (subdivision standards).
 - e. Certification required by Section 39.05(f) (floodway encroachments).
5. Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, shall:
 - a. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
 - b. Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.
 - c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
 - d. Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.
6. Map determinations. Make interpretations where needed, as to the location of the boundaries of the areas of special flood hazard. Where there appears to be a conflict between a mapped boundary and actual field condition, grade and base flood elevations shall be used to determine the boundaries of the special flood hazard area. The person

contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 39.06.

7. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available. The analyses shall be prepared by a qualified registered professional engineer in a format required by FEMA.
8. Remedial action. Take action to remedy violations of this ordinance as specified in Section 39.03(c) or other applicable law.

Sec. 39.05. Provisions for flood hazard reduction.

- (a) Standards of construction. In all areas of special flood hazards the following standards are required:
 1. Anchoring.
 - a. All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - b. All manufactured homes shall meet the anchoring standards of Section 39.05(d).
 2. Construction materials and methods. All new construction and substantial improvement shall be constructed:
 - a. With materials and utility equipment resistant to flood damage;
 - b. Using methods and practices that minimize flood damage.
 - c. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and if
 - d. Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.
 3. Elevation and floodproofing. (See Section 39.02 definitions for "basement," "lowest floor," "new construction," "substantial damage" and "substantial improvement".)
 - a. Residential construction, new or substantial improvement, shall have the lowest floor, including basement:
 - i. In an AO zone, elevated above the highest adjacent grade to a height exceeding the depth number specified in feet on the FIRM by at least one foot, or elevated at least three feet above the highest adjacent grade if no depth number is specified.

- ii. In an A zone, elevated at least one foot above the base flood elevation, as determined by the City of Colusa.
- iii. In all other zones, elevated at least one foot above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

- b. Nonresidential construction, new or substantial improvement, shall either be elevated to conform with Section 39.05(a)(3)(a) above, or together with attendant utility and sanitary facilities:
 - i. Be floodproofed below the elevation specified in Section 39.05(a)(3)(a) so that the structure is watertight with walls substantially impermeable to the passage of water.
 - ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - iii. Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certification shall be provided to the floodplain administrator.
 - c. All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must exceed the following minimum criteria:
 - i. Be certified by a registered professional engineer or architect to comply with the guidelines for engineered openings in FEMA Technical Bulletin 1, or
 - ii. Have a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
 - d. Manufactured homes shall also meet the standards in Section 39.05(d).
- (b) Standards for utilities.
- 1. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 - a. Infiltration of flood waters into the systems.
 - b. Discharge from the systems into flood waters.

2. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

(c) Standards for subdivisions.

1. All preliminary subdivision proposals shall identify special flood hazard areas and the elevation of the base flood.
2. All subdivision plans will provide the elevation of proposed structure(s) and pad(s). If the site is filled above the base flood elevation, the lowest floor and pad elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.
3. All subdivision proposals shall be consistent with the need to minimize flood damage.
4. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
5. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

(d) Standards for manufactured homes.

All manufactured homes that are placed or substantially improved, within Zones AI-30, AH, and AE on the community's Flood Insurance Rate Map, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation collapse and lateral movement.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

(e) Standards for recreational vehicles.

1. All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map will either:
 - a. Be on the site for fewer than one hundred eighty consecutive days, and be fully licensed and ready for highway use—a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, or
 - b. Meet the permit requirements of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 39.05(d).

(f) Floodways. Located within areas of special flood hazard established in Section 39.03(b) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply.

1. Prohibit encroachments, including fill, new construction, substantial improvement, and other new development unless certification by a registered professional engineer or

architect is provided demonstrating that encroachments shall not result in any increase in [the base] flood elevation during the occurrence of the base flood discharge.

2. If Section 39.05(f)(1) is satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of this ordinance.

Sec. 39.06. Variance and appeals.

- (a) Nature of variances. The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City of Colusa to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

- (b) Variance and appeals procedures.
 1. The planning commission of the City of Colusa shall hear and decide requests for variances from the requirements of this chapter.
 2. The planning commission shall hear and decide appeals on any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.
 3. The planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the
 - a. Danger that materials may be swept onto other lands to the injury of others.
 - b. Danger of life and property due to flooding or erosion damage.
 - c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property.
 - d. Importance of the services provided by the proposed facility to the community.
 - e. Necessity to the facility of a waterfront location, where applicable.
 - f. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

- g. Compatibility of the proposed use with existing and anticipated development.
 - h. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
 - i. Safety of access to the property in time of flood for ordinary and emergency vehicles.
 - j. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - k. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
4. Any applicant to whom a variance is granted shall be given written notice by the floodplain administrator that:
- a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage.
 - b. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the floodplain administrator in the office of the Colusa County recorder.
6. The decision (s) of the planning commission shall be final, unless said decision (s) is appealed to the city council within thirty days of said commission decision (s).
7. The floodplain administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Insurance Administration, Federal Emergency Management agency.
- (c) Conditions for variances.
- 1. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 39.04 and 39.055 of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
 - 2. Variances may be issued for the repair or rehabilitation of "historic structures" as defined in section 39.02 of this ordinance) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - 3. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - 4. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means

to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the city need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City of Colusa believes will both provide relief and preserve the integrity of the local ordinance.

5. Variances shall only be issued upon a:
 - a. Showing of good and sufficient cause.
 - b. Determination that failure to grant the variance would result in exceptional “hardship” (as defined in section 39.02 of this ordinance) to the applicant.
 - c. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in section 39.02—see “Public safety or nuisance”), cause fraud or victimization (as defined in section 39.02) of the public, or conflict with existing local laws or ordinances.
6. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.
7. Upon consideration of the criteria of section 39.06(b)(3) and the purposes of this ordinance, the City of Colusa planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

SECTION 3. ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the Municipal Code will have a significant effect on the environment.

