CITY OF RIVERBANK

REGULAR CITY COUNCIL AND THE LOCAL REDEVELOPMENT AUTHORITY MEETINGS

(The City Council also serves as the LRA Board)
City Hall North • Council Chambers
6707 Third Street • Suite B• Riverbank • CA • 95367

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AGENDA

TUESDAY, DECEMBER 8, 2015 – 6:00 P.M.

(THE AGENDA PACKET IS POSTED AT THE CITY CLERK'S OFFICE AND AT [WWW.RIVERBANK.ORG](http://www.riverbank.org))

CALL TO ORDER: Mayor/Chair Richard D. O'Brien

FLAG SALUTE: Mayor/Chair Richard D. O'Brien

INVOCATION: Riverbank Ministerial Association

ROLL CALL: Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair Darlene Barber-Martinez
Council/Authority Member Cal Campbell
Council/Authority Member Leanne Jones Cruz
Council/Authority Member Jeanine Tucker

CONFLICT OF INTEREST
Any Council/Authority Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.

1. PRESENTATIONS

Item 1.1: Presentation on the Stanislaus Council of Government's Unmet Transit Needs Assessment Process.

Item 1.2: Stanislaus Economic Development & Workforce Alliance Presentation.

Item 1.3: Introduction of the Organizational Culture Team.

Item 1.4: Presentation and Acknowledgement to Katie Lemons, City Employee.

2. PUBLIC COMMENTS (No Action Can Be Taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the City Council/LRA Board. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the City Council/LRA Board.

3. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless otherwise requested by an individual Council/Authority Member for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 3.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 3.B: Approval of the November 10, 2015, City Council and Local Redevelopment Authority Minutes.

Item 3.B-1: Approval of the November 24, 2015, City Council and Local Redevelopment Authority Minutes.

Item 3.C: **A Resolution of the City Council of the City of Riverbank, California, Approving a Lease Agreement Between the City of Riverbank and Verizon Wireless, LLC for the Placement of a Cellular Tower at the Riverbank Sports Complex.** – It is recommended that the City Council approve the draft Option and Tower Lease Agreement, and Memorandum of Option for Tower Lease Agreement, and authorize the City Manager to execute the agreements with minor changes as needed.

Recommendation: It is recommended that City Council/LRA Board approve the Consent Calendar items by roll call vote.

4. UNFINISHED BUSINESS

Item 4.1: **Second Reading by Title Only and Adoption of Ordinance No. 2015-019 of the City Council of the City of Riverbank, California, Amending Title III: Administration, Chapter 30, by Adding Section 30.03: Council Member Elections By District, to the Riverbank Municipal Code, to Establish that Election of City Council Members Shall Be By District** – It is recommended that the City Council conduct the second reading by title only of the proposed Ordinance and consider its adoption by roll call vote.

5. PUBLIC HEARINGS

The Public Hearing Notice(s) were published in the local newspaper of general circulation on November 25, 2015.

Item 5.1: **The First Reading and Introduction of a Proposed Ordinance of the City Council of the City of Riverbank, California, amending the Riverbank Municipal Code by repealing in its Entirety Chapter 120: Medical Marijuana Dispensary Ban of Title XI: Business Regulations and Substituting it with a New Chapter 120: Ban On Medical Marijuana Dispensaries and Commercial and Outdoor Marijuana Cultivation** – It is recommended that the City Council conduct the public hearing for the first reading and introduction by title only of proposed ordinance and consider its approval as presented, which will initiate the scheduling of the ordinance for its second reading by title only at the January 12, 2016, regular City Council meeting to consider its adoption.

6. NEW BUSINESS

Item 6.1: **A Resolution of the City Council of the City of Riverbank, California, Authorizing the Execution and Delivery of a Master Governmental Lease-Purchase Agreement, an Escrow Agreement and a Supplement with Respect to the Acquisition, Purchase, Financing and Leasing of Certain Equipment for the Public Benefit; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution** – It is recommended that the City Council adopt a Resolution awarding the financing for the Water Meter Project to Wells Fargo Bank and authorizing the City Manager and Director of Finance to execute the necessary financing documents.

7. COMMENTS (Information only – No action)

Item 7.1: Staff Comments

Item 7.2: Council/Authority Member Comments

Item 7.3: Mayor/Chair Comments

8. CLOSED SESSION

The public will have a limit of 5 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing into Closed Session.

Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code § 54956.9(a)
Name of Case: City of Riverbank v. Riverbank Oil Transfer, LLC
Stanislaus County Superior Court Case No. 2012779

Recommendation: It is recommended that City Council /LRA Board provide direction to Staff on the Closed Session item(s).

9. REPORT FROM CLOSED SESSION

Item 9.1: Report from Closed Session Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

ADJOURNMENT **(The next regular City Council meeting –Tuesday, Jan. 12 @ 6:p.m.)**

UPCOMING EVENTS:

Open Until Filled	▪ **Budget Advisory Committee** Applications are currently being accepted. Visit www.riverbank.org or Contact Marisela Garcia at 863-7110.
Friday Closures	▪ **City Offices are Closed Alternating Fridays** o **Friday: December 18 and January 15: CLOSED** o **Friday: December 4 and January 8: Hours 8:am – 5:pm**
HOLIDAY OFFICE CLOSURES	▪ **City Offices are Closed: 12/24/15, 12/25/15, 12/30/15, 12/31/15, and 01//01/15**
Cancelled 2015 Regular City Council Meetings	▪ **Tuesday, December 22, 2015.**

AFFIDAVIT OF POSTING

I, Annabelle Aguilar, do hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted 72 hours prior to the meeting in accordance to the Brown Act.

Posted this 3rd day of December, 2015
/s/Annabelle H. Aguilar, CMC, City Clerk /LRA Recorder

Notice Regarding Americans with Disabilities Act: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (209) 863-7122 or cityclerk@riverbank.org. Notification 72-hours before the meeting will enable the City to make reasonable arrangements to ensure any special needs are met. [28 CFR 35.102-35.104 ADA Title II].

Notice Regarding Non-English Speakers: Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Council/LRA Board shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

GENERAL INFORMATION

Meeting Schedule	The City Council Members also serve as the LRA Board Members. The Riverbank City Council/LRA Board meets in the City Hall North Council Chambers. Regular City Council meetings are held on the 2nd and 4th Tuesdays of each month at 6:00 p.m. The Local Redevelopment Authority Board meets on an "as needed" basis. Meetings are held as indicated, unless otherwise noticed.
City Council / LRA Agenda & Reports	The City Council/LRA Board agenda is posted pursuant to the California Brown Act, which only requires these agenda title pages to be posted near the entrance of the location where the meeting is to be held and,when available, on the City's website. Additional documents may be provided by the City in its efforts of transparency to keep the public well informed. **The agenda packet (agenda plus supporting documents) are posted for public review at the City Clerk's Office**, **6707 Third Street, Riverbank, CA and at www.riverbank.org upon distribution to a majority of the City Council/LRA Board.** A subscription to receive the agenda can be purchased for a nominal fee through the City Clerk's Office.
Public Hearings	In general, a public hearing is an open consideration within a regular meeting of the City Council or a meeting of the LRA, for which special notice has been given and may be required. During a specified portion of the hearing, any resident or concerned individual is invited to present protests or offer support for the subject under consideration.
Televised / Video of Meetings	City Council/LRA meetings are televised on Charter Channel 2 and AT&T Uverse Channel 99. Video of the meeting and the schedule of replays may be seen on the City's website, under the "Action 2" Icon. (Note: Technical difficulty occurs on occasion preventing the televising or recording of the meeting.)
Questions	Contact the City Clerk at (209) 863-7122 or aaguilar@riverbank.org

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.1

SECTION 1: PRESENTATION

Meeting Date:	December 8, 2015
Subject:	Presentation on the Stanislaus Council of Government's Unmet Transit Needs Assessment Process
From:	Jill Anderson, City Manager
Submitted By:	Marisela Garcia, Director of Finance Kathleen Cleek, Development Services Admin. Manager

RECOMMENDATION

It is recommended that the City Council hear the Stanislaus Council of Governments (StanCOG) presentation on the unmet transit needs assessment process and provide any feedback or comments after the presentation.

SUMMARY

According to the Transportation Development Act (TDA) regional transportation planning agencies, such as the Stanislaus Council of Government, must annually complete an Unmet Transit Needs (UTN) Assessment process. This process identifies and analyzes potential transit needs for reasonableness based upon adopted state and local guidelines. The purpose of the unmet transit needs assessment process is to identify any unmet transit need(s) that may be present anywhere in the County and determine whether any identified are reasonable to meet. If an unmet needs is identified as "reasonable to meet", it must be funded prior to Local Transportation Funds (LTF) being allocated for non-transit purposes.

Any potential transit need identified at the UTN public hearings will be reviewed per the Policy Board's adopted procedures and definitions for "unmet transit need" and "reasonable to meet." A final report documenting the FY 2016/17 UTN Assessment process will be prepared in February 2016, with findings for any "unmet transit needs" that are also "reasonable to meet" being determined by the StanCOG Policy Board in March 2016.

UPCOMING PUBLIC TRANSIT HEARINGS

Gene Bianchi Community Center (Oakdale)	Tuesday, December 15, 2015	6 PM – 7 PM
Ceres Community Center	Tuesday, January 19, 2016	6 PM – 7 PM

ATTACHMENTS

Public Transit Hearing's Schedule – English
Public Transit Hearing's Schedule - Spanish

PUBLIC TRANSIT HEARINGS

Does public transit meet your needs?

SHARE YOUR TRANSIT IDEAS WITH US AT A PUBLIC HEARING LISTED BELOW!

WEDNESDAY **OCTOBER 21, 2015** **6:00 PM** StanCOG Policy Board 1111 I Street, Suite 308 Modesto, CA	**THURSDAY** **NOVEMBER 12, 2015** **6PM – 7PM** Hammon Senior Center 1033 W. Las Palmas Patterson, CA
TUESDAY **DECEMBER 15, 2015** **6PM – 7PM** Gene Bianchi Community Center 110 S 2nd Avenue Oakdale, CA	**TUESDAY** **JANUARY 19, 2016** **6PM – 7PM** Ceres Community Center 2701 4th Street Ceres, CA

Spanish translation services will be provided

Submit comments/questions to:

Regina Valentine, Associate Planner
rvalentine@stancog.org
1111 I Street, Suite 308
Modesto, CA 95354
(209) 525-4644

StanCOG
Stanislaus Council Of Governments

www.StanCOG.org/Unmet-Transit-Needs.shtm

Audiencias Abiertas al Público sobre Transporte Colectivo

¿Cubrimos sus necesidades de transporte?

¡Comparta sus Ideas de Transporte Público con Nosotros!

miércoles
21 de octubre del 2015
6:00 pm
Reunión del Comité de Políticas Salón de Directorio del StanCOG
1111 I Street, Suite 308
Modesto, CA

jueves
12 de noviembre del 2015
6pm – 7pm
Centro para Tercera Edad Hammon
1033 W. Las Palmas
Patterson, CA

martes
15 de diciembre del 2015
6pm – 7pm
Centro Comunitario Gene Bianchi
110 S 2nd Avenue
Oakdale, CA

martes
19 de enero del 2016
6pm – 7pm
Centro Comunitario Ceres
2701 4th Street
Ceres, CA

Se ofrecerá servicio de traducción al español

Háganos llegar sus comentarios/preguntas a:

Regina Valentine, Associate Planner
rvalentine@stancog.org
1111 I Street, Suite 308
Modesto, CA 95354
(209) 525-4644

StanCOG
Stanislaus Council Of Governments

www.StanCOG.org/Unmet-Transit-Needs.shtm

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.2

SECTION 1: PRESENTATION

Meeting Date:	December 8, 2015
Subject:	Stanislaus Economic Development & Workforce Alliance Presentation
From:	Jill Anderson, City Manager
Submitted by:	Norma Torres-Manriquez, Administrative Analyst II/ Human Services Specialist

RECOMMENDATION

It is recommended that the City Council welcome the Stanislaus Economic Development & Workforce Alliance staff: Steven Ames, Chief Business Development Officer, Kurtis Clark, Chief Innovation Officer & SBDC Director, and Gavin Bruce, Business Development Coordinator. The Alliance staff will be providing a presentation on the current and future services provided to the City of Riverbank.

SUMMARY

The Alliance is committed to creating a blueprint for success, which can make Stanislaus County the strategic business choice for existing and expanding businesses by focusing on job creation, business assistance, and workforce preparation activities. What does this mean for the City of Riverbank? How does the City benefit from the current and future efforts of the Alliance? The Alliance staff would like to share with the City Council the value that they provide to our City and present a vision of the future value of their services.

FINANCIAL IMPACT

There is no financial impact for the City.

ATTACHMENTS

There are no attachments to this report.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.3

SECTION 1: PRESENTATION

Meeting Date:	December 8, 2015
Subject:	Introduction of the Organizational Culture Team
From:	Jill Anderson, City Manager
Submitted by:	Katie Lemons, HR Manager Melissa Holdaway, Administrative Analyst II

RECOMMENDATION

It is recommended that the City Council provide an opportunity for the City's Organizational Team (OCT) to be introduced and make a brief presentation regarding the work that they are doing.

SUMMARY

Tonight the OCT, represented by Daren Martin, will be introducing the team members and the 2015/16 Game Plan.

BACKGROUND

In the Summer of 2014, the Organizational Culture Team was formed as a step in achieving the City Manager's Organizational Vision, which is:

> *The City of Riverbank's organizational culture will be healthy and productive with a spirit of service to each other, as well as the community. This culture will be characterized by City staff members who:*

- *Demonstrate respect, honesty and ethics in their dealings with one another and the community.*
- *Take responsibility and initiative in executing their jobs self-sufficiently; develop their abilities; and grow in their roles.*
- *Deliver customer service that is consistently reported to be helpful, responsive and competent.*
- *Exhibit teamwork that is cooperative, solution-oriented, and supportive within and across department lines.*

The team adopted the City Manager's vision as their own and is working toward the vision by promoting a positive work environment and developing a game plan to enhance the City's culture.

FINANCIAL IMPACT

None.

STRATEGIC PLAN

The work of the City's Organizational Culture Team supports the City Council's strategic goal to "enhance professionalism and customer service."

ATTACHMENTS

Attachment A: 2015/16 Game Plan

Organizational Culture Team

2015-2016 GAME PLAN

<u>Goal #1: To improve our internal customer service by developing practices that will streamline interpersonal communication amongst employees and departments and will promote a respectful, professional, efficient, and consistent work environment.</u>

Action Plan

1. Develop a list of protocols in treating one another
2. Schedule a leadership forum for Mid-Management and Supervisors to discuss do's and dont's.
3. Develop a method to disseminate information between staff on event, large projects, seasonal projects, and emergencies.
4. Develop an internal informational sheet on individual employee tasks and restructuring of job duties.
5. Designate colors on the City-Wide map to reflect areas of responsibility
6. Update Standby Binder to help communication
7. Develop an emergency card with phone numbers for staff to have readily available.
8. Update phone numbers that are provided to residents so that they may contact the correct department.

<u>Goal #2: To deliver external customer service that results in the public experiencing service that is provided in an accurate, updated, helpful, respectful, responsive, and efficient manner as consistent practice while still maintaining regulatory responsibilities.</u>

Action Plan

1. To develop effective methods of disseminating information to residents that is clear, concise, and up to date.
2. Develop a list of protocols when interacting with customers.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.4

SECTION 1: PRESENTATION

Meeting Date:	December 8, 2015
Subject:	Presentation and Acknowledgement to Katie Lemons, City Employee
From:	Jill Anderson, City Manager
Submitted by:	Alvaro Zamora, Human Resource Analyst

RECOMMENDATION

It is recommended that the City Council acknowledge retiring City Employee, Katie Lemons, and present a plaque in her honor.

SUMMARY

City Employee Katie Lemons has been with the City since December 5, 2011, when she was hired on a temporary/part-time basis to work on specialized projects in the Administration Department. On July 10, 2015 she was promoted to the Human Resources position on a full-time basis. On Thursday, December 30, 2015, Katie will be retiring from the City's employment. The City wishes her the best of luck in retirement and her future endeavors. She will be missed.

ATTACHMENT

There are no attachments with this report.

RIVERBANK CITY COUNCIL / LRA AGENDA ITEM NO. 3.A

SECTION 3: CONSENT CALENDAR

Meeting Date:	December 8, 2015
Subject:	Waiver of Readings
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / LRA Board approve the waiver of readings of Ordinances and Resolutions, except by title.

SUMMARY

The approval of the waiver of readings will allow Ordinances and Resolutions to be introduced by title only and acted upon without the need to read the entire text of the item into the public record. The documents related to proposed Ordinances and Resolutions are available for review by the public on the City's website and in the City Clerk's office at City Hall (North).

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENTS

There are no attachments to this report.

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY
AGENDA ITEM NO. 3.B

SECTION 3: CONSENT CALENDAR

Meeting Date:	December 8, 2015
Subject:	Approval of the November 10, 2015, City Council and Local Redevelopment Authority Minutes
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / Local Redevelopment Authority Board approve the City Council /LRA Meeting Minutes as presented.

SUMMARY

The Draft Minutes of the November 10, 2015, regular City Council and the Local Redevelopment Authority Board meetings have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. November 10, 2015, City Council and LRA Minutes

City of Riverbank

REGULAR CITY COUNCIL AN
LOCAL REDEVELOPMENT AUTHORITY MEETINGS
(The City Council also serves as the LRA Board)

MINUTES

TUESDAY, NOVEMBER 10, 2015

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The following minutes reflect action minutes, which may contain added clarification for the record. A copy of the verbatim recording may be obtained for a fee, by contacting the Administration Department at (209) 863-7122.

CALL TO ORDER:

The City Council and Local Redevelopment Authority Board of the City of Riverbank met at 6:00 p.m. on this date at the Riverbank City Council Chambers, 6707 Third Street, Suite B, Riverbank, California, with Mayor/Chair Richard D. O'Brien presiding.

FLAG SALUTE: **Mayor Richard D. O'Brien**

INVOCATION: **Reverend Charles Neal**

ROLL CALL:
Present **Mayor/Chair Richard D. O'Brien**
Vice Mayor/Chair Darlene Barber-Martinez
Council/Authority Members: Cal Campbell, Leanne Jones Cruz, and Jeanine Tucker

CONFLICT OF INTEREST
Any Council/Authority Member and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered are to declare their conflict.

No one declared a conflict.

1. PRESENTATIONS

Item 1.1: Presentation and Acknowledgement to John Hurst, City Employee. – *Presentations were made by Staff members and Mayor O'Brien. Mayor O'Brien called for a brief recess at 6:10 p.m.; Mayor O'Brien reconvened the City Council meeting at 6:19 p.m.*

Item 1.2: Financing Options for Capital Improvement Projects. – *Mr. Craig Hill of NHA Advisors made the presentation and responded to questions.*

2. PUBLIC COMMENTS (No Action Can Be Taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the City Council/LRA Board. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the City Council/LRA Board.

