



CITY COUNCIL MEETING

Tuesday, December 05, 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 (Location: "Business Services", Fairway Esplanade at Wynn Casino & Resort,
3131 Las Vegas Blvd S, Las Vegas, NV 89109.

Council Member – Denise Conrado

Council Member – Ryan Codorniz

Council Member – Daniel Vaca

CALL TO ORDER

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. 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

COUNCIL MEMBER /CITY MANAGER REPORTS AND STAFF COMMENTS

PUBLIC HEARING

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

Recommendation: Council to open the Public Hearing and;

Council to introduce and read by title only the Ordinance to repeal the current Article 39 and Replace it with Updated Article 39 that has been updated to comply with new NFIP guidelines.

FUTURE AGENDA ITEMS

ADJOURNMENT



SHELLY KITTLE, CITY CLERK

Notice of Meetings and Agendas

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

Americans with Disabilities Act

In compliance with the Americans with Disabilities Act, persons requiring accommodations for a disability at a public meeting should notify the City Clerk at least 48 hours prior to the meeting at (530) 458-4740 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”

ORDINANCE NO. 562

AN ORDINANCE OF THE CITY COUNCIL 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, BORDERED BY THE SACRAMENTO RIVER ON THE NORTH, CLAY STREET ON THE SOUTH, AND D STREET ON THE WEST IN COLUSA

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

Section 1. The City Council of the City of Colusa finds and determines that:

A. All procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 *et seq.*, and the CEQA guidelines, title 14 of the California Code of Regulations, chapter 3, §15000 *et seq.* have been satisfied because:

1. October 30, 2007, the City of Colusa in its capacity as CEQA Lead Agency certified a Master Environmental Impact Report for the City of Colusa General Plan (SCH 2005072145), which document was prepared in accordance with CEQA Guidelines section 15175 and 15176.
2. The City of Colusa, as “Lead Agency,” commissioned the preparation of an Initial Study/Mitigated Negative Declaration (“IS/MND”), dated February 2019, and incorporated herein by reference, to evaluate the potential environmental impacts associated with the Colusa Triple Crown Cannabis Business Park.
3. The IS/MND was prepared in compliance with CEQA Guidelines Sections 15152 & 15168, and identified mitigation measures that would avoid or mitigate the potential environmental effects of the Project to a point where clearly no significant effects would occur, and such mitigation measures are incorporated to the Project herein by reference.
4. On July 16, 2019, in compliance with to CEQA Guidelines Section 15074, the City Council passed Resolution 19-19, adopting a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Colusa Triple Crown Cannabis Business Park and no further environmental review is required.

B. The development agreement is consistent with and implements the policies of the City of Colusa's General Plan, including the Housing Element.

C. The development agreement is compatible with the land uses and development regulations prescribed by the zoning for the 85.60-acre property in the City of Colusa located 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 (“Site”).

D. The development agreement will not be detrimental to the health, safety, and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of residents of the city as a whole.

E. The development agreement will not adversely affect the orderly development of property or the preservation of property, on or off the project Site.

F. The agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 2. The Planning Commission, during a duly noticed public hearing held on August 24, 2022, passed a resolution by a vote of 4-0 recommending City Council approval of this Ordinance for the Development Agreement.

Section 3. The City Council of the City of Colusa hereby approves the Ordinance and the Development Agreement, attached hereto and incorporated by reference herein, by and between the City of Colusa and Colusa Riverbend Estates, LP and Pomona Rio Property, LLC relative to the cultivation and manufacturing of cannabis and cannabis products.

Section 4. The City Council of the City of Colusa hereby directs the Mayor to sign the Development Agreement by and between the City of Colusa and Colusa Riverbend Estates, LP and Pomona Rio Property, LLC relative to cannabis manufacturing on behalf of the City of Colusa and directs the City Clerk to record said document with the Colusa County Recorder.

Section 5. Within fifteen days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in a newspaper of general circulation circulated in the City. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in a newspaper of general circulation circulated in the City, and shall post in the office of the City Clerk a certified copy of the City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code section 36993 (c) (1) are met.

INTRODUCED at a regular meeting of the City Council of the City of Colusa held on November 21, 2023, by the following vote:

AYES: Codorniz, Conrado, Vaca and Ponciano.

NOES: Garofalo.

ABSENT: None.

ABSTAIN: None.

Greg Ponciano, Mayor

ATTEST:

SHELLY KITTLE, City Clerk

ATTACHED:

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF COLUSA AND
COLUSA RIVERBEND ESTATES, LP AND POMONA RIO PROPERTY, LLC

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Colusa
425 Webster Street
Colusa CA 95932

Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of _____, 2023 (the "**Execution Date**"), by and between the **CITY OF COLUSA, a California municipal corporation ("City")** and **COLUSA RIVERBEND ESTATES L.P., a California limited partnership**, and **POMONA RIO PROPERTY, LLC a California limited partnership** (collectively, "**Owner**"). Although this Agreement is entered into between particular named parties, it runs with the land. City and Owner are sometimes referenced together herein as the "**Parties.**" In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a "**Party.**" The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

- A. The State of California enacted California Government Code Sections 65864 *et seq.* ("**Development Agreement Statutes**") to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the developer, and to meet certain public purposes of the local government.
- C. Owner owns approximately 85.60 acres in the City of Colusa located 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, known herein as "Parcel 1", "Parcel 2", "Parcel 3" and "Parcel 4", as depicted on **Exhibit A** and legally described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Property**").

- D. Owner proposes to develop and operate a business park for cannabis cultivation and processing (the “**Cannabis Center**” or “**Project**”) on approximately 85.60 acres of the Property, as described in **Exhibit C** attached hereto and incorporated herein by this reference.
- E. The Cannabis Center will be developed in three (3) phases (each, a “Phase”, together, “Phases”) with approximately a total of 1,469,546 square feet of building space containing cultivation structures, drying and processing space, warehouses, manufacturing and research facilities, plus a drainage basin, which may be used for all or a combination of such activities as cannabis planting, growing, harvesting, drying, curing, grading, trimming, extracting, manufacture into cannabis products, testing, distribution and transportation. Phase 1 of the Project shall consist of the development of two (2) buildings totaling approximately 401,165 square feet (“**Phase 1**”); Phase 2 of the Project shall consist of the development of an additional four (4) buildings totaling approximately 560,000 square feet (“**Phase 2**”); and Phase 3 of the Project shall consist of the development of a final addition of four (4) buildings totaling approximately 522,680 square feet (“**Phase 3**”) (for a total of approximately 1,483,845 square feet in ten (10) buildings).
- F. The Cannabis Center shall operate in accordance with all applicable cannabis laws promulgated in the State of California and in effect on the Execution Date of this Agreement (collectively, the “California Cannabis Laws”).
- G. Owner may lease all or portions of the Cannabis Center (such lessees and/or their sublessees are identified here in as “**Tenants**”). Owner may also sell all or portions of the Cannabis Center to third parties (“**Buyers**”). Prior to operating a cannabis manufacturing facility, Tenants and Buyers shall be required to obtain a cannabis manufacturing facility regulatory permit from the City of Colusa. Where appropriate, Owner, Tenants and Buyers shall collectively be referred to in this Agreement as “**Developers**”. Compliance with this Agreement shall be the responsibility of the Owner, which may eventually be the Owner’s successor or successors.
- H. Developers will also be required to obtain licenses from the State of California the City’s Cannabis Business Regulatory Permits, to the extent such licenses are required by the California Cannabis Laws and are being issued.
- I. On June 6, 2017, the City Council of City adopted Ordinance No. 519 attached hereto as **Exhibit D** and incorporated herein by this reference amending the City Zoning Code and Municipal Code to permit cannabis-related activities and authorize issuance of cannabis-related permits, which among other things: (1) created a new “CM” Cannabis Manufacturing Combining District zoning district (the “**CM Combining District**”); (2) added a new Section 33.03 to the City Zoning Code authorizing issuance of Cannabis Manufacturing Special Use Permits; (3) added a new Article 21.5 to the Zoning Code providing regulations regarding Cannabis Manufacturing Special Use Permits; (4) added a new Chapter 12F to the Municipal Code authorizing issuance of Cannabis Manufacturing Facilities Regulatory

Permits and providing regulations regarding such permits; and (5) added and amended certain defined terms related thereto (collectively, (the “**City Cannabis Law**”).

J. Land Use Entitlements.

1. Owner has applied to City for the following approvals needed to develop and operate the Project: A General Plan Amendment **was approved and adopted July 16, 2019 Resolution 19-20** to change the land use designation of the Cannabis Center from “Low Density Residential” to “Industrial District” (the “**General Plan Amendment**”).
2. Rezoning **has been approved** to change the zoning for the Cannabis Center from “Planned Development (P-D) District” to “Light Industrial (M-1) District” (the “**M-1 Rezoning**”) (but not mentioning the CM District).
3. Lot line adjustment to merge and reconfigure eight legal parcels into four legal parcels, and to divide the Cannabis Center area into four parcels intended to develop the Project in Phases (the “**Lot Line Adjustment**”).
4. Cannabis Manufacturing Special Use Permit for the Cannabis Center (the “**Special Use Permit**”), submitted with the design review application to the City on March 21, 2022.
5. Cannabis Manufacturing Facilities Regulatory Use Permit for the Cannabis Center (the “**Regulatory Permit**”).
6. This Development Agreement for the Project.

K. As part of adopting the City of Colusa General Plan, City previously prepared and certified a Master Environmental Impact Report (the “**MEIR**”) pursuant to California Public Resources Code §21000 *et seq.* (the California Environmental Quality Act or “**CEQA**”) and Title 14 of the California Code of Regulations, Chapter 3, §15000 *et seq.* (the “**CEQA Guidelines**”). The MEIR evaluated environmental effects of development allowed under the General Plan and identified mitigation measures. The MEIR included analysis of a residential development proposed for the Property (the “**Prior Project**”).

L. Pursuant to CEQA, City prepared a draft Initial Study (“**IS**”) and proposed Mitigated Negative Declaration (“**MND**”) for the Project (State Clearinghouse No. 2019029059, taking into consideration the MEIR’s analysis of the Prior Project and incorporating mitigation measures from the MEIR to the extent applicable to the Project (the “**IS/MND**”). The IS/MND was made available for public review for the period February 13 to March 15, 2019, during which time City received comments. City subsequently considered the comments and prepared responses as appropriate.

- M. City and Owner have agreed that, as a condition of allowing the Cannabis Center, and due to the unique circumstances of the proposed Project, Developers shall pay to the City an annual fixed fee per Phase of the Project, which will cover all activities, including but not limited to, cultivation, manufacturing, warehouse, distribution and sale (but no on-site dispensary), research and development, processing, nursery and administration.
- N. Following recommendations by the Colusa Planning Commission adopted at its hearing on May 22, 2019, the Colusa City Council on July 16, 2019, held a duly noticed public hearing and took the following actions requested by Owner (the “**Initial Approvals**”, and together with approval of this Agreement, the “**Project Approvals**”):
1. **Mitigated Negative Declaration.** After considering the public comments received by City and in compliance with CEQA, adopted Resolution No. 19-19: (a) adopting the MND as adequate under CEQA to consider approval of the Project Approvals; (b) adopting findings as required by CEQA supporting adoption of the MND; (c) accepting mitigation measures recommended by the MND; and (d) adopting a mitigation monitoring and reporting program (“**Mitigation Program**”) to be applied to the Property and the Project.
 2. **Rezoning.** Introduced Ordinance No. 537 (a) approving a General Development Plan Rezoning the Property to M1-PD to allow the Cannabis Center uses proposed by Owner and to the Cannabis Center Site (the “**Rezoning**”), which Ordinance No. 537 at its second reading was adopted by the City Council at a duly noticed public hearing on August 6, 2019 approving the Rezoning. As part of approving the Rezoning, the City Council acknowledged that adopting the City Cannabis Law allowing and regulating cannabis cultivation served to supersede earlier adopted Section 12E of the Municipal Code which purported to prohibit cannabis cultivation, even though Ordinance 519 did not expressly identify or delete Section 12E, so that the Project and the Project Approvals are not inconsistent with or in violation of the Municipal Code notwithstanding Section 12E remaining part of the Code.
 3. **Cannabis Manufacturing Special Use Permit.** Adopted Resolution No. _____ approving the Special Use Permit to allow the Cannabis Center uses proposed by Owner.
 4. **Cannabis Manufacturing Facilities Regulatory Permit.** Adopted Resolution No. _____ approving the Regulatory Use Permit to allow the Cannabis Center uses proposed by Owner.
- O. On _____, the City Engineer approved the Lot Line Adjustment pursuant to the California Subdivision Map Act and City Code, which does not require action by the Planning Commission or City Council.

- P. City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code §65867. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in City’s General Plan, zoning code and municipal ordinances.
- Q. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City and the Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety and welfare are best served by entering into this obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement; *i.e.*, assuring Owner that it will enjoy the development rights.
- R. The City agrees that Owner’s land use entitlements for the Project shall vest for the Term of this Agreement as described below.
- S. After conducting a duly noticed hearing, on August 24, 2022 the Planning Commission of the City reviewed, considered and recommended approval of the Development Agreement and recommended approval of the execution of this Agreement to the City Council. The Planning Commission found the Development Agreement: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized by the zoning code; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.
- T. After conducting a duly noticed hearing on November 21, 2023, and after independent review and consideration, the City Council introduced Ordinance No. _____ to approve this Agreement (the “**Enacting Ordinance**”). On _____, 2023 (the “**Approval Date**”), the City Council held a duly noticed public hearing for a second reading, considered the adopted MND as it applied to this Agreement, and adopted Ordinance No. _____ approving this Agreement and authorizing its execution. As part of its approval, the City Council made the findings required by the Development Agreement Statute and City Code with respect to this Agreement, and among other attributes found this Agreement and the Project: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized in the zoning code; is in

conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Colusa and its residents. The City Council additionally conducted independent review and consideration of the potential environmental effects that might be caused by the Project and this Agreement, and as part of the Initial Approvals imposed mitigation measures to avoid or reduce potential impacts.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Binding Effect of Agreement. The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Property as described in **Exhibit A** and shown in **Exhibit B**. Except as otherwise provided in Section 15 of this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Property. In order to provide continued notice thereof, the Parties will record this Agreement with the Colusa County Recorder. The word “Owner” as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Property. Should the size or orientation of any Property component specified above be changed in minor respects, e.g., changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties and their successors shall remain as provided herein.

2. Relationship of the Parties. It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Developers will be deemed to be the agent of the other for any purpose whatsoever. City and Owner hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developers joint venturers or partners.

3. Term. The effective date of this Agreement (“**Effective Date**”) shall be thirty (30) days after the Approval Date as defined in Recital T. Except as otherwise specified herein, the term of this Agreement (the “**Term**”) shall be forty (40) years from the Effective Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided, however, notwithstanding any other term in this Agreement, including but not limited to delay from any cause or reason, the expiration of the Term of this Agreement shall be the 40th year from the Effective Date unless extended under the express provisions of section 3.2 below.

3.1. Term Extension – Third Party Issues. Notwithstanding the Parties’ expectation that there will be no limit or moratorium upon the Project’s development or the issuance of building or other development related permits (a “**Development**

Limitation) during the Term, the Parties understand and agree that various third parties may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by Developers.

3.1.1. Litigation. Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement, the Project Approvals or any subsequent City approval required in connection with the Project's development, or third party initiated litigation having the actual effect of delaying the Project's development. This extension period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2. Government Agencies. Any delay arising from or related to the act(s) or omission(s) any third party governmental agency, quasi-public entity or public utility, and beyond the reasonable control of Developers.

3.1.3. Force Majeure. Any delay resulting from war; insurrection; strikes; lock outs; picketing; other labor disputes; riots; floods; earthquakes; fires; other acts of mother nature; casualties; contamination; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials, supplies or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of Developers.