SSECTION 4. SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SSECTION 5. EXECUTION.

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 45 days after its adoption.

Passed and adopted on this ____ day of December 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

GREG PONCIANO, MAYOR

ATTEST:

Shelly Kittle, City Clerk



City of Colusa California

STAFF REPORT

DATE: December 19, 2023
TO: Mayor and Members of the City Council
FROM: Jesse Cain, City Manager

AGENDA ITEM:

Consideration of a Resolution of the City Council of the City of Colusa approving the use of ARPA funds that the Parks, Recreation, and Tree Commission is requesting for C.D. Semple Park.

Recommendation: The Council approve the Proposed Resolution allowing City Staff to begin project planning (material cost and quotes, and timeline).

BACKGROUND ANALYSIS:

In June of this year, the Council approved a proposed ARPA Spending plan that included an allocation of \$100,000 for Park Improvements. The PRT created a list of repairs and improvements for each park. With the approval of the Clean California Local Grant Program award in fall of this year, PRT and City Staff were able to narrow down improvements to be paid for with ARPA Funding.

The proposed project is a revitalization of C.D. Semple Park, estimated to be \$108,000. City Staff and PRT will work with the CCLGP project to find ways to use purchase power for best pricing. The C.D. Semple Park project will be done in phases, and quotes and RFP's come in – essentially putting together the full project timeline, scope, and cost by March 2024.

The project will include updating lighting and picnic tables; revamping t-ball fields; possible new playground; replacement of playground bark with a rubberized playground base; and ADA water fountains with a dog water bowl at the base.

BUDGET IMPACT:

Up to \$100,000 of ARPA Funding

STAFF RECOMMENDATION:

Approve Resolution 23- and the letter from the PRT Commission

RESOLUTION NO. 23-_____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA APPROVING THE USE OF ARPA FUNDS THAT PARKS, RECREATION, AND TREE COMMISSION REQUESTED**

WHEREAS, on December 19, 2023, the City of Colusa City Council approved the use of ARPA funds; and

WHEREAS, the City of Colusa Parks, Recreation, and Tree Commission will use ARPA funds to improve C.D Semple Park.

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 to use ARPA funds to improve C.D Semple Park, 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 19th day of December 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk

December 7, 2023

Dear Colusa City Council members,

At our Parks, Recreation, and Tree Commission meeting on November 30, 2023, we voted unanimously to request that Council approve the release of American Rescue Plan Act (ARPA) funds for upgrades to CD Semple Park. The PRT established a list of park project priorities at our April 19, 2023 meeting, and we are anxious to move forward with the priorities set forth for CD Semple Park as soon as possible. We selected CD Semple because it was the only City park not included in the funding we will receive from the Clean California Grant.

We anticipate that between \$50,000--\$100,000 will be available in ARPA funds for upgrades to CD Semple Park. This seems a particularly appropriate use of ARPA funding, given that during COVID our citizens needed and greatly utilized our park spaces to enjoy recreation and socializing in the fresh air while social distancing.

Thank you for reviewing this request. We look forward to your earliest possible response.

Sincerely,

Elizabeth Yerxa, Chair

Parks, Recreation, and Trees Commission



City of Colusa California

STAFF REPORT

DATE: December 19th, 2023

TO: City Council – Public Hearing Initiate Annexation of City Owned Property

FROM: David Swartz, City Engineer, Planning Dept. Support Via Jesse Cain City Manager

AGENDA ITEM: City Council to consider Resolution _____ to initiate proceedings for the annexation of approximately 509.78 acres of City-owned property adjacent to the wastewater treatment plant.

Recommendation: Staff recommends Council adopt the Resolution thereby initiating proceedings for the annexation of 509.78 acres of City-owned property located adjacent and easterly of the existing wastewater treatment plant more in particular defined by the following APN's: 017-020-024, 025, 026, 027 & 017-030-079,080.

BACKGROUND ANALYSIS: The City's Wastewater Treatment Plant (Plant) is located approximately 0.30 of a mile southwest of the City limits. It consists of a pond system, with ten ponds total. This system supports a low-rate biological process that produces an effluent considered equivalent to secondary effluent from conventional mechanical process. The Plant currently operates under Wastewater Discharge requirements Order No. R5-2002-0020, National Pollutant Discharge Elimination System (NPDES) Permit No. CA 007899, issued March 2002. The Plant discharges to the Powell Slough tributary.

In 2018 the City of Colusa purchased property directly south and east of the existing Plant. The property was purchased to facilitate future needs of treatment plant capacity and filtration of sewage waste, primarily to eliminate the need for the City to continue to discharge wastewater effluent to surface water and to remove the NPDES permit requirements. Since that time the city has conducted preparatory construction on much of this proposed annexation area by installing an elaborate underdrain system which is part of the new treatment plant strategy.

The Plant, itself is within City limits, but is not continuous to the main boundaries of the city. Therefore, for an annexation of additional properties to the boundaries of the Plant, the annexation must meet California Government Code section 56742, which states:

- (a) Notwithstanding Section 56741, upon approval of the commission a city may annex non-contiguous territory not exceeding 300 acres if the territory meets all of the following requirements:
- (1) It is located in the same county as that in which the city is situated.
 - (2) It is owned by the city.
 - (3) Territory that is used by a city for the reclamation, disposal, and storage of treated wastewater may be annexed to the city pursuant to this section **without limitation as to the size of the territory.**

The property to be annexed totals 509.78 acres +/- and is located within the City's Sphere of Influence (SOI) and within the same county. The property, as noted above, is owned by the City.

BUDGET IMPACT

LAFCO fees are anticipated to be around \$3500, and there will be some staff time dedicated to the project for reports, mapping, public hearings, etc.