Ramon Bermudez, Riverbank, spoke in regards to maintenance of the alley by Carl's Junior, the cause of sink holes, and preservation of farm land.

3. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless otherwise requested by an individual Council/Authority Member for special consideration. Otherwise, Staff's recommendation(s) will be accepted and acted upon by a roll call vote.

Item 3.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 3.B: A **Resolution [No. 2015-088]** of the City Council of the City of Riverbank, California, Adopting the Transportation Development Act Local Transportation Fund (LTF) Non-Transit Claim for Fiscal Year 2015/2016 Other Purposes and Amending the Fiscal Year 2015/2016 Budget for the City Of Riverbank to Conform to Said Claim.

Recommendation: It is recommended that City Council/LRA Board approve the Consent Calendar items by roll call vote.

ACTION: *By motion moved/seconded (Jones Cruz / Tucker / passed 5-0) to approve Items 3.A and 3.B as presented.*

Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

4. UNFINISHED BUSINESS

There were no items to consider.

5. PUBLIC HEARINGS

Item 5.1, Notice of a public hearing was mailed via USPS, certified-return receipt, on October 30, 2015, to property owners. The Public Hearing Notices were published in the local newspaper of general circulation as follows: Items 5.2 and 5.4, on October 28, 2015; Item 5.3, on October 30, 2015.

Item 5.1: **Public Hearing to consider a Resolution [No. 2015-089] of the City Council of the City Of Riverbank, California, Authorizing the Submittal of Outstanding Abatement Invoices to Stanislaus County**

to be Collected as Special Assessments and Liens On the Property Tax Bill – It is recommended that the City Council:

1) Hold a Public Hearing for Affected Property Owners regarding Outstanding Abatement Invoices and Collection by Special Assessment and Lien Process, and
2) Adopt a Resolution Authorizing the Submittal of the Outstanding Abatement Invoices to Stanislaus County for Collection through a Special Assessment and Lien Process.

Marisela Garcia, Director of Finance, presented the staff report.

Mayor O'Brien opened the public hearing at 6:43 p.m.; no one spoke, the hearing was closed.

ACTION: *By motion moved/seconded (Jones Cruz / Tucker / passed 5-0) to approve the authorization to submit the outstanding abatement invoices to Stanislaus County for Collection through a Special Assessment and Lien Process on the Property Tax Bill by the adoption of Resolution No. 2015-089 as presented.*

Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

Item 5.2: **Consideration of a proposed Resolution [No. 2015-090] of the City Council of the City of Riverbank, California, Approving Variance No. 01-2015 for KB Home Central Valley Inc.** – It is recommended that the City Council approve the Variance 01-2015 to decrease a setback at 5705 Cornerstone Drive, Lot 99 from four (4) feet to three (3) feet based upon the Planning Commission recommendation in Resolution No. 2015-023 and findings in the proposed City Council Resolution.

Donna Kenney, Planning and Building Manager, presented the staff report.

ACTION: *By motion moved/seconded (Campbell / Barber-Martinez / passed 5-0) to approve the Variance 01-2015 to decrease a setback at 5705 Cornerstone Drive, Lot 99 from four (4) feet to three (3) feet based upon the Planning Commission recommendation in Resolution No. 2015-023 and findings in the proposed City Council Resolution by the adoption of Resolution No. 2015-090 as presented.*

Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

Item 5.3: **Conduct the Second Public Hearing to Consider the Proposed District Boundary Map Options and to Reduce the Number of Optional Maps for Further Consideration** – In order to select and adopt a final district boundaries map that best represents the current population of Riverbank, which is part of the transition process to change from an "at-large" electoral system of electing Councilmembers to a "by-district" system with the Mayor elected citywide, it is recommended that the City Council:

1) conduct the second public hearing required by State law to establish district boundaries;
2) consider the proposed district boundary maps, A through H, and public comments that were presented by National Demographics Corporation; and
3) by roll call vote, select four (4), or less, of the eight (8) optional maps to be further considered at the third public hearing in order to select one (1) boundaries map that will establish the City of Riverbank's district boundaries, and that will be incorporated into a proposed ordinance to establish the electoral process for "by-district" elections.

Mr. Justin Levitt, National Demographics Corporation Consultant, presented the staff report.

Mayor O'Brien opened the public hearing at 6:59 p.m.

- *Ramon Bermudez, Riverbank, spoke in regards to use of the correct Census data.*
- *Evelyn Halbert, Riverbank, spoke in regards to the division of the downtown area.*
- *Diana Gonzalez, Riverbank, spoke in favor of Map G and requested that a minor adjustment be made to match the Riverbank School District Boundaries.*

Mayor O'Brien closed the public hearing at 7:01 p.m.

City Council discussed the map options.

ACTION: *By motion moved/seconded (Jones Cruz / Barber-Martinez / passed 5-0) to approve the selection and further consideration of district boundary maps A, E, F, and G, as presented, without any changes.*

Motion carried by unanimous City Council roll call vote.

AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

Item 5.4: **Conduct the First Reading and Introduction of an Ordinance [2015-018] of the City Council of the City of Riverbank, California, Repealing in its Entirety Riverbank Municipal Code of Ordinances, Title XI: Business Regulations, Chapter 123: Tobacco Sales Licensing Requirements, and Substituting it with a New Chapter 123:**

Tobacco and E-Cigarette Sales Licensing Requirements – It is recommended that the City Council conduct the public hearing for the first reading and introduction by title only of the proposed ordinance and consider its approval as presented, which will initiate the scheduling of the ordinance for its second reading by title only at the November 24, 2015, regular City Council meeting to consider its adoption.

Donna Kenney, Planning and Building Manager, presented the staff report.

Mayor O'Brien opened the public hearing at 7:11 p.m.

- *Ramon Bermudez, Riverbank, was opposed to the issuance of more business licenses to sell these products.*

Mayor O'Brien closed the public hearing at 7:14 p.m. and responded.

ACTION: *By motion moved/seconded (Jones Cruz / Barber-Martinez / passed 5-0) to approve the first reading and introduction by title only of proposed Ordinance No. [2015-018] and consider its approval as presented, and schedule its second reading by title only for the November 24, 2015, regular City Council meeting to consider its adoption, as presented..*

Motion carried by unanimous City Council roll call vote.

AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

6. NEW BUSINESS

Item 6.1: **Award a Contract to NHA Advisors, LLC, an Independent Registered Municipal Advisor, for Financial Advisory Services in Relation to the Financing of the Water Meter Project** - It is recommended that the City Council consider awarding a contract to NHA Advisors for financial advisory services in relation to the financing of the water meter project and authorizing the Director of Finance to execute said contract.

Marisela Garcia, Director of Finance, presented the staff report; City Council discussed the item.

ACTION: *By motion moved/seconded (Barber-Martinez / Tucker / passed 5-0) to approve awarding a contract to NHA Advisors for financial advisory services in relation to the financing of the water meter project and authorizing the Director of Finance to execute said contract for Option #2 Private Placement Financing: City issues water revenue bonds to be purchased by a financial institution.*

Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

LRA Item 6.2: **Accept Report on Status of LRA Budget for First Quarter FY 2015/16** – It is recommended that the Local Redevelopment Authority (LRA) Board of Directors (Board) receive and approve the status report on the LRA budget for the first quarter of fiscal year 2015/16.

Melissa Holdaway, LRA Administrative Analyst, presented the budget report.

ACTION: *By motion moved/seconded (Tucker / O'Brien / passed 5-0) to receive and approve the status report on the LRA budget for the first quarter of fiscal year 2015/16.*
Motion carried by unanimous LRA Board roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Chair O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

Item 6.3: **A Resolution [2015-091] of the City Council of the City of Riverbank, California, Approving and Authorizing the City Manager to Execute a Memorandum of Understanding Regarding the Stanislaus and Tuolumne Rivers Groundwater Basin Association** – It is recommended that the City Council adopt a resolution approving and authorizing the City Manager to execute Memorandum of Understanding (MOU) regarding the Stanislaus and Tuolumne Rivers Groundwater Basin Association (STRGBA).

Michael Riddell, Public Works Superintendent, presented the staff report; City Council and Staff discussed the item.

ACTION: *By motion moved/seconded (Tucker / Campbell / passed 5-0) approve and authorize the City Manager to execute a Memorandum of Understanding (MOU) regarding the Stanislaus and Tuolumne Rivers Groundwater Basin Association (STRGBA) by the adoption of Resolution No. 2015-091 as presented.*
Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

Item 6.4: **Potential Downtown Restaurant Incentives** – It is recommended that Council review the presented information and provide direction to staff to prepare an implementation plan that utilizes Incentives #1) Grease Interceptor Loan Program and #2) Program to Allow Conditional Waiver to Install Grease Interceptors.

Donna Kenney, Planning and Building Manager and presented the staff report.

Public Comment: Evelyn Halbert spoke in opposition of the item.

ACTION: City Council discussed the item and directed staff to begin with option #2 and return with its presentation at a later date.

Item 7.1: Staff Comments

- *Michael Riddell, provided updates on the City's water conservation efforts and on the Wastewater Treatment Plant energy project.*
- *Donna Kenney announced the recruitment to fill three Planning Commissioner seats.*

Item 7.2: Council/Authority Member Comments

- *Council/Authority Member Campbell commented on switching to a hot water recycling system.*
- *Council/Authority Member Tucker commented on her attendance of the Veteran's luncheon.*
- *Vice Mayor/Chair Barber-Martinez thanked the Veteran's for their service.*

Item 7.3: Mayor/Chair Comments

Mayor/Chair O'Brien reported he participated on panel of former City Mayors, a presentation hosted by the Historical Society.

8. CLOSED SESSION

The public will have a limit of 5 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing into Closed Session.

MAYOR/CHAIR O'BRIEN ANNOUNCED THERE WOULD BE NO CLOSED SESSION, AND OPENED THE ITEM FOR PUBLIC COMMENT; NO ONE SPOKE.

~~**LRA Item 8.1: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**~~

~~Pursuant to Government Code § 54956.9(a)~~
~~In re AQH, LLC (case number 15-50553-ASW-11), U.S. Bankruptcy Court, Northern District of California~~

~~**Recommendation:**~~ ~~It is recommended that City Council /LRA Board provide direction to Staff on the Closed Session item(s).~~

9. REPORT FROM CLOSED SESSION

~~**Item 9.1:**~~ ~~Report on Closed Session LRA Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**~~

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meetings at 8:04 p.m.

ATTEST: *(Adopted 12/08/15)*

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY
AGENDA ITEM NO. 3.B-1

SECTION 3: CONSENT CALENDAR

Meeting Date:	December 8, 2015
Subject:	Approval of the November 24, 2015, City Council and Local Redevelopment Authority Minutes
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / Local Redevelopment Authority Board approve the City Council /LRA Meeting Minutes as presented.

SUMMARY

The Draft Minutes of the November 24, 2015, regular City Council and the Local Redevelopment Authority Board meetings have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. November 24, 2015, City Council and LRA Minutes

CITY OF RIVERBANK

REGULAR CITY COUNCIL AN LOCAL REDEVELOPMENT AUTHORITY MEETINGS

(The City Council also serves as the LRA Board)

MINUTES

TUESDAY, NOVEMBER 24, 2015

choose civility

The following minutes reflect action minutes, which may contain added clarification for the record. A copy of the verbatim recording may be obtained for a fee, by contacting the Administration Department at (209) 863-7122.

CALL TO ORDER:

The City Council and Local Redevelopment Authority Board of the City of Riverbank met at 6:00 p.m. on this date at the Riverbank City Council Chambers, 6707 Third Street, Suite B, Riverbank, California, with Mayor/Chair Richard D. O'Brien presiding.

FLAG SALUTE: **Mayor/Chair Richard D. O'Brien**
Mayor O'Brien called for a moment of silence for the loss of innocent lives in Paris, France.

INVOCATION: **Riverbank Ministerial Association**

ROLL CALL:
Present

Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair Darlene Barber-Martinez
Council/Authority Member Cal Campbell
Council/Authority Member Leanne Jones Cruz
Council/Authority Member Jeanine Tucker

CONFLICT OF INTEREST
Any Council/Authority Member and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered are to declare their conflict.

No one declared a conflict.

1. PRESENTATIONS

Item 1.1: Presentation of Budget Advisory Committee Recommendations. – *Chair Arlene Figueroa made the presentation.*

2. PUBLIC COMMENTS (No Action Can Be Taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the City Council/LRA Board. Individual comments will be limited to a

maximum of 5 minutes per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the City Council/LRA Board.

- Ramon Bermudez, Riverbank, spoke in regards to installation of a sidewalk on Roselle.
- Diane Talbot, Riverbank Royal Neighbors Member, thanked City Council for serving lunch to the Veterans.
- Scott McRitchie, Riverbank, spoke in regards to a successful Turkey drive.
- Charles Neal, Riverbank, spoke in regards to the renewal of the Ministerial Association and support to the community.
- Haskell Moore, Riverbank, requested to agendize a no water and sewer requirement for empty property.

3. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless otherwise requested by an individual Council/Authority Member for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 3.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 3.B: Approval of the October 12, 2015, Special City Council Minutes.

Item 3.B-1: Approval of the October 13, 2015 Regular City Council and Local Redevelopment Authority Minutes.

Item 3.B-2: Approval of the October 27 2015 Regular City Council and Local Redevelopment Authority Minutes.

Item 3.C: A **Resolution [No. 2015-093]** of the City Council of the City of Riverbank, California, Declaring Certain Property Surplus as Listed in Exhibit A and Authorizing Its Disposition.

Item 3.D: **Authorize the Executive Director of the Local Redevelopment Authority to Negotiate and Execute a Contract for Grant Writing Services as a Result of a Request for Proposal** – It is recommended that the City Council authorize the Executive Director of the Local Redevelopment Authority ("LRA") to negotiate and execute an agreement with a professional service firm for Grant Writing services pursuant to a Grant Writing Request for Proposal (RFP) released on August 13, 2015.

Recommendation: It is recommended that City Council/LRA Board approve the Consent Calendar items by roll call vote.

ACTION: *By motion moved/seconded (Barber-Martinez / Tucker / passed 5-0) to approve Items 3.A through 3.D as presented.*
Motion carried by unanimous City Council and LRA Board roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor/Chair O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

4. UNFINISHED BUSINESS

Item 4.1: **Second Reading by Title Only and Adoption of Proposed Ordinance No. 2015-018 of the City Council of the City of Riverbank, California, Repealing in its Entirety Riverbank Municipal Code of Ordinances, Title XI: Business Regulations, Chapter 123: Tobacco Sales Licensing Requirements, and Substituting it with a New Chapter 123: Tobacco and E-Cigarette Sales Licensing Requirements** – It is recommended that the City Council conduct the second reading by title only of the proposed Ordinance and consider its adoption by roll call vote.

City Manager Jill Anderson presented the item.

Public Comment: Ramon Bermudez spoke in regards to implementing fines for violating the ordinance.

ACTION: *By motion moved/seconded (Tucker / Jones Cruz / passed 5-0) to approve the Second Reading and Adoption of Ordinance No. 2015-018 of the City Council of the City of Riverbank, California, Repealing in its Entirety Riverbank Municipal Code of Ordinances, Title XI: Business Regulations, Chapter 123: Tobacco Sales Licensing Requirements, and Substituting it with a New Chapter 123: Tobacco and E-Cigarette Sales Licensing Requirements, as presented.*
Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

5. PUBLIC HEARINGS

The Public Hearing Notices for the following public hearing items were published in the local newspaper of general circulation: Item 5.1 on November 4 and November 11, 2015; Item 5.2 on October 30, 2015; Items 5.3 and 5.4 on November 11, 2015; Item 5.5 on November 4, 2015.

Item 5.1: **A Resolution [No. 2015-094] of the City Council of the City of Riverbank, California, Adopting a 2.5% Consumer Price Index**

Increase in Rates for Solid Waste Disposal Services Pursuant to the 2014 Executed Franchise Agreement with Gilton Solid Waste, Inc. – It is recommended that the City Council consider adopting a resolution approving a 2.5% Consumer Price Index (CPI) increase in rates for solid waste disposal services pursuant to the executed franchise agreement with Gilton Solid Waste, Inc.

Marisela Garcia, Director of Finance, presented the staff report.

Mayor O'Brien opened the public hearing at 6:31 p.m.

- *Ramon Bermudez, Riverbank,spoke in regards the City to customer service and allowing a six month period before implementation of the new rates.*
- *Scott McRitchie, Riverbank, spoke in regards the use of standards that do not represent the Central Valley cities.*

Mayor O'Brien closed the public hearing at 6:35 p.m., and inquired about the use of the Modesto MPO as a standard for the next negotiated contract with Gilton.

ACTION: *By motion moved/seconded (Campbell / Tucker / passed 4-1) to approve a 2.5% Consumer Price Index (CPI) increase in rates for solid waste disposal services pursuant to the executed franchise agreement with Gilton Solid Waste, Inc. by the adoption of Resolution No. 2015-094, as presented.*

Motion carried by City Council roll call vote.

AYES:	*Campbell, Jones Cruz, Tucker, and Mayor O'Brien*
NAYS:	*Barber-Martinez*
ABSENT:	*None*
ABSTAINED:	*None*

Item 5.2: **Conduct the Third Public Hearing to Consider and Select a Council Member District Boundaries Map, and Adopt Resolution No. 2015-092 of the City Council of the City of Riverbank, California, Establishing the Council Member District Boundaries to Implement a "By-District" based Electoral System Beginning with the November 2016 General Municipal Elections** – It is recommended that the City Council:

1. conduct the third public hearing required by state law to establish the City's electoral district boundaries that best represents the population of the City of Riverbank; and
2. consider the four (4) proposed district boundary maps A, E, F, and G, as prepared by National Demographics Corporation, including the public comments that were presented; and
3. by roll call vote, adopt the resolution approving the selected Council Member district boundaries map that will establish the City of Riverbank's four (4) voting district boundaries, which will be incorporated into a proposed ordinance to change the City's "at-large" electoral system to a "by-district" system.

Mr. Justin Levitt, National Demographics Corporation Consultant, presented the staff report.

Mayor O'Brien opened the public hearing at 6:42 p.m.

- *Ramon Bermudez, Riverbank, spoke in regards to the Voting Rights Act.*
- *Diana Gonzalez, Eva Munoz, Brenda Miranda, and Virginia Madueno, Riverbank, spoke in favor of Map G.*
- *Scott McRitchie, Riverbank, supported Map G, as well as having other choices.*

Mayor O'Brien closed the public hearing at 6: 49 p.m.

City Council discussed the map options.

<u>ACTION:</u> *By motion moved/seconded (Barber-Martinez / Tucker / passed 3-2) to approve the selected Council Member District Boundaries, Map G, that establishes the City of Riverbank's four (4) voting district boundaries by the adoption of <u>Resolution No. 2015-092</u>, which will be incorporated into a proposed ordinance to change the City's "at-large" electoral system to a "by-district" system as presented.*

Motion carried by City Council roll call vote.

