

#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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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

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.

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

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**".

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-resettable 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

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

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

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

Colusa-Sacramento River SRA

Operating Agreement #P210A008

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.

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

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.

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

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

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

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.

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 TRADEMARKSState 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. <u>Goodwill and Quality Control</u> 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). <u>Third Party Infringement</u> 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

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