3.2. Term Extensions. The Term of this Agreement may be extended in either of the following ways:

3.2.1. Request of Owner. This Agreement's Term may be extended by the City Council for one (1) additional ten (10) year period following the expiration of the initial Term upon the occurrence of all of the following:

3.2.2. Written Notice. Owner shall give written notice to City of a request for the Term Extension no later than fifteen (15) days before the expiration of the Term; and

3.2.3. No Default by Owner. Owner shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Owner did in fact default as to this Agreement, upon notice from City, that Owner did cure said default during the period to cure provided herein to City's satisfaction.

3.2.4. Mutual Agreement of Parties. This Agreement's Term may be extended by mutual agreement of the Parties.

3.3. Termination of Agreement.

3.3.1. Upon the termination of this Agreement, either by expiration or otherwise, Developers shall have no right to engage in cannabis cultivation or manufacturing at the Cannabis Center Site, except as may otherwise be allowed by then-applicable City ordinance, law or separate development agreement.

3.4. Project Approvals.

3.4.1. Term of Project Approvals. Notwithstanding anything to the contrary in the Applicable Law (as defined below), including without limitation the City Cannabis Law, each of the Project Approvals, including any Subsequent Approvals and including any approvals or permits obtained by Tenants and Buyers, shall vest for the longer of (a) the then-remaining Term of this Agreement as it may be extended or (b) the term of the particular approval.

3.4.2. Regulatory Permits Applications. Each Tenant and Buyer shall be required to obtain a separate City of Colusa and State Regulatory Permit.

1. Complete property ownership and lease details, where applicable. If the Business Owner is not the Premises Owner, the applications form must be accompanied with a notarized acknowledgment from the Premises Owner that Cannabis Operations will occur on its property.
2. A diagram and floor plan of the entire Premises, denoting all the use of areas proposed for Cannabis Operations, including, but necessarily limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage. The diagram and floor plan need not be prepared by a registered design professional, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the Premises to an accuracy of plus or minus twenty-four (24) inches.
3. The proposed security arrangements for ensuring the safety of persons and to protect the Premises from theft will be approved by the Police Chief.
4. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Cannabis Operation and the property line of any school as set forth in the Operational Requirements.

3.4.3. Automatic Renewal of Regulatory Permits. Notwithstanding any provision of Chapter 12 F - 4.E of the Municipal Code of the City of Colusa each Regulatory Permit for Tenants and Buyers shall continue in force and automatically renew annually with a written application for renewal, provided the permit holder has paid all renewal fees due and payable, unless the permit holder is found to be in default of the Agreement, violation of applicable State regulations or the Existing City Law (as defined below) after notice of such violation and a reasonable opportunity for cure (which cure

period shall not be less than sixty (60) days), unless such cure is continuously and actively being pursued and the annual renewal fees have been paid.

3.4.4. Regulatory Permit Fees. Fees charged by City for the initial issuance or annual renewal of a Regulatory Permit for Tenants and Buyers shall not exceed the amounts established by resolution of the City Council.

4. Cannabis Center City Compensation Payments. In consideration of City's entering into this Agreement and authorizing development and operation of the Project, the requirements for City services created by the Project, the City ensuring Developers' compliance with this Agreement, the California Cannabis Laws, the City Cannabis Law and the Applicable Law (as defined below), throughout the Term of this Agreement, Developers shall make the following payments to City:

4.1. Phasing of City Compensation Amounts. Owner shall pay compensation to the City upon "completion" of each Phase of the Project and receipt of a Notice of Completion from the City. The Project comprises three Phases, with multiple buildings to be built in each Phase, as further described in Recital E herein above. The City Compensation for each Phase upon completion of all buildings within such Phase will be a fixed amount of ONE MILLION DOLLARS per year, subject to adjustments in accordance with this Agreement. Payment for each Phase will be due and payable on the date which is six (6) months after the City of Colusa issues a Notice of Completion and a certificate of occupancy for the initial building in each Phase, along with all necessary regulatory approvals. The City Compensation will be required annually for the duration of this Agreement. An example of the City Compensation for Phase 1 is shown below.

Colusa Farms			
Phase 1	Square Feet	City Compensation Rate	City Compensation
Building 1	184,000	Fixed fee	\$500,000
Building 2	217,000		\$500,000
Total	401,165		\$1,000,000

Colusa Farms

Phase 2	Square Feet	City Compensation Rate	City Compensation
Building 1	180,000	Fixed	\$333,333
Building 2	180,000	Fixed	\$333,333
Building 3	180,000	Fixed	\$333,333
Total	540,000		\$1,000,000

Colusa Farms

Phase 3	Square Feet	City Compensation Rate	City Compensation
Building 1	110,000	Fixed	\$237,000
Building 2	172,100	Fixed	\$371,270
Building 3	182,200	Fixed	\$391,173
Total	464,300		\$1,000,000

City Compensation Rate Adjustment Procedure. During the Term of this Agreement, the City Manager and Development shall meet and confer, at least three (3) Months prior to the date which is every 5th anniversary of the Term (each such date, a Rate Adjustment Date) to reconfirm or reestablish the City Compensation. The adjustment Rate within the 5th year shall be tied to prior years California weighted state average consumer price indexes. (CCPI). In no event shall said adjustment be lower than 3% nor greater than 6%

4.2. Timeline to Construct: Owners must obtain the issuance of a building permit to start construction of Phase 1 of the Project within 10 years of the execution date of this Agreement. Failure to obtain this permit will result in breach of this Agreement, and therefore termination of the Agreement.

4.3. Requirement to Complete Construction of Phase 1. To vest the City Compensation Rate set forth in Section 4.1 above, Developer shall have received a

Notice of Completion for at least 400,000 square feet of GBA on or before the 10th anniversary of the Effective Date of this Agreement. If Developer fails to receive a Notice of Completion for at least 400,000 square feet of GBA on or before the 10th anniversary of the Effective Date of this Agreement, then the City Compensation Rate shall then be, payable to the City on an annual basis, the amount of one million dollars per year until such time as a minimum of 400,000 square feet of GBA has been completed. Upon completion of 400,000 square feet of GBA, the City Compensation Rate shall be the amount pursuant to section 4.1 above.

4.4. No Double Taxation. No City Compensation shall be assessed for any sale of cultivated product to an on-site manufacturing operator.

4.5. Certification of Non-Income Tax Exemption. Owner certifies that Owner is not income tax exempt under State or Federal Law and that Owner will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board. Owner will also require each Tenant and Buyer to certify that the Tenant and Buyer is not income tax exempt under State or Federal Law and will not file for such an exemption.

4.6. Annual Compensation Payments. The City Compensation shall be the only fee, tax, assessment or other charge owed by Developers and Owner regarding operation or use of the Cannabis Center, and specifically excluding any fee or tax the City might adopt or increase regarding cannabis-related activities and any periodic charge related to renewing or maintaining in effect the Special Use Permit. Annual Payments of the City Compensation Rate set forth in Section 4.1, as amended from time to time in accord with the procedures of Section 4.2, shall be made to the City within thirty (30) calendar days prior to each anniversary date of receipt by Owner of the Notice of for each building, on a building-by-building basis.

4.7. Maintenance of Records. Developers shall maintain complete records of their operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by Developers. Developers shall maintain such records in a form and location reasonably accessible to the City, following reasonable notice to Developers and/or any operator, for a period of at least five (5) calendar years following submission of the Certified Report to which the records apply.

4.8. Survival. The obligations of Developers, Owner and City under this Section 4 shall survive the expiration or any earlier termination, as applicable, of this Agreement.

5. Vested Rights/Use of the Property/Applicable Law/Processing.

5.1. Right to Develop and Operate. Owner shall have the vested right to develop and operate the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to

this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the Colusa General Plan, the Colusa Municipal Code, and the City Cannabis Law, shall be those that are in force and effect on the Approval Date (collectively, the "Applicable Law"). Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any other rights Owner may obtain pursuant to City's approval of a vesting tentative map for the Project or a portion of the Project.

5.2. Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development and operation applicable to the Property and the Project, shall be those set forth in the Project Approvals and this Agreement.

5.3. Exceptions to Applicable Law. Notwithstanding anything to the contrary, the following exceptions and modifications to the provisions in the Applicable Law shall apply to development and operation of the Property and Project.

5.3.1. Odor Control. City agrees that the odor control requirements of Section 12F-12 and Section 21.5.06(n) of the Zoning Code of the Municipal Code, adopted as part of the City Cannabis Law, will adequately control odors. Furthermore, City also acknowledges that the IS/MND in Section III(f) determined that odors from the Project would have a less than significant impact given cultivation will be indoors and buildings will have air filtration and ventilation systems to control odors.

5.4. Applicable Fees, Exactions and Dedications.
The City acknowledges and agrees that any typical development impact fees associated with the construction of building will be deferred until one year after receipt of the Notice of Completion. Furthermore, City acknowledges and agrees that development impact fees for any other improvements on the Property shall due after receipt of the Notice of Completion by Developer.

5.4.1 This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

5.4.2 Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because (i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.5. New Taxes and Assessments. To the extent allowed by state or federal law, no new taxes, assessments or other charges not in force and effect as of the Approval Date shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied. If any City-wide assessments or taxes are levied after execution of this Agreement, Owners are not exempt from payment thereof.

5.6. Construction Codes.

5.6.1. Uniform Codes Applicable. Notwithstanding the provisions of Section 5.2 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the "**Construction Codes**"), the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.6.2. Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

5.7. New Rules and Regulations. During the term of this Agreement, City may apply to the Property and the Project new or modified ordinances, resolutions, rules, regulations, standards, policies, conditions, specifications, new or amended general plan, specific plan and zoning provisions, new or amended fees or other exactions of the City which were not in force and effect on the Approval Date and thus not part of the Applicable Law (collectively, "**New Rules**") only if (a) the New Rule is consented to in writing by Owner in Owner's sole and absolute discretion; or (b) it is otherwise expressly permitted by this Agreement. If City adopts a New Rule, Owner in its sole and absolute discretion may elect to comply with and receive the benefits of any New Rule by providing written notice to City of said election, after which such New Rule shall thereafter become part of the Applicable Law for the remaining Term of this Agreement.

5.7.1. City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the Approval Date pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statutes;

(c) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a City-wide basis; or

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

(e) The City is currently preparing amendments to Chapters 12.E, 12.F and Section 21.5.06(n) of the Zoning Code of the City Municipal Code which will be of citywide applicability, and Developer agrees that any changes to Chapter 12.E and 12.F and Section 21.5.06(n) of the Zoning Code approved by the City Council prior to the date Developer applies for their first building permit will be applicable to the Project.

5.8. Other Emergency Restrictions. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate, timing, phasing or sequencing of development, a restriction on operations, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop and operate the Project (collectively, "**Restrictions**"), City agrees that such Restrictions shall not apply to the Project, the Property, this Agreement, the Project Approvals or the Subsequent Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Restriction applies.

5.9. Development of the Project; Phasing; Timing.

5.9.1. No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any portion or phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which portions or phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a

subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.8 affect the Term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2. No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner’s own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner’s chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

5.10. Processing and City Discretion.

5.10.1. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals, and City shall apply the Applicable Law as the controlling body of law.

5.10.2. Owner acknowledges that implementation of the Project will require City’s consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the MEIR and the MND to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11. Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies. The Parties understand and agree that no development is allowed within the Airport’s Area of Influence until said proposed project to be developed has obtained Airport Land Use Committee (ALUC) review and approval, or should the ALUC not approve, approval by the City Council of an override of the ALUC decision. The Parties further understand and agree the final design of the road section of East Main Street

located in the County of Colusa shall be designed to the satisfaction of the County of Colusa's Public Works Director.

6. Covenants of Owner. During the Term of this Agreement, Owner hereby covenants and agrees with the City as follows:

6.1. Implementation. Owner shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, consistent with and subject to this Agreement, the Project Approvals and the Applicable Law.

6.2. Maintain & Operate Project. Developers shall maintain and operate the Project on the Property, once constructed, throughout the Term of this Agreement, in accordance with this Agreement, the Project Approvals, the Applicable Law, and all State and Federal laws.

6.3. Hold Harmless Owner shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "**Indemnified Parties**") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities to the extent arising from the Project, this Agreement, the approval of the Project, and the activities of Tenants, their members, officers, employees, agents, contractors, invitees and any third parties on the Cannabis Center Site, from and against any challenges to the validity of this Agreement or other Project Approvals; provided, Owner shall have no such obligation arising from the negligence or wrongful misconduct of the Indemnified Parties. To the extent that Owner sells a portion of the Project to a Buyer, that Buyer and its successors in interest shall bear the responsibility of Owner under this Section 6.3 rather than Owner or any other Buyer. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

7. Covenants of City. During the Term of this Agreement, City hereby covenants and agrees with Owner as follows:

7.1. Expeditious Services. City shall process applications and address questions and concerns raised by Developers' representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon a Developer's request, or if, in an exercise of City's own discretion, City staff determines that it cannot comply with this section, City shall expeditiously engage the services of private contract planners, plan checkers or inspectors ("**Private Contractors**") to perform such services as may be necessary to assist in processing the Project plans as described herein. Compensation of such Private Contractors shall be at the Developer's sole cost and expense, inclusive of any administrative cost to City of integrating services by Private Contractors into the Project's development processing. The Developer shall pay such costs and expenses of Private Contractors via reimbursement to City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors; provided the Developer shall have the right to reject the use of one or more

particular Private Contractors in its reasonable discretion, in which case City shall select another Private Contractor not rejected by the Developer.

7.2. Building Permits and Other Approvals and Permits. Subject to (a) Owner's compliance with this Agreement, the Project Approvals, the Applicable Law and the Construction Codes; and (b) payment of the Processing Fees pursuant to Section 5.4.3 charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall in good faith expeditiously process and issue to Developers all necessary use permits, building permits, occupancy certificates, regulatory permits, licenses and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

7.3. Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project and the operation of the Cannabis Center shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Applicable Law, but the procedures for processing applications for such permits or approvals shall be governed by such ordinances and regulations as may then be applicable to the extent not inconsistent with this Agreement.

7.4. Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, fire, or other causes. Any such renovation or reconstruction shall comply with the terms of this Agreement, and may be subject to CEQA as may be required under applicable law.

8. Effect of Agreement.

8.1. Grant of Right. This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants Owner the right and entitlement to develop the Project and use the land pursuant to specified and known criteria and rules as set forth in the Project Approvals and Applicable Law, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

8.2. Binding on City/Vested Right of Owner. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether taken by ordinance or resolution of the City Council, or by referendum, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development and operation of the Project as set forth in the Project Approvals and the Applicable Law, and the timing provisions of Section 3, and the City has entered into this in order to secure the public benefits conferred upon it hereunder

which are essential to alleviate current and potential problems in the City and to protect the public health, safety and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

8.3. Future Conflicting Initiatives or Referenda. If any New Rule is enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, such New Rule shall not apply to the Property or Project. The Parties, however, acknowledge that the City's approval of this Agreement and one or more of the Project Approvals are legislative actions subject to referendum.

9. Permitted Delays; Supersedure by Subsequent Laws.

9.1. Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developers and City shall be excused from performance of their obligations hereunder during any period of delay caused by Force Majeure as defined in Section 3.1.3, litigation, acts or neglect of the other Party, any referendum elections held on the Enacting Ordinance or the Applicable Law, or any other matter affecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities other than City, enactment of conflicting provisions of the Constitution or laws of the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "**Laws**"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Developers, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

9.2. Supersedure of Subsequent Laws or Judicial Action.

9.2.1. The provisions of this Agreement or of the Project Approvals shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new state or federal law or regulation or an action of a state or federal agency ("**Non-City Law**") or decision issued by a court of competent jurisdiction (a "**Decision**"), enacted or made after the Effective Date which is determined to be applicable and prevents or precludes compliance with one or more provisions of this Agreement or of a Project Approval (such Non-City Law or Decision, a "**Change in Law**").

9.2.2. Promptly after a Party learns of any such Change in Law, that Party shall provide the other Party written notice and a copy, together with a statement identifying how it conflicts with or affects the provisions of this Agreement or of a Project Approval. The Parties thereafter shall promptly meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement or the Project Approval, and shall make a reasonable attempt to modify or suspend this Agreement or the Project Approval to comply with such Change in Law in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Each Party agrees to extend to the other its prompt and reasonable cooperation in so

modifying this Agreement or Project Approval. If the Parties cannot agree on a manner or method to comply with the Change in Law, the Parties may but shall not be required to engage in alternative dispute resolution.