AYES:	*Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS:	*Campbell and Jones Cruz*
ABSENT:	*None*
ABSTAINED:	*None*

<u>Item 5.3:</u> **Conduct the First Reading and Introduction of Ordinance No. 2015-019 of the City Council of the City of Riverbank, California, Amending Title III: Administration, Chapter 30, By Adding Section 30.03: Council Member Elections By District, to the Riverbank Code, to Establish that Election of City Council Members Shall Be By District** – It is recommended that the City Council conduct the public hearing for the first reading and introduction by title only of proposed Ordinance No. 2015-091 and consider its approval as presented, which will initiate the scheduling of the ordinance for its second reading by title only at the December 8, 2015, regular City Council meeting to consider its adoption.

Annabelle Aguilar, Sr. Management Analyst/City Clerk, presented the staff report.

Mayor O'Brien opened the public hearing at 7:05 p.m.

- *Ramon Bermudez, Riverbank, spoke in regards to the transition process.*
- *Haskell Moore, Riverbank, asked for clarification of which map, E or G, was selected.*
- *Eva Munoz and Diana Gonzalez thanked City Council for the selection of Map G.*

Mayor O'Brien closed the public hearing at 7:09 p.m.

<u>ACTION:</u> *By motion moved/seconded (Tucker / Barber-Martinez / passed 4-1) to approve the first reading and introduction by title only of proposed Ordinance No. [2015-019] and schedule its second reading by title only for the December 8, 2015,*

regular City Council meeting to consider its adoption with amended language to Section (B)(1), as presented.

Motion carried by City Council roll call vote.
AYES: Campbell, Tucker, Barber-Martinez, and Mayor O'Brien
NAYS: Jones Cruz
ABSENT: None
ABSTAINED: None

<u>Item 5.4:</u> **A Resolution [No. 2015-095] of the City Council of the City of Riverbank Accepting the Fiscal Year 2014-15 Annual AB 1600 Report of System Development Fee Activity** – It is recommended that the City Council adopt a Resolution accepting the Fiscal Year 2014-15 Annual AB 1600 Report of System Development Fee Activity.

Marisela Garcia, Director of Finance, presented the staff report.

Mayor O'Brien opened the public hearing at 7:17 p.m.

- *Charles Neal, Riverbank, spoke in regards to designation of funds for traffic surveillance.*

Mayor O'Brien closed the public hearing at 7:19 p.m.

<u>ACTION:</u> By motion moved/seconded (Barber-Martinez / Campbell / passed 5-0) to accept the Fiscal Year 2014-15 Annual AB 1600 Report of System Development Fee Activity by adoption of <u>Resolution No. 2015-095.</u>

Motion carried by unanimous City Council roll call vote.
AYES: Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

<u>Item 5.5:</u> **Expenditure of Supplemental Law Enforcement Services Fund – I**t is recommended that the City Council approve the expenditure of the fiscal year 2015-2016 Supplemental Law Enforcement Services Fund (SLESF) to help off-set the cost of a sworn Deputy Sheriff position as described in this agenda item.

Police Chief Erin Kiely presented the staff report.

Mayor O'Brien opened the public hearing at 7:24 p.m.; no one spoke, the hearing was closed.

<u>ACTION:</u> By motion moved/seconded (Tucker / Jones Cruz / passed 5-0) to approve the expenditure of the fiscal year 2015-2016 Supplemental Law Enforcement Services Fund (SLESF) to help off-set the cost of a sworn Deputy Sheriff position as presented.

Motion carried by unanimous City Council roll call vote.

AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

6. NEW BUSINESS

Item 6.1: **A Resolution [No. 2015-096] of the City Council of the City of Riverbank, California, to Adopt Emergency Water Restrictions in Accordance with Section 6.5 of the Urban Water Master Plan (Adopted January 17, 2015) –** In accordance with the City of Riverbank's Urban Water Master Plan Section 6.5 thru 6.7, it is recommended that the City Council approve the proposed resolution adopting a revised outdoor watering schedule to implement additional outdoor watering restrictions and increase in the related fines because residential water use has not declined to the degree necessary to meet the 32% reduction mandated by the State of California.

Michael Riddell, Public Works Superintendent, presented the staff report; City Council discussed the item.

Public Comment:

- *Scott McRitchie, Riverbank, spoke in opposition of the standards.*
- *Haskell Moore, Riverbank, commented on water use at City parks.*
- *Ramon Bermudez, Riverbank, commented on water violators at night.*
- *Daryl Daniels, Riverbank, commented on high temperatures beginning in April.*
- *Brian Elliott, Riverbank Business Owner, opposed the policy.*

ACTION: *By motion moved/seconded (Jones Cruz / Tucker / passed 5-0) to approve the a revised outdoor watering schedule to implement additional outdoor watering restrictions and increase the related fines because residential water use has not declined to the degree necessary to meet the 32% reduction mandated by the State of California by adoption of Resolution No. 2015-096, as presented.*
Motion carried by unanimous City Council roll call vote.
AYES: *Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien*
NAYS: *None*
ABSENT: *None*
ABSTAINED: *None*

Item 6.2: **Strategic Plan Objective Regarding Proposed Fundraising Event to Renovate City Facilities** – It is recommended that the City Council discuss and provide direction regarding a proposal to conduct a

"CrabFest" in February 2016 as a fundraising event with help from community organizations.

City Manager Jill Anderson presented the staff report; City Council discussed the item. City Council agreed more discussion with nonprofit groups was needed. An update will be provided at a later date.

7. COMMENTS (Information only – No action)

Item 7.1: Staff Comments

- *City Manager Anderson announced that there would not be a Closed Session and announced upcoming Holiday events.*

Mayor O'Brien proceeded with his comments.

Item 7.2: Council/Authority Member Comments

- *Vice Mayor/Chair Barber-Martinez presided at 8:44 p.m.*
- *Council/Authority Member Campbell reported on his participation in the Modesto Veteran's parade.*
- *Vice Mayor/Chair Barber-Martinez reported on her attendance of a League of California Cities Legislative webinar, announced a North County Corridor meeting on January 28th, and Citizen and Youth of the Year Nominations.*

Item 7.3: Mayor/Chair Comments

Mayor/Chair O'Brien commented on the need to look at the telephone poles blocking the sidewalks on Roselle Avenue.

Mayor/Chair O'Brien passed the gavel to Vice Mayor/Chair Barber-Martinez and departed at 8:44 p.m.

8. CLOSED SESSION

The public will have a limit of 5 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing into Closed Session.

VICE MAYOR/CHAIR BARBER-MARTINEZ OPENED THE ITEM FOR PUBLIC COMMENT; NO ONE SPOKE.

~~**Item 8.1: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**~~
~~Significant exposure to litigation pursuant to subdivision (b) of Government Code § 54956.9: 1 potential case~~

~~**Recommendation:** It is recommended that City Council /LRA Board provide direction to Staff on the Closed Session item(s).~~

~~9. REPORT FROM CLOSED SESSION~~

~~**Item 9.1:** Report on Closed Session Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**~~

10. INFORMATIONAL ITEMS (Information Only – No Action)

Item 10.1: Warrant Registers for 10/01/15, 10/08/15, 10/15/15, 10/22/15, 10/29/15, and 11/05/15.

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meetings at 8:46 p.m.

ATTEST: *(Adopted on 12/08/15)*	**APPROVED:**
Annabelle H. Aguilar, CMC **City Clerk / LRA Recorder**	**Richard D. O'Brien** **Mayor / Chair**

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.C

SECTION 3: CONSENT CALENDAR

Meeting Date:	December 8, 2015
Subject:	A **Resolution** of the City Council of the City of Riverbank, Calfiornia, Approving a Lease Agreement Between the City of Riverbank and Verizon Wireless, LLC for the Placement of a Cellular Tower at the Riverbank Sports Complex
From:	Jill Anderson, City Manager
Submitted by:	Sue Fitzpatrick, Director of Parks and Recreation

RECOMMENDATION

It is recommended that the City Council approve the draft Option and Tower Lease Agreement, and Memorandum of Option for Tower Lease Agreement, and authorize the City Manager to execute the agreements with minor changes as needed.

BACKGROUND

The City of Riverbank ("City") was approached by Verizon Wireless LLC ("Verizon") approximately one year ago to explore the possibility of using the Riverbank Sports Complex as a new cell tower site. Verizon ultimately selected the Riverbank Sports Complex for their project. The Lease, if exercised, would provide a ground space area to Verizon for a 25' x 25' parcel containing 625 square feet for the installation of an equipment building. The Lease would also provide tower space to Verizon on the light standard that holds the sports field lights.

SUMMARY

Verizon and the City Attorney have negotiated an Option and Tower Lease Agreement and Memorandum of Option and Tower Lease Agreement for review and approval by the City Council. Under the option agreement ("Option"), the City will agree to leave the offer to lease the lighting tower at the Riverbank Sports Complex for up to two (2) years in exchange for One Thousand Dollars ($1,000) per year.

If Verizon exercises its Option by notifying the City, the tower lease agreement ("Lease") will take effect, in which case Verizon would pay the City Twelve Hundred Dollars ($1200) per month, for a total of Fourteen Thousand Four Hundred Dollars ($14,400.00) per year, for the right to use the Riverbank Sports Complex for the installation and operation of telecommunications equipment.

If the Lease is exercised, the initial lease term would be five (5) years. The Lease would automatically renew for four (4) additional terms every five (5) years, for a total of twenty-five (25) years, and for each of the first for terms rent would increase by ten percent (10%) every five (5) years. If the Lease is extended beyond 25 years, rent would remain the same. The Lease may be terminated prior to the expiration of each term by either the City or Verizon.

The Lease would also require Verizon to demolish and replace the City's existing tower, with the City's field lights being replaced on the new tower. At the end of the Lease term, Verizon will restore the property to the condition it was in before the Lease. In developing a new tower, the Lease requires Verizon to meet City standards for cell towers as well as any permits required by Stanislaus County since the Sports Complex is outside City limits. The Lease would also require the City to give Verizon the right of first refusal if the City ever sought to sell the Property.

A Memorandum of Option and Tower Lease Agreement ("Memorandum") is also prepared, to be recorded against the Riverbank Sports Complex property and provide constructive notice of the Option and Lease agreement.

The City does not see any conflict with the Option and Lease, and the agreement would provide revenue to support the maintenance of the Riverbank Sports Complex or other recreational facilities.

FINANCIAL IMPACT

The Option, once exercised, will provide the City revenue of $1,000 for up to two years. The Lease, if exercised, will provide revenue to the City in the amount of $1,200 per month, totaling $14,400 per year. Every time the Lease extends for the first twenty-five years, annual rent will increase by ten percent (10%) every five years. Verizon will be required to maintain cell tower facilities on the tower at its own cost.

ATTACHMENT

1. Resolution (with attachments)

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF RIVERBANK AND VERIZON WIRELESS, LLC FOR THE PLACEMENT OF A CELLULAR TOWER AT THE RIVERBANK SPORTS COMPLEX

WHEREAS, Verizon Wireless, LLC ("Verizon") has selected the Riverbank Sports Complex, located at 2119 Morrill Road, Modesto, California as the location for a cell tower under Verizon's West Riverbank project; and

WHEREAS, Verizon and the City Attorney have negotiated an Option and Tower Lease Agreement,

WHEREAS, under the Option and Tower Lease Agreement, the City agrees to leave open the offer to lease the Riverbank Sports Complex tower for up to two years in exchange for one thousand dollars ($1,000) per year ("Option"); and,

WHEREAS, under the Option and Tower Lease Agreement, if the Option is exercised by Verizon, a tower lease agreement will take effect ("Lease"), which would require Verizon to pay the City Fourteen Thousand Four Hundred Dollars ($14,400) per year for the right to lease the Riverbank Sports Complex tower;

WHEREAS, the Lease, if exercised, would also require (1) the replacement and use of City's tower at the Riverbank Sports Complex for the installation and operation of telecommunications equipment; (2) three easements for utility purposes; and (3) a 15-foot access easement for utility purposes; and

WHEREAS, the Option and Tower Lease agreement, attached hereto as **Exhibit A**, includes other terms and provisions that are customary in the leasing of cell tower space; and

WHEREAS, a Memorandum of Option and Tower Lease has been prepared, attached hereto as **Exhibit B**, to be recorded on the Riverbank Sports Complex property in order to provide constructive notice of the Option and Tower Lease Agreement between the City and Verizon.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the Option and Tower Lease Agreement, and the potential replacement of the tower at the Riverbank Sports Complex by Verizon.

BE IT FURTHER RESOLVED that the City Council authorizes and directs the City Manager to execute the Option and Tower Lease with minor changes as needed and, if applicable, to execute and record the Memorandum with minor changes as needed.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of December, 2015; motioned by Councilmember ______, seconded by Councilmember ______, and upon roll call was carried by the following vote of ___:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:	**APPROVED:**
Annabelle H. Aguilar, CMC **City Clerk**	**Richard D. O'Brien** **Mayor**

Attachments: Exhibit A – Option and Tower Lease Agreement
Exhibit B – Memorandum of Option and Tower Lease Agreement

OPTION AND TOWER LEASE AGREEMENT

This Agreement made this _____ day of _____________, 201__, between City of Riverbank, a municipal corporation, with its principal offices located at 6707 3rd Street, Riverbank, California 95367, hereinafter designated LESSOR and Sacramento Valley Limited Partnership d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

LESSOR is the owner of that certain real property located at 2119 Morrill Road, Modesto, County of Stanislaus, California, as shown on the Tax Map of the County of Stanislaus as Assessor's Parcel Number 074-006-014 (the entirety of LESSOR's property is referred to hereinafter as the "Property"). LESSEE desires to obtain an option to lease a portion of said Property, being described as a 25' by 25' parcel containing 625 square feet (the "Land Space") sufficient for the installation of LESSEE's equipment building, together with a portion of that certain space (the "Tower Space") on the LESSOR's tower, hereinafter referred to as the "Tower", located on the Property, together with the non-exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty four (24) hours a day, on foot or motor vehicle, including trucks over or along a right of way extending from the nearest public right of way to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space; and together with any further rights of way (the "Further Rights of Way") over and through the Property between the Land Space and the Tower Space for the installation and maintenance of utility wires, poles, cables, conduits, and pipes. The Tower Space, Land Space, Right of Way and Further Rights of Way, if any, are substantially described in Exhibit "A", attached hereto and made a part hereof and collectively referred to hereinafter as the "Premises".

NOW THEREFORE, in consideration of the sum of One Thousand Dollars ($1,000.00), to be paid by LESSEE to the LESSOR, the LESSOR hereby grants to LESSEE the right and option to lease said Premises, for the term and in accordance with the covenants and conditions set forth herein. The foregoing payment shall be made by LESSEE within forty five (45) days of execution of this Agreement or of receipt by LESSEE from LESSOR of the Rental Documentation, as defined in and in accordance with Paragraph 3 of the Agreement below, whichever occurs later. The providing by LESSOR of Rental Documentation to LESSEE shall be a prerequisite for the payment of the foregoing amount or any other option or rental payment, if applicable, by LESSEE, and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any payment(s) until Rental Documentation has been supplied to LESSEE; provided, however, that any failure to provide Rental Documentation shall in no way discharge LESSEE's obligations under this Agreement, including any rental payments.

The option may be exercised at any time on or prior to twelve (12) months after the date of this Agreement. If the option has not been so exercised, it shall be automatically extended for one additional period of twelve (12) months, unless LESSEE gives written notice to the LESSOR of the intent not to extend prior to the end of the initial option period. If the option is extended, LESSEE shall make an additional payment of One Thousand Dollars ($1,000.00) to LESSOR within thirty (30) days of the option being extended, provided LESSOR has supplied to LESSEE the Rental Documentation, as defined in and in accordance with Paragraph 3 of the Agreement below. The time during which the option may be exercised may be further extended by mutual agreement in writing. If during said option period, or during the term of the lease, if the option is exercised, the LESSOR decides to subdivide, sell or change the status of the Property or his property contiguous thereto he shall immediately notify LESSEE in writing.

This option may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal; to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization; or to any entity which acquires or receives an interest in the majority of communication towers of the LESSEE in the market defined by the Federal Communications Commission in which the Property is located. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

Should LESSEE fail to exercise this option or any extension thereof within the time herein limited, all rights and privileges granted hereunder shall be deemed completely surrendered, this option terminated, and LESSOR shall retain all money paid for the option, and no additional money shall be payable by either Party to the other.

LESSOR shall cooperate with LESSEE in its effort to obtain all certificates, permits and other approvals that may be required by any Federal, State or Local authorities which will permit LESSEE use of the Premises.

The LESSOR shall permit LESSEE, during the option period, free ingress and egress to the Premises on weekdays during the hours of 8:00 AM to 5:00 PM, to conduct such surveys, inspections, structural strength analysis, subsurface soil tests, and other activities of a similar nature as LESSEE may deem necessary, at the sole cost of LESSEE and in accordance with that certain Right of Entry and Indemnification ("Right of Entry Agreement"), last executed October 29, 2015, between LESSOR and LESSEE. LESSEE's ingress and egress during the option period shall not disturb or interfere with Lessor's use of the Property and shall not damage the Property or any personal property located thereon.

LESSOR agrees to execute a Memorandum of this Option to Lease Agreement which LESSEE may record with the appropriate Recording Officer. The date set forth in the Memorandum of Option to Lease is for recording purposes only and bears no reference to commencement of either term or rent payments.

Notice of the exercise of the option shall be given by LESSEE to the LESSOR in writing by certified mail, return receipt requested. Notice shall be deemed effective on the date it is posted and thereupon the following agreement shall take effect:

TOWER LEASE AGREEMENT

This Agreement, made this _____ day of _____________, 201__, between City of Riverbank, a municipal corporation, with its principal offices located at 6707 3rd Street, Riverbank, California 95367, hereinafter designated LESSOR and Sacramento Valley Limited Partnership d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. LESSOR agrees that LESSEE shall replace LESSOR's existing light standard with a new tower, hereinafter referred to as the "Tower", as shown on Exhibit "A" attached hereto and made a part hereof. LESSOR hereby leases to the LESSEE a portion of that certain parcel of property (the entirety of LESSOR's property is referred to hereinafter as the Property), located at 2119 Morrill Road, Modesto, County of Stanislaus, California, and being described as a 25' by 25' parcel containing 625 square feet (the "Land Space") sufficient for the installation of LESSEE's equipment building, together with a portion of that certain space on the Tower (the "Tower Space"), located on the Property, together with the non-exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty four (24) hours a day, on foot or motor vehicle, including trucks over or along a right of way extending from the nearest public right of way to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space; and together with any further rights of way (the "Further Rights of Way") over and through the Property between the Land Space and the Tower Space for the installation and maintenance of utility wires, poles, cables, conduits, and pipes. The Tower Space, Land Space, Right of Way and Further Rights of Way, if any, are substantially described in Exhibit "A", attached hereto and collectively referred to hereinafter as the "Premises". The Property is also shown on the Tax Map of the County of Stanislaus as Assessor's Parcel Number 074-006-014.