STAFF RECOMMENDATION

Adopt the proposed attached Resolution with Annexation map

NOTICE OF INTENT TO CIRCULATE PETITION

Government Code Section §56700.4 states that:

- a) Before circulating any petition for change of organization, the proponent shall file with the Executive Officer a Notice of Intention that shall include the name and mailing address of the proponent and a written statement, not to exceed 500 words in length, setting forth the reasons for the proposal. The notice shall be signed by a representative of the proponent.
- b) After the filing required pursuant to subdivision (a), the petition may be circulated for signatures.

Notice is hereby given of the intention to circulate a petition proposing to:

The reasons for the preproposal are:

Proponent's Name:		
Address:		
City:		Zip:
Phones:	Work:	Fax:
	Cell	Home:
Email:		

(Signature) (Date)

(Printed Name)

Attachments: Map & Legal Description of Proposal
Draft Petition

Before circulating a petition, file this notice with LAFCO'S Executive Officer at:

*Colusa LAFCO
P.O. Box 2694
Granite Bay, CA 95746
j.benoit4@icloud.com*

RESOLUTION NO. 23-_____

A RESOLUTION OF THE CITY OF COLUSA CITY COUNCIL REQUESTING THE LOCAL AGENCY FORMATION COMMISSION TO BEGIN PROCEEDINGS FOR THE ANNEXATION OF PROPERTY NOW LOCATED IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF COLUSA TO THE INCORPORATED TERRITORY OF THE CITY OF COLUSA (APN's 017-020-024,025,026,027 & 017-030-079,080)

BE IT RESOLVED, By the City Council of the City of Colusa ("City"), that

WHEREAS, this Council, by this Resolution, now desires to initiate proceedings to annex Property to City, all as provided by the Cortese-Knox-Hetzberg Local Government Reorganization Act of 2002 ("the Act"), as set forth in Division 3, title 5 of the California Government Code ("Section 56742"); and

WHEREAS, notice of intent to adopted the resolution initiating this annexation has been provided to the Local Area Formation Commission (LAFCo), interested agencies and subject agencies; and

WHEREAS, the territory proposed to be annexed is uninhabited, and depicted and description of the boundaries of the territory is set forth in Exhibit A, attached hereto and by this release incorporated herein; and

WHEREAS, California Government Code section 56742, allows such an annexation to proceed, including for areas larger than 300 acres: and

WHEREAS, the property to be annexed totals 509.78 acres +/- and is located within the City's Sphere of Influence (SOI) and within the same county.

WHEREAS, the property is located within the same County and is contiguous to the existing boundaries of the City and are under ownership by the City and is within the logical boundaries of the territory of City as the property is located and consistent with the Sphere of Influence of the City.

WHEREAS, this Council certifies that the project is exempt from California Environmental Quality Act review pursuant to Section 15061(b)(3) (General Review) and 15320.

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. 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 19th day of December 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk

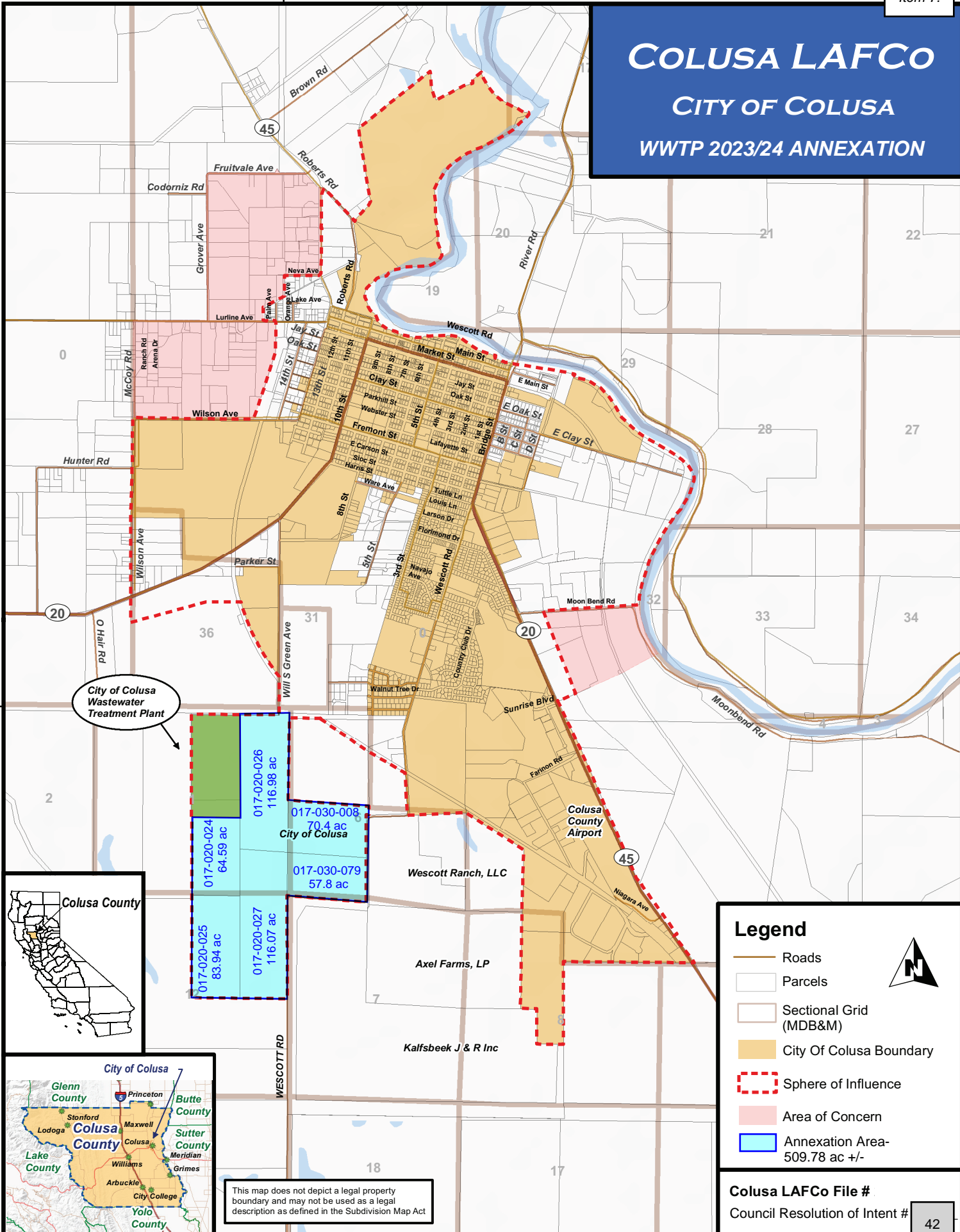
COLUSA LAFCO

CITY OF COLUSA

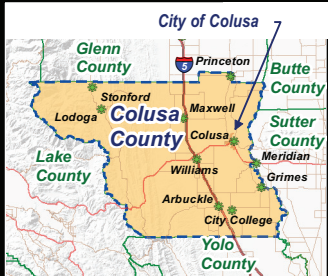
WWTP 2023/24 ANNEXATION

Township 16 North

Township 15 North



City of Colusa Wastewater Treatment Plant



This map does not depict a legal property boundary and may not be used as a legal description as defined in the Subdivision Map Act

Legend

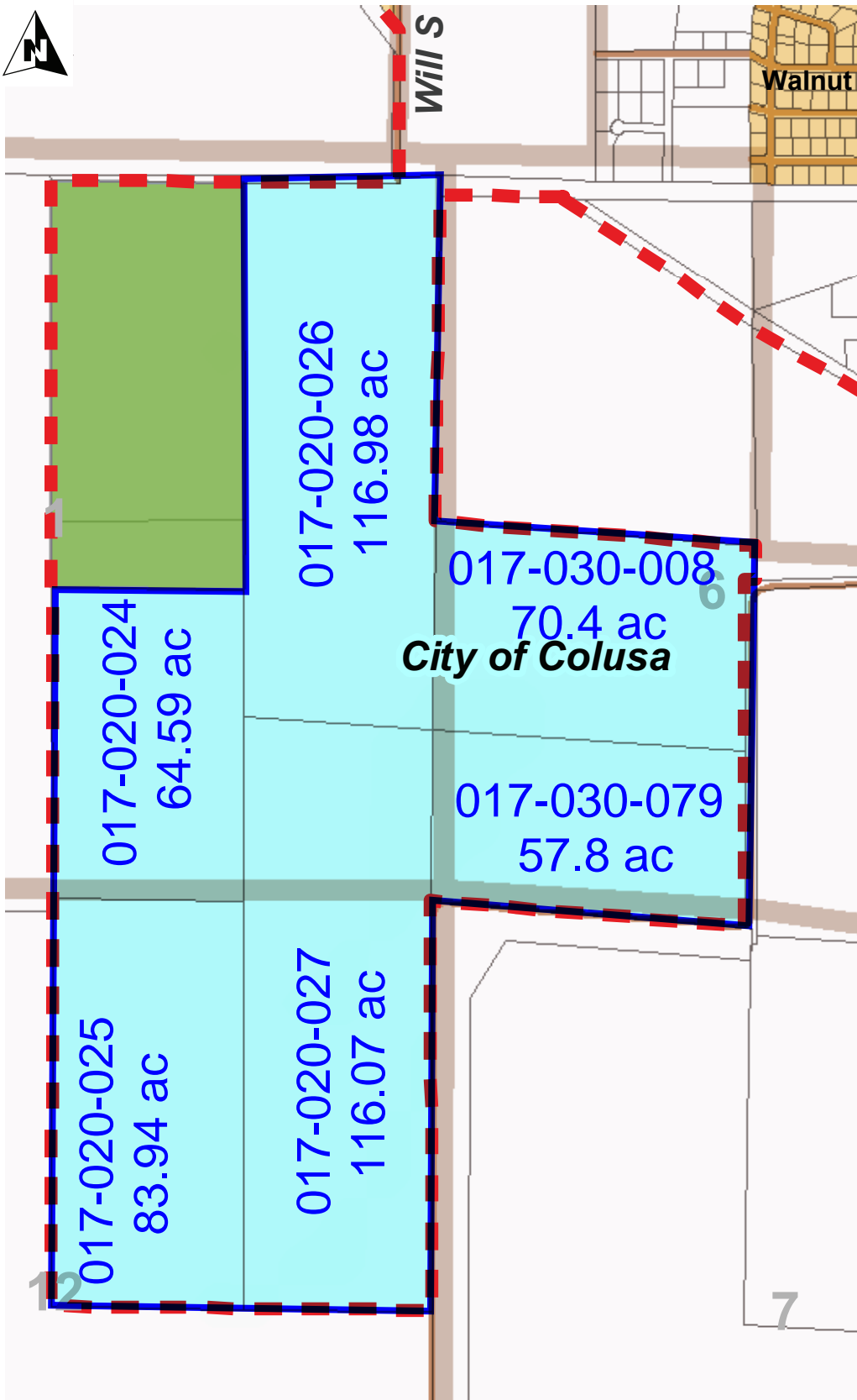
- Roads
- Parcels
- Sectional Grid (MDB&M)
- City Of Colusa Boundary
- Sphere of Influence
- Area of Concern
- Annexation Area- 509.78 ac +/-

Colusa LAFCo File #
Council Resolution of Intent # **42**

COLUSA LAFCO

CITY OF COLUSA

WWTP 2023/24 ANNEXATION





City of Colusa California

STAFF REPORT

DATE: December 19, 2023
TO: Mayor and Members of the City Council
FROM: Jesse Cain, City Manager

AGENDA ITEM:

Consideration of a Resolution of the City Council of the City of Colusa Approving and Authorizing the City Manager to sign the Hybrid Renewable Electric Energy Power Purchase Agreement with Glanris, Colusa LLC.