9.2.3. During the interim until this Agreement or the Project Approval is so amended, or for the remainder of the Term if this Agreement or Project Approval is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement or Project Approval shall remain in full force and effect to the extent it is not inconsistent with such Change in Law and to the extent such Change in Law does not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.2.4. Owner and City shall have the right to challenge the new Change in Law preventing compliance with the terms of this Agreement or a Project Approval. In the event that such challenge is successful, this Agreement or the Project Approval shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to the extent such challenge delayed the implementation of the Project or delayed or temporarily halted or curtailed operation of the Cannabis Center.

10. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Developers. It is anticipated due to the term of this Agreement that refinements to the approvals may be appropriate with respect to the details of performance of the City and the Developers. To the extent allowable by law, the Developers shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Developers find it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("**Operating Memoranda**") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with the Developers, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to this Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any Operating Memoranda hereunder without further City Council action. Where Tenants request Operating Memoranda, they shall be subject to review and approval by the Owner of the subject portion of the Project.

11. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the Construction Codes, inclusive of such California and International Codes as have been adopted in accord

therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

12. Assignment and Transfer of Rights. Except as otherwise provided in this Section, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants that run with the Property. Owner, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, may at any time during the Term, assign, convey, lease, sell or otherwise transfer all or any portion of its rights under this Agreement and under the Special Use Permit (“**Assignable Rights**”) to a third party, a subordinate entity, or a related entity (an “**Assignee**”) in its sole discretion and without the prior written consent of City in each instance but with prior notice to City; provided any such Assignee must fully comply with all applicable terms of this Agreement, including without limitation the requirement to obtain a Regulatory Permit. Without limiting the foregoing, Owner may lease portions of the Project to Tenants and/or sell portions of the Property to Buyers, who thereafter shall assume the obligations and enjoy the rights of this Agreement (except as this Agreement may reserve such rights or obligations to Owner). Any lease or sale agreement shall require Tenants and Buyers to cooperate with Owner, City and other Tenants and Buyers in all respects with matters pertaining to this Agreement.

13. Review for Compliance.

13.1. Periodic Review. Pursuant to Section 65865.1 of the Development Agreement Statutes, City shall engage in an annual review of this Agreement, on or before the anniversary of the Effective Date, in order to ascertain Owner’s good faith compliance with its terms (the “**Periodic Review**”). Any initial finding of non-compliance will entitle Owner to reasonable good faith discussions with City staff to resolve the issue, and if necessary, a hearing before the City Council. In the event City fails to formally conduct such annual review, Owner shall be deemed to be in full compliance with the Agreement. If Owner sells a portion of the Property or Project to a Buyer, the Periodic Review as to that portion shall be between City and that Buyer (but with notice to Owner), and any results of such Periodic Review shall only involve and affect that portion and that Buyer and not affect Owner or the remainder of the Property and Project.

14. Amendment or Cancellation.

14.1. Amendment of Agreement.

14.1.1. Modification Because of Conflict with State or Federal Laws. An amendment to this Agreement resulting from a Change in Law shall be governed by Section 12.2.

14.1.2. Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

14.1.3. Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property (“**Portion**”) seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party’s Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the “owner” of that Portion of the Property for the purpose of amending this Agreement. Notice shall be given to Owner and all Parties owning Portions of the Property of any attempt to amend this Agreement as to a Portion, who shall have the right to intervene based on the claim that the amendment will affect rights or obligations as to the remainder of the Property.

14.1.4. Administrative Agreement Amendments. Notwithstanding the provisions of Section 17.1.2, the City Manager or designee (“**Director**”) may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) conditions, terms, restrictions or requirements for subsequent discretionary actions; (d) the density or intensity of use of the Property; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Agreement (an “**Administrative Agreement Amendment**”), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall evaluate and apply the term “substantially affect” in the context of the Project as a whole.

14.1.5. Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by the Parties.

14.1.6. Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

14.2. Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

14.2.1. Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or

modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 15.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the MND or mitigated by conditions to any Project Approval, it shall be determined to be an **“Administrative Project Amendment”** and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle or pedestrian circulation patterns or access points, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

14.2.2. Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 15.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

15. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which may include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by email, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Colusa
 Attention: City Manager
 425 Webster Street
 Colusa CA 95932
 Email:
 citymanager@cityofcolusa.com

With copy to:

Jones & Mayer, City Attorney
 Attention: Ryan R. Jones, Esq.
 6549 Auburn Blvd.
 Citrus Heights, California 95621
 Email: rjr@jones-mayer.com

If to Owner: COLUSA RIVERBEND ESTATES
L.P., a California limited partnership,

And

POMONA RIO PROPERTY, LLC a
California limited liability company
Courtney Dubar

Notices sent in accordance with this Section shall be deemed delivered upon the: **(a)** date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); **(b)** date of actual receipt (if personally delivered by other means); **(c)** date of transmission (if sent by email or Fax), if received before 5:00p.m. on a regular business day, otherwise on the next regular business day, so long as sender receives actual confirmation that the transmission was received; or **(d)** date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

16. Breach and Remedies.

16.1. Notwithstanding any provision of this Agreement to the contrary, Developers shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Developers’ rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Owner and the defaulting Developer that specifies the nature of such default. If such default is not cured by the defaulting Developer within sixty (60) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, the defaulting Developer fails to commence to cure the default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate the defaulting Developer’s rights under this Agreement. Owner reserves the right but is not obligated to cure any default of a defaulting Developer so as to allow the Developer to remain in the Project with the rights and obligations of this Agreement.

16.1.1. Notwithstanding subsection 15.1, if a Tenant’s default results in City terminating the Tenant’s rights under this Agreement as to a portion of the Project occupied by the Tenant, Owner may reactivate such rights for the remaining Term either by occupying and operating the former Tenant’s portion of the Project or by leasing it to another Tenant that qualifies under this Agreement. Recognizing the substantial benefit the City obtains through continued operation of the Project under this Agreement, Owner shall not be required to cure the former Tenant’s default to exercise this right.

16.1.2. Notwithstanding subsection 15.1, if a Buyer’s default results in City terminating the Buyer’s rights under this Agreement as to a portion of the

Project owned by the Buyer, Owner may reactivate such rights for the remaining Term by obtaining title to the former Buyer's portion of the Project and thereafter either operating such portion, leasing it to a Tenant, or selling it to another Buyer. Owner shall not be required to cure the former Buyer's default to exercise this right. Recognizing the substantial benefit the City obtains through continued operation of the Project under this Agreement,

16.2. Default by any Assignee or Owner's successor in interest shall affect only that portion of the Property owned by such Assignee or successor, and shall not cancel or diminish in any way Owner's rights with respect to any portion of the Property not owned by such Assignee or successor.

16.3. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by a non-breaching Party for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement, or to terminate this Agreement, and not by a claim or action for monetary damages against the breaching Party; provided, this limitation on damages shall not preclude actions to enforce payments of monies owed under this Agreement.

17. Entire Agreement. This Agreement and the Exhibits herein contain the entire integrated agreement among the Parties. The Parties intend that this Agreement state their agreement in full to each and every one of its provisions. Any prior agreements, understandings, promises, negotiations or representations respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, are agreed by all Parties to be null and void.

18. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. Attorneys' Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

21. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of the Approval Date.

22. Estoppel Certificate. City shall, at any time and from time to time within ten (10) days after receipt of written notice from a Developer so requesting, execute, acknowledge and deliver to the Developer a statement in writing: **(a)** certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and **(b)** acknowledging that there are no uncured defaults on the part of the Developer hereunder or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Property. Upon a Developer's written request, City shall issue a certificate of performance evidencing completion of any of the Developer's obligation(s) under this Agreement.

23. Encumbrances on Real Property.

23.1. Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvements thereon then owned by such person with any mortgage, deed of trust or other security device ("**Mortgage**") securing financing with respect to the Property or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Property or any portion thereof or any improvements thereon and its successors and assigns ("**Mortgagee**") shall be entitled to the following rights and privileges.

23.2. Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Developers may request certain interpretations and modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Developers and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably

withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments. Notwithstanding the above, no change to this Agreement requested by a Tenant or Buyer shall be made without the Owner's approval in its sole discretion.

23.3. Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

23.4. Mortgagee Not Obligated. Notwithstanding the provisions of Section 26.3, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder, or to guarantee such performance, except that to the extent that Mortgagee opts to receive the benefits of the Agreement, including the right to operate, any covenant to be performed by Owner is a condition to the performance of a covenant by City, and the performance thereof shall continue to be a condition precedent to City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Property or any portion thereof. Uncured monetary defaults will terminate the rights under this Agreement and Mortgagee's right to operate, to the extent such default relates to all or a portion of the Property.

23.5. Written Notice of Default. Each Mortgagee shall be entitled to receive written notice from City of any default by Owner under this Agreement, if such default is not cured within thirty (30) days, provided such Mortgagee has delivered a written request to City for such notice. Each Mortgagee shall have a further right, but not the obligation, to cure such default for a period of thirty (30) days after receipt of such notice of default. Any non-curable defaults of Owner of any obligation owed solely to City arising prior to Mortgagee's acquisition of title to the Property or any portion thereof shall be waived; provided, however, the non-payment of money shall not be deemed a non-curable default.

24. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

25. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in the Superior Court of Colusa County, California.

26. Mutual Covenants. The covenants contained herein, including those contained in the Recitals 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.

27. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement (“**Successors**”). Furthermore, the rights and remedies, together with the benefits and burdens of this Agreement of each Party to this Agreement shall be coextensive with those of its Successors. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each Party and each Successor during ownership of the Property or any portion thereof. From and after recordation of this Agreement, this Agreement shall impute notice to all persons and entities in accord with the recording laws of this State

28. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement.

29. Waiver. Failure by a Party to insist upon the strict performance of any of this Agreement’s provisions by the other Party, or the failure by a Party to exercise its rights upon the breach or 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, or be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

30. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

31. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

32. Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

33. Jointly Drafted. It is agreed among the Parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any Party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever

shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

34. Independent Legal Counsel. Each Party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

35. Further Cooperation. The Parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

36. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the Parties hereto.

[Remainder of page left blank. Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

“CITY”

CITY OF COLUSA, CA
a California Municipal Corporation

Date: _____, 2023

By: _____
Greg Ponciano, Mayer

Attest:

By: _____
Shelly Kittle
City Clerk

Approved as to form:

JONES & MAYER

By: _____
Ryan R. Jones, Esq.
City Attorney

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

“OWNER”

**COLUSA RIVERBEND ESTATES L.P., a
California limited partnership,**

Date: _____, 2023

By: _____
Managing Member

**POMONA RIO PROPERTY, LLC a
California limited liability company**

Courtney Dubar

EXHIBIT A

Depiction of the Property

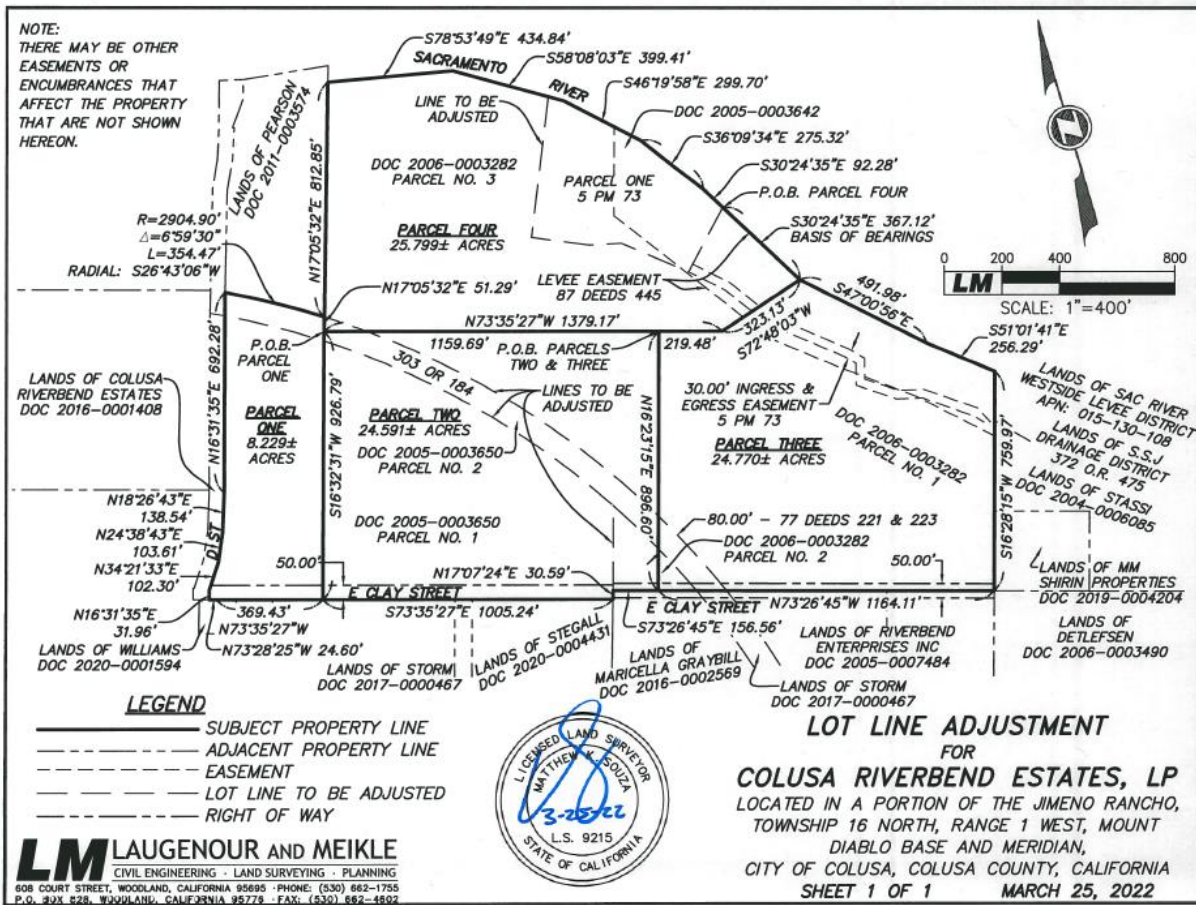


EXHIBIT B

Legal Description of the Parcels

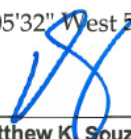
[See Attached]

EXHIBIT "A"
LAND DESCRIPTION
PARCEL ONE

THAT portion of real property situate in the City of Colusa, County of Colusa, State of California, and being a portion of the JIMENO RANCHO, Township 16 North, Range 1 West, Mount Diablo Base and Meridian, also being portions of Parcel No. 1 and Parcel No. 2, as described in Document No. 2005-0003650, said County Records, and being more particularly described as follows:

BEGINNING at a point on the Southwesterly projection of the Northwesterly line of Parcel No. 3, as described in Document No. 2006-0003282, said County Records, said point being distant the following three (3) courses and distances from the most Easterly corner of Parcel One as shown in Book 5 of Parcel Maps at Page 73, said County Records: 1) along the Northeasterly line of Parcel No. 1 as described in said Document No. 2006-0003282, South 30°24'35" East 367.12 feet; 2) leaving said Northeasterly line, South 72°48'03" West 323.13 feet; and 3) North 73°35'27" West 1,379.17 feet to the POINT OF BEGINNING; thence, from said POINT OF BEGINNING, South 16°32'31" West 926.79 feet to the Southerly line of said Parcel No. 1 as described in said Document No. 2005-0003650; thence, along said Southerly line the following two (2) courses and distances: 1) North 73°35'27" West 369.43 feet; and 2) North 73°28'25" West 24.60 feet to the Southwest corner of said Parcel No. 1; thence, along the West line of said Parcel No. 1 the following four (4) courses and distances: 1) North 16°31'35" East 31.96 feet; 2) North 34°21'33" East 102.30 feet; 3) North 24°38'43" East 103.61 feet; and 4) North 18°26'43" East 138.54 feet; thence, along said West line and the West line of said Parcel No. 2, North 16°31'35" East 692.28 feet to the Northwest corner of said Parcel No. 2; thence, along a non-tangent curve to the right concave Southwesterly, the radial line of said curve bears South 26°43'06" West, said curve having a radius of 2,904.90 feet, through a central angle of 06°59'30", and having an arc distance of 354.47 feet, to the most Westerly corner of said Parcel No. 3; thence, along the Southwesterly projection of the Northwesterly line of said Parcel No. 3, South 17°05'32" West 51.29 feet to the POINT OF BEGINNING.