Notwithstanding the above, the Parties agree that LESSEE shall coordinate any entry onto the Tower Space by providing LESSOR at least 24 hours' notice prior to entry thereon, except in the event of an emergency resulting from an imminent threat to property or human health, in LESSEE's reasonable determination, by contacting the LESSOR's Director of Parks and Recreation at (209) 863-7150. LESSOR shall have the right to deny LESSEE access to the

Tower Space in the event that such access materially adversely affects LESSOR's obligations under prior written agreements with day-renters of LESSOR's facilities on the Property, except in the event of an emergency resulting from an imminent threat to property or human health, in LESSEE's reasonable determination.

In the event any public utility is unable to use the Right of Way or Further Rights of Way, the LESSOR hereby agrees to grant an additional right-of-way(s) either to the LESSEE or to the public utility at no cost to the LESSEE.

LESSEE shall replace LESSOR's existing light standard with a Tower, which will accommodate LESSEE's equipment and the LESSOR's stadium lights, in accordance with approved plans and specifications ("Plans"). LESSEE shall submit the Plans to LESSOR for LESSOR's written approval, which approval shall not be unreasonably withheld, delayed or conditioned. In the event the LESSOR does not either (i) object to the Plans in writing, or (ii) furnish the LESSEE with written approval within fifteen (15) days of the date of submission of the Plans, LESSOR will be deemed to have approved them. All work to be done by LESSEE shall be performed in accordance with the approved Plans unless otherwise approved in writing by LESSOR, which approval shall not be unreasonably withheld, delayed or conditioned. The Parties acknowledge and agree that LESSOR's approval of the Plans does not imply or provide a guarantee or warranty of any kind by LESSOR of the Plans, or the work to be performed by LESSEE.

The Tower, installed by LESSEE, shall be owned and maintained by LESSOR, including without limitation the providing of power to the Tower and the replacement, maintenance and repair of equipment due to use. LESSEE, at its sole cost, agrees to re-install LESSOR's existing stadium lights on the Tower. The re-installation of the existing stadium lights shall be in the location shown on Exhibit "A" attached hereto. The LESSOR's light standard that is replaced shall be removed from the Property and discarded by LESSEE at LESSEE's sole cost. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). Upon completion of the Tower, LESSEE shall provide LESSOR written notice of such completion ("Completion Notice") and LESSOR shall have thirty (30) days from delivery of the Completion Notice to inspect the Tower and provide LESSEE with a list ("Punch List") of any deficiencies or work required to bring the Tower into substantial compliance, as reasonably determined by LESSOR, with the Plans. Upon LESSEE's completion of the work on the Punch List or thirty days after delivery of the Completion Notice, if LESSOR does not provide a Punch List within the thirty (30) day timeframe set above, the ownership of the Tower shall automatically transfer from LESSEE to LESSOR. LESSEE warrants, for a ten (10) year period ("Warranty Period") commencing upon the completion of the Tower, that all work and materials related to LESSEE's work on the Tower will be substantially free from defects in design, engineering and workmanship. If any component of the Tower or lighting system fails during the Warranty Period as the result of the substandard workmanship of LESSEE or LESSEEE's contractors or subcontractors, then LESSEE shall repair or replace the defective component at no cost to LESSOR, or in LESEE's sole discretion, provide a bond for such repair or replacement. Other than the warranty specifically provided herein, LESSOR agrees that LESSOR shall acquire the Tower in an "as-is, where-is" condition, with all faults, without any express or implied representations, covenants or warranties relating to merchantability, marketability, profitability or fitness of the Tower for any purpose, whatsoever or compliance with any laws, rules, ordinances, codes or regulations of any applicable governmental authority or body. LESSOR fully and irrevocably releases LESSEE from any and all claims that it may have or hereafter acquire against LESSEE arising from or related to the Tower, including without limitation, any inadequacy thereof, any deficiency or defect therein, any defects, errors, omissions or other conditions, latent or otherwise, including environmental and geotechnical matters, relating to or affecting the Tower. LESSOR hereby agrees to indemnify, defend and hold LESSEE harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever, including without limitation, attorneys' fees, and any hazardous material and/or environmental contamination, resulting from or arising out of, directly or indirectly, in whole or in part, the use of the Tower, by LESSOR, its agents, employees or licensees or any other person or entity from and after the date of transfer of ownership of the Tower to LESSOR. LESSEE shall evidence the transfer with a "Bill of Sale" for the Tower in the form attached hereto as Exhibit "C".

2. SURVEY. A survey of the Property is attached hereto as Exhibit "B" and made a part hereof. Exhibit "B" attached hereto shall control in the event of boundary and access discrepancies between it and Exhibit "A".

3. TERM; RENTAL; ELECTRICAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of Fourteen Thousand Four Hundred Dollars ($14,400.00) to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 25 below. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE. The Commencement Date shall be the first day of the month in which notice of the exercise of the option, as set forth above, is effective. However, LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until thirty (30) days after the exercise of the option is effective.

b. LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") evidencing LESSOR's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to LESSEE in LESSEE's reasonable discretion, evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to LESSEE, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by LESSEE in LESSEE's reasonable discretion. From time to time during the Term (as defined in Paragraph 6 hereinafter) of this Agreement and within thirty (30) days of a written request from LESSEE, LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. The Rental Documentation shall be provided to LESSEE in accordance with the provisions of and at the address given in Paragraph 25. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments (however rental payments shall continue to accrue without interest thereof) until Rental Documentation has been supplied to LESSEE as provided herein.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE Rental Documentation in the manner set forth in the preceding paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. Delivery of Rental Documentation to LESSEE by any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall be a prerequisite for the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments (however rental payments shall continue to accrue without interest thereof) to any assignee(s), transferee(s) or other successor(s) in interest of LESSOR until Rental Documentation has been supplied to LESSEE as provided herein.

c. LESSOR shall, at all times during the Term, provide electrical service and telephone service access within the Premises. If permitted by the local utility company servicing the Premises, LESSEE shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by LESSEE's installation. In the alternative, if permitted by the local utility company servicing the Premises, LESSEE shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by LESSEE's installation. In the event such sub-meter is installed, the LESSEE shall pay the utility directly for its power consumption, if billed by the utility, and if not billed by the utility, then the LESSEE shall pay the LESSOR thirty (30) days after receipt of an invoice from LESSOR indicating the usage amount based upon LESSOR's reading of the sub-meter. All invoices for power consumption shall be sent by LESSOR to LESSEE at Verizon Wireless, M/S 3846, Post Office Box 2375, Spokane, Washington 99210-2375, and Lessee shall include the following on each invoice: Site Name: "West Riverbank". LESSEE shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The annual rental for each additional five (5) year term described in Section 4 above shall increase by an amount equal to ten percent (10%) of the annual rental payable with respect to the immediately preceding five (5) year term.

6. ADDITIONAL EXTENSIONS. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be equal to the annual rental payable with respect to the immediately preceding five (5) year term. The initial term and all extensions shall be collectively referred to herein as the "Term".

7. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making LESSEE liable for any portion of LESSOR's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by

LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests and structural analysis which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests or structural analysis is unsatisfactory; (v) LESSEE determines that the Premises is no longer technically or structurally compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement by providing LESSOR thirty (30) day's prior written notice thereof. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rental obligations accruing prior to said termination date shall remain due to LESSOR and all rental payments paid prior to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

9. INDEMNIFICATION. To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.8), LESSEE shall defend, indemnify hold harmless and release LESSOR, and LESSOR's elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("LESSOR's Agents") from and against any and all actions, claims, loss, cost, damage, injury (including, without limitation, disability, injury or death of an employee of LESSEE or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to or relate to acts or

omissions of LESSEE, or any direct or indirect subcontractor, employee, contractor, representative or agent of LESSEE, or anyone that LESSEE controls (collectively "Liabilities") in connection with use of the Premises. Such obligations to defend, hold harmless and indemnify LESSOR and LESSOR's Agents shall not apply to the extent that such Liabilities are due to or caused by the negligence, active negligence, or willful misconduct of LESSOR or LESSOR's Agents, but shall apply to all other Liabilities. With respect to third party claims against the LESSEE, the LESSEE waives any and all rights of any type of express or implied indemnity against LESSOR and LESSOR's Agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for LESSEE or its agents under workers' compensation acts, disability benefits acts or other employee benefit acts.

Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release LESSEE from its obligations to indemnify the LESSOR and LESSOR's Agents in accordance with the terms of this Agreement.

Submission of insurance Certificates or other proof of compliance with the insurance requirements in this Agreement does not relieve LESSEE from liability under this indemnification clause. The obligations of this indemnity shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

10. INSURANCE. During the Term, LESSEE shall maintain in full force and effect policies of insurance as set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A- VII, and will provide the LESSOR with a certificate of insurance as written proof of said insurance. LESSEE shall maintain coverage as follows:

a. *General Liability*. LESSEE shall carry commercial general liability insurance in the amount Two Million Dollars ($2,000,000.00) combined single limit for each occurrence, covering bodily injury and property damage and Four Million Dollars ($4,000,000.00) general aggregate Said commercial general liability insurance policy shall include The City of Riverbank, its officers and employees as an additional insured as their interest may appear under this Agreement for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

   Said policy shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

   Said policy shall further provide that the insurance provided therein is primary coverage to the City of Riverbank with respect to any insurance or self-insurance programs maintained by the City.

b. *Builder's Risk Insurance*. For the demolition and installation of the Tower, LESSEE shall carry builder's risk insurance with limits of liability equal to one hundred percent (100%) of the replacement cost of the Tower. Said policy shall be endorsed with the following specific language:

"This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to City of Riverbank, Attention: City Manager."

Worker's Compensation Insurance and Employer's Liability. LESSEE shall carry workers' compensation insurance as required by the State of California under the Labor Code and employer's liability with a limit of $1,000,000 each accident/disease/policy limit.

Automobile Liability Insurance. LESSEE shall carry Automobile liability insurance covering bodily injury and property damage in an amount of One Million Dollars ($1,000,000) combined single limit each accident for bodily injury and property damage covering all owned, hired, and non-owned vehicles.

c. *Environmental Liability Insurance.* LESSEE shall carry environmental liability insurance with a limit of $2,000,000 per occurrence including coverage for sudden and accidental pollution arising out of handling hazardous materials or hazardous wastes, non-hazardous materials or non-hazardous wastes, that, when released to the environment, violate regulatory standards of federal, state, or local government.

d. *Documentation*. The following documentation shall be submitted to LESSOR:

   i. Properly executed Certificates of Insurance clearly evidencing all coverages, limits and blanket additional insured endorsements required above ("Certificates"). Said Certificates shall be submitted upon the execution of this Agreement.

   ii. Coverages shall contain no special limitations on the scope of protection afforded to the LESSOR, and shall contain standard separation of insured provisions.

e. *Policy Obligations*. LESSEE's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

f. *Material Breach.* If LESSEE, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. LESSOR, at its sole option, may terminate this Agreement and obtain damages from LESSEE resulting from said breach. This remedy shall be in addition to any other remedies available to LESSOR.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to paragraphs 9 and 31, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

12. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

13. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower, pursuant to the terms as set forth in Paragraph 1 above, for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises.

14. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all Laws (as defined in Paragraph 35 below). The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers.

15. INTERFERENCE. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

16. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna(s), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

17. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 16 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 16 and this Paragraph 17, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 16 shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

18. RIGHT OF FIRST REFUSAL. If LESSOR elects, during the Term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer. For purposes of this Paragraph, any transfer, bequest or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale of the Property for which LESSEE has any right of first refusal.

19. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Tower thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

20. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

21. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

22. INTEGRATION. With the exception of the Right of Entry Agreement, it is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

23. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

24. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. LESSOR reserves the right to lease any other portion of the Property, excluding the Premises, to any party as long as such other lease and tenants do not interfere with LESSEE's use of the Premises. LESSEE shall not sublease any portion of the Premises without LESSOR consent, not to be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

25. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Riverbank, a municipal corporation
6707 3rd Street
Riverbank, California 95367

LESSEE: Sacramento Valley Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

26. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

27. SUBORDINATION AND NON-DISTURBANCE. LESSOR shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property, Tower or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated

to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

28. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

29. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within ten (10) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that if the nature of LESSOR's obligation is such that more than ten (10) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such ten (10) day period and thereafter diligently pursued to completion.

30. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by

either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE within thirty (30) days after demand the full undisputed amount thereof (as verified through invoices, proof of payment of such invoices, purchase orders and/or other such reasonable supporting documentation evidencing such cost and expense) with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to LESSEE.

31. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Tower or Property, unless such conditions or concerns are caused by the specific activities of LESSEE or LESSEE's contractors, employees, agents, representatives and subtenants in the Premises.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE or LESSEE's contractors, employees, agents, representatives and subtenants; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Tower or Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE or LESSEE's contractors, employees, agents, representatives and subtenants.

c. LESSEE shall not use, generate, handle, store or dispose of any hazardous material in, on, under, upon or affecting the Property in violation of any Laws.

32. CASUALTY. In the event of damage by fire or other casualty to the Tower or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

33. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Tower, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

34. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement

by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

35. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); (b) Sections 153.342 and 153.343 of the City of Riverbank's standards for telecommunications' towers and (c) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

36. SURVIVAL. The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

37. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

38. EXHIBITS. All exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

39. BINDING EFFECT. Regardless of which party prepared or communicated this Agreement, this Agreement hall be binding between the parties only upon its execution by an authorized representative of each such party.

40. VENUE. The venue for legal proceedings shall be the Stanislaus Superior Court.

41. CONSTRUCTION. The parties acknowledge that the parties and their attorneys have reviewed and revised this Agreement and that the terms of this Agreement have been negotiated between LESSEE and LESSOR. Accordingly, this Agreement will not be construed against the party preparing it, but will be construed as if prepared by both parties.

42. ATTORNEYS' FEES. In any action or proceeding arising out of this Agreement, the prevailing party in the action or proceeding shall be entitled to recover reasonable attorney's fees from the other party.

43. TIME OF THE ESSENCE. The Parties hereto expressly agree that time is of the essence with respect to all of the terms of this Agreement.

44. WEEKENDS AND HOLIDAYS. In the event that any time period ends or action is required on a Saturday, Sunday or legal State of California or federal holiday, the time period or deadline to act shall be automatically extended to the next business day.

45. INTENTIONALLY OMITTED.

46. THIRD PARTY BENEFICIARIES. This Agreement is entered into for the express benefit of LESSOR and LESSEE and no third party shall be entitled to the benefit of any of the provisions of this Agreement.

47. FURTHER ASSURANCES. Each party hereto agrees to use good faith efforts to cause satisfaction of all conditions to its obligation under this Agreement, and to exercise good faith in fulfilling its obligations under this Agreement. Each party shall perform, execute and /or deliver or cause to be executed and delivered any instruments and documents that may reasonably be requested by the other Party to carry out the obligations of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

City of Riverbank, a municipal corporation

By:____________________________
Name:__________________________
Title:___________________________
Date:___________________________

LESSEE:

Sacramento Valley Limited Partnership
d/b/a Verizon Wireless
By AirTouch Cellular, Its General Partner

By:____________________________
Name: Phillip French
Title: Executive Director - Network
Date:___________________________

Exhibit "A"

(Premises)

Exhibit "B"

(Survey)

Exhibit "C"

(Bill of Sale)

BILL OF SALE

In consideration of One and 00/100 Dollar ($1.00), the receipt and sufficiency of which are hereby acknowledged, Sacramento Valley Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") hereby assigns and delivers to City of Riverbank, a municipal corporation, with a mailing address of 6707 3rd Street, Riverbank, California 95367 ("Assignee"), all of Verizon Wireless's right, title and interest in and to that certain tower listed on Attachment "1" attached hereto and incorporated herein by reference (the "Tower").

The Tower is conveyed to Assignee with a ten (10) year warranty period ("Warranty Period") commencing on the last date of execution indicated on the signature block below in this Bill of Sale. During such Warranty Period, Verizon Wireless warrants that all work and materials related to Verizon Wireless' work on the Tower will be substantially free from defects in design, engineering and workmanship. If any component of the Tower or lighting system fails during the Warranty Period as the result of the substandard workmanship of Verizon Wireless or Verizon Wireless' contractors or subcontractors, then Verizon Wireless shall repair or replace the defective component at no cost to Assignee, or in Verizon Wireless' sole discretion, provide a bond for such repair or replacement. Other than the warranty specifically provided herein, Assignee agrees that Assign shall acquire the Tower in an "as-is, where-is" condition, with all faults, without any express or implied representations, covenants or warranties relating to merchantability, marketability, profitability or fitness of the Tower for any purpose whatsoever, or compliance with any laws, rules, ordinances, codes or regulations of any applicable governmental authority or body. Assignee fully and irrevocably releases Verizon Wireless from any and all claims that it may have or hereafter acquire against Verizon Wireless arising from or related to the Tower, including without limitation, any inadequacy thereof, any deficiency or defect therein, any defects, errors, omissions or other conditions, latent or otherwise, including environmental and geotechnical matters, relating to or affecting the Tower. Assignee hereby agrees to indemnify, defend and hold Verizon Wireless harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever, including without limitation, attorneys' fees, and any hazardous material and/or environmental contamination, resulting from or arising out of, directly or indirectly, in whole or in part, the use of the Tower, by Assignee, its agents, employees or licensees or any other person or entity after the date of transfer.

Assignee acknowledges and agrees that it has, in its sole discretion, made all inspections, investigations, tests and studies, including, without limitation, investigations with regard to hazardous materials, hazardous substances, laws, rules, codes and regulations, engineering tests, and economic feasibility studies, as well as toxic and environmental studies and reports with respect to the Tower as Assignee may elect to make or obtain.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

VERIZON WIRELESS:

Sacramento Valley Limited Partnership
d/b/a Verizon Wireless
By AirTouch Cellular, Its General Partner

By:___________________________
Name: Phillip French
Title: Executive Director - Network
Date:_________________________

ASSIGNEE:

City of Riverbank, a municipal corporation

By:___________________________
Name:_________________________
Title:__________________________
Date:__________________________

ATTACHMENT "1"

(Tower)

DATE OF SURVEY: 05-23-15

SURVEYED BY OR UNDER DIRECTION OF: KENNETH D. GEIL, RCE 14803

LOCATED IN THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA

BEARINGS SHOWN ARE BASED UPON MONUMENTS FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY.

ELEVATIONS SHOWN ON THIS PLAN ARE BASED UPON U.S.G.S. N.A.V.D. 88 DATUM. ABOVE MEAN SEA LEVEL UNLESS OTHERWISE NOTED.

N.G.V.D. 1929 CORRECTION: SUBTRACT 2.43' FROM ELEVATIONS SHOWN.

CONTOUR INTERVAL: N.A.