Recommendation: Council to adopt the Proposed Resolution and delegate the City Manager authority to execute both the Hybrid Renewable Electric Energy Power Purchase Agreement.

BACKGROUND ANALYSIS:

The City of Colusa has been approached by Glanris Colusa LLC, to enter into a Hybrid Renewable Electric Energy Power Purchase Agreement (PPA). Glanris Colusa LLC is a company that intends to produce electricity through renewable sources such as bio-waste, etc.

This PPA would be an agreement between the City and Glanris Colusa LLC, for the City to purchase the electricity that they produce at a rate that is lower than we currently purchase from Pacific Gas and Electric (PG&E). In the project's infancy, it will produce less power than the City currently uses, but will act to offset our current PG&E costs. As the project is built out, the City of Colusa and Glanris Colusa, LLC will work together to complete the BioMat application with PG&E which allows the City to sell any surplus electricity back to PG&E for a profit or the ability to provide electricity to future projects near Colusa's Bio innovations center located at 1480 Will S Green Avenue.

We are currently working on a lease agreement with Glanris Colusa LLC for the City-owned property located at 1480 Will S Green Avenue. I should have the lease agreement back in front of the City Council within the next 60 days so that the project can move forward. The PPA is an important part of this process that will ensure funding.

BUDGET IMPACT:

This is an opportunity for the City of Colusa to partner with a company that allows us to put renewable electricity back in the electrical grid. In doing so, this project, at full build-out, has the potential to generate extra city revenues.

STAFF RECOMMENDATION:
Approve Resolution 23-
Agreement

RESOLUTION NO. 23-_____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA AUTHORIZING THE CITY MANAGER TO SIGN A HYBRID RENEWABLE ELECTRIC ENERGY POWER PURCHASE AGREEMENT WITH GLANRIS COLUSA, LLC**

WHEREAS, on December 19, 2023, the City of Colusa City Council authorized the City Manager to sign the purchase power agreement with Glanris Colusa, LLC; and

WHEREAS, the City has a plan to enter into a lease agreement at the Colusa Bio innovation center with Glanris Colusa, 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 to enter into a purchase power agreement (PPA), 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 on December 19, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk

Hybrid Renewable Electric Energy Power Purchase Agreement

This Hybrid Renewable Electric Energy (HREE) Power Purchase Agreement (“PPA” or “Agreement”) is made and entered into as of this 19th day of December 2023 (the “Effective Date”), between Glanris Colusa, LLC, , a Tennessee company (“Provider”), and The City of Colusa, CA., (“Purchaser” or “City”) and, together with Provider, each, a “Party” and together, the “Parties”).

RECITALS:

The following Recitals are a substantive part of this PPA.

WHEREAS, Purchaser acknowledges that Provider will install, own, and operate a hybrid renewable electric energy system (the “System”) at 1480 Will S Green Ave. Colusa, CA 95932 or a neighboring parcel (the “Premises”) for the purpose of providing Hybrid Renewable Electric Energy (as hereafter defined) to begin to meet 100% of Purchaser’s electric consumption needs for the Consumers of the City of Colusa, CA., and Provider is willing to do the same;

WHEREAS, Purchaser and Provider acknowledge that Provider will be producing hybrid renewable electric energy in excess of Provider’s needs and it is acknowledged that Purchaser will purchase all excess electricity at a rate set in Schedule 2 attached herein.

WHEREAS, the Parties acknowledge and agree that, should it be required, a future Grid Access Agreement providing access by and between the Parties to the PG&E service panel at the Premises will be executed by the Parties and that Provider will have unlimited backfeed capacity to feed into the PG&E grid with the exception of mechanical or electrical constraints or PG&E rules and regulations.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Term. This PPA will commence on the Date Provider receives a Notice To Operate and all obligations and work to be completed by Provider set forth in the companion cooperation agreement have been fulfilled and completed and will terminate 20 years from the date of first electric energy is delivered to Purchaser by the HREE System and billed to Purchaser unless the PPA is terminated earlier as set forth herein. Provider shall provide no less than three (3) business days written notice prior to the Service Commencement Date to Purchaser, stating that the System is ready for operation and has successfully completed all performance testing in accordance with Prudent Industry Practice (as defined below) and that service under this PPA will begin on the date certain

indicated in the notice (the “Service Commencement Date”). The delivery of energy from the System as part of the commissioning and testing process shall not constitute the commencement of service. At any time prior to the end of the Term, the Parties may meet and negotiate the terms and conditions on which this PPA may be extended in their respective sole and absolute discretion. For purposes of this paragraph, “Prudent Industry Practice” shall mean the practices, methods and acts engaged in or approved by a significant portion of the hybrid renewable electric energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

2. Schedules. The following Schedules attached hereto and incorporated herein set forth more specific terms and conditions of this Agreement.

Schedule 1 - Description of the Premises

& Schedule 2 - kWh Rate

Schedule 3 - Estimated Annual Schedule 4 -

Notice Information

3. Compliance with Laws. Provider shall ensure that the System conforms with all Applicable Laws (as defined in Paragraph 6 below), regulations and orders, including, without limitation, obtaining all permits or approvals required by any governmental entity. At no expense to Purchaser, Purchaser shall reasonably cooperate with Provider in obtaining any and all permits or approvals required by any Governmental Authority.
4. Delivery of Electricity to Purchaser. Provider shall provide all wiring from the System to the point at which the System connects to the Purchaser’s electrical system (“Connection Point”) as identified in Exhibit “B” attached hereto and incorporated herein. Custody, control and ownership of electricity shall transfer from the Provider to the Purchaser at the Connection Point. The parties shall mutually agree upon the method and metering device/s which shall meter and measure the quantity and time of delivery of all electric energy sold hereunder as set forth in Section 13 herein.
5. Interruptions in Delivery of Electricity. Provider may interrupt, reduce or discontinue the delivery of electricity for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of electricity. No such interruption shall last more than twenty-four (24) hours except for extraordinary or unanticipated repairs without the prior consent of Purchaser, which consent will not be unreasonably withheld, conditioned or delayed. Provider shall use reasonable best efforts to give written notice to Purchaser of any expected interruption of delivery of electricity at least five (5) business days prior to the date of any interruption and shall use its reasonable best efforts to inform Purchaser of the expected length of any interruption and to schedule such interruption to minimize disruption to Purchaser. Provider reserves the right to curtail the delivery of electricity if so directed by authorized governmental authorities, electric utilities or as necessitated