Matthew K. Souza, L.S.

3-25-22
Date

EXHIBIT "A"
LAND DESCRIPTION
PARCEL TWO

THAT portion of real property situate in the City of Colusa, County of Colusa, State of California, and being a portion of the JIMENO RANCHO, Township 16 North, Range 1 West, Mount Diablo Base and Meridian, also being portions of Parcel No. 1 and Parcel No. 2, as described in Document No. 2005-0003650, said County Records, and also being portions of Parcel No. 1, Parcel No. 2, and Parcel No. 3, as described in Document No. 2006-0003282, said County Records, and being more particularly described as follows:


BEGINNING at a point within said Parcel No. 1 as described in said Document No. 2006-0003282, said point being distant the following three (3) courses and distances from the most Easterly corner of Parcel One as shown in Book 5 of Parcel Maps at Page 73, said County Records: 1) along the Northeasterly line of said Parcel No. 1 as described in said Document No. 2006-0003282, South 30°24'35" East 367.12 feet; 2) leaving said Northeasterly line, South 72°48'03" West 323.13 feet; and 3) North 73°35'27" West 219.48 feet to the POINT OF BEGINNING; thence, from said POINT OF BEGINNING, North 73°35'27" West 1,159.69 feet; thence South 16°32'31" West 926.79 feet to the Southerly line of said Parcel No. 1 as described in said Document No. 2005-0003650; thence, along said Southerly line the following two (2) courses and distances: 1) South 73°35'27" East 1,005.24 feet; and 2) North 17°07'24" East 30.59 feet to the Southwest corner of said Parcel No. 2 as described in said Document No. 2006-0003282; thence, along the South line of said Parcel No. 2 as described in said Document No. 2006-0003282, South 73°26'45" East 156.56 feet; thence, leaving said South line, North 16°23'15" East 896.60 feet to the POINT OF BEGINNING.

Containing 24.591 acres of land, more or less.

The basis of bearings for this description is South 30°24'35" East, being the Northeasterly line of the Designated Remainder Parcel, as shown said Book 5 of Parcel Maps at Page 73, said County Records.

End of description.





Matthew K. Souza, L.S.

3-25-22
Date



4571
March 25, 2022

EXHIBIT "A"
LAND DESCRIPTION
PARCEL FOUR

THAT portion of real property situate in the City of Colusa, County of Colusa, State of California, and being a portion of the JIMENO RANCHO, Township 16 North, Range 1 West, Mount Diablo Base and Meridian, and being a portion of Parcel No. 2, as described in Document No. 2005-0003650, said County Records, also being portions of Parcel No. 1 and Parcel No. 3, as described in Document No. 2006-0003282, said County Records, and also being all of Parcel One as shown in Book 5 of Parcel Maps at Page 73, said County Records, and being more particularly described as follows:

BEGINNING at the most Easterly corner of said Parcel One; thence, from said POINT OF BEGINNING, and along the Northeasterly line of said Parcel No. 1, South 30°24'35" 367.12 feet; thence, leaving said Northeasterly line, South 72°48'03" West 323.13 feet; thence North 73°35'27" West 1,379.17 feet to the Southwesterly projection of the Northwesterly line of said Parcel No. 3; thence, along said Southwesterly projection, North 17°05'32" East 51.29 feet to the most Westerly corner of said Parcel No. 3; thence, along said Northwesterly line, North 17°05'32" East 812.85 feet to the most Northerly corner of said Parcel No. 3; thence, along the Northeasterly line of said Parcel No. 3, South 78°53'49" East 434.84 feet; thence, along said Northeasterly line and the Northeasterly line of said Parcel One, South 58°08'03" East 399.41 feet; thence, along said Northeasterly line of said Parcel One the following three (3) courses and distances: 1) South 46°19'58" East 299.70 feet; 2) South 36°09'34" East 275.32 feet; and 3) South 30°24'35" East 92.28 feet to the POINT OF BEGINNING.

Containing 25.799 acres of land, more or less.

The basis of bearings for this description is South 30°24'35" East, being the Northeasterly line of the Designated Remainder Parcel, as shown said Book 5 of Parcel Maps at Page 73, said County Records.

End of description.




Matthew K. Souza, L.S.

3-25-22
Date

EXHIBIT C
Site Plan of the Project

EXHIBIT D
Ordinance 519



City of Colusa California

STAFF REPORT

DATE: December 5, 2023
TO: Mayor Ponciano and members of the City Council
FROM: Joshua Fitch, Police Chief, via Jesse Cain, City Manager, and Ryan Jones, City Attorney

AGENDA ITEM:

Subject: A Resolution of the Colusa City Council to authorize the Police Chief to purchase replacement handguns, optics, and related duty equipment.

Recommendation: Authorize the Police Chief to purchase replacement handguns, optics, and related duty equipment from ProForce, amount not to exceed \$12,500.

BACKGROUND ANALYSIS:

The duty weapons (handguns) currently used by the Police Department have surpassed their recommended replacement schedule of 10 years. This purchase is to include 13 (thirteen) Glock 17, generation 5, 9mm handguns each with three magazines. AMG night sites, Holosun, red dot optics, and Safariland duty holsters.

Three quotes were received with the lowest provided by ProForce for the amount of \$10,969.51.

BUDGET IMPACT:

None. SLEFS funds will be used for this purchase and is currently budgeted under 'Machinery and Equipment'.

STAFF RECOMMENDATION:

Adopt Resolution 23- AUTHORIZING THE CITY OF COLUSA POLICE CHIEF TO PURCHASE HANDGUNS, OPTICS, AND DUTY-RELATED EQUIPMENT FROM PROFORCE.

ATTACHMENT:

Resolution 23-
 Three (3) quotes received.

RESOLUTION NO. 23-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA AUTHORIZING THE CITY OF COLUSA POLICE CHIEF TO PURCHASE REPLACEMENT HANDGUNS, OPTICS, AND DUTY-RELATED ACCESSORIES FROM PROFORCE LAW ENFORCEMENT

WHEREAS, on December 5, 2023, the City of Colusa City Council approved the lowest quote for goods; and

WHEREAS, the City has a plan to purchase the Police handguns, optics, and related duty accessories from Proforce Law Enforcement.

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 purchase handguns, optics and related duty accessories from Proforce Law Enforcement, 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 5th day of December 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk

PROFORCE LAW ENFORCEMENT

2625 Stearman Drive. Prescott AZ, 86301
 Tel: 928-776-7192 Fax: 928-445-3468
 email: sales@proforceonline.com www.proforceonline.com

O R D E R	QUOTE#	Item 2.
	663581	1
Q U O T E	SHIP DATE	
	A.S.A.P.	

SOLD TO

CITY OF COLUSA
 425 WEBSTER STREET
 COLUSA CA 95932

SHIP TO

COLUSA POLICE DEPARTMENT
 C/O: SERGEANT MIKAH HOGAN
 260 SIXTH STREET
 COLUSA CA 95932

530-458-8674

JOB #	ORD. DATE	CUST.#	LOC.	SALESMAN	SHIP VIA	FRT.
N/A	09/19/23	008550	A	JASON DAVIS	F-2D FOB ORIGIN	

QTY. ORDER	ITEM NO./DESC.	UNIT PRICE	UOM DISC.	NET PRICE
13	PA175S202MOS GLK LE 17G5 9MM PST FS 17RD MOS FSS 3 MAGS	429.00	EA .00	5,577.00
13	GL-506 AMG NSITES TALL SUPPRESSOR SET GLK 17-41 BLK/FLT BLK	38.52	EA .00	500.76
13	HE508T-RDX2-LEM HLS LE 508T OPN RED DOT TI X2 SLR 2/32MOA	300.11	EA .00	3,901.43
13	GL-RSH-V2-ST C&H V2 MOS GLK MIL/LEO ADP PLT RMR/SRO HLS 407/507/508 STEEL	43.75	EA .00	568.75
13	6360RDS-832-131 SFL 6360RDS HLST STX TAC RH BK GLK 17/22 W/LGT	130.31	EA .00	1,694.03
12	TRADES-CA CREDIT FOR TRADES-IF NOT SENT AS SPECIFIED, MAY BE REDUCED S&W MP 40 TRADES, GOOD CONDITION. -\$5.00 FOR EACH MISSING MAGAZINE.	180.00-	EA .00	2,160.00CR

COMMENT

TERMS

PROFORCE LAW ENFORCEMENT

2625 Stearman Drive, Prescott AZ, 86301
 Tel: 928-776-7192 Fax: 928-445-3468
 email: sales@proforceonline.com www.proforceonline.com

ORDER	QUOTE#	Item 2.
	663581	2
QUOTE	SHIP DATE	
	A.S.A.P.	

SOLD
TO

CITY OF COLUSA
 425 WEBSTER STREET
 COLUSA CA 95932

SHIP
TO

COLUSA POLICE DEPARTMENT
 C/O: SERGEANT MIKAH HOGAN
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530-458-8674

JOB #	ORD. DATE	CUST.#	LOC.	SALESMAN	SHIP VIA	FRT.
N/A	09/19/23	008550	A	JASON DAVIS	F-2D FOB ORIGIN	

QTY. ORDER	ITEM NO./DESC.	UNIT PRICE	UOM DISC.	NET PRICE
1	OFFICER BUYBACK PRICE IS \$225 PLUS TAX AND SHIPPING. XFET THIS ITEM FET OUT IMPORTANT NOTICES: This quotation is based on the issuance of a department purchase order and F.E.T. form. ATF or the manufacturer may require additional forms. Sample forms may be found at: http://www.ProForceonline.com/forms.html Standard Terms are Net 30 days. If department policy does not allow for partial shipments and payments, separate purchase orders for each item will be necessary. Standard manufacturer's warranty applies to all department This quote is valid for 45 days from date of issue, pending credit approval, and is subject to manufacturer's availability and price change. Please call (800) 367-5855 if this bid is still pending on the expiration date for updated pricing. ProForce Law Enforcement agrees to defend, indemnify and hold harmless its customers from claims for personal injury or property damages, to the extent arising from the	.00	EA .00	.00

COMMENT

TERMS

PROFORCE LAW ENFORCEMENT

2625 Stearman Drive. Prescott AZ, 86301
 Tel: 928-776-7192 Fax: 928-445-3468
 email: sales@proforceonline.com www.proforceonline.com

ORDER

QUOTE

QUOTE#

663581

Item 2.

3

SHIP DATE

A.S.A.P.

SOLD TO

CITY OF COLUSA
 425 WEBSTER STREET
 COLUSA CA 95932

SHIP TO

COLUSA POLICE DEPARTMENT
 C/O: SERGEANT MIKAH HOGAN
 260 SIXTH STREET
 COLUSA CA 95932

530-458-8674

JOB #	ORD. DATE	CUST.#	LOC.	SALESMAN	SHIP VIA	FRT.
N/A	09/19/23	008550	A	JASON DAVIS	F-2D FOB ORIGIN	

QTY. ORDER	ITEM NO./DESC.	UNIT PRICE	UOM DISC.	NET PRICE			
	negligent acts or omissions of ProForce Law Enforcement or its employees, agents or independent contractors. ORDERING INSTRUCTIONS: Please reply to your sales representative in writing to process this order or send an email to john.gall@proforceonline.com. For orders over \$5,000, a PO or signed quote is required to process the order. Returned items are subject to 20% restocking fee. All sales are final on non-stocked/special order items IMPORTANT: To order from this quotation, please sign below. Printed Name: _____ - Date: _____ P.O.: _____ - Signature: _____ **PLEASE NOTE: WHEN SHIPPING TRADE GUNS, PLEASE SUPPLY A LETTER STATING THAT THE GUNS HAVE BEEN INSPECTED BY AN ARMORER AND THAT THEY ARE SAFE AND FUNCTIONAL. ALL CONFISCATED WEAPONS MUST BE CLEARED BY AN NCIC CHECK AND STATED ON YOUR PAPERWORK PRIOR TO SHIPPING TO PROFORCE. NO SATURDAY DELIVERIES. AN ADULT SIGNATURE IS REQUIRED.** **PLEASE EMAIL THE COMPLETED TRADE WEAPONS FORM IN EXCEL						

COMMENT

TERMS

PROFORCE LAW ENFORCEMENT

2625 Stearman Drive. Prescott AZ, 86301
 Tel: 928-776-7192 Fax: 928-445-3468
 email: sales@proforceonline.com www.proforceonline.com

ORDER

QUOTE

QUOTE#

663581

Item 2.

4

SHIP DATE

A.S.A.P.

SOLD TO

CITY OF COLUSA
 425 WEBSTER STREET
 COLUSA CA 95932

530-458-8674

SHIP TO

COLUSA POLICE DEPARTMENT
 C/O: SERGEANT MIKAH HOGAN
 260 SIXTH STREET
 COLUSA CA 95932

JOB #	ORD. DATE	CUST.#	LOC.	SALESMAN	SHIP VIA	FRT.
N/A	09/19/23	008550	A	JASON DAVIS	F-2D FOB ORIGIN	

QTY. ORDER	ITEM NO./DESC.	UNIT PRICE	UOM DISC.	NET PRICE
	FORMAT PRIOR TO SHIPPING THE TRADES TO PROFORCE LAW ENFORCEMENT.** **NOTE: PROFORCE LAW ENFORCEMENT DOES NOT ACCEPT CLASS III WEAPONS TRADES. PLEASE DO NOT SHIP ANY CLASS III WEAPONS TO PROFORCE REGARDLESS OF THE CIRCUMSTANCES.** IMPORTANT: TRADE GUNS ARE TO BE DELIVERED AT THE DEPARTMENT'S EXPENSE WITHIN 45 DAYS OF ACCEPTANCE OF NEW PRODUCT. DELIVERY ADDRESS TO BE PROVIDED BY PROFORCE INSIDE SALES REPRESENTATIVE. PLEASE CONFIRM ADDRESS BEFORE SHIPPING TRADES.			

COMMENT FOR MIKAH HOGAN BY JOHN GALL	SALES AMOUNT	10,081.97
TERMS DUE NET 30 DAYS	7.250% SALES TAX	887.54
	SUB TOTAL	10,969.51



LC ACTION POLICE SUPPLY
 1088 N FIRST STREET
 SAN JOSE CA 95112
 TEL: 408 294-2677 • FAX 408 294-6444
 EMAIL: Stacy@LCAction.com

QUOTATION

Item 2.

Date Sep-01-2023

STATE OF CA SBE CERTIFICATION # 1017260

To:
 SGT. MIKAH HOGAN
 COLUSA POLICE DEPT
 P# 530-701-1731
 EM: MHOGAN@COLUSAPD.ORG

Ship To:

CUST#	QUOTED BY	EST. DELIVERY	F.O.B.	TERMS	
	Stacy Moore			Net 45	
QTY.	DESCRIPTION			PRICE	TOTAL
12	G17 MOS GEN5 FIXED 9MM PISTOL PA175S202MOS GLOCK 17RD FXD 5.5			429.00	5148.00
12	AMERIGLO GL-506 CO- WHITNESS SIGHTS FOR GLOCK + RMR			45.00	540.00
12	RM06-C-700672 RMR TYPE 2 ADJUST RED LED 3.25 MOA SIGHT TRIJICON			455.15	5461.80
12	C&H MOUNT PLATE FOR OPTIC			72.13	865.56
12	BLACKHAWK LEVEL 3 RDS HOLSTER FOR G22 GEN5 PISTOL PLUS RED DOT AND TLR1HL			116.95	1403.40
1	SALES TAX AT 8.75% ON NEW ITEMS			1174.14	1174.14
					0.00
					0.00
12	TRADE-IN S&W M&P .40 CAL PISTOL W- 3 MAGS PER GUN			-155.00	-1860.00
					0.00
					0.00
					0.00

Notes:

SUBTOTAL	\$12,732.90
OTHER	0.000%
OTHER	0.00
SHIPPING	0.00
TOTAL	\$12,732.90

Josh Fitch

From: pk <patrick@kittlesoutdoor.com>
Sent: Saturday, July 22, 2023 5:25 PM
To: Josh Fitch
Subject: FW: Quote - GLOCKS- Colusa PD

From: Kittles Gun Department <gundept@kittlesoutdoor.com>
Sent: Thursday, July 20, 2023 4:14 PM
To: patrick@kittlesoutdoor.com
Subject: RE: Quote - GLOCKS- Colusa PD

100,000 rounds of 9mm just showed up today. I don't think we can beat lc action, our cost on the Glock 22's alone is \$546. G17's are the same price.