ASSESSOR'S PARCEL NUMBER: 074-006-014

LANDLORD(S): CITY OF RIVERBANK
6707 3RD STREET
RIVERBANK, CA 95367

Project Name: West Riverbank

Project Site Location: 2119 Morrill Road
Modesto, CA 95357
Stanislaus County

Date of Observation: 05-23-15

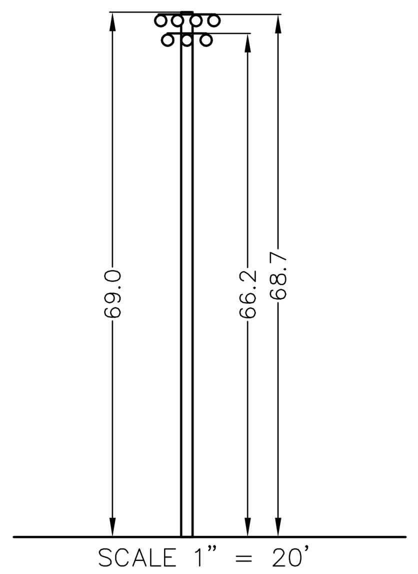
Equipment/Procedure Used to Obtain Coordinates: Trimble Pathfinder Pro XL post processed with Pathfinder Office software.

Type of Antenna Mount: Proposed Light Standard

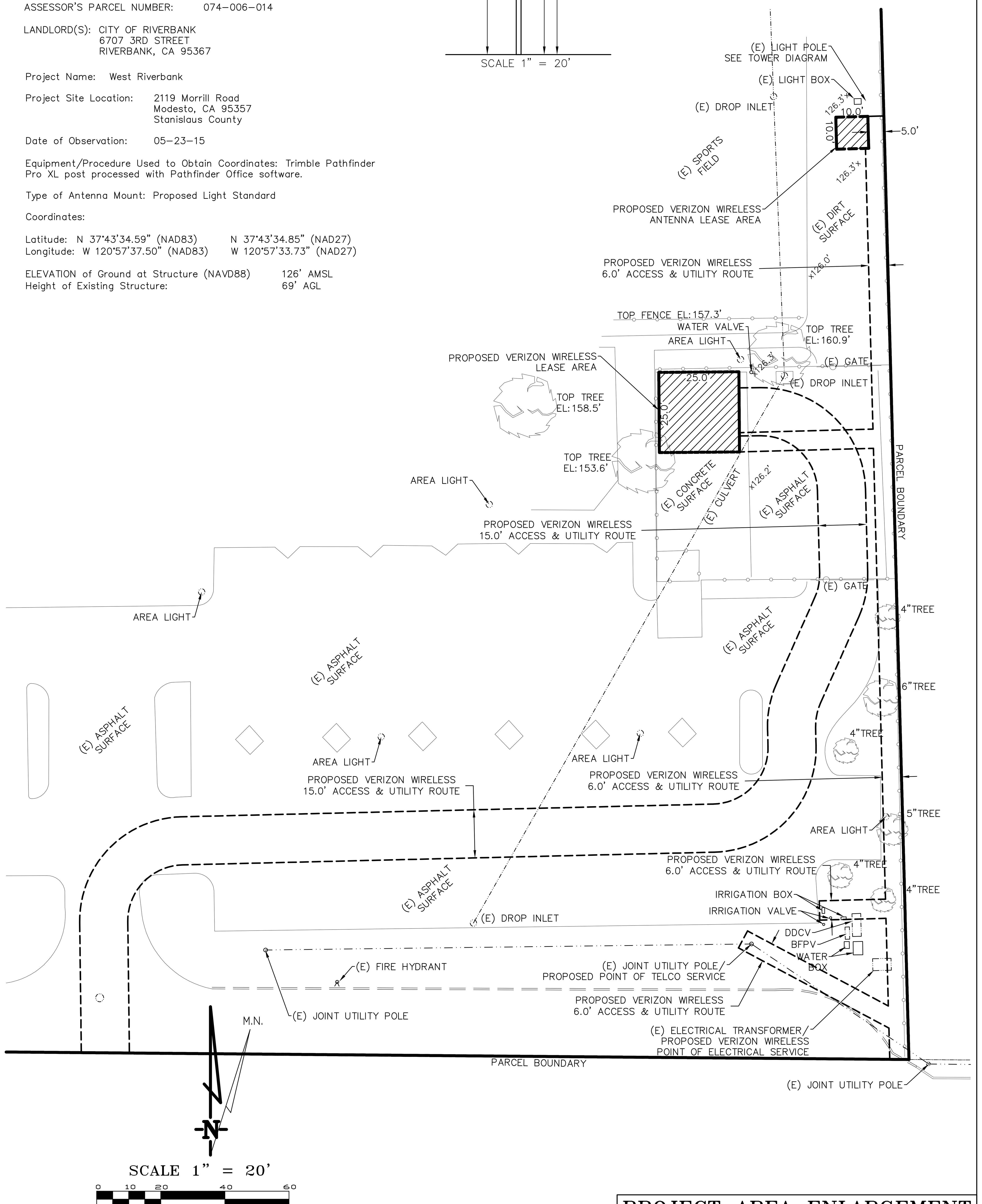
Coordinates:

Latitude: N 37°43'34.59" (NAD83) N 37°43'34.85" (NAD27)
Longitude: W 120°57'37.50" (NAD83) W 120°57'33.73" (NAD27)

ELEVATION of Ground at Structure (NAVD88) 126' AMSL
Height of Existing Structure: 69' AGL



BOUNDARY SHOWN IS BASED ON MONUMENTATION FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY. THIS IS A SPECIALIZED TOPOGRAPHIC MAP WITH PROPERTY LINES AND EASEMENTS BEING A GRAPHIC DEPICTION BASED ON INFORMATION GATHERED FROM VARIOUS SOURCES OF RECORD AND AVAILABLE MONUMENTATION FOUND DURING THE FIELD SURVEY. NO EASEMENTS WERE RESEARCHED OR PLOTTED. PROPERTY LINES AND LINES OF TITLE WERE NOT INVESTIGATED NOR SURVEYED. NO PROPERTY MONUMENTS WERE SET.



PROJECT AREA ENLARGEMENT

West Riverbank
Lease Area Description

All that certain license area being a portion of the "City of Riverbank" parcel delineated on the plat filed in Book 30 of Surveys, Page 48, Stanislaus County, California Records being more particularly described as follows:

Equipment Lease Area
Commencing at the Southeast most corner of the aforementioned parcel of land; thence along the East boundary thereof North 01°31'32" West 215.80 feet; thence leaving said East boundary South 88°28'28" West 47.33 feet to the True Point of Beginning; thence from said point of beginning South 00°27'05" East 25.00 feet; thence South 89°32'55" West 25.00 feet; thence North 00°27'05" West 25.00 feet; thence North 89°32'55" East 25.00 feet to the point of beginning.

Antenna Lease Area
Commencing at the Southeast most corner of the aforementioned parcel of land; thence along the East boundary thereof North 01°31'32" West 294.36 feet; thence leaving said East boundary South 88°28'28" West 5.00 feet to the True Point of Beginning; thence from said point of beginning South 01°31'32" East 10.00 feet; thence South 88°28'28" West 10.00 feet; thence North 01°31'32" West 10.00 feet; thence North 88°28'28" East 10.00 feet to the point of beginning.

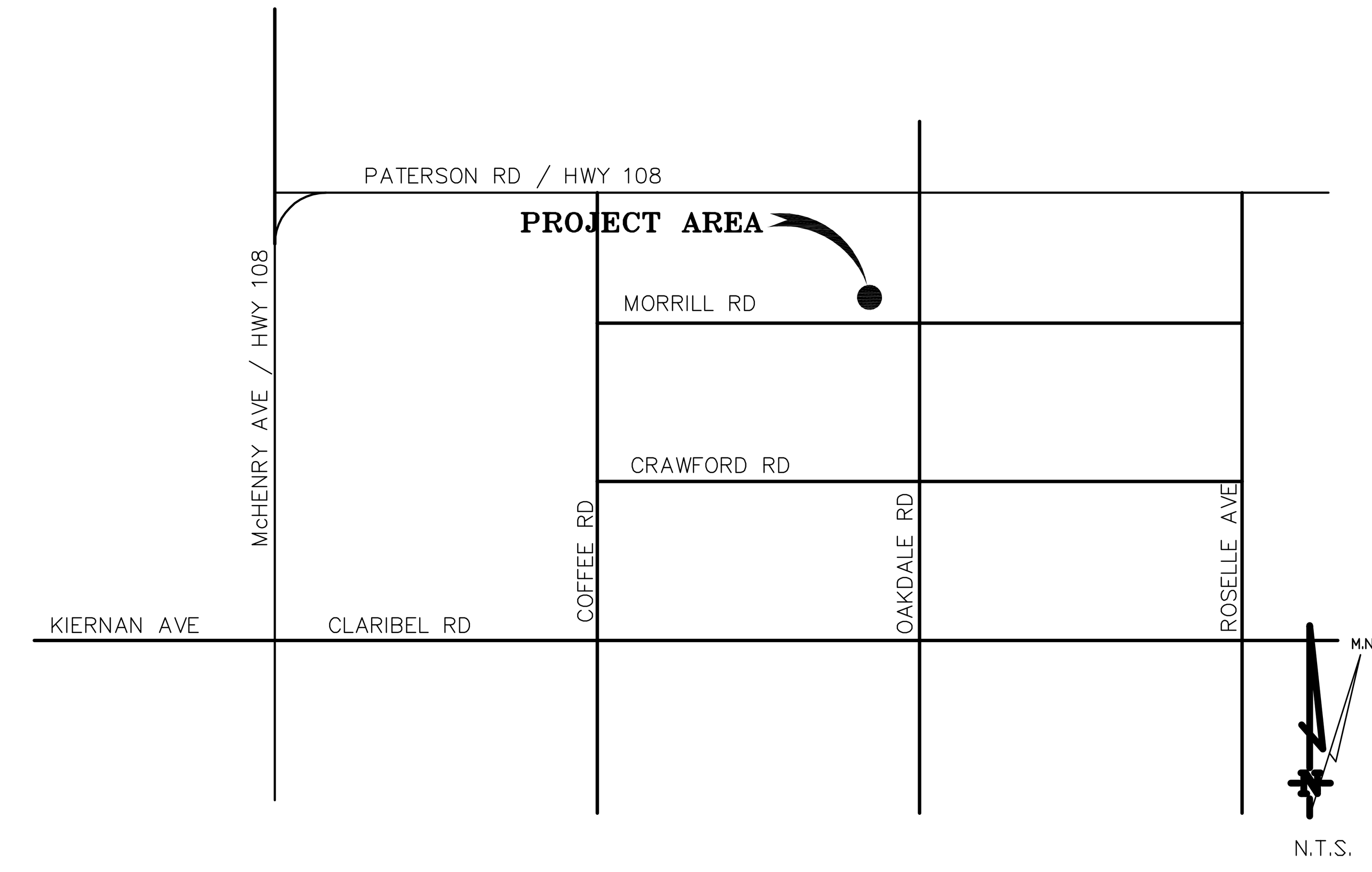
Together with a easement for access and utility purposes, six feet in width, the centerline of which is described as follows: Beginning at a point on the East boundary of the above described equipment lease area which bears North 00°27'05" West 3.00 feet from the Southeast corner thereof; thence from said point of beginning North 88°28'28" East 44.80 feet to a point hereafter referred to as Point A; thence South 01°31'32" East 146.62 feet to a point hereafter referred to as Point B; thence South 01°31'32" East 35.48 feet to a point hereafter referred to as Point C; thence South 01°31'32" East 11.50 feet more or less to the public right of way.

Also together with an easement for access and utility purposes, six feet in width, Beginning at the above described Point "A" and running thence North 01°31'32" West 146.6 feet more or less to the above described antenna lease area.

Also together with an easement for access and utility purposes, six feet in width, Beginning at the above described Point "B" and running thence South 88°28'28" West 23.5 feet more or less as necessary for connection to the existing irrigation facilities.

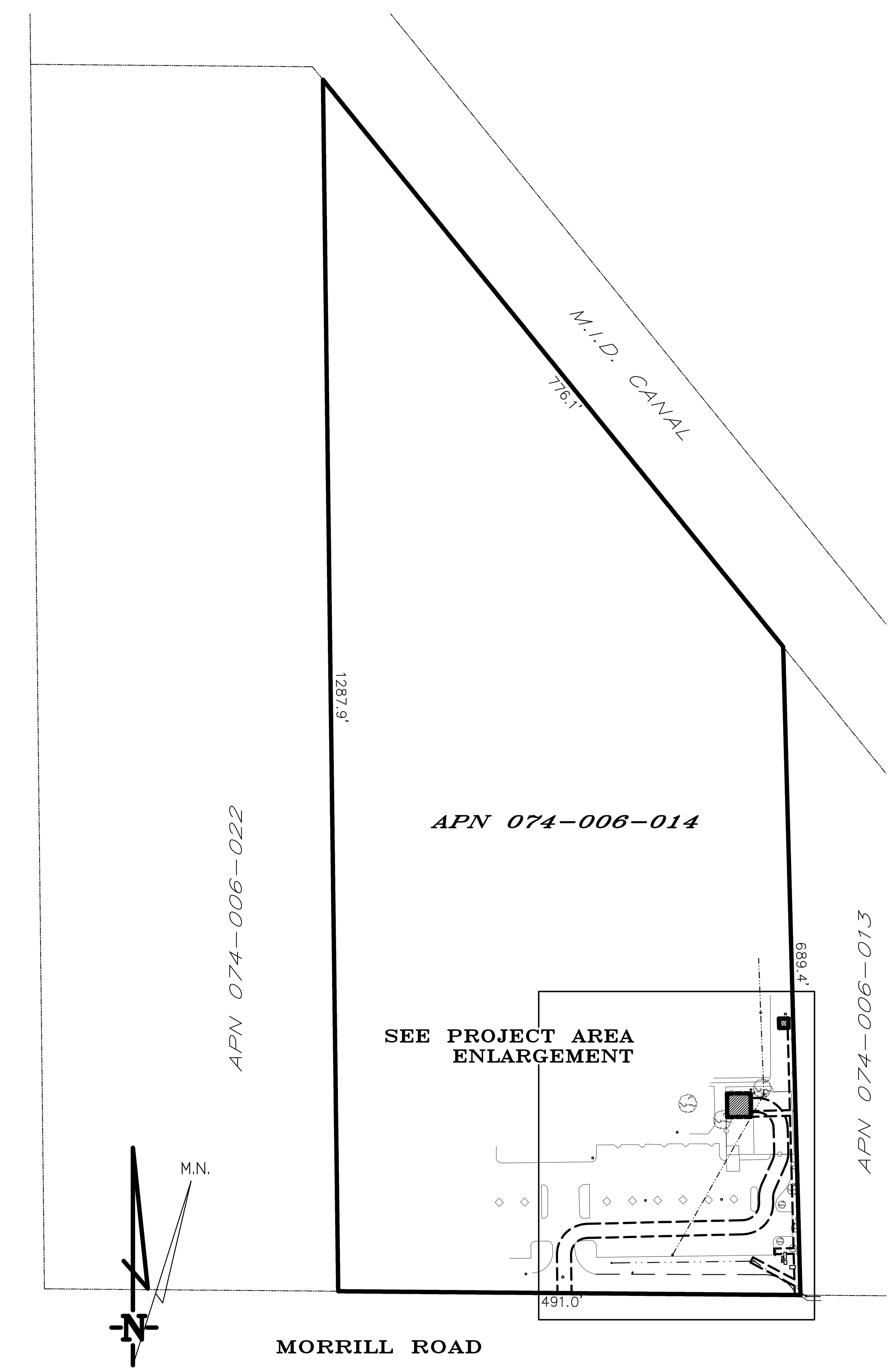
Also together with an easement for access and utility purposes, six feet in width, Beginning at the above described Point "C" and running thence North 61°57'24" West 52.0 feet more or less as necessary for connection to utility service.

Also together with an easement for access and utility purposes, fifteen feet in width, from the above described lease area, over and across the existing traveled way, to the public right of way.



MODESTO, CA

VICINITY MAP



SCALE 1" = 100'

OVERALL PROJECT AREA

DEPT	APPROVED	DATE
A&C		
RE		
RF		
INT		
EE\IN		
OPS		
EE\OUT		

Surveyor
GEIL ENGINEERING
ENGINEERING • SURVEYING • PLANNING
1226 HIGH STREET
AUBURN, CALIFORNIA 95603
phone: (530) 885-0426
fax: (530) 823-1309

verizon wireless

WEST RIVERBANK
2119 Morrill Road
Modesto, CA 95357

PLOT PLAN AND
SITE TOPOGRAPHY

REVISIONS

REV			
REV	05-05-15	Preliminary Drawing	DG
REV	06-04-15	redline	DG
REV			
REV			
REV			

Sheet
C-1

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

TRAINOR FAIRBROOK
Michael O. Gualco, Esquire
Post Office Box 255824
Sacramento, California 95865-5824
(Site Name: West Riverbank)

(Space above this line for Recorder's use.)

MEMORANDUM OF OPTION AND TOWER LEASE AGREEMENT

THIS MEMORANDUM OF OPTION AND TOWER LEASE AGREEMENT ("Memorandum") is made this _____ day of _______________, 201__, between City of Riverbank, a municipal corporation, with a mailing address of 6707 3rd Street, Riverbank, California 95367, hereinafter collectively referred to as "LESSOR", and Sacramento Valley Limited Partnership d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter referred to as "LESSEE". LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

1. LESSOR and LESSEE entered into an Option and Tower Lease Agreement on _____________________, 201__ (the "Agreement"). LESSOR grants to LESSEE the right and option to lease the premises, including a right-of-way for access thereto, for an option term of twelve (12) months, beginning on the date of full execution of the Agreement by the Parties, i.e., _____________________, 201__. Such twelve (12) month option period may be extended by LESSEE for one (1) additional period of twelve (12) months. Upon exercise of the option by LESSEE, the Agreement shall be for an initial term of five (5) years, commencing on the Commencement Date, subject to further extension pursuant to the terms of the Agreement.

2. LESSOR hereby leases to LESSEE a portion of that certain space on the LESSOR's Tower, located at 2119 Morrill Road, Modesto, County of Stanislaus, California, as shown on the Tax Map of the County of Stanislaus as a portion of Assessor's Parcel Number 074-006-014 (the entirety of LESSOR's property is referred to hereinafter as the "Property"), together with a parcel of land for the installation of LESSEE's equipment building and other equipment, together with the non-exclusive right for ingress and egress, as provided for in the Agreement, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right-of-way extending from the nearest public right-of-way to the demised premises. The tower space, demised premises and right-of-way are hereinafter collectively referred to as the "Premises". The Property is described in Exhibit A attached hereto and made a part hereof. In the event any public utility is unable to use the aforementioned right-of-way, the LESSOR has agreed to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

3. The Commencement Date of the Agreement, of which this is a Memorandum, is the first day of the month in which notice of the exercise of the option is effective.

4. LESSEE has the right of first refusal to purchase the Premises during the initial term and all renewal terms of the Agreement.

5. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, LESSOR and LESSEE have caused this Memorandum to be duly executed on the date first written hereinabove.