by an emergency or immediate risk to the health and safety of persons or destruction of property. Provider shall use reasonable care to ensure the operation of the System and supply of electricity. However, the Parties explicitly acknowledge and understand that the System is comprised of intermittent generation facilities and may not provide Purchaser with an uninterrupted supply of electricity at all times.

6. Conditions to Provider's Obligations. Subject to the terms and conditions of this PPA, each of the following conditions precedent shall be met prior to Provider's obligations to:
 - (a) commence construction and installation of the System; and (b) commence the delivery of electricity to Purchaser:
 - a) Necessary Governmental Approvals. Provider shall have received and retained where necessary, all applicable and material federal, state and local approvals, permits, licenses and authorizations necessary: (a) for the construction and installation of the System, prior to the commencement of construction and installation of the System; and (b) for the generation and sale of electricity to the Purchaser under this PPA, prior to the commencement of delivery of electricity to Purchaser.
 - b) Additional Consents and Approvals. Provider shall have obtained from all Parties any necessary easements, leases/leasebacks, licenses, consents and approvals and other rights Provider reasonably deems necessary or desirable for the construction and installation of the System, the production and delivery of electricity to the Connection Point, and the operation and maintenance of the System under this PPA.
8. Changes in Applicable Law. Provider will not be entitled to any adjustment in the Energy Price as a result of a change in Applicable Law which alters the value or applicability of the Renewable Energy Credits and Environmental Financial Attributes and accepts all risk associated with same. As used in this PPA, "Applicable Law" shall mean, with respect to Governmental Authority (defined as any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government), any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.
9. Purchase and Sale of Electricity. In accordance with the terms and conditions herein, commencing on the Service Commencement Date (as defined in Section 1 herein) and continuing throughout the remainder of the Term (as defined in Section 1 herein), Provider shall deliver to the Purchaser at the Connection Point, and Purchaser shall accept delivery from Provider at the Connection Point, all electrical energy generated by the System. The amount of electrical power delivered to the Connection Point from the System ("System Output") shall be in whole kWh and determined in accordance with the provisions of Section 13 herein below.
10. Payments. Provider will invoice Purchaser each month in the manner set forth in Exhibit "C". Purchaser shall pay the full Monthly Payment or any amounts owed pursuant to Section 13 within thirty (30) days of the invoice date from Provider for the prior month ("Due Date"). Purchaser shall, at Purchaser's option, (a) cause a check to

be drawn in the undisputed amount due made payable to the Provider, or (b) pay such amount via wire transfer to Provider's bank account. Unless otherwise directed by Provider, all payments must be made payable to Glanris Colusa, LLC.

11. Energy Credits and Environmental Financial Attributes. The Provider shall own all "Renewable Energy Credits" and all "Environmental Financial Attributes" relating to the System or the electricity generated by the System. "Renewable Energy Credits" shall mean those certificates (including Tradable Renewable Certificates), green-e tags, pollution credits, carbon offset credits, or other transferable indicia used to control pollution by providing economic incentives for achieving reductions in the emissions of pollutants, or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the electricity during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (including but not limited to, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time. "Environmental Financial Attributes" shall mean all of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future, excluding, however, any Renewable Energy Credits: (i) performance-based incentives, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, "allowances"), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such allowances. In addition, Provider shall retain any resource adequacy credits or benefits and any capacity credits that may be available to independent power producers, and shall have the right to sell or monetize such attributes.
12. Provider Representations. Provider hereby represents to Purchaser that:
- a) Due Authorization. Provider is duly authorized and empowered to enter into this PPA;
 - b) No Conflict. This PPA is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which it is a party;
 - c) Accuracy of Information. The information provided pursuant to this PPA as of the Effective Date is true and accurate in all material respects; and
 - d) Ability to Perform. Provider has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect either Party's ability to perform its respective obligations hereunder.
13. Metering.
- a) Metering Equipment. The Parties acknowledge and agree that Provider shall, or shall cause a third party to, provide, install, own, operate and maintain a meter on the Property with real time digital access that is accessible by Provider and Purchaser, and Provider shall, or shall cause a third party to, exercise reasonable care in the installation, operation, and maintenance of the meter so as to assure to the maximum extent reasonably practical an accurate determination of such quantities. The location of the meter shall be approved by Purchaser prior to its installation and shall be used for the purpose of measuring the System Output.