From: pk [<mailto:patrick@kittlesoutdoor.com>]
Sent: Thursday, July 20, 2023 3:51 PM
To: 'Josh Fitch'
Cc: 'Kittles Gun Department'
Subject: RE: Quote - GLOCKS- Colusa PD
Importance: High

Not sure about the near future for 9mm. We do have a pallet of it in route.

From: Josh Fitch <jfitch@colusapd.org>
Sent: Thursday, July 20, 2023 3:23 PM
To: patrick@kittlesoutdoor.com
Subject: RE: Quote - GLOCKS- Colusa PD

Thank you, can you look at the Glock 17 Gen5 9MM too please. How hard is 9mm ammo to get now?

Joshua Fitch, Chief of Police

Colusa Police Department



260 5th Street Colusa CA, 95932
 Office (530) 458-7777
 Cell (530) 788-8567
jfitch@colusapd.org

From: pk <patrick@kittlesoutdoor.com>
Sent: Thursday, July 20, 2023 2:59 PM
To: Josh Fitch <jfitch@colusapd.org>
Subject: RE: Quote - GLOCKS- Colusa PD

Thanks Josh – I will check with Glock and let you know tomorrow.



City of Colusa California

STAFF REPORT

DATE: December 5, 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 a 20-year operating agreement with California State Parks

Recommendation: The Council approve the Proposed Resolution

BACKGROUND ANALYSIS:

In 2011, the City Council negotiated and entered into an operating agreement with California State Parks for the operation and maintenance of the Colusa Sacramento River State recreation area. Our State Park was the first State Park on the Closure list due to State budgeting at that time. The Council believed that the closure would have had an economic impact on the City of Colusa.

In 2016/2017, the City of Colusa received a grant from the Department of Boating and Waterways to construct a new boat launch facility. The boat launch facility completed construction in 2019. In the grant agreement, the City must enter into a 20-year operating agreement with California State Parks. The biggest change in this agreement is the new trail system that we have been working on with the Colusa Schools. In this agreement, if the trails are managed and taken care of for three years then State Parks will start the process to add them in the park trails program. Once the trails are in the system it makes it very difficult to remove them - this is a good thing as we would like to be able to keep the access.

BUDGET IMPACT:

Unknown

STAFF RECOMMENDATION:

Approve Resolution 23-
20-year agreement

RESOLUTION NO. 23-

A RESOLUTION OF THE CITY COUNCIL APPROVING AN AGREEMENT WITH THE STATE OF CALIFORNIA FOR THE OPERATION OF THE COLUSA-SACRAMENTO RIVER STATE RECREATION AREA

WHEREAS, due to budget shortfalls, the State of California has indicated an intent to close the Colusa-Sacramento River State Recreation Area; and

WHEREAS, the Council has determined that it would benefit the City, the residents and the businesses of the City if the Colusa-Sacramento State Recreation Area remains open and accessible to the public; and

WHEREAS, the City Council finds that the continued operation of the Colusa-Sacramento State Recreation Area is in the public's interest, as it provides access to the river, and opportunities for interaction with nature; and

WHEREAS, on June 7th, June 21st, and August 16, 2011 the City Council met and considered the potential for an operating agreement with the State of California for the Colusa-Sacramento River State Recreation Area, and directed staff to pursue negotiations with the State Park on an operating agreement, and also indicated satisfaction with the terms of the Proposed Agreement; and

WHEREAS, as part of the boat launch facility grant agreement the City of Colusa must enter into a 20-year agreement.

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

1. Recitals. The foregoing recitals are true and correct and made a part of this Resolution.
2. Authorization of Agreement. The City Council of the City of Colusa hereby authorizes the City Manager to execute the Agreement with the State of California for the operation of the Colusa-Sacramento River State Recreation Area and also authorizes the City Manager to execute any further documentation in order to carry out the intent of this Resolution.
3. Effective Date. This Resolution shall be effective immediately.

Resolution 23-
Page 2

Passed and adopted this 5th day of December 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

GREG PONCIANO, MAYOR

Shelly Kittle, City Clerk

#P210A008

Operating Agreement

with

City of Colusa

for

Colusa-Sacramento River State Recreation Area

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
PARTNERSHIPS DIVISION
715 P STREET, 13TH FLOOR
SACRAMENTO, CA 95814



OPERATING AGREEMENT

for

Colusa-Sacramento River State Recreation Area

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Colusa-Sacramento River SRA

Operating Agreement #P21OA008

OPERATING AGREEMENT

with

City of Colusa

for

Colusa-Sacramento River State Recreation Area

This OPERATING AGREEMENT "Agreement", by and between the STATE OF CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter referred to as "**State**", and the City of Colusa, hereinafter referred to as "**City**", collectively referred to as the "**Parties**".

WITNESSETH:

Whereas, pursuant to the provisions of §5080.30, et seq., of the California Public Resources Code (PRC), State may enter into an operating agreement with any city, county, district, public agency, or combination thereof of the State of California for the care, maintenance, administration, and control of lands under the jurisdiction of State for the purpose of the state park system; and

Whereas, within Colusa County, State has acquired for park and recreational purposes certain real properties known as Colusa-Sacramento River State Recreation Area (SRA), which includes a campground, day-use area, restrooms, boat launch, roads, parking, and infrastructure hereinafter referred to as State Property;

Whereas, the City owns and operates certain property adjacent to State Property known as Levee Park hereinafter referred to as City Property; and

Whereas, the City, through a Boat Launch Facility grant issued in FY2016/17 by the California Department of Parks and Recreation, Division of Boating and Waterways, constructed a boat launch ramp on City Property (formerly referred to as Memorial Grove) and an adjoining road on State Property and City Property from the boat launch to an entrance station and parking lot on State Property, and the grant requires a 20-year Operating Agreement between the State and City for the operation and maintenance of the boat launch ramp, adjoining road and parking lot at the completion of boat launch ramp construction, which occurred October 1, 2019; and

Colusa-Sacramento River SRA

Operating Agreement #P21OA008

Whereas, State and City desire to enter into a new Operating Agreement to include development, operation, control, and maintenance of the day use area, campground, boat launch ramps, and shop and service area within Colusa-Sacramento SRA by City; and

Whereas, the State has provided at least 30 days' written notice and a copy of Agreement to the Joint Legislative Budget Committee; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the Parties hereto agree as follows:

1. PREMISES

State authorizes City to develop, operate, control, and maintain Colusa-Sacramento River SRA as shown in "**Exhibit A**", which is attached hereto and incorporated herein, hereafter referred to as "Premises". City agrees to accept Premises, including facilities covered by this Agreement, and take the same in their present condition "AS IS" with all faults, and agrees to maintain the same in a safe and tenable condition, and, at any termination of this Agreement, to promptly turn back the same to State in the same or better condition, reasonable wear and tear excepted. State shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Agreement. This Agreement is not intended to and does not create any third-party rights and in no event shall be relied on by any party other than City and State.

2. TERM

The term of this Agreement shall be for a period of twenty (20) years and shall commence on the first of the month following approval by the State of California Department of General Services. Should City hold-over after the expiration of the term of this Agreement with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this Agreement subject otherwise to all the terms and conditions of this Agreement.

3. USE OF PREMISES

City agrees to develop, operate, control, and maintain the Premises as a public park with a day use area, campground, picnic grounds, motorized and non-motorized boat launching facilities, shop and service facility, and related concessions for the use and enjoyment of the general public. Development and operation of the Premises shall be conducted in accordance with all applicable State general planning principles, State Parks and Recreation Commission policies and all federal, state, and local government statutes, laws, and regulations.

- A. Camping and Day Use Fees: City may charge camping and day use fees consistent with State's fees and as directed by item 3B, below. Rates and fees must be approved by State.
- B. Boat Launch Fees: City may charge boat launch fees not to exceed the maximum allowable under the FY2016/17 Boat Launch Facility Grant awarded to the City. See "Exhibit B", FY2016/17 Boat Launch Facility Grant (Article 8, Operation and Maintenance of Project, item D).
- C. Reservations: All reservations made more than 48 hours prior to arrival date shall be taken by State's reservation contractor unless otherwise approved by State. City shall receive all overnight fees collected by the camping reservation contractor, minus any reservation, administrative or transaction fees. Advance reservations shall not be included in gross receipts until the services that relate to the deposit have been rendered by City or the reservation has been canceled and the deposit has been retained by City in accordance with the deposit policy as approved in advance in writing by the State. At the State's sole discretion, such advance deposits may be retained by the State until the revenue is earned, at which time the State will release payment to the City less any reservation or administrative fees. Should the State elect not to retain the advance deposits, they shall be retained by the City in an interest-bearing joint trust account. All earned interest, including interest earned on a reservation deposit, shall be included in gross receipts for the month such earned interest is reported to City. Upon termination of this Agreement, and commencement of a

new Agreement, all advance reservation deposits shall be transferred to entity named in new Agreement. City shall honor all advance campsite reservations, including rates and group camps, booked prior to the execution date of the Agreement.

- 1) Upon approval by State, campsites may be held off the reservation system.

D. Security: City shall require all employees and volunteers in positions of special trust to undergo a background check, including references and fingerprints, to ensure that the individual does not pose a risk to the public. The background check may be similar to the California Department of Justice's Live Scan Program. City shall be responsible for covering all costs associated with said background checks. Any criminal offenses that have a nexus to said job should be considered as a basis for rejection from hire.

E. Resources: City must adhere to all natural and cultural resource regulations as mandated by local, state and federal laws. These include, but are not limited to, the Federal and State Endangered Species Acts, the Historic Preservation Act, and the California Environmental Quality Act (CEQA).

F. Year-Round Operation: City shall operate the park year-round unless a request to operate seasonally is approved by State.

G. Facilities: Upon permission by State, City may improve the Premises by constructing and operating park related facilities that are in compliance with the park's General Plan and Phase 2 construction objectives provided in "**Exhibit B**". No facilities shall adversely affect the use and enjoyment of the Premises by the public.

H. Trails: City may construct new trails within the Riparian Area depicted in "**Exhibit A**" to enhance the visitor experience at the park. The trails shall be constructed on a 3-year trial basis to determine management sustainability and analyze visitor use. At the end of the 3-year trial, the State and City will determine whether to formally phase in the trails over a 2-year period and to add the trails to park brochures and/or other print and digital media. Prior to new trail construction, the City shall prepare and receive State's approval on a trails plan

consistent with California State Parks' 2019 Trails Handbook available online at https://www.parks.ca.gov/?page_id=29174 or through the State.

I. Rules & Regulations: Upon permission of State, City may adopt rules and regulations for the use and enjoyment of the Premises by the public. Any such rules and regulations adopted by City shall conform to and be consistent with the rules and regulations adopted by State and generally applicable to the California State Park system. The Premises shall not be used for any purpose other than those permitted by this Agreement.

J. Consent of State: City shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose other than as herein set forth without the prior consent of the State.

K. Fire Emergency Preparedness and Response:

- 1) City will install and maintain a defensible space zone around all structures owned by the State (PRC 4291).
- 2) City may install and maintain a fuel break to protect park habitat from fires initiating off the Premises. Planning for fuel break must be in coordination with State.
- 3) City will issue and oversee boundary vegetation modification Right of Entry permits for neighboring private landowners that, per PRC 4291, must maintain defensible space for their habitable structures. City must follow State specifications of Right of Entry permit.
- 4) City will initiate and oversee applications for boundary vegetation modification Right of Entry permits for neighboring private landowners that, per PRC 4291, must maintain defensible space for their habitable structures on the Premises. City must follow State specifications for the preparation of right of entry permits. Right of Entry permits will be issued by State for all other work on the Premises.
- 5) In the event of a wildfire incident, City will notify the State immediately of its occurrence. As determined by the State, City shall repair all suppression damage as soon as reasonably possible

after Fire Agency declares it safe to do so. The State will provide City with suppression repair specifications and provide on-site suppression repair guidance if requested by City or Fire Agency.

L. City shall honor all State Park Passes including, but not limited to, Disabled Discount Passes and Distinguished Veterans Passes. State shall provide City with its Disabled Discount Pass and Distinguished Veterans Pass Policies. Upon approval of State, City may develop and implement an annual pass program specific to Colusa-Sacramento River SRA that combines parking and boat launch fees.

4. DUTIES OF THE CITY

A. The City shall be responsible for carrying out duties related to management and protection of natural, historical, and cultural resources. The City at its own cost and expense shall maintain and operate the Land Use Areas identified in the 2016 General Plan and shown in Figure 3, "Exhibit A" as the Southeast Parcel, Channel, Southwest Parcel, and the Riparian Area.

- 1) These Land Use Areas contain all facilities including but not limited to the following: Campground, Boat Ramp, Entrance and Fee Station, Group Picnic Area and irrigation system, Campground Restroom and Shower Building, Day Use Restroom, RV dump station, Maintenance Shop, paved roads and day-use parking, and the Nature Trail.
- 2) The City will forward Right of Entry applications to State for review, authorization, and cost recovery.
- 3) City shall be responsible for the water system treatment/testing, main distribution system pipeline maintenance, the well, and tanks on Premises.
- 4) Within thirty (30) days of the Tree Hazard Inspection Report issued by State to City, City shall address the tree hazard(s) to the satisfaction of State.

- 5) If landfill materials are uncovered during any excavation, consult a cultural resources specialist to document and provide preservation and/or treatment recommendations.
 - 6) City shall obtain State's review and prior approval of contract specifications and contractor minimum qualifications to ensure projects that qualify as "Improvements" under Section 7 meet State's standards prior to issuing solicitations and awarding contracts.
 - 7) All funding and management of contracts shall be the responsibility of the City.
- B. All duties of the City are subject to oversight by State.
- C. City shall be responsible for operating Premises in a manner that protects its natural, historic, and cultural resources.
- D. City shall conduct all scientific, architectural, and engineering functions that require special expertise or professional training by or under the supervision of qualified persons with applicable expertise or training and subject to oversight of State.
- E. Non-Interference: City agrees to provide access to the Premises to State's employees, contractors, or agents to allow State to carry out its duties as stated herein and responsibilities as a landowner and manager.

5. DUTIES OF STATE

- A. The District Superintendent or designee whose jurisdiction the Premises are subject to shall provide liaison with State, City, and the public.
- B. State shall contribute in-kind services that include, but are not limited to the following functions:
- 1) Tree hazards inspections in the developed areas of the Southwest Parcel and Southeast Parcel Land Use Areas at least once biennially or as requested by City as agreed to by State.
 - 2) Upon mutual agreement, State shall process Project Evaluation Form(s) (PEF) to the level of a Notice of Exemption (NOE) as

- needed. Any further CEQA review will be at the sole expense of City.
- 3) State shall process Scientific Research and Collection Permit, and the Native Californian Indian Gathering Permit, as needed.
 - 4) State shall provide a response to City's requests for required approvals in this Agreement, including operating plans, compliance reviews, and projects, within ten (10) business days of receipt. If State fails to provide a response within the prescribed time, then City shall notify the Northern Division Chief and Deputy Director of Park Operations of the request and of State's failure to respond. The Division Chief and/or the Deputy Director of Park Operations shall provide a response to City within ten (10) business days of receipt of notice. If said response is not provided within the prescribed time, State and City will meet to render a decision on said requests within ten (10) business days.
 - 5) State shall coordinate with City for consultation with local tribes and organizations to provide culturally appropriate interpretive panels, displays, brochures and educational events as funding becomes available.
 - 6) State shall coordinate with City for carrying out responsibilities related to management and protection of natural, historical and cultural resources, and interpretive and educational services within the Land Use Areas.
 - 7) State reserves the right to access the Premises for public safety, resource monitoring activities, and maintenance, including treatment and removal of invasive species.