LESSOR:

City of Riverbank, a municipal corporation

By:____________________________
Name:__________________________
Title:___________________________
Date:___________________________

LESSEE:

Sacramento Valley Limited Partnership
d/b/a Verizon Wireless
By AirTouch Celluar, Its General Partner

By:____________________________
Name: Phillip French
Title: Executive Director - Network
Date:___________________________

EXHIBIT "A"

NOTARY ACKNOWLEDGMENT

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 CONTRA COSTA)

On _____________ before me, ________________________________, Notary Public, personally appeared Phillip French who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Public

Place Notary Seal Above

NOTARY ACKNOWLEDGMENT

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 ______________________________)
) ss.
County of ____________________________)

On ______________________ before me, ____, Notary Public, 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 _______________ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________ (Seal)

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.1

SECTION 4: UNFINISHED BUSINESS

Meeting Date:	December 8, 2015
Subject:	Second Reading by Title Only and Adoption of **Ordinance No. 2015-019** of the City Council of the City of Riverbank, California, Amending Title III: Administration, Chapter 30, By Adding Section 30.03: Council Member Elections By District, to the Riverbank Code, to Establish that Election of City Council Members Shall Be By District
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, Sr. Management Analyst/City Clerk/Elections

RECOMMENDATION

It is recommended that the City Council conduct the second reading by title only of the proposed Ordinance and consider its adoption by roll call vote.

INTRODUCTION

A Public Hearing was conducted at the regular City Council meeting on November 24, 2015, to receive public opinions or evidence for or against proposed Ordinance No. 2015-019 after its first reading and introduction by title only. The City Council approved the first reading and introduction of the proposed Ordinance, with requested amendment to Section (B)(1), which moved said Ordinance to the December 8, 2015, regular City Council meeting for its second reading by title only and consideration for adoption.

SUMMARY

To avoid a costly legal challenge, the City Council decided that it would be in the best interest of the City to change Riverbank's current "at-large" system to a "by-district" system based upon a statistical analysis of the City's current elections system conducted and presented by National Demographics Corporation (NDC). Since October 2013, the City has discussed this matter at several regular City Council meetings and has held several public forums in an effort to include the citizens of Riverbank in the discussion of the electoral system transition process, and in the decision-making process of considering the proposed district boundary maps A through H, developed by NDC.

In moving forward with implementation of a “by-district” electoral system, the transition process is two-fold: First, in accordance with state law Council Member district boundaries must be established for the entire City. To accomplish this, the City Council conducted three (3) required public hearings to consider the district boundary map options A through H developed by NDC. The first two public hearings occurred on October 27, 2015, and November 10, 2015, respectively. The third public hearing occurred at the regular City Council meeting on November 24, 2015, at which time the City Council considered district boundary map options A, E, F, and G, and by a 3-2 vote, selected Map G by the adoption of Resolution No. 2015-092; thereby, establishing the four (4) Council Member district boundaries of the City. Second, upon City Council taking the first action, a separate public hearing was also conducted on November 24, 2015, and by a 4-1 vote, the City Council approved the first reading and introduction of Ordinance No. 2015-019, which initiated the scheduling of a second reading by title only of the Ordinance to consider its adoption at this evening’s meeting. If adopted, the Riverbank Municipal Code will officially be amended to change the City’s “at-large” electoral system to a “by-district” system; incorporating the adopted Council Member District Boundaries Map G. The Ordinance will become effective 30 days after the date of adoption (January 8, 2016).

In accordance with City Council Resolution No. 2015-092, the City Clerk, as the City of Riverbank’s Elections Official, shall implement the by-district electoral system beginning with the November, 2016, General Municipal Elections.

Impact to Current Councilmembers

The terms of current Councilmembers Darlene Barber-Martinez and Jeanine Tucker expire November, 2016. These two vacancies will allow for the establishment of the first two district elected Councilmembers. In accordance with the *Transition Period* in the proposed Ordinance No. 2015-019, the first by-district elections for Council Member District #2 and District #4 shall occur during the regular General Municipal Elections of November 2016. Also during this election, the Mayor’s seat will continue to be elected citywide.

In addition, the Councilmembers elected at-large in the regular Municipal Election of November 2014, which are the seats currently held by Councilmembers Cal Campbell and Jones Cruz, whose terms expire November 2018, will not be affected by the establishment of district boundaries, therefore, they will continue to be considered elected “at-large”, representing Riverbank citywide. However, their office seats will be designated to represent one of District #1 and District #3 whether or not they reside in that district. Upon expiration of their terms, the two Council Member seats will then be transitioned over to the by-district electoral system during the November 2018 General Municipal Elections. Further clarification of the transition process to by-district elections is established by the attached proposed Ordinance No. 2015-019.

BACKGROUND

The City of Riverbank is a General Law City governed by the State of California Government Code and Elections Code. Riverbank's City Council is comprised of four (4) Councilmembers and a Mayor, who serve a four-year term, and are elected at-large on alternating even-years (Two Councilmembers during one even-year; two Councilmembers and the Mayor during the following even-year).

As a result of many California cities facing legal challenges to their "at-large" electoral system, which may have been determined to result in racially polarized voting and therefore in violation of the 2001 California Voting Rights Act, the City Council has been considering the merits of switching the City's current "at-large" electoral system in which the four (4) Councilmembers and the Mayor are elected citywide, to a "by-district" system in which voters elect a Councilmember from within a corresponding geographical section of the city considered to be a voter's "district boundary", and continue to elect the Mayor citywide. Based on an analysis conducted and presented to the City Council on July 8, 2014, the City Council unanimously directed NDC to develop draft plans to transition the City of Riverbank to a by-district elections system, and further adopted Resolution No. 2014-066 to set parameters for drawing the district boundaries. By January 27, 2015, NDC had developed and presented to the City Council eight (8) district boundary maps (labeled A through H) that took into consideration the public's input as well as City Council's recommendations.

Newly enacted legislation (SB 493; Cannella) that removed the requirement of voter approval of an ordinance to change electoral systems, and transferred the approval to the City Council, expedited the transition process and therefore a revised implementation plan was developed to accomplish all the state law requirements in order to begin the by-district elections by the November 2016 General Municipal Elections.

Implementation Plan

The following provides the City's transition plan to change from the current at-large electoral system to a by-district system:

DATE	ACTION
October 27, 2015	The 1st required City Council public hearing was conducted to receive additional public comments in regards to the proposed district boundary maps A through H developed by NDC.
November 10, 2015	The 2nd required City Council public hearing was conducted, public comments were received, and after consideration, the City Council voted to narrow down the eight (8) proposed boundary map options A through H, to four (4) map options A, E, F, and G for further consideration.

DATE	ACTION
November 24, 2015	The 3rd and last City Council public hearing was conducted, public comments were received, the four (4) district boundary map options A, E, F, and G were considered, and by City Council roll call vote, District Boundary Map G was selected by adoption of Resolution No. 2015-092; thereby, establishing Riverbank's Council Member district boundaries.
November 24, 2015	City Council conducted another public hearing, after the district boundaries were established, to consider and approve the 1st Reading and introduction of Ordinance No. 2015-019 to amend Riverbank's Municipal Code to officially change Riverbank's at-large electoral system to a by-district system.
December 8, 2015	City Council is to conduct the 2nd Reading (by title only) of Ordinance No. 2015-019, and consider its adoption to amend the Riverbank Municipal Code; thereby, officially changing the City's "at-large" electoral system to a "by-district" system.
January 8, 2016	Effective date of the ordinance.
November 2016	Implement the "by-district" electoral system for the 2016 General Municipal Elections to establish the first two (2) district elected Councilmember seats, which are the seats currently held by Councilmember Darlene Barber-Martinez and Councilmember Jeanine Tucker. The Mayor's seat is also up for election which will be elected at-large (citywide).
November 2018	Implement the "by-district" 2018 General Municipal Election to establish the remaining two (2) district elected Councilmember seats, which are the seats currently held by Councilmember Cal Campbell and Councilmember Leanne Jones Cruz

STRATEGIC PLAN

Presentation of the process required to move to District Elections was set as an objective during the October 15, 2015 strategic planning session as part of the goal to Achieve and Maintain Financial Stability and Sustainability.

FINANCIAL IMPACT

At this time, there is no direct financial impact associated with the presentation of the information. The costs associated with the consulting assistance were previously budgeted.

ATTACHMENTS

Proposed Ordinance No. 2015-019

CITY OF RIVERBANK

ORDINANCE NO. 2015-019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AMENDING TITLE III: ADMINISTRATION, CHAPTER 30, BY ADDING SECTION 30.03: COUNCIL MEMBER ELECTIONS BY DISTRICT, TO THE RIVERBANK MUNICIPAL CODE, TO ESTABLISH THAT ELECTION OF CITY COUNCIL MEMBERS SHALL BE BY DISTRICT

WHEREAS, the City of Riverbank ("City") has determined that it is in the best interest of the City to move from its current "at-large" election system to a "by-district" election for members of the Riverbank City Council ("City Council"); and

WHEREAS, the City values and supports the full participation of all City residents in electing members of the City Council; and

WHEREAS, the City hired consulting firm National Demographic Corporation ("NDC") to assist the City in evaluating the City's current at-large system and assist the City in its transition to a by-district electoral system pursuant to state law; and

WHEREAS, NDC developed several voter district boundary maps for consideration by the citizens of the City and the City Council; and

WHEREAS, the City conducted and held several public forums for public input on the proposed district maps; and

WHEREAS, the City Council conducted three separate noticed public hearings on October 27, 2015, November 10, 2015 and November 24, 2015, pursuant to Elections Code section 10010(a) to receive public input on the proposed district maps; and

WHEREAS, on November 24, 2015, the City Council selected a map depicting boundaries of the four districts for City elections moving forward; and

WHEREAS, this ordinance provides for the election of the members of the City Council by districts in four districts with a separately elected Mayor, elected on a Citywide basis; and

WHEREAS, pursuant to Government Code Section 34886, subdivision (a), the change in the method of electing members of the City Council is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

<u>SECTION 1:</u> NOW, THEREFORE THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Title III: Administration is amended by adding Chapter 30.03: Council member Elections By District to the Riverbank Municipal Code, which shall read as follows:

(A) *Method of election of the Members of the City Council*. The elective officers of the City of Riverbank shall be a Mayor and four (4) Council members. The Council shall consist of the Mayor and four (4) Council members, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council.

(1) *Council Members*. Each member of the Council shall serve a four (4) year term until his or her successor is elected and qualified. Members of the Council shall be elected "by-district" and each district shall elect one Council member. Only voters who live in a district shall be eligible to vote in the election for Council member of that district. Except as provided in subdivision (B)(2) of this section, the Council member elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for the Council must live in, and be a registered voter in, the district in which he or she seeks election. Termination of residency in a district by a Council member shall create an immediate vacancy for that Council district unless a substitute residence within the district is established within thirty (30) days of the termination of residency.

(2) *Mayor*. The term of office of the Mayor shall be four (4) years until his or her successor is elected and qualified. The Mayor shall be elected by the voters of the City at-large at each general municipal election, or as otherwise provided by law. The Mayor shall be a resident of the City. The Mayor in office at the time this ordinance takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is elected and qualified.

(B) *Establishment of Council Member districts*. Beginning with the general municipal election in November 2016, members of the Council shall be elected on a "by-district" basis from four (4) Council Member districts.

(1) *Boundaries and numbering of each district*. Each Council Member district shall be assigned a district number, with districts numbered one through four. The boundaries and the number of each of the four (4) electoral districts for the Council are set forth by City Council resolution, including a map of the districts, which is incorporated herein by reference. The electoral districts may be subsequently reapportioned as provided by state law. The Council members of the two even-numbered districts shall be elected by-district in November 2016 for a term of four (4) years.

The Council members of the two odd-numbered districts shall be elected by-district in November 2018 for a term of four (4) years. After the adoption of this ordinance all persons appointed to fill vacancies on the Council and all persons elected to fill vacancies on the Council at a special municipal election shall reside within the district to which they are appointed or elected.

(2) *Technical changes to Council districts*. If necessary to facilitate the implementation of this section, the City Clerk is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Clerk shall advise the Council of any such adjustments that are found to be required in the implementation of the district.

(3) *Amendment of district boundaries*. Pursuant to Elections Code section 21601, as it may be amended, the Council shall adjust the boundaries of any or all of the districts following each decennial federal census. Using the census as a basis, the Council shall adjust the boundaries so that the districts shall be as nearly equal in population as practicable and in compliance with all applicable provisions of law. Any adjustment of district boundaries shall be made by resolution adopted by the Council before the first day of November of the year following the year in which each decennial federal census is taken. Prior to the public hearing approving the adjustment of the district boundaries, the City Council shall hold a public hearing on the proposed district boundaries as required by Election Code Section 21601.

(4) *Transition period*. A period of transition from at-large elections to by-district elections will occur from the time of adoption of the first districting plan to the time that the by-district elections are held for all Council member districts. During this period of transition, each Council member elected at-large in the regular municipal election of November 2014 will be designated by the Council as the Council member representing one of Districts One and Three in the districting plan whether or not that Council member resides in the district. The first by-district elections for Districts Two and Four shall occur during the regular municipal election in November 2016. The first by-district elections for Districts One and Three shall occur during the regular municipal election in November 2018. Nothing contained herein shall prevent an incumbent Council member at the time of the effective date of this ordinance from running for a Council district in which that Council member resides other than the district for which that member currently holds office, if the Council member is otherwise eligible to run in that district and vacates the office of Council member for the district of non-residency if elected. No Council member may hold office in more than one district. Each incumbent Council member elected at-large shall be allowed to complete the term for which they were elected regardless of the district of residency so long as they otherwise remain eligible to hold the office and have not been removed for cause or elected to another office.

SECTION 2: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption (January 8, 2015), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on November 24, 2015. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 8th day of December, 2015; motioned by Councilmember ____________, seconded by Councilmember ________________, moved said ordinance by a City Council roll call vote of ____:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:	**APPROVED:**
____________________________	____________________________
Annabelle H. Aguilar, CMC **City Clerk**	**Richard D. O'Brien** **Mayor**

APPROVED AS TO FORM:

____
Tom P. Hallinan, City Attorney

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 5.1

SECTION 5: PUBLIC HEARING

Meeting Date:	December 8, 2015
Subject/ Title:	The First Reading and Introduction of a Proposed **Ordinance** of the City Council of the City of Riverbank, California, amending the Riverbank Municipal Code by repealing in its Entirety Chapter 120: Medical Marijuana Dispensary Ban of Title XI: Business Regulations and Substituting it with a New Chapter 120: Ban On Medical Marijuana Dispensaries and Commercial and Outdoor Marijuana Cultivation
From:	Jill Anderson, City Manager
Submitted by:	Tom Hallinan, City Attorney Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council conduct the public hearing for the first reading and introduction by title only of proposed ordinance and consider its approval as presented, which will initiate the scheduling of the ordinance for its second reading by title only at the January 12, 2016, regular City Council meeting to consider its adoption.

SUMMARY

The proposed ordinance ("Ordinance") amends Chapter 120, Medical Marijuana Dispensary Ban of Title XI, Business Regulations of the Riverbank Municipal Code ("R.M.C."), to create Section 120.02, Regulation of Commercial and Outdoor Medical Marijuana Cultivation. The Ordinance is proposed in response to recently adopted state laws known as the California Medical Marijuana Regulation and Safety Act ("MMRSA"). In compliance with MMRSA, the proposed Ordinance would prohibit commercial cannabis activities and the outdoor cultivation of marijuana within city limits of the City of Riverbank ("City"). By enacting the proposed Ordinance, the City will maintain local control over the regulation of marijuana cultivation within the City.

BACKGROUND

In 1996, the people of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA"). The CUA enables seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted SB 420, entitled the Medical Marijuana Program ("MMP"), which permits qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP requires cities and counties to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within their jurisdictions. Additionally, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to any claimed medical need.

Governor Brown signed the 3 bills which form MMRSA (AB 266, AB 243, and SB 643) on October 9, 2015, to be effective as of January 1, 2016. MMRSA requires cities and counties to take certain actions by March 1, 2016, in order to maintain local control to regulate the cultivation of medical marijuana within their jurisdiction. MMRSA also establishes a new State agency and licensing system for the cultivation, processing, transportation, testing, and distribution of medical marijuana to qualified patients throughout the State.

If the City of Riverbank does not have land use regulations or ordinances regulating or prohibiting the commercial cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or if the City chooses not to administer a conditional permit program pursuant to MMRSA, then commencing March 1, 2016, the new State agency will be the sole licensing authority for medical marijuana cultivation in the City.

The R.M.C. currently does not expressly address the cultivation, processing, or delivery of medical marijuana. Under the City's permissive zoning ordinance, this means that the cultivation, processing and delivery of medical marijuana is not allowed in any zoning district of the City, as such activities are not defined as permitted uses in any of the City's zoning districts. While the proposed ordinance expressly prohibits both commercial and the outdoor cultivation of marijuana, the ability of individual patients and primary caregivers to cultivate marijuana indoors is not affected.

In compliance with MMRSA, and consistent with the City's existing zoning designations, the proposed Ordinance adds Section 120.02, expressly prohibiting commercial and outdoor marijuana cultivation within the City. The Ordinance also makes minor technical amendments to Section 120.01 in response to changes in existing law. By adopting the proposed Ordinance, the City Council will ensure that local regulation of marijuana cultivation remains within the local control of the City. City staff may propose additional ordinances in the future as MMRSA continues to evolve.

ALTERNATIVES

The City Council's options regarding the Ordinance include:

1. Motion to introduce the Ordinance for first reading;

2. Continue introduction of the Ordinance for first reading to the next regular City Council meeting, with changes or revisions provided by the City Council;

3. Reject the introduction of the Ordinance for first reading and draft a resolution formally declaring that under the principles of permissive zoning, marijuana cultivation is currently prohibited in all zoning districts of the City.

ENVIRONMENTAL REVIEW

The proposed Ordinance does not constitute a project subject to review under the California Environmental Quality Act ("CEQA"), and the proposed Ordinance will not result in any direct or indirect environmental impacts that trigger CEQA review as the Ordinance formalizes current prohibitions under the City's permissive zoning.

FINANCIAL IMPACT

The City will not likely see a significant financial impact added to local law enforcement or code enforcement costs, as the City's existing code generally prohibits commercial cultivation of marijuana.

STRATEGIC GOALS

Riverbank's Strategic Planning sessions allow the Council and staff to reaffirm the City's Mission Statement, Vision Statement, Core Values and Three-Year Goals. In addition, strategic objectives are drafted and completed as the City works towards their long range goals. One "Enhance Public Safety" objective is to present to the City Council an analysis of recently enacted medical marijuana legislation that will be implemented Statewide on January 1, 2016. Therefore, this item relates to a strategic objective.

ATTACHMENT

1. Proposed Ordinance

CITY OF RIVERBANK

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AMENDING THE RIVERBANK MUNICIPAL CODE BY REPEALING IN ITS ENTIRETY CHAPTER 120: MEDICAL MARIJUANA DISPENSARY BAN OF TITLE XI: BUSINESS REGULATIONS AND SUBSTITUTING IT WITH A NEW CHAPTER 120: BAN ON MEDICAL MARIJUANA DISPENSARIES AND COMMERCIAL AND OUTDOOR MARIJUANA CULTIVATION

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution. However, the CUA also states that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes;" and

WHEREAS, the limited immunity from specified state marijuana laws provided by the CUA and the Medical Marijuana Program ("MMP") does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc*. (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…"; and

WHEREAS, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana..." affirming the ability of a local governmental to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed; and

WHEREAS, on October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643), collectively referred to as the Medical Marijuana Regulation and Safety Act (the "Act"). The Act allows cities to maintain local control of marijuana cultivation, provided that cities take certain actions; and

WHEREAS, the Act contains language that requires the City to take actions to regulate the cultivation of medical marijuana by March 1, 2016, either expressly or otherwise under principles of permissive zoning, or the State will become the sole licensing authority; and

WHEREAS, the City Council finds that (1) commercial and outdoor medical marijuana activities can adversely affect the health, safety, and well-being of City residents; (2) City-wide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment and malodorous smells that may result from such activities; (3) as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentrations of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, while the City Council finds that outdoor cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to make clear that such uses are prohibited throughout City limits; and

WHEREAS, the City Council of the City of Riverbank finds that this ordinance is consistent with the City's current prohibitions and banning commercial and outdoor cultivation is in the best interest of the health, welfare and safety of the public.

<u>SECTION 1:</u> NOW THEREFORE, THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

The Riverbank Municipal Code is amended by repealing in its entirety Chapter 120: Medical Marijuana Dispensary Ban of Title XI: Business Regulations and substituting it with a new Chapter 120: Ban on Medical Marijuana Dispensaries and Commercial and Outdoor Marijuana Cultivation, which shall read as follows:

CHAPTER 120: BAN ON MEDICAL MARIJUANA DISPENSARIES AND COMMERCIAL AND OUTDOOR CULTIVATION

Section

§120.01 MEDICAL MARIJUANA DISPENSARIES.

(A) *Definitions.* For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) **MEDICAL MARIJUANA DISPENSARY** or **DISPENSARY.** Any facility or location, stationary or mobile, where medical marijuana is cultivated, made available to and/or

distributed to any of the following: a primary caregiver, a qualified patient, or a person with an identification card, in accordance with Cal. Health and Safety Code §§ 11362.5 et seq. The terms **PRIMARY CAREGIVER, QUALIFIED PATIENT,** and **PERSON WITH AN IDENTIFICATION CARD** shall be as defined in Cal. Health and Safety Code §§ 11362.5 et seq.

(2) **A MEDICAL MARIJUANA DISPENSARY** shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 1, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 3.01, a residential care facility for the elderly licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 3.2, a residential hospice or a home health agency licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 8, as long as any such use complies strictly with the applicable law including, but not limited to, Cal. Health and Safety Code §§ 11362.5 et seq.

(3) The term **MEDICAL MARIJUANA DISPENSARY** as defined herein is not intended, nor shall it be construed, to apply to the cultivation, delivering, giving away, providing, or furnishing of marijuana by a qualified patient, a primary caregiver, or a person with an identification card, as defined in Cal. Health and Safety Code §§ 11362.5 et seq., provided such activity complies strictly with all applicable state law, including but not limited to, Cal. Health and Safety Code §§ 11362.5 and 11362.765.

(B) *Medical marijuana dispensaries as a prohibited use.* A medical marijuana dispensary as defined in division (A)(1) of this section is prohibited in all zones and planned developments as defined in Chapter 153 of this Code of Ordinances and no permit shall be issued therefore.

§ 120.02 MEDICAL MARIJUANA CULTIVATION.

(A) *Definitions.* For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) **COMMERCIAL CANNABIS ACTIVITY** shall mean cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, delivery transport, distribution, or sale of medical cannabis or a medical cannabis product, and other similar activities defined under Business & Professions Code § 19300.5, as amended from time to time.

(2) **COMMERCIAL CANNABIS ACTIVITY** shall not include qualified patients and primary caregivers defined in Cal. Health and Safety Code § 11362.7, provided such activity complies strictly with all applicable state law, including but not limited to, Cal. Health and Safety Code §§ 11362.5 and 11362.765.

(3) **CULTIVATION** shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(4) **OUTDOOR CULTIVATION** shall mean cultivation of plants that are not grown within a fully enclosed and secure structure, and where such plants rely primarily on the sun for photosynthesis.

(B) Commercial cannabis activity and outdoor cultivation are expressly prohibited in all zones and planned development areas in the City of Riverbank, and no permit shall be issued therefore. No person shall establish, engage in, conduct or allow commercial cannabis activity or outdoor cultivation anywhere within the City.

SECTION 2: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption ( ), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on December 8, 2015. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the day of , 2016; motioned by Councilmember ____________, seconded by Councilmember _______________, moved said ordinance by a City Council roll call vote of ____:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:	**APPROVED:**
___________________________	_________________________
Annabelle H. Aguilar, CMC **City Clerk**	**Richard D. O'Brien** **Mayor**

APPROVED AS TO FORM:

____
Tom P. Hallinan, City Attorney

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	December 8, 2015
Subject:	A **Resolution** of the City Council of the City of Riverbank, California, Authorizing the Execution and Delivery of a Master Governmental Lease-Purchase Agreement, an Escrow Agreement and a Supplement with Respect to the Acquisition, Purchase, Financing and Leasing of Certain Equipment for the Public Benefit; Authorizing the Execution and Delivery of Documents Required in Connection Therewith; and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by this Resolution
From:	Jill Anderson, City Manager
Submitted by:	Marisela H. Garcia, Director of Finance

RECOMMENDATION

It is recommended that the City Council adopt a Resolution awarding the financing for the Water Meter Project to Wells Fargo Bank and authorizing the City Manager and Director of Finance to execute the necessary financing documents.

SUMMARY

At the November 10, 2015 meeting, City Council was presented with financing options related to the funding of the Water Meter Project (the "Project"). Based on three financing structures, City Council approved moving forward with a private placement approach that included the solicitation from banks and financial institutions by NHA Advisors (the City's Municipal Advisor). After receiving 9 proposals from various firms, the lowest interest rate, financing cost and repayment terms were provided by Wells Fargo Bank. The interest rate for the Project will be 2.18% and paid over the next 11-12 years. Annual payments are anticipated to be approximately $429,000 (the projected amount in the Water Rate Study).

BACKGROUND

The proposed financing of the Project will be structured as an equipment lease with the water meters serving as the leased asset. This will provide the lowest interest rate and allow the security to only include the repayment from the City's Water Enterprise Fund and not the City's General Fund. This financing structure is used on a regular basis by most public agencies for capital projects and equipment. The financing structure also uses standardized financing documents that minimize transaction costs and keep the overall financing amount as low as possible.

BID PROCESS

NHA Advisors drafted a Project Summary and Credit Package that was submitted through the Placement Agent (Hilltop Securities) to over 15 financial institutions. 9 responses were received and are summarized below:

Financial Institution	Rate
Wells Fargo Bank	2.18%
Bank of America	2.49%
Pinnacle Public Finance	2.60%
Key Government Finance	2.75%
Umpqua Bank	2.89%
BBVA Compass	2.92%
Sterling National Bank	3.10%
Capital One Public Funding, LLC	3.35%
Western Alliance Public Finance	3.55%

NHA Advisors reviewed all proposals for interest rate, fees and terms prior to making the recommendation to award the financing to Wells Fargo Bank. Many of the proposals included legal and transaction fees or prepayment terms that were disadvantageous to the City. The proposed financing terms from Wells Fargo Bank will allow the City to pay off the Project in approximately 11 years (compared to the 15-year term assumed in the Rate Study).

PROJECT BACKGROUND

The City of Riverbank has been providing metered water to our residents for well over 30 years. Currently, the City has over 6,800 service connections all of which are read by the Water Division on a bi-monthly basis. Based on the type of meter, the City uses a variety of methods by which to obtain meter readings including the following:

Type of Meter	% of Total Meters	Reading Method
Direct (Radio) Read	56%	Vehicle Drive-By
Touch Pad	37%	Walking
Manual	7%	Walking

Six (6) months a year, for approximately 3 weeks per month, the City's four Water Division staff members are dedicated full time to the meter reading process. In addition, the City's Finance staff must prepare all of the equipment prior to the process to ensure that they are in working condition and ready for the meter reading process to begin.

A typical meter reading month will involve the following steps:

1. Finance prepares laptop for reading of Radio Read Meters
2. Water Division reads Radio Read Meters – 1 day
3. Finance prepares Meter Guns for reading of Manual and Touch Pad meters
4. Water Division reads manual & touch pad meters – 10 days
5. Finance downloads readings to system and prepares the re-read list for those meters that were not able to be read or that present deviations from the normal usage – 1 day
6. Water Division manually reads meters on the re-read list. 1-2 days
7. Finance exports reads into the billing system.
8. Finance manually inputs the re-reads into the billing system – 1 day
9. Finance prepares billing – 1 day

During the six (6) months when meter reading is not occurring, the Water Division is tasked with the maintenance and upkeep of our water system, including the performance of any state mandated tasks (i.e. valve turning exercises). In addition to these duties, the Water Division staff also performs the daily turn-on's for new service, turn-off's for discontinued service, and investigates any complaints received from customers regarding their water usage and billings.

The City spends approximately $122,400 in staff time manually handling all meter related duties.

Duties	Water Department Costs	Finance Department Costs
Water Turn On/Off	$28,700	$8,900
Meter Reading	$52,000	$5,900
Investigating Complaints	$10,100	$8,800
Door Notices	$700	$400
Shut-Off List	$6,500	$400
Total Cost	**$98,000**	**$24,400**

CURRENT WATER SYSTEM ISSUES

Our current water delivery system has some significant deficiencies that do not allow the city to track water usage properly nor provide excellent customer service assistance to our residents. Several of the key issues the City is facing with our current system include the following:

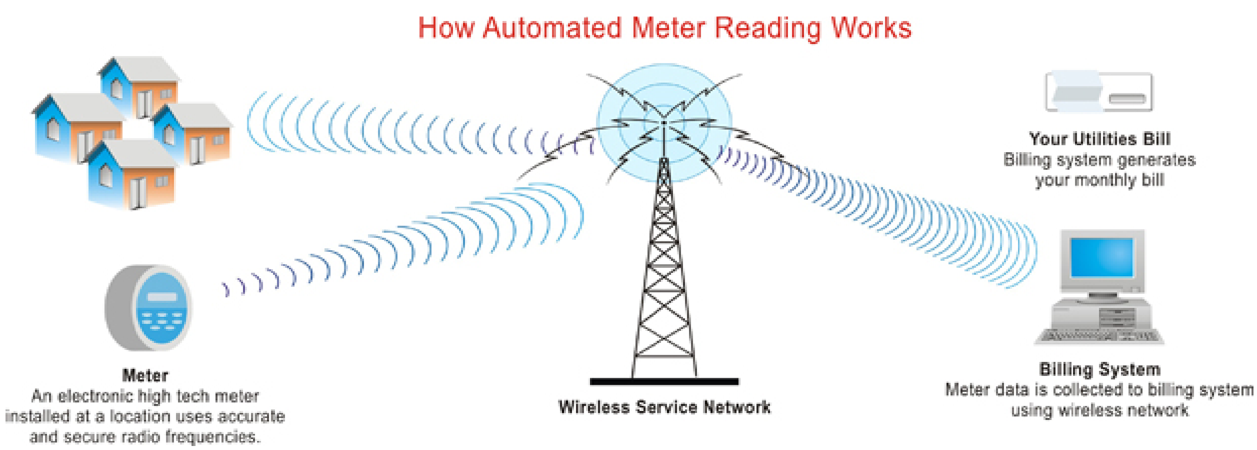
1. Loss of Revenue

   - ➢ Older meters lose efficiency and are not able to capture the correct readings. An audit of our water meters in August 2013 reflected an 80% read rate success.
   - ➢ The City has no ability to track closed accounts to monitor whether usage continues. Water
2. No Leak Detection on our water mains
3. Customer Service Issues
   - ➢ Customer cannot track own usage
   - ➢ Usage Data is only available every other month
   - ➢ Customer complaints require days to investigate
4. Antiquated Meter Reading Equipment no longer under warranty
   - ➢ Water Districts moving to automated systems

<u>AUTOMATIC METER READING/AUTOMATED METER INFRASTRUCTURE PROJECT</u>

On January 27, 2015 the City Council approved an award to National Meter Automation, Inc. for the installation of a Fixed Network Automatic Meter Reading / Advanced Metering Infrastructure (AMR/AMI) system to read meters in an automated and cost effective manner. The project will include water meter replacement and/or installation of over 6,800 meters city-wide. With this project, the City will be able to conduct advanced data analysis through this system based upon the data it provides.

It is the intention of the City to undergo this project in order to upgrade aging water meter technology with the most advanced technology available. As water meters age, their efficiency decreases and thus the City loses valuable revenues necessary to continue maintaining our water system. In addition, the time saved from being able to automatically read meters from a central location will allow Water Division employees to dedicate their time maintaining our system rather than meter reading.



This project will also include the installation of a leak detection system on the City's water main distribution lines to ensure that leaks are detected in a timely manner, avoiding any major loss of water or other catastrophe.

BENEFITS OF THE AMR/AMI SYSTEM

- Increased Efficiency = Increased Revenues
  - Accurate readings will lead to an increase in revenues of approximately 5%-10% = $87,000-$174,000
- Decreased maintenance costs with system under warranty
- Facilitates monthly billing of all three services
- Facilitates move to billing for gallons vs. cubic feet
  - Customer no longer has to calculate gallons on their own
- Enhanced Customer Service
  - Customer can track own usage, view billings, etc.
  - Readings can be obtained hourly, daily, weekly, etc.
  - Customer Complaints can be handled immediately
- Promotes Water Conservation
- Staff has time to perform maintenance required by the State Water Resources Control Board & Dep't of Public Health.

NEXT STEPS

Subject to City Council approval of the award to Wells Fargo Bank for the Project Financing, City staff will work with NHA Advisors to finalize the Financing Agreement and supplemental documents (included in draft form with this staff report). It is anticipated that execution and delivery of funds will occur prior to December 23, 2015.

FINANCIAL IMPACT

This project has an estimated cost of $4.7 million, of which $4.1 will be financed through the equipment lease with Wells Fargo Bank and $600,000 appropriated from the Water Capital Improvement Fund during the adoption of the FY 2015-16 Annual Budget (as contingency funding). Annual debt service is estimated to be $429,000 and paid from the Water Enterprise Fund.

STRATEGIC PLAN

This report has been prepared to work towards accomplishing the following strategic objective established at the October 15, 2015 and November 10, 2015 meetings:

"Present to the City Council for consideration a SMART Water Meters Financing Plan"

ATTACHMENT

1. Resolution
2. Sample Financing Package with Wells Fargo Bank

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER GOVERNMENTAL LEASE-PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND A SUPPLEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the City of Riverbank (the "City" or "Lessee"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of California is authorized by the laws of the State of California to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Master Governmental Lease-Purchase Agreement dated as of December 22, 2015 (the "Agreement"), and Supplement dated as of December 22, 2015 thereto (the "Supplement" and together with the Agreement, the "Lease"), each with Wells Fargo Equipment Finance, Inc. (the "Lessor"), and that certain Escrow Agreement with the Lessor as lessor and escrow agent, the forms of which have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Supplement and Escrow Agreement as provided in the Agreement for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided:

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of Lessee as follows:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement, the Escrow Agreement and the Supplement are hereby approved in substantially the forms presented at this meeting. with such insertions, omissions and changes as shall be approved by the City Manager or Finance Director of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the City Manager or Finance Director of the Lessee is hereby authorized and directed to execute, and the City Manager or Finance Director of the Lessee is hereby authorized and directed to attest and countersign, the Agreement, the Escrow Agreement and the Supplement and any related Exhibits attached thereto and to deliver the Agreement, the Escrow Agreement and the Supplement (including such Exhibits) to the respective parties thereto and the City Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

<u>Section 2.</u> Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement, the Escrow Agreement and the Supplement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of an acceptance certificate and a tax certificate and agreement with respect to the Supplement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement, the Escrow Agreement and the Supplement.

<u>Section 3.</u> No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement, the Supplement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement. the Escrow Agreement, the Supplement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Lease are special limited obligations of the Lessee as provided therein.

<u>Section 4.</u> Appointment of Authorized Lessee Representatives. The City Manager and Finance Director of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement, the Escrow Agreement and the Supplement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement, the Escrow Agreement and the Supplement.

<u>Section 5.</u> Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 6. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 7. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

PASSED AND ADOPTED by the City Council of the City of Riverbank ("Lessee") at a regular meeting held on the 8th day of December, 2015; motioned by Councilmember ______, seconded by Councilmember ______, and upon roll call was carried by the following City Council vote of ___:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:	**APPROVED:**
______________________________	______________________________
Annabelle H. Aguilar, CMC	**Richard D. O'Brien**
City Clerk	**Mayor**

Bank-Qualified Designation

Wells Fargo Equipment Finance, Inc. | 733 Marquette Avenue, Suite 700 | MAC N9306-070 | Minneapolis, MN 55402

Supplement Number 0-000 dated as of ___________ to
Master Governmental Lease-Purchase Agreement
Number ____________ dated as of _____________

Name and Address of Lessee:
sample
1234 Main Street
Sample, HI 00000

Lessee hereby designates the above referenced Master Governmental Lease-Purchase Agreement and Supplement thereto (collectively, the "Lease") to which this Designation is attached, as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) that exceed the aggregate principal amount of $10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of the Lease.

Executed On:_______________________________

Lessee: sample

____
By

____
Title

Incumbency Certificate

Wells Fargo Equipment Finance, Inc. | 733 Marquette Avenue, Suite 700 | MAC N9306-070 | Minneapolis, MN 55402

WELLS FARGO

I, ___________________________, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of Sample Customer, a political subdivision or agency duly organized and existing under the laws of the State of _______________, that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of such entity holding the offices set forth opposite their respective names. I further certify that (I) the signatures set opposite their respective names and titles are their true and authentic signatures and (II) such officers have the authority on behalf of such entity to enter into that certain Master Governmental Lease-Purchase Agreement Number ___________ dated as of ______________________ and any Supplements thereto and any escrow agreement related thereto.

NAME	TITLE	SIGNATURE

IN WITNESS WHEREOF, I have duly executed this certificate as of ____________________.