- b) Meter Reading. Readings of the meter shall be conclusive as to the amount of electricity generated by the System; provided that if the meter is out of service, is discovered to be inaccurate pursuant to subsection 13.c), or registers inaccurately, measurement of electricity generated by the System shall be determined by estimating by reference to quantities measured during periods of similar conditions when the meter was registering accurately. Provider shall use the data taken from the meter readings on a monthly basis to calculate a Monthly Payment under this PPA.
- c) Testing and Correction. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:
- i. If either Party disputes the accuracy or condition of the meter, such Party shall advise the other Party in writing.
 - ii. Provider shall, within fifteen (15) business days after receiving such notice from Purchaser or issuing such notice to Purchaser, advise Purchaser in writing as to Provider's position concerning the accuracy of such meter and Provider's reasons for taking such position.
 - iii. If the Parties are unable to resolve the dispute through reasonable negotiations, then Provider may cause a neutral, unrelated third party having considerable experience testing such meters and acceptable to Purchaser (whose consent shall not be unreasonably be withheld) to test the meter.
 - iv. If the meter is found to be inaccurate by not more than 2%, any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter shall bear the cost of inspection and testing of the meter.
 - v. If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (a) Provider shall promptly cause any meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (b) Provider will pay the cost of inspection and testing of the meter; and (c) the Parties shall estimate the correct amounts of electricity delivered, based on usage during the previous calendar year, for no more than the preceding six (6) months and Provider shall either invoice or credit Purchaser for the correct amounts of electricity delivered.

14. Insurance.

- a) General Liability Coverage. From the Effective Date until termination or expiration of the Term, Provider and its contractors and subcontractors and Purchaser each agree to maintain or cause to be maintained General Liability insurance against claims for bodily injury, loss of life or property damage occurring on the Property (including within the buildings thereon); and on the portion of the street and the sidewalks adjacent thereto with bodily injury, loss of life and property damage coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence. Such insurance may be in the form of blanket liability coverage applicable to the Property and to other property owned or occupied by Purchaser or Provider, as applicable. The other Party shall be named under the applicable policy as Additional Insureds.

- b) **Automobile Coverage.** Provider and its contractors and subcontractors, as applicable, shall carry a business automobile policy with a combined single limit of not less than One Million Dollars (\$1,000,000). Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto). The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the Purchaser.
- c) **Workers Compensation Coverage.** Provider, its contractors and subcontractors as applicable, shall carry Workers' Compensation insurance during the full term or duration of the PPA, to insure statutory liability for injury to its employees in the State of California. The policy should have limits as follows: Bodily injury by accident, \$1,000,000 each accident, and each employee a \$1,000,000 policy limit.
- d) **Property Damage.** Provider will carry all-risk coverage for property damage in an amount equivalent to the full replacement value of the System. Purchaser will carry all-risk coverage for property damage in an amount equivalent to the full replacement value of any improvements located on the Site, excluding the System.
- e) **All Policies.** All insurance, including Workers Compensation coverage, shall include an insurer's Waiver of Subrogation in favor of the other Party and will be in a form and with insurance companies acceptable to the other Party. All insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. The workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the other Party.
- f) **Evidence Required.** Insurance certificates for all coverages required by the PPA shall be provided by each Party to the other Party within twenty (20) business days after the Effective Date, prior to the construction of the System and during the term of this Agreement as requested in writing by the other Party. All insurance policies shall contain a provision that such policies shall not be canceled or terminated without thirty (30) days prior notice from the insurance company to the other Party.

15. Taxes.

- a) **Sale of Energy.** In the event that any state or local taxes are assessed against the consumption of energy, Purchaser shall either pay or reimburse Provider for all such amounts due, including any taxes assessed thereon except any federal or state income taxes imposed on Provider based on such sales.
- b) **Real Estate or Property Taxes.** Provider will pay and hold harmless Purchaser from ad valorem and related property tax, if any, assessed on (i) the System; (ii) Provider's ownership, installation or use of the System; or (iii) any other aspect of this PPA.
- c) **Other Taxes.** Provider will pay and hold harmless Purchaser from any federal, state or local taxes imposed upon Purchaser arising from this PPA, other than as set forth in subsection a) above, including but not limited to Provider's manufacture, installation and acquisition of the System.

16. Default.

- a) **Events of Defaults.** Any one or more of the following events shall constitute an event of default ("Event of Default"): (a) Purchaser fails to pay an invoice within sixty (60) days of the date of the invoice; (b) Purchaser materially interferes with or damages the System; (c) Either Party fails to observe or perform any other material

term or condition in this PPA; (d) Either Party (i) voluntarily or involuntarily files or has filed a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other relief of the same or different kind under any provisions of the bankruptcy laws that is not dismissed within sixty (60) days of the initial filing, (ii) makes an assignment for the benefit of creditors, (iii) has a receiver appointed with respect to the business property or assets of such Party on the Property, or (iv) otherwise is unable to pay its debts as they become due; (e) Either Party misrepresents a material fact contained in this PPA as of the Effective Date; and (f) Either Party violates or fails to enforce any applicable law, regulation or ordinance related to the use or occupancy of the Property.

- b) Right to Cure. Either Party shall, after notice, promptly and diligently commence curing a Default and shall have thirty (30) days after notice is given to complete the cure of said Default; provided, however, that if the nature of the defaulting Party's failure is such that more than thirty (30) days are reasonably required for its cure, then such Party shall not be in Default if the defaulting Party begins such cure within the thirty (30) day period described in the preceding sentence, provides notice to the non-defaulting Party of the extended time required for performance, within such thirty (30) day period, and, thereafter, diligently prosecutes such cure to completion.
- c) Notice of Default. A Party shall not be considered to be in default under this PPA unless (i) the non-defaulting Party has given written notice specifying the default; and (ii) the defaulting Party has failed to cure the default in accordance with provisions of subsection b) above.
- d) Remedies.
 - i. If the defaulting Party has failed to cure as set forth herein, the non-defaulting Party shall have right to terminate this PPA by giving written notice to the defaulting Party on a date specified in such notice.
 - ii. Termination of the PPA pursuant to this Section shall not be deemed to limit the non-defaulting Party's right to pursue any other remedy given under this PPA or now or hereafter existing at law or in equity or otherwise.

17. Termination for Failure to Construct. Should Provider fail to construct the System and begin delivery of electricity to Purchaser within 24 months from the date this PPA is approved by the Colusa City Council, the City may terminate this PPA in the sole discretion of the Colusa City Council.

18. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

19. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the delivery of electricity to the City from the System; otherwise, this Agreement shall

terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

20. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.
21. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
22. Singular and Plural. As used herein, the singular of any word includes the plural.
23. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
24. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.
25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
26. Force Majeure. Notwithstanding any provision to the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), moratoriums, public health orders and regulations or other government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur the term of this Agreement then the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years beyond the date it would have otherwise expired, and further provided that if such delay is longer than six (6) months, Provider may terminate this Agreement upon written notice to the City and the City shall return to Provider any portion of the Mitigation Fee paid for any period after the effective date of such termination.
27. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

28. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.
29. Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Colusa, State of California, or such other appropriate court in said county. Service of process on the City shall be made in accordance with California law. Service of process on Provider shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the City and Provider seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.
30. Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.
31. System as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the construction and operation of the System is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private development into a "public work" development, and that nothing herein shall be interpreted to convey upon Provider any benefit which would transform Provider's private development into a public work project, it being understood that this Agreement is entered into by the City and Provider upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that the City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Provider by this Agreement.
32. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

33. **Cooperation with Financing.** Purchaser acknowledges that Provider will be financing the acquisition of the System and Purchaser agrees that it shall cooperate with Provider and its financing parties in connection with such financing of the System. Such cooperation shall include (a) the furnishing of such Purchaser information reasonably requested by Provider's lender, (b) the giving of such usual and customary estoppel certificates, (c) instruments in commercially reasonable form that provide Provider's lender the right to secure and gain access to the System, (d) accommodating reasonable requests by the financing party for clarifications regarding the rights and duties of the Parties under this PPA; provided, however, in no event will Purchaser be obligated to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Purchaser under this PPA (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Provider as a financing party may reasonably request).
34. **Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both parties specifically approving the amendment (which approval shall not be unreasonably withheld, conditioned or delayed). The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved on behalf of the City by the City Manager upon reasonable approval by the City Attorney.
35. **Assignment.** Provider shall have the right to transfer or assign its rights and obligations under this Agreement (collectively, an "Assignment") to any person or entity (an "Assignee") in connection with a transfer or assignment of all of Provider's interest in the PPA without the prior approval of the City; provided that, (a) Provider shall notify City in writing of such proposed Assignment at least thirty (30) days prior to the effective date of any proposed Assignment, and (b) Provider and Assignee shall enter into a written assignment and assumption agreement, executed in recordable form, pursuant to which Assignee shall agree to assume all duties and obligations of Provider under this PPA remaining to be performed at the time of the Assignment.
36. **Corporate Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.
37. **Notices.** All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested, and addressed to the respective parties as set forth below, or to such other address as either party may from time to time designate in writing by providing notice to the other party:

If to the City Purchaser:

City of Colusa
425 Webster St.
Colusa, CA 95932
Attn: City Manager

If to Provider:
Glanris Colusa, LLC and or its successors or assigns
680 Oakleaf Office Lane
Suite 201
Memphis TN 38117

901-312-7700
Attn: Bryan M Eagle III, CEO

- 38. Nonliability of City Officials. No officer, official, member, employee, agent, or representatives of the City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.
- 39.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

Provider

Purchaser

By: _____ By: _____
 Bryan M Eagle III, Managing Member Jesse Cain, City Manager – Colusa

SCHEDULES

I. Schedule 1: Description of Premises and System

HREE PPA Premises: 1480 Will S Green Ave. Colusa, CA 95932

Hybrid Renewable Electric Energy output: 0-5 MW

Scope: Design and supply grid-interconnected renewable electric energy from Biomass Conversion, Solar, Wind, Battery storage.

NOTE: Provider and Purchaser may jointly elect that energy production take place off-site via a neighboring parcel but maintain Grid Access up to 1600-amp electrical panel on Premises. Access to the electrical panel will be granted regardless of Provider location- on Premises or on a neighboring parcel. Access granted to Provider not to exceed 1800 amps of consumption but does not limit Provider for production of energy into the PG&E grid via the electrical panel on Premises. Provider agrees to install a separate or sub-metering system if necessary.

II. Schedule 2: kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule: The electric production will be metered and billed monthly due within 45 days of billing.

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term		kWh Rate[*] (\$/kWh)
1	.15	15	Year 11-20	
2	.15	15	To be	
3	.15*	13	negotiated	
4	.15*	15	Up on each	
5	.15*	15	5 year	
6	.15*	15	extension	

7	.15*	15	
8	.15*	15	
9	.15*	15	
10	.15*	15	

[*Calculated based on the year 1 kWh Rate multiplied by the CPI inflation factor each year.]

III. Schedule 3 – Estimated Annual Production

Estimated Annual Production commencing on the Commercial Operation Date with respect to the Hybrid Renewable Energy System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
01	18,500,000 (1.5MW/hr, 330d/yr)	11	Same as year 5
2	31,680,000 (4MW/hr, 330d/yr)	12	Same as year 5
3	35,640,000 (4.5MW/hr, 330d/yr)	13	Same as year 5
4	35,640,000 (4.5MW/hr, 330d/yr)	14	Same as year 5
5	35,640,000 (4.5MW/hr 330d/yr)	15	Same as year 5
6	Same as year 5	16	Same as year 5
7	Same as Year 5	17	Same as year 5

8	Same as Year 5	18	Same as year 5
9	Same as Year 5	19	Same as year 5
10	Same as Year 5	20	Same as year 5

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

Schedule 4 – Notice Information

Purchaser:

The City of Colusa and or its successors or assigns.
425 Webster Street
Colusa, CA 95932

Attn: Jesse Cain City Manager
530-682-2933

Provider:

Glanris Colusa, LLC and or its successors or assigns

680 Oakleaf Office Lane
Suite 201
Memphis TN 38117

901-312-7700 Bryan M. Eagle III, Managing Member
bryan@glanris.com

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