6. CONSIDERATION

A. Notwithstanding Section 6B and in consideration of the services to be performed by City pursuant to this Agreement, State hereby authorizes the use of the Premises by City on a rent-free basis on the condition that City perform the

terms and conditions of this Agreement. In the event City fails to perform, the Premises shall revert back to the State, at State's option, and State shall have the right to pursue any other remedies available under this Agreement and/or otherwise available by law.

B. Any revenue to City derived from its control and operation of Premises for services, benefits, or accommodation to the general public, or otherwise, shall be used only for the operation and maintenance of lands and/or facilities located within Colusa-Sacramento River SRA, or for the development and renovation of improvements as outlined in the following section. Any such portion of revenue as may exceed costs and expenses described in this paragraph shall be remitted to State in accordance PRC §5080.32 (b)(2).

7. CONSTRUCTION AND COMPLETION OF IMPROVEMENTS

A. At no cost or expense to the State, City may undertake new construction, reconstruction, and renovation if such projects are supported by the park's general plan and aligned with Phase 2 of the FY2016/17 Boat Launch Facility Grant ("**Exhibit B**") subject to the following provisions:

- 1) In the event that City desires to undertake improvements that constitute renovations, reconstructions or new constructions to the Premises or any part of the Premises, including changes to structural design, landscape design, or interior or exterior fixtures, design, and/or furnishings, (collectively "Alteration(s)"), approval by State shall be obtained prior to the commencement of any Alterations.
- 2) Needed renovations, reconstructions or new constructions shall be identified by City and submitted annually to State. State shall review this submission, and City and State shall subsequently meet to identify and prepare a list of mutually agreed upon priority projects. State shall dictate the plan approval process.
 - a) Planning, Permitting, Design, and Construction: City shall undertake and be responsible for the planning (including

environmental compliance under CEQA), permitting, design, and construction of the project.

(1) Planning: City shall serve as the Lead and Responsible Agency as applicable for purposes of compliance with CEQA for the project.

(2) Permitting: City shall undertake and be responsible for obtaining all required permits in compliance with all applicable local, state, and federal laws and construction of the project.

(3) Design and Construction: Following receipt of necessary permits for the construction, City shall prepare detailed specifications for the drawings and other construction contract documents, conduct the bidding process and, subject to concurrence by the State, select the contractor to construct the project. City shall provide supervision and inspection of the construction with assistance from State in regard to conformance with the specifications for the project. City shall require that indemnity and insurance requirements for any construction contracts contain a provision naming DPR as an indemnitee or additional named insured at no added cost to State. In no event shall State's approval, concurrence, or inspections for conformance with conceptual plans of the project relieve City from responsibility for accurate and complete working drawings and other construction documents and for proper supervision and completion of the work. City shall make the final determination to the contents of working drawings, construction specification and other construction documents, and shall carry out the construction functions in accordance with law pertaining to City in such activities.

- b) Cooperation: The parties agree to cooperate in the planning, design, and construction related to the project. Such cooperation may include, but is not limited to, applications for permits, grants and loans.
- c) Employees, Consultants, Agents, Contractors and Subcontractors
- (1) City may engage consultants or contract administration personnel as subcontractors to perform, administer, or coordinate any task governed by this Agreement and the attachments hereto. Nothing in this Agreement shall be construed as preventing either party from utilizing as many employees as deemed necessary for the proper and efficient execution of this Agreement.
- (2) All third-party contracts and/or subcontracts executed in furtherance of this Agreement shall follow any and all Federal or State laws regarding contracting, as applicable, and shall contain the following provisions:
- (a) The contractor or subcontractor (hereafter referred to as Contractor) shall procure and maintain, at its own cost, comprehensive general liability insurance from an acceptable insurance provider in an amount not less than one million dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of two million dollars (\$2,000,000) for any number of claims arising from any one incident, covering all claims for injuries against persons or damage to property resulting from any employee's actions in the performance of Contractor's obligations under any authorized contract pursuant to this Agreement.
- (b) The Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and

employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the contract.

B. Once prior approvals, permits, etc. have been received as required herein above, and the work on any Alteration has begun, City shall prosecute to completion with reasonable diligence all approved Alterations. All work shall be performed in a professional manner and will comply substantially with plans and specifications submitted to State as required herein and with all applicable governmental permits, laws, ordinances, and regulations. It shall be the responsibility of City, at its own cost and expense, to obtain all licenses, permits, security, and other approvals necessary for the construction of approved Alterations. City shall comply with public bidding requirements as set forth in the California Public Contract Code.

C. For all Alterations erected on the Premises by City, upon completion of construction, City shall (1) record a Notice of Completion, with a copy provided to the State; (2) provide State with a complete set of "as-built" plans for all improvements in a format reasonably acceptable to State; (3) submit evidence that all improvements are clear of any mechanic's liens or stop notices; (4) submit a verified accounting of the cost for Alterations, excluding equipment and trade fixtures that are the personal property of City; and (5) submit a verified report demonstrating full compliance with the pertinent state and federal accessibility laws, including but not limited to, the Americans with Disabilities Act of 1990, Title II.

Colusa-Sacramento River SRA

Operating Agreement #P21OA008

D. Title to all Alterations existing or hereafter erected on Premises, regardless of who constructs such improvements, shall immediately become State's property, and upon termination of this Agreement, all improvements shall become part of the realty and title to the Premises and shall vest in State, without compensation to City. City agrees never to assail, contest, or resist said title. The foregoing notwithstanding, State may elect, by notice to City, that City must remove any Alterations that are peculiar to City's use of the Premises and are not normally required or used by State and/or future occupants of the Premises. In this event, City shall bear the cost of restoring the Premises to their condition prior to the installment of the Alterations.

E. State reserves the right to fund and construct facilities should funding become available through the State's standard capital outlay funding process. State shall provide advance notice to City of its intent to construct facilities which shall take place to limit interruption to park operations as reasonably as possible.

F. A list of Eligible or Potentially Eligible Historic Properties is attached hereto as "**Exhibit C**" and incorporated herein by reference.

8. MAINTENANCE OBLIGATIONS OF CITY

A. During the term of this Agreement and at City's own cost and expense, City shall maintain and operate the Premises including equipment, personal property, and Alterations or improvements of any kind that may be erected, installed, or placed thereon in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. During the term of this Agreement it shall be the City's responsibility to ensure that the Premises are maintained to the satisfaction of STATE. All construction, operation, and maintenance shall be in accordance with all laws, codes, regulations, ordinances, and generally accepted industry standards pertaining to such work.

B. Should City fail, neglect, or refuse to undertake and complete any required maintenance, State shall have the right to perform such maintenance or repairs for the City. In this event, City shall promptly reimburse State for the cost thereof, provided, however, that State shall first give City ten (10) days written notice of

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its intention to perform such maintenance or repairs. State shall not be obligated to make any repairs to or maintain any improvement on the Premises. City hereby expressly waives the right to make repairs at the expense of the State and the benefit of §§1941 and 1942 of the California Civil Code relating thereto, if there be any. State has made no representations regarding the condition of the Premises, except as specifically set forth in this Agreement.

C. State reserves the right to enter the Premises for inspection and work related to its care and maintenance during the term hereof, provided that State shall give City reasonable written notice of its intention to do any of the work herein mentioned before such work is undertaken.

9. VOLUNTEERS

A. The City may recruit and utilize volunteers outside the State Parks Volunteer in Parks Program (VIP) to perform various tasks and duties to ensure the continued operation and maintenance of the premises.

B. At its sole cost and expense, the City shall require Live Scan criminal history background check for volunteers whose duties fall under Section 3(D) of this Agreement.

C. The City shall obtain and maintain liability coverage with aggregate limits of not less than one million dollars (\$1,000,000) to cover volunteers for personal injury and accident medical expense (excess) of not less than one hundred thousand dollars (\$100,000) to cover volunteers for personal injury and accidents occurring during the course of the volunteer assignment. The City shall have volunteers sign a Waiver of Release of Claims agreement whereby the volunteer releases and discharges, agrees to indemnify and hold harmless, the State of California, the Department of Parks and Recreation, and their agents, employees and representatives from all claims, demands, actions or judgments arising from the volunteer activity.

D. Volunteers of other organizations who are not under the State Parks VIP Program shall not be allowed to wear the State Parks logo patch or count hours earned at the Premises toward VIP Program benefits.

10. CONCESSIONS

A. Subject to prior approval by State and consistent with the terms and conditions of the FY2016/17 Boat Launch Facility Grant ("**Exhibit B**"), City may grant concessions in or upon the Premises consistent with the requirements of State under PRC §§5080.33 and 5080.34. All concession contracts shall be subject to the requirements of PRC §5080.20 and shall be assumable and/or subject to termination by State, at State's sole discretion, in the event this Agreement is terminated by its terms. No concessions that exploits public lands for commercial purpose shall be granted by City. Further, all concession agreements shall be made subject to audit by State. State shall have the right, through its representative and at all reasonable times, to examine and copy all working papers supporting concessionaire's annual financial statement. In addition, the State, acting through its representative, may conduct additional independent reviews of the concession operations upon written notification of such intent to City.

B. City may pursue campground development in the Southwest Parcel provided in "**Exhibit A**" and upon mutual agreement by the parties, the City may identify and pursue real property acquisitions for additional facility development opportunities consistent with Section 22, Real Property Acquisition, as well as the park General Plan and the Phase 2 projects referenced in the FY2016/17 Boat Launch Facility Grant.

11. TAXES

City, by signing this Agreement, acknowledges that occupancy interest and rights to do business on State property may create a possessory interest as that term is defined in Revenue and Taxation Code §107.6, which possessory interest may subject City and/or concessionaire to liability for the payment of property taxes levied on such possessory interest. City and/or any concessionaire engaged by City shall pay all lawful taxes, assessments, or charges that may be levied by the state, county, city, or any tax or assessment levying body at any time upon any interest in or created by this

Agreement, or any possessory right that City and/or any concessionaire may have in or to the Premises covered hereby or the improvements thereon, by reason of City and/or any concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by City and/or any concessionaire in or about the Premises.

12. RECORDS AND ACCOUNTS

- A. **Recordkeeping**: At all times during the term of this Agreement, City shall keep separate, true, and complete books, records, and accounts of all income and fees received and all expenditures made by City in relation to concessions, events, special services, and all other matters incident to the development, control, operation and maintenance of the Premises. The books, records, and accounts applying to the operation of the Premises and kept by City shall be open for audit or inspection by State at all reasonable times. All records shall be kept by City for a period of at least four (4) years. City shall be subject to State's audit requirements and remedies as set forth herein.
- B. **Annual Revenue and Expenditure Report**: City shall report said income and expenditures to State in accordance with "**Exhibit D**" Annual Revenue and Expenditure Report, or in a similar format acceptable to State on an annual basis, which annual report shall be submitted for the period commencing July 1st and ending June 30th of each reporting year, and shall be filed with State no later than the following September 30th. In addition, within forty-five (45) days of the expiration or termination of this Agreement, City shall submit to State a statement of income and expenditures for the period of operation not previously reported, prepared as set forth above. The Annual Revenue and Expenditure Report can be accessed at <https://partnersreg.parks.ca.gov/>.
- C. **Attendance Report**: City shall provide State with a monthly attendance report to include a reasonable estimate of the number of visitors and vehicles to Premises. Such monthly reports shall be submitted to State by the 15th day of the following month on a Monthly Visitor Attendance Form (DPR 449) which is attached hereto as "**Exhibit E**".

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D. City shall obtain and install cash registers or other accounting equipment acceptable to the State, through which City shall record all gross receipts from the operation of the Premises. This equipment shall be non-resetable and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display that is visible to the public. City shall make all cash register tapes available to the State upon State's request. City shall provide a cash register receipt to each customer setting forth the full amount of a sale. Upon such time the State's Point of Sale (POS) system, or equivalent, is offered to the City, the City is obligated to use the system and pay any applicable transaction fees.

13. UTILITIES AND SERVICES

City shall be responsible for all expenses resulting from utilities supplied to the Premises. City shall be responsible for distribution systems and all related expenses within the Premises.

14. INSURANCE

A. Commercial General Liability Insurance: At its sole expense, City agrees to maintain in force during the term of this Agreement comprehensive general liability insurance, insuring against claims for injuries to persons or property occurring in, upon, or about Premises. The insurance shall have limits of not less than ONE MILLION DOLLARS (\$1,000,000) for injuries to person or persons, with TWO MILLION DOLLARS (\$2,000,000) aggregate; and not less than ONE MILLION DOLLARS (\$1,000,000) for property damage.

B. Fire Insurance: Fire insurance with extended coverage endorsements thereon on all improvements located on the Premises, whether furnished by State or constructed upon the Premises by City and/or any concessionaire, in an amount equal to the full replacement cost and/or value thereof. This policy shall contain a replacement cost endorsement naming the City and/or any concessionaire as the insured provided that if there is a lender on the security of

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the improvements so insured, the proceeds of any such policy or policies may be made payable to such lender.

C. State agrees that City, at City option, may self-insure the coverage required by this section.

D. Each policy of liability insurance shall contain additional named insured endorsements in the name of the State of California, through its Department of Parks and Recreation, as to all insurable interests of the State including, but not limited to, the Premises and all contents as follows:

State of California, its officers, agents, and employees are included as additional insured but only insofar as operations and facilities under this Agreement are concerned. The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to State.

E. Worker's Compensation and Employer's Liability Insurance: Operator shall maintain statutory worker's compensation and employer's liability insurance for all of Operator's employees who will be engaged in the performance of work on the property, including special coverage extensions where applicable. When work is performed on State-owned or controlled property the Workers' Compensation and Employers' Liability policy shall be endorsed with a waiver of subrogation endorsement in favor of the State (this endorsement shall also be provided).

F. No cancellation provision in any insurance policy shall diminish the responsibility of the City to furnish continuous insurance throughout the term of the Agreement. Each policy shall be underwritten to the satisfaction of the State. A signed Certificate of Insurance, with each endorsement required, including but not limited to State's additional insured endorsement, shall be submitted to State at the time this Agreement is executed, showing that the required insurance has been obtained. Further, at least thirty (30) days prior to the expiration of any such policy, City shall submit to State a signed and completed Certificate of Insurance, with all endorsements required by this section, showing, to the

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satisfaction of State, that such insurance coverage has been renewed or extended. Within fifteen (15) days of State's request, City shall furnish State with a signed and complete copy of the required policy and/or evidence of self-insurance.

G. City agrees to impose the foregoing insurance requirements on any and all concessionaires and shall require that State be named as an additional insured on all policies. Failure to provide any of the required insurance and/or endorsements shall constitute a material breach of this Agreement.

15. HOLD HARMLESS AGREEMENT

A. City waives all claims and recourse against State Parks, its officers, employees and/or agents, including the right to contribution for any and all loss, injury, death or damage to persons or property, caused by, arising out of, or in any way connected with or incident to the condition or use of the Premises, this Agreement, or the rights or obligations herein granted or imposed, except those arising out of the sole active negligence or willful misconduct of State.