____
SECRETARY/CLERK

Master Governmental Lease Purchase Agreement

Wells Fargo Equipment Finance, Inc. | 733 Marquette Avenue, Suite 700 | MAC N9306-070 | Minneapolis, MN 55402

WELLS FARGO

Master Governmental Lease Purchase Agreement Number 100100 dated as of _______________

Name and Address of Lessee:
Sample Customer
1234 Main Street
Sample, HI 00000

Master Governmental Lease Purchase Agreement Provisions ("Master Lease")

1. LEASE. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the personal property described in a Supplement or Supplements to this Master Lease from time to time signed by Lessor and Lessee upon the terms and conditions set forth in this Master Lease and in the related Supplement (such property together with all replacements, substitutions, parts, improvements, repairs, and accessories, and all additions incorporated therein or affixed thereto being referred to herein as the "Equipment"). Each Supplement shall constitute a separate lease incorporating the terms of this Master Lease. References in this Master Lease to "this Lease", "hereunder" and "herein" shall be construed to mean a Supplement which incorporates this Master Lease. Lessee's execution of a Supplement shall obligate Lessee to lease the Equipment described therein from Lessor. No Supplement shall be binding on Lessor unless and until executed by Lessor. Anything to the contrary notwithstanding, Lessor shall have no obligation to accept, execute or enter into any Supplement or to acquire or lease to Lessee any equipment. Except as otherwise required by applicable law, upon Lessee's acceptance of the Equipment under the Lease, title to all Equipment shall vest in Lessee subject to Lessor's rights hereunder.

2. TERM. The term of this Lease shall begin on, and interest shall accrue from, the rent commencement date shown in the applicable Supplement and shall continue for the number of consecutive months from the rent commencement date shown in such Supplement unless earlier terminated as provided herein. Upon agreement by Lessor and Lessee as to any Equipment to be acquired and leased by Lessee under this Lease, Lessor and Lessee may enter into an escrow agreement establishing a fund from which the Total Cost for such Equipment is to be disbursed in accordance with disbursement requests as provided therein, and an amount equal to the Total Cost for such Equipment is to be deposited therein by Lessor. Lessee agrees that the rent commencement date may be left blank when Lessee executes the related Supplement and hereby authorizes Lessor to insert the rent commencement date, which shall be the date Lessor disburses the Total Cost or deposits such amounts into an escrow fund as provided herein, irrespective of when the Equipment is accepted by Lessee. When the Equipment under this Lease has been delivered and installed, Lessee shall immediately accept such Equipment and evidence said acceptance by executing and delivering to Lessor a delivery and acceptance certificate.

3. RENT; NON-APPROPRIATION. Lessee shall pay as basic rent for the term of this Lease the amount shown in the related Supplement as Total Basic Rent, subject, however to the provisions of this paragraph 3. As set forth in the related Supplement or an exhibit thereto, each basic rental payment consists of principal and interest portions. The Total Basic Rent shall be payable in installments each in the amount of the basic rental payment set forth in the related Supplement plus sales and use tax thereon (if applicable). Lessee shall pay advance installments and any security deposit, each as shown in the related Supplement, on the date it is executed by Lessee. Subsequent installments shall be payable on the first day of each rental payment period shown in the related Supplement beginning after the first rental payment period; provided, however, that Lessor and Lessee may agree to any other payment schedule, in which event they shall be set forth in the Supplement.

Lessee is obligated only to pay basic rental payments and other amounts due under this Lease as may lawfully be made from funds budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay the basic rental payments and other amounts due under this Lease for any fiscal period during the term of this Lease (an "Event of Non-Appropriation"), this Lease shall be deemed terminated at the end of Lessee's then current fiscal period. Lessee agrees to deliver notice to Lessor immediately (and in no case later than 30 days prior to the end of Lessee's then current fiscal period) of the occurrence of an Event of Non-Appropriation under this Lease. If an Event of Non-Appropriation occurs with respect to this Lease, Lessee shall return the Equipment in accordance with paragraph 14. Lessee currently intends, subject to this paragraph, to pay all basic rental payments for the term of the Lease, and reasonably believes that legally available funds in an amount sufficient to pay all basic rental payments and other amounts due during the term of this Lease can be obtained. Lessee currently intends to do all things lawfully within its power to obtain and maintain legally available funds from which the basic rental payments and other amounts due under this Lease may be paid, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding anything herein to the contrary, the decision whether or not to budget and appropriate funds and continue the term of this Lease is within the discretion of the governing body of Lessee.

Lessor and Lessee understand and intend that the obligation of Lessee to pay basic rental payments under this Lease shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

THIS AGREEMENT INCLUDES THE TERMS ON THE ATTACHED PAGE(S).

Lessor: Wells Fargo Equipment Finance, Inc.	Lessee: Sample Customer
By	By
Title	Title

4. SECURITY DEPOSIT. Lessor may apply any security deposit toward any obligation of Lessee under any Supplement and shall return any unapplied balance to Lessee without interest upon full satisfaction of all of Lessee's obligations.

5. NO WARRANTIES. Lessee agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSEE ACKNOWLEDGES THAT: LESSOR IS ACTING ONLY AS A FINANCING SOURCE WITH RESPECT TO LESSEE'S ACQUISITION OF THE EQUIPMENT; LESSOR IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN; THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY, DESCRIPTION AND MANUFACTURE SELECTED BY THE LESSEE; LESSEE IS SATISFIED THAT THE EQUIPMENT IS SUITABLE AND FIT FOR ITS PURPOSES; AND LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE QUALITY, CONDITION OR CAPACITY OF THE EQUIPMENT OR THE MATERIALS IN THE EQUIPMENT OR WORKMANSHIP OF THE EQUIPMENT, TITLE TO THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY EQUIPMENT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. LESSOR SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT. No defect or unfitness of the Equipment and no failure on the part of the manufacturer or the shipper of the Equipment to deliver the Equipment or any part thereof to Lessee shall relieve Lessee of the obligation to pay rent or any other obligation hereunder. Lessor shall have no obligation in respect of the Equipment and shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall look only to persons other than Lessor such as the manufacturer, vendor or carrier thereof should any item of Equipment for any reason and in any way be defective. To the extent permitted by the manufacturer and/or vendor and provided Lessee is not in default under the Lease, Lessor shall make available to Lessee all manufacturer and/or vendor warranties with respect to the Equipment.

6. LESSEE COVENANTS, REPRESENTATIONS AND WARRANTIES. (a) Affirmative Covenants. Lessee shall: (i) pay all shipping and delivery charges and other expenses incurred in connection with the Equipment and pay all lawful claims, whether for labor, materials, supplies, rent or services, which might or could if unpaid become a lien on the Equipment; (ii) comply with all laws and regulations and rules, all manufacturer's instructions and warranty requirements, and with the conditions and requirements of all policies of insurance relating to the Equipment and its use; (iii) mark and identify the Equipment with all information and in such manner as Lessor or its assigns may request from time to time and replace promptly any such markings or identification which are removed, defaced or destroyed; (iv) at any and all times during business hours, grant Lessor free access to enter upon the premises wherein the Equipment shall be located or used and permit Lessor to inspect the Equipment and all applicable maintenance records; provided, however, that Lessor shall have no obligation to inspect any Equipment or records; (v) maintain a system of accounts established and administered in accordance with generally accepted accounting principles and practices consistently applied; (vi) within one hundred and twenty (120) days after the end of each fiscal period, deliver to Lessor the audited financial statements of Lessee as at the end of and for such fiscal period, with accompanying notes to financial statements, each setting forth in comparative form the corresponding figures for the preceding fiscal period, in each case prepared in accordance with generally accepted accounting principles and practices consistently applied, and certified by an independent accounting firm; (vii) with reasonable promptness, furnish Lessor with such other information, financial or otherwise, relating to Lessee or the Equipment as Lessor shall reasonably request; and (viii) comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the United States Treasury Regulations thereunder applicable to excluding the interest component of the basic rental payments under this Lease from the recipient's gross income for federal income tax purposes.

(b) Negative Covenants. Lessee shall not (i) voluntarily or involuntarily create, incur, assume or suffer to exist any mortgage, lien, security interest, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Equipment or this Lease or any of Lessee's interest thereunder, except those created under this Lease in favor of Lessor; (ii) permit the name of any person, association or corporation other than the Lessor or Lessee to be placed on the Equipment; (iii) part with possession or control of or suffer or allow to pass out of its possession or control any item of the Equipment or change the location (or alternatively, the garage or base location with respect to vehicles or mobile equipment) of the Equipment or any part thereof from the address shown in the applicable Supplement; (iv) ASSIGN OR IN ANY WAY TRANSFER OR DISPOSE OF ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE OR ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE EQUIPMENT; (v) change its name or address from that set forth above; or (vi) permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code.

(c) Representations and Warranties. Lessee represents and warrants to Lessor, that effective on the date on which Lessee executes this Master Lease and each Supplement: (i) Lessee is a state or political subdivision thereof within the meaning of Section 103(c) of the Code; (ii) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Master Lease and each Supplement and to perform all of its obligations hereunder and thereunder; (iii) the execution and delivery of this Master Lease and each Supplement and the performance of Lessee's obligations hereunder and thereunder have been duly authorized by all necessary action on the part of the Lessee and are not in contravention of, and will not violate any judgment, order, law or regulation applicable to Lessee or result in a breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment pursuant to any loan agreements or indentures of Lessee, or any other contract, agreement or instrument to which Lessee is a party or by which it is bound; (iv) the person signing the Master Lease and each Supplement on behalf of Lessee is duly authorized; (v) all requirements have been met and procedures have occurred in order to ensure the enforceability of this Master Lease and each Supplement, and Lessee has complied with such public bidding requirements as may be applicable to the transactions contemplated by this Master Lease and each Supplement; (vi) Lessee has obtained all other approvals and consents as are necessary to consummate the Master Lease and each Supplement;(vii) this Master Lease and each Supplement constitute a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (viii) all information provided by Lessee to Lessor in connection with this Lease is true and correct; (ix) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in the trade or business of any other entity or person; (x) there are no suits pending or threatened against Lessee which, if decided adversely, might materially adversely affect Lessee's financial condition, the value, utility or remaining useful life of the Equipment, the rights intended to be afforded to Lessor hereunder or the ability of Lessee to perform its obligations under the Lease or any document delivered in connection with the Lease; (xi) no portion of the net proceeds of this Lease will be used to reimburse Lessee for any payment made more than 60 days prior to the earlier of (I) the date Lessee executed the related Supplement or (II) any official action taken by Lessee or its governing body to evidence an intent to finance the Equipment described in the related Supplement; and (xii) in the event that the Total Cost of any Equipment includes a prepayment for updates, maintenance or support services with respect to computer software, the vendor thereof has confirmed to Lessee in writing (and such writing has been or will be delivered to Lessor) that the same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable are regularly provided to non-governmental persons on the same terms.

7. TAXES. Unless Lessee has provided Lessor with evidence necessary (as determined by Lessor in its sole discretion) to sustain an exemption therefrom, Lessee shall promptly pay when due all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any governmental body or agency upon the Equipment or its use, purchase, ownership, delivery, leasing, possession, storage, operation, maintenance, repair, return or other disposition of the Equipment, or for titling or registering the Equipment, or upon the income or other proceeds received with respect to the Equipment or this Lease or the rentals hereunder; provided, however, that Lessee shall not be required to pay taxes on or measured by the net income of Lessor. Lessee shall prepare and file all tax returns relating to taxes for which Lessee is responsible hereunder which Lessee is permitted to file under the laws of the applicable taxing jurisdiction. Upon the expiration or earlier termination of the Lease, Lessee shall pay to Lessor any such taxes accrued or assessed but not yet due and payable.

8. INDEMNITY. To the extent permitted by applicable law and subject to the provisions of paragraph 3 hereof, Lessee hereby agrees to indemnify and hold Lessor harmless (on an after-tax basis) from and against any and all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, obligations, actions, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of, or in any manner connected with, or resulting directly or indirectly from, the Equipment, including, without limitation, the manufacture, purchase, lease, financing, selection, ownership, delivery, rejection, non-delivery, transportation, possession, use, storage, operation, condition, maintenance, repair, return or other disposition of the Equipment or with this Lease, including without limitation, claims for injury to or death of persons and for damage to property, whether arising under the doctrine of strict liability, by operation of law or otherwise, and to give Lessor prompt notice of any such claim or liability.

9. ASSIGNMENT. Lessor may sell or assign any or all of its interest in this Lease or sell or grant a security interest in all or any part of the Equipment, without the consent of Lessee; provided however, Lessor will deliver to Lessee written notice of an assignment. Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect to this Lease in form necessary to comply with Section 149 of the Code. For this purpose, Lessee appoints Lessor to act as its registration agent, which appointment Lessor hereby accepts. Lessor agrees on Lessee's behalf to maintain such record of all assignments. Lessee agrees not to assert against any assignee of Lessor any setoff, recoupment, claim, counterclaim or defense Lessee may have against Lessor or any person other than such assignee. Lessee agrees that if it receives written notice of an assignment from Lessor, it will pay all Rent and other payments payable under each assigned Supplement to such assignee or as instructed by Lessor or the assignee identified in the notice received from Lessor. An assignee of Lessor shall have all rights of Lessor under the applicable Lease, to the extent assigned, separately exercisable by such assignee independently of Lessor or any assignee with respect to other leases. Upon any such assignment and except as may otherwise be provided therein all references in this Master Lease to Lessor shall include such assignee.

10. EQUIPMENT PERSONALTY. The Equipment shall remain personal property regardless of its attachment to realty, and Lessee agrees to take such action at its expense as may be necessary to prevent any third party from acquiring any interest in the Equipment as a result of its attachment to realty. If requested by Lessor with respect to any item of the Equipment, Lessee will obtain and deliver to Lessor waivers of interest or liens in recordable form, satisfactory to Lessor, from all persons claiming any interest in the real property on or in which such item of the Equipment is installed or located.

11. USE AND MAINTENANCE. Lessee will use the Equipment with due care and only for the purpose for which it is intended. Lessee will, by qualified personnel, use, maintain, repair, modify (to the extent permitted or required herein) in accordance with prudent practices (but in no event less than the same extent to which Lessee maintains other similar equipment owned or leased by it) and for the purpose for which such Equipment was designed, in compliance with insurance policies, manufacturer's specified maintenance programs, warranties and applicable laws, and shall keep the Equipment in as good repair, condition and working order as when originally received by Lessee, ordinary wear and tear excepted, and will furnish and replace all parts of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use, all at its expense. Lessee shall, at its expense, make all modifications and improvements to the Equipment required by law. Lessee may, at its sole cost and expense, make any modifications to the Equipment, provided that such modifications (a) are readily removable without causing damage to the Equipment, (b) do not reduce the value, utility, marketability or remaining useful life of the Equipment, and (c) are of a kind that customarily are made by lessees or purchasers of equipment similar to the Equipment. All parts, modifications and improvements to the Equipment shall, when installed or made, immediately become part of the Equipment for all purposes; provided, that any modification not required by law shall if requested by Lessor be removed by Lessee and any damage to the Equipment resulting from such removal shall be repaired prior to the return of the Equipment to the Lessor. The Equipment shall not be used outside of the United States without Lessor's prior written consent.

12. LOSS OR DAMAGE. No loss or damage to the Equipment or any part thereof shall affect any obligation of Lessee under this Lease, which shall continue in full force and effect. Lessee shall advise Lessor in writing within five (5) days of any item of Equipment becoming lost, stolen or damaged and of the circumstances and extent of such damage. In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of any item of Equipment (each, a "Loss"), Lessee shall promptly pay Lessor from insurance proceeds and other legally available funds, within ten (10) days after demand by Lessor, a payoff amount equal to the Termination Balance (as set forth on the related Supplement or an exhibit thereto) with respect to such item of Equipment (as determined by Lessor based on the Total Cost of such Equipment) as of the rental payment due date immediately preceding the date of Loss, plus accrued interest thereon at the annual rate set forth on the related Supplement or an exhibit thereto from such rental payment due date through the date of payment to Lessor, computed on the basis of a 30 day month and 360 day year. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will release or transfer to Lessee, without recourse or warranty, all of Lessor's right, title (if any) and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Any insurance or condemnation proceeds received shall be paid to Lessor and credited to Lessee's obligation under this paragraph and Lessee shall be entitled to any surplus. Whenever the Equipment is damaged and such damage can be repaired, Lessee shall, at its expense, promptly effect such repairs as Lessor shall deem necessary for compliance with paragraph 11 above. Proceeds of insurance shall be paid to Lessor with respect to such reparable damage to the Equipment and shall, at the election of Lessor, be applied either to the repair of the Equipment by payment by Lessor directly to the party completing the repairs, or to the reimbursement of Lessee for the cost of such repairs; provided, however, that Lessor shall have no obligation to make such payment or any part thereof until receipt of such evidence as Lessor shall deem satisfactory that such repairs have been completed and further provided that Lessor may apply such proceeds to the payment of any rent or other sum due or to become due hereunder if at the time such proceeds are received by Lessor there shall have occurred any Event of Default or any event which with lapse of time or notice, or both, would become an Event of Default.

13. INSURANCE. Lessee shall obtain and maintain on or with respect to the Equipment at its own expense (a) liability insurance (including bodily injury and property damage) with a minimum $1 million combined single limit per occurrence and (b) all-risk physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement cost of the Equipment or the then applicable Termination Balance, whichever is greater. Lessee shall furnish Lessor with a certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein naming Lessor as an additional insured thereunder for the liability coverage and as (i) loss payee for the property damage coverage if the aggregate original cost of the Equipment leased hereunder is $1 million or less, or (ii) lender loss payee for the property damage coverage if the aggregate original cost of the Equipment leased hereunder exceeds $1 million. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor, and shall contain a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy and a clause requiring the insurer to give to Lessor at least thirty (30) days' prior written notice of (i) the cancellation or non-renewal of such policy or (ii) any amendment to the terms of such policy if such amendment would cause the policy no longer to conform to the policy requirements stated in this paragraph; and ten (10) days prior notice of cancellation for non-payment of premium. Lessee shall deliver to Lessor, annually and upon renewal or replacement of any insurance required herein, evidence satisfactory to Lessor of the required insurance coverage. Lessee hereby assigns to Lessor the proceeds of all such insurance and directs any insurer to make payments directly to Lessor. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof.

14. RETURN OF THE EQUIPMENT. Upon the termination of this Lease by Lessor pursuant to its rights under paragraph 18 or following an occurrence of an Event of Non-Appropriation, Lessee will immediately deliver the Equipment to and in the manner designated by the Lessor in the same condition as when delivered to Lessee fully capable of performing all functions for which it was originally designed (or as upgraded during the Lease term), ordinary wear and tear excepted, and in compliance with any additional return conditions set forth in the applicable Supplement, at such location within the continental United States as Lessor shall designate. Lessee shall pay all transportation and other expenses relating to such delivery. Lessee shall arrange for the disassembly and packing of the Equipment, together with all parts and pieces and then reassembly (including, if necessary, repair and overhaul) by an authorized representative of the manufacturer. Without limiting the generality of the foregoing, returned Equipment shall be in such condition to immediately qualify for (i) the manufacturer's (or other authorized service representative's) then available service contract or warranty, and (ii) all applicable licenses or permits necessary for its operation for its intended purposes and to comply with all specifications and requirements of applicable federal, state and local laws. The Equipment shall be