B. City shall protect, save, hold harmless, indemnify and defend the State, its officers, employees and/or agents from any and all liability, loss, damage, injury, death, claims, demands, expenses, costs and fees, including, but not limited to, expert costs and attorney fees, that may be suffered or incurred by the State, its officers, employees and/or agents from any cause whatsoever, arising directly or indirectly out of or in any way connected with this Agreement, the exercise or performance of any of the rights or obligations herein granted or imposed, or the use, development, operation, management, control, condition, repair or maintenance of the Premises, including those arising from the alleged violations of any state or federal law, statute or regulation, including, but not limited to, the Americans with Disabilities Act of 1990 Titles I, II, and III (ADA), however caused or alleged to have been caused, provided however, in no event shall City be obligated to defend or indemnify State Parks, with respect to the sole negligence or willful misconduct of State Parks, its employees, or agents (excluding City). City shall further cause such indemnification and waiver of claims in favor of

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State Parks to be inserted in each contract that City executes for the provision of services in connection with the Premises and/or this Agreement.

C. In the event State Parks is named as a co-defendant in any legal action related to this Agreement and served with process of such legal action, State Parks shall immediately notify City of such fact and City shall represent State Parks in such legal action as provided herein, unless State Parks undertakes to represent itself as co-defendant in such legal action, in which event City shall reimburse and indemnify State Parks, as provided in sections A and B, for all its litigation costs, expenses and attorney fees.

16. EMINENT DOMAIN PROCEEDINGS

If the Premises or any portion thereof is taken by proceedings in eminent domain, State shall receive the entire award for such taking.

17. PROHIBITIONS AGAINST ASSIGNING, SUBLETTING

This Agreement and/or any interest therein or thereunder shall not be assigned, delegated, mortgaged, hypothecated, or transferred by City without obtaining the prior consent of State.

18. NOTICES

Any notice and/or report required to be given or that may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States Postal Service, postage prepaid, and addressed as follows:

State:	Department of Parks and Recreation Northern Buttes District Office 400 Glen Drive Oroville, CA 95966 530-538-2200
City:	City of Colusa

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425 Webster Street
Colusa, CA 95932
530-458-4740

Copy to: Department of Parks and Recreation
Partnerships Division
P.O. Box 942896
Sacramento, California 94296-0001

19. DEFAULTS AND REMEDIES

A. Any failure by a party to this Agreement to observe or perform a provision of this Agreement, where such failure continues for thirty (30) days after written notice of such failure, shall constitute a default and breach of this Agreement. However, if the nature of the default is such that it cannot be reasonably remedied within the thirty (30) day period, the offending party shall not be deemed to be in default if an effective cure is commenced within the thirty (30) day period and thereafter diligently prosecuted to completion. Upon an event of default by State, City shall have the right to terminate this Agreement by providing written notice to State.

B. Upon an event of default by City, State shall have the right to terminate this Agreement and obtain immediate possession of the Premises at any time by written notice to City. In such event, State shall be entitled to all rights and remedies of law and/or in equity, including but not limited to, costs and expenses incurred by State in recovering possession of and/or restoring the Premises and compensation for all detriment proximately caused by City's failure to perform its obligations under this Agreement.

20. TERMINATION

A. Notwithstanding the provisions of Section 19-Defaults and Remedies, either party may terminate this Agreement for any reason. The party who wishes to terminate the Agreement shall give written notice of its intention no later than 1-year before the scheduled termination date. Such notice shall be given in writing

and shall be effective on the date given in the notice as the scheduled date for the termination of the Agreement.

B. In the event that the State is the party choosing to terminate the Agreement, the State shall pay to City on the termination date a sum of money equal to the depreciated cost of the improvements installed or constructed upon the Premises by the City with the following exceptions: (a) improvements erected with funds realized through income from the Premises, and (b) improvements the cost of which City has been paid or reimbursed by State through grants or other sources. It is expressly understood that the reimbursement provisions are not applicable where State terminates this Agreement for any breach on the part of City. In the event of breach, bankruptcy, insolvency, abandonment, or termination of Agreement upon City's request, the reimbursement provisions shall not apply and shall not be considered an obligation of the State.

C. State may not commence termination proceedings until such time as the funds required for such termination and reimbursement have been obtained through appropriations by the Legislature and through the normal budgeting process of the State.

21. SURRENDER OF THE PREMISES; HOLDING OVER

A. Surrender: On expiration or within thirty (30) days after earlier termination of this Agreement, City shall surrender the Premises to State with all fixtures, improvements, and Alterations in good condition, except for fixtures, improvements, and Alterations that City is obligated to remove. City shall remove all of its personal property and shall perform all restoration required by the terms of this Agreement within the above stated time unless otherwise agreed to in writing.

If City fails to surrender the Premises to State on the expiration, assignment, or within thirty (30) days after earlier termination of the term as required by this section, City shall hold State harmless for all damages resulting from City's failure to surrender the Premises.

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B. Holding Over: After the expiration or earlier termination of the term and if City remains in possession of the Premises with State's express consent, such possession by City shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. All provisions of this Agreement, except those pertaining to the term, shall apply to the temporary tenancy.

22. REAL PROPERTY ACQUISITION

It is understood and agreed to by the Parties that all applications for real property rights, appurtenant to the Premises, shall be made in the name of and on behalf of State, and shall be subject to the prior approval of State.

23. COMPLIANCE WITH LAWS, RULES, REGULATIONS, AND POLICIES

City and its officers, agents and employees shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Agreement, including obtaining and maintaining all necessary permits and licenses. City acknowledges and warrants that it is, or will make itself, through its responsible managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the Premises, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historical preservation, environmental compliance, and building standards.

24. NON-DISCRIMINATION

- A. Pursuant to PRC §5080.34, this Agreement and every contract on lands that are subject to this Agreement shall expressly prohibit discrimination against any person because of sex, sexual orientation, race, color, religious creed, marital status, ancestry, national origin, medical condition, age (40 and above), and disability (mental and physical) including HIV and AIDS.
- B. City shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.) and the applicable regulations promulgated thereunder (CA Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of

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the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), are incorporated into this agreement by reference and made a part hereof as if set forth in full (2 CCR's §7285.0). City shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

C. City shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this agreement.

D. In the event of violation of this section, State will have the right to terminate this agreement, and any loss of revenue sustained by the State by reason thereof shall be borne and paid for by City.

25. DISABILITY ACCESS LAWS

A. With regard to all operations and activities that are the responsibility of City under this Agreement, and without limiting City's responsibility under this Agreement for compliance with all laws, City shall be solely responsible for complying with the requirements of the Americans with Disabilities Act of 1990 (ADA) (Public Law 101-336, commencing at §12101 of Title 42, United States Code, including Titles I, II, and III of that law), the Rehabilitation Act of 1973, the California Unruh Act (California Civil Code sections 51 et. seq.) and all related regulations, guidelines, and amendments to both laws.

B. With regard to facilities for which City is responsible for operation, maintenance, construction, restoration, or renovation under this Agreement, City also shall be responsible for compliance with Government Code §4450, et seq. Access to Public Buildings by Physically Handicapped Persons, and Government Code §7250, et seq., Facilities for Handicapped Persons, and any other applicable laws, regulations, guidelines and successor statutes. Such compliance shall be at City's sole cost and expense. Approval from State is required prior to implementation of any plans to comply with accessibility requirements.

26. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

By signing this Agreement, City does hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against City within the two-year period immediately preceding the date of this Agreement because of City's failure to comply with a federal court order that City shall comply with an order of the National Labor Relations Board.

27. ENVIRONMENTAL COMPLIANCE AND RESOURCE PROTECTION

A. The City shall comply with State's Cultural and Natural resource management policies and mandates in the conduct of all activities that may potentially affect cultural, natural, and/or scenic values, and is responsible for maintaining current knowledge of these requirements as they may be amended. These mandates include, but are not limited to, the California Environmental Quality Act (CEQA/PRC §21000 et seq.), the Memorandum of Understanding between California State Parks and the Office of Historic Preservation Executive Orders W-26-92 and B-10-11, Departmental Notice 2004-02, PRC §§5024, 5024.5 and 5097 et seq., the Native American Graves Protection and Repatriation act (NAGPRA) (PL 101-601, 25 U.S.C. 3001 et seq., 104 stat. 3048) Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, California Endangered Species Act, the Federal Endangered Species Act, the Clean Air Act, Clean Water Act, and the Porter Cologne Water Quality Act. When an undertaking has a Federal nexus, the National Historic Preservation Act (NHPA)- §106 (36 CFR Part 800.1 to 800.16) and the National Environmental Policy Act (42 U.S.C. §4321) will be required as well. The California State Parks Departmental Operation Manuals (DOM 300, 400, 2000) for natural and cultural resources shall also be complied with for projects with a potential to affect resources.

B. All resource management projects proposed within the Premises will be undertaken with the oversight provided by the appropriate State staff, specifically Environmental Scientists, State Historians, and State Archaeologists.

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C. Sensitive information will be safeguarded from general public distribution as required by state and federal law (Government Code §§65040.2(g)(3); 6254.10; 43 CFR 7, §7.18(a)).

28. HAZARDOUS SUBSTANCES

A. On the Premises City shall not: keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous; carry on any offensive or dangerous trade, business, or occupation; use or operate any machinery or apparatus that shall injure the Premises or adjacent buildings in any way; or do anything other than is provided for in this Agreement.

B. Nothing in this section shall preclude City from bringing, keeping, or using on or about said Premises such materials, supplies, equipment, and machinery as is appropriate or customary in the care, maintenance, administration, and control of parklands. Gasoline, oils, and all other materials considered under law or otherwise to be hazardous to health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.

C. City shall comply with all laws, federal, state, or local, existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event the State or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney fees and costs, as a result of the City's illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, City shall protect, indemnify, defend, and hold harmless any of these individuals against such liability. Where City is found to be in breach of this provision due to the issuance of a government order directing City to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by City or any person acting under City's direct control or authority, City shall be responsible for all costs and expenses of complying with such order including any and all expenses imposed

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on or incurred by the State in connection with or in response to such government order.

D. Notwithstanding the foregoing, in the event a government order is issued naming City, or City incurs any liability during or after the term of the Agreement in connection with contamination that preexisted the City's obligations and occupancy under this Agreement, or prior agreements or that were not directly caused by City, the State shall be solely responsible as between City and State for all expenses and efforts in connection therewith, and State shall reimburse City for all reasonable expenses actually incurred by City therewith.

E. All pest control activities, chemical and non-chemical, shall be approved by State prior to action by the City. City or the pest control business acting on behalf of City shall submit a DPR 191, Pest Control Recommendation, or equivalent to State for approval. State has fourteen (14) days to approve or deny the request. State review and approval shall be solely for compliance with State's policies and in no way shall relieve City or its contractors, employees, agents, or representatives from compliance with all laws and regulations concerning such activities, nor from carrying out the work in a workmanlike manner.

F. City or the pest control business acting on behalf of City shall submit a report of completed work for each pest management action to the State no later than seven (7) days after performance of the work. The report may be submitted on a DPR 191, Pest Control Recommendation, or equivalent.

29. SIGNS AND ADVERTISING

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon Premises, or circulated or published without prior approval of the State. Approval will be granted only when said signs or advertising is consistent with the purposes of this Agreement.

30. INTELLECTUAL PROPERTY RIGHTS

A. Clarify Ownership of Pre-existing Intellectual Property Rights: Other than as specifically identified and authorized in this Agreement, no names, logos, trademarks or copyrighted materials belonging to and/or associated with State shall be used, circulated, or published without the express consent of State. Further, no such use, even if permitted herein, or otherwise, shall be deemed to instill in City any rights of ownership on such names, logos, trademarks, copyrights or other materials, and any rights to such use shall not, under any circumstances, continue beyond the term of the Agreement. Any and all materials provided to City by the State to aid their performance under this Agreement shall be used by City for the exclusive benefit of the State and for the authorized purposes under this Agreement only. Such materials shall be treated as proprietary by City, for the benefit of the State. In the event that City wishes to use materials provided by the State for any other purpose, City must obtain a separate license from the State that specifically identifies the licensed material and rights granted in connection therewith.

Any trademarks and/or copyrights belonging to City prior to the commencement of the Agreement shall remain in Agency's sole ownership upon termination of the Agreement.

During the term of this Agreement, City shall use the name City of Colusa. Any additional and/or different names may be used only upon written agreement of State.

B. Ownership of New Logos and Trademarks Developed During Agreement: Any names, logos, and/or trademarks developed during and/or pursuant to this Agreement that in any way associate with, identify or implicate an affiliation with State and/or are funded by State Parks shall be approved in writing by State, shall belong to State upon creation, subject to express written agreement otherwise, and shall continue in State's exclusive ownership upon termination of the Agreement. Further, all goodwill and other rights in said marks shall inure to the benefit of the State as the mark owner.

C. Ownership of new Copyrights and Intellectual Property Rights, Developed by City for State Parks, Absent a Separate Written Agreement: All copyrighted materials developed and created by City for State during the term of this Agreement shall be deemed to be “works for hire” under the United States Copyright Act 17 USC §101 et seq. and shall, unless otherwise agreed to in writing, belong to State upon creation, and continue in State's exclusive ownership upon termination of this Agreement. Unless otherwise agreed to in writing, City intends and agrees to assign to State all rights, title, and interest in and all works created pursuant to this Agreement as well as all related intellectual property rights.

City agrees to cooperate with State and to execute any document reasonably necessary to give the foregoing provisions full force and effect including, but not limited to, an assignment of copyright.

D. City Rights in Separately Created Works: Any copyrighted materials and/or trademarks developed and created by City separate and apart from this Agreement shall belong to City and shall continue in City exclusive ownership upon termination of this Agreement. In the event that any trademarks and/or copyrights are created by City during the term of this Agreement and same are proposed for use in connection with City performance under the Agreement, City shall promptly notify State in writing of its intention to retain ownership in the specific trademarks and/or copyrights.

E. Construction Projects and/or Agency Deliverables: As stated above, any works developed by City pursuant to this Agreement, including all related copyrights and other proprietary rights therein, shall be deemed to be “works for hire” under the United States Copyright Act, 17 USC §101 et seq., and shall belong to State upon creation, and continue in State's exclusive ownership upon termination of this Agreement. These works shall include, but are not limited to, all drawings, designs, reports, specifications, notes, images, interpretive panels, and other works developed in the performance of this Agreement. Upon request, City shall deliver to State the disk or tape that contains the design files of any work that is performed with the assistance of computer Aided Design and

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Drafting Technology, and shall specify the supplier of the software and hardware necessary to use said design files. Agency intends and agrees to assign to State all rights, title, and interest in and to such materials as well as all related copyrights and other proprietary rights therein, unless otherwise agreed to in writing.

City warrants that it is the sole exclusive owner and has the full right, power, and authority over all tangible and intangible property deliverable to State in connection with this Agreement, and that title to such materials conveyed to State shall be delivered free and clear of all claims, liens, charges, judgments, settlements, encumbrances, or security interests.

City agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or Intellectual Property Rights of third parties without (1) obtaining State prior written permission, and (2) granting to or obtaining for State a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license to use, reproduce, sell, modify, publicly and privately perform, publicly and privately display, and distribute, for any purpose whatsoever, any such prior works.

City further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret, or any other intellectual property rights of any person, entity, or organization. City agrees to execute any documents reasonably requested by State in connection with securing State's registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Agency further agrees to incorporate these provisions into all of its contracts with architects, engineers, and other consultants or contractors.

City, at its sole expense, shall hold harmless, protect, defend, and indemnify State against any infringement action and/or dispute brought by a third party in connection with any deliverable hereunder. City shall pay all costs, expenses, losses, damages, judgments, and claims including reasonable attorney's fees, expert witness fees, and other costs.

31. GRANT OF STATE'S TRADEMARK LICENSE

- A. State hereby grants City, and City hereby accepts a non-exclusive, non-assignable license to use the State Park Logo (sometimes referred to as the "Trademark" or "Mark"), created and owned by State, in accordance with the terms and conditions of the License/Permission for Use of Trademarks which is attached hereto as "**Exhibit F**" and incorporated herein by reference. After signature by both City and State, this License shall authorize the use of the Trademark and associated goodwill in connection with this Agreement only.
- B. A record of each authorized use by City of the Trademark shall be maintained by City and by State.
- C. City and State will use the State Park name, Trademark, and brand consistent with the State Parks License/Permission for Use of Trademark-Exhibit A, which is attached hereto as "**Exhibit F, Attachment 1**" and incorporated herein by reference, and the State Park Brand Standards Handbook available at <https://www.parks.ca.gov/pages/735/files/brandhandbookjanuary2007.pdf>.
- D. The State Park name, Trademark and brand will not be used on City social media pages.

32. PARTICIPATION IN STATE PARK MARKETING PROGRAMS

City acknowledges that State has an established advertising and marketing program designed to promote additional revenue for the State and to deliver a consistent and positive image to the public. City agrees to cooperate in this program in the manner described below without compensation from the State for such cooperation:

- A. City agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department of Parks and Recreation.
- B. City agrees to place on the Premises any advertising that the State approves under this program. Any advertising approved by the State under this program will be placed at State's expense.
- C. City agrees to rent or sell, along with all other items of merchandise that are part of the City's normal and customary inventory, any item of merchandise

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that the State approves under this program, provided that City is authorized to sell or rent it under the terms of the Agreement, and the City receives reasonable compensation for its sale.

33. CHILD SUPPORT COMPLIANCE ACT

A. City recognizes the importance of child and family support relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders as obligations and shall fully comply with all applicable state and federal laws provided in Chapter 8 (commencing with §5200) of Part 5 of Division 9 of the Family Code.

B. To the best of its knowledge, City is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

34. DISPUTES

City shall continue with any and all responsibilities under this Agreement during any dispute.

35. LIMITATION

This Agreement is subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title that may affect Premises.

36. SECTION TITLES

The section titles in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

37. INSPECTION

State or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine compliance with the provisions of this Agreement.

38. SUCCESSORS IN INTEREST

Unless otherwise provided in this Agreement, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of who shall be jointly and severally liable hereunder.

39. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

40. DURATION OF PUBLIC FACILITIES

By entering into this Agreement, State makes no stipulation as to the type, size, location, or duration of public facilities to be maintained at this unit, or the continuation of State ownership thereof, nor does the State guarantee the accuracy of any financial or other factual representation that may be made regarding the Premises.

41. WAIVER OF RIGHTS, CLAIMS, AND AGREEMENT TERMS

Unless otherwise provided by this Agreement, no waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the Premises or to exercise any right, power, or privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or relinquishment of any right or acquiescence therein. No notice to the City shall be required to restore or revive time as of the essence after the waiver by the State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise thereof

in one or more instances. The rights, powers, options, and remedies given to the State by this Agreement shall be deemed cumulative.

42. INTERPRETATION OF AGREEMENT

This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

43. INDEPENDENT CONTRACTOR

In the performance of this Agreement, City and the agents and employees of City shall act in an independent capacity and not as officers or employees or agents of the State.

44. MODIFICATIONS AND APPROVAL OF AGREEMENT

This Agreement contains and embraces the entire Agreement between the Parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally or by any Agreement between the Parties unless such Agreement be expressed in writing, signed, and acknowledged by the State and City or their successors in interest.

Notwithstanding any of the provisions of this Agreement, the Parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or terminations thereof, which are not forbidden by law. This Agreement, amendments, modifications, or termination thereof shall not be effective until approved by State's relevant control agencies.

45. MISCELLANEOUS

- A. Unless otherwise stated, all reference to "days" in this Agreement shall mean calendar days.
- B. Any time City is required to obtain approval, consent, or permission from State, it shall be in writing.

Colusa-Sacramento River SRA

Operating Agreement #P21OA008

IN WITNESS WHEREOF, the Parties have executed this Agreement and shall be effective once approved by State and control agencies as applicable.

CITY OF COLUSA

**STATE OF CALIFORNIA
DEPARTMENT OF
PARKS AND RECREATION**

By: _____

By: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

APPROVED:

DEPARTMENT OF GENERAL SERVICES:

LICENSE/PERMISSION FOR USE OF TRADEMARKS

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

REQUESTER NAME
City of Colusa hereafter called the "Licensee."

Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation (the "Department") grants permission to use certain trademarks (the "Mark(s)", created and owned by the Department, in accordance with the terms and conditions of this License, identified as follows:

California State Parks logo USPTO Reg. No. 2437051

See Attachment 1" for additional provisions regarding use of the logo, including specifications, registration, and logo usage guidelines.

The Department hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable right and license to use, reproduce, duplicate and distribute the Marks pursuant to the terms and conditions of this license for a term of 5 year(s) from the date of execution by both parties but not to exceed the duration of the operating agreement between the Department and Licensee. This License is intended to run concurrently with the operating agreement and shall automatically terminate upon early termination of said agreement. Licensee shall own all right, title and interest in and to the new works created; provided, however, that the Department shall retain all right, title and interest in and to the Marks provided hereunder.

This license shall authorize the use of the Marks and associated goodwill, in connection with the following only:

Operating agreement #P210A008

Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicenseable (except as described above). This is not an exclusive privilege to the user, and the Department reserves the right to make the Marks available to others.

One copy of any published work or product using the Marks pursuant to this grant of license must be provided to the Department at no cost to the Department unless agreed otherwise in writing. Licensee shall not modify or alter the Marks in any way without prior written approval from the Department.

All uses of the trade Mark must be accompanied by the trademark symbol TM until such time that Licensee is notified by the Department that the federal registration symbol (®) should be used. All uses of the California State Parks logo must be accompanied by the trademark symbol ®.

IN NO EVENT SHALL THE DEPARTMENT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. THE DEPARTMENT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-

Licensee agrees to indemnify, protect, hold harmless, and defend the Department from and against any liability that might arise from any and all use of the Marks by Licensee, its licensees, successors or assigns.

Licensee agrees to pay the Department, upon acceptance of this Agreement, all expenses as follows:

No additional charge.

Goodwill and Quality Control

A. Licensee recognizes the great value and goodwill associated with the Marks and acknowledges that such goodwill belongs to the Department. Licensee further acknowledges that the Marks have acquired a secondary meaning among the public. Licensee agrees not to take any action that could be detrimental to the goodwill associated with the Marks or to the Department.

B. The Department shall have the right to approve the quality of any reproduction of the Marks on any materials, as well as the associational use or co-joining of the Marks with any event, cause, or third party. The Department shall not unreasonably withhold such approval.

C. Licensee agrees to inspect and approve its own sponsored uses of the Mark(s) to ensure quality and content of materials, consistent with the good will represented by the Mark(s).

Third Party Infringement

The Department, at its sole discretion, shall take whatever action it deems advisable in connection with any unauthorized use of the Marks by a third party. The Department shall bear the entire cost and expense associated with any such action, and any recovery or compensation that may be awarded or otherwise obtained as a result of any such action shall belong to the Department.

The provisions above constitute page 1 of 2 of this agreement. Page 2 must be initiated by both parties for this agreement to be valid.

AGREED AND ACCEPTED			
State of California Department of Parks and Recreation		LICENSEE City of Colusa	
BY ▷	DATE	BY ▷	DATE
PRINTED NAME OF PERSON SIGNING Armando Quintero		PRINTED NAME AND TITLE OF PERSON SIGNING Jesse Cain City Manager	
TITLE Director	DISTRICT/SECTION California State Parks	ADDRESS	
PHONE NO.	EMAIL	PHONE NO.	EMAIL citymanager@cityofcolusa.com

LICENSE/PERMISSION FOR USE OF TRADEMARKS

State of California - The Resources Agency
 DEPARTMENT OF PARKS AND RECREATION

The provisions below constitute page 2 of 2 of this agreement. This page must be initialed by both parties for this agreement to be valid.

Ownership Rights

Licensee acknowledges the Department's exclusive right, titles and interest in and to the Marks. Licensee further covenants that it shall not at any time challenge or contest the validity, ownership, title and registration of the Department in and to the intellectual property or the validity of this License. Licensee's use of the Marks shall inure to the benefit of the Department. If Licensee acquires any trade rights, trademarks, equities, titles, or other rights in and to the Marks, by operation of law, usage, or otherwise, Licensee shall, upon the expiration of this License, assign and transfer the same to the Department without any consideration other than the consideration of the License. All rights not specifically transferred by this License are reserved to the Department.

Termination

A. The Department shall have the right to terminate the License without cause upon sixty (60) days notice, whereupon all rights granted herein shall revert immediately to the Department.
 B. Upon early termination by the Department or by expiration of the License, the License shall terminate, Licensee's rights shall cease immediately and Licensee shall discontinue all use of the Marks and/or other licensed property at once. Licensee shall dispose of all goods, works and materials bearing or relating to the Marks in accordance with the Department's instructions.

No Partnership or Agency Created

Nothing herein shall be construed to constitute the parties hereto as partners or joint venturers, nor shall any similar relationship be deemed to exist between them. Further, nothing in this License shall make one party the agent of the other, and neither party has power or authority to bind the other.

Applicable Law

This License shall be construed in accordance with the laws of the State of California; Licensee consents to jurisdiction of the courts of Sacramento, California.

Integration

This License, the operating agreement, and Attachment 1 hereto constitute the entire agreement between the parties hereto and shall not be modified, amended, or changed in any way except by written agreement signed by both parties hereto. This License shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

Notices

All notices and reports to be sent to the Department shall be in writing and shall be mailed or delivered to California Department of Parks and Recreation, Partnerships Office, PO Box 942896, Sacramento, CA 94296-0001. All notices to be sent to Licensee shall be mailed or delivered to the address specified on the first page of the License form. All notices and reports shall be deemed delivered immediately upon personal delivery, or, if mailed, three (3) days after being deposited in the United States mail system, postage prepaid, first class mail, and properly addressed. The Department and Licensee shall provide notice to the other of any change in address.

Modifications

This License may not be modified except by a written instrument, signed by both parties, making specific reference to this License by date, parties and subject matter.

Severability

The invalidity or unenforceability of any provision of this License, or the invalidity or unenforceability of any provision of this License as applied to a particular occurrence or circumstance, shall not affect the validity or enforceability of any of the other provisions of this License or any other applications of such provisions, as the case may be.

Attorneys Fees

If litigation becomes necessary to secure compliance with the terms and conditions of this License, to recover damages and/or to terminate the License, the prevailing party in any legal action shall be entitled to recover reasonable attorney fees and expenses incurred.

AGREED AND ACCEPTED

LICENSOR'S INITIALS ▷	DATE	LICENSEE'S INITIALS ▷	DATE
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Certificate Of Completion

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Signer Events**Signature****Timestamp**

Jesse Cain

citymanager@cityofcolusa.com

City Manager

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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, California State Department of Parks and Recreation (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact California State Department of Parks and Recreation:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: esign@parks.ca.gov

To advise California State Department of Parks and Recreation of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at esign@parks.ca.gov and in the body of such request you must state: your previous email address, your new email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from California State Department of Parks and Recreation

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to esign@parks.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number.

To withdraw your consent with California State Department of Parks and Recreation

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to esign@parks.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. . .

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify California State Department of Parks and Recreation as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by California State Department of Parks and Recreation during the course of your relationship with California State Department of Parks and Recreation.



City of Colusa California

STAFF REPORT

DATE: December 5, 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 a cannabis use and regulatory permit.

Recommendation: The Council approve the Proposed Resolution

BACKGROUND ANALYSIS:

As part of the City of Colusa's cannabis ordinance once a development agreement has been obtained the next step in the process is for the applicant to obtain a use and City regulatory permit. The City use and regulatory permit is only valid for one year - the applicant must fill out and apply for a new permit each year.

BUDGET IMPACT:

None

STAFF RECOMMENDATION:

Approve Resolution 23-

RESOLUTION NO. 23-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA APPROVING A CANNABIS MANUFACTURING SPECIAL USE PERMIT AND REGULATORY PERMIT FOR COLUSA RIVERBEND ESTATES L.P AND POMONA RIO PROPERTY, LLC RELATIVE TO THE DEVELOPMENT OF A CANNABIS MANUFACTURING FACILITY LOCATED ON EAST CLAY STREET NEXT TO THE SACRAMENTO RIVER

WHEREAS, Riverbend Estates L.P and Pomona Rio Property, LLC has applied to the City to develop and open a cannabis manufacturing facility along the Sacramento River off of East Clay Street, Colusa; and

WHEREAS, the Project will include the cultivation and manufacturing of cannabis products as provided within the Development Agreement by and between the City of Colusa and Riverbend Estates L.P and Pomona Rio Property, LLC relative to the development of a Cannabis Manufacturing Facility, adopted by City of Colusa City Council Ordinance No 562 on November 21, 2023, incorporated herein by reference; and

WHEREAS, the City of Colusa City Code Article 21-5, and City of Colusa Zoning Ordinance Section 33.03, sets forth requirements for cannabis manufacturing regulations and a requirement to obtain a Cannabis Manufacturing Special Use Permit respectively; and

WHEREAS, the City of Colusa Municipal Code Chapter 12F sets forth requirements for a Cannabis Manufacturing Regulatory Permit; and

WHEREAS, the Riverbend Estates L.P and Pomona Rio Property LLC Project must be granted both a Cannabis Manufacturing Special Use Permit and a Cannabis Manufacturing Regulatory Permit by the City of Colusa City Council.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLUSA DOES RESOLVE AS FOLLOWS:

Section 1. The City Council finds that the establishment, maintenance, and operation of the Riverbend Estates L.P and Pomona Rio Property LLC Project applied for is consistent with the City's General Plan and zoning for the site.

Section 2. The City Council finds that the establishment, maintenance, and operation of the Riverbend Estates L.P and Pomona Rio Property LLC Project applied for will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or to be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.

Section 3. The City Council hereby approves a cannabis manufacturing Regulatory permit for the Riverbend Estates L.P and Pomona Rio Property LLC

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 5th day of December 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

GREG PONCIANO, MAYOR

ATTEST:

Shelly Kittle, City Clerk

SIDE LETTER BETWEEN
CITY OF COLUSA
Colusa City Clerk
Effective December 5th, 2023

Human resources provided by the City Clerk.

The City Clerk shall help manage human resources for the City of Colusa, there is no current job description for these duties as this will be for a one-year trial period. It is expected that the added job duties would take approximately 20 additional hours per month for that the city will add \$1,000 per month to the City Clerk’s salary. The City Clerk shall work with the department heads to update the employees MOU’s and employee policies. This is new to the City of Colusa; the goal is to learn over the next year and create a job description for HR services that work for the City of Colusa.

Shelly Kittle, City Clerk

Greg Ponciano, Mayor

APPROVED AS TO FORM:

Ryan Jones – City Attorney



City of Colusa California

STAFF REPORT

DATE: December 5th, 2023

TO: City Council

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

AGENDA ITEM: Public Hearing and council to consider the repeal and replacement of Article 39 Floodplain Management with an updated version.

Recommendation: Council to introduce and read by title only the Ordinance to repeal the current Article 39 and Replace it with Updated Article 39 that has been updated to comply with new NFIP guidelines.

BACKGROUND ANALYSIS: With the adoption of the new Colusa County Flood Rate Insurance Maps (FIRM), the FEMA Region IX Regional Service Center is conducting a review of all counties that had changes in their floodplain development ordinances. Reviews are required as part of the new Flood Insurance Study (FIS) and associated Flood Insurance Rate Maps (FIRMs) becoming effective in Colusa County

Currently as published on the FEMA Map Service Center Web Site, the effective date when the new FEMA flood plain mapping is officially adopted and in place by March 27, 2024.

When FEMA provides a community with new or revised flood hazard data, the community must ensure its floodplain management regulations are fully compliant, adopted by the local governing body, and are legally enforceable by the effective date of the FIRM and FIS report. A community that fails to do so will automatically be suspended from the NFIP.

FEMA staff reviewed the city's ordinance for compliance with the NFIP minimum development standards. Our ordinance was largely in compliance, but there was some language and cross-references within our current regulations that were outdated.

Staff met with FEMA and reviewed the changes requested by FEMA on Article 39 and has determined that the changes being proposed do not have any substantial effects on the interpretation of the code as it would relate to regulating floodplain management in the city.

BUDGET IMPACT

None

STAFF RECOMMENDATION

Council to introduce and read by title only the Ordinance to repeal the current Article 39 and replace with updated Article 39 to comply with new NFIP guidelines.

ORDINANCE NO.

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.

(Ord. No. 437, § 1.)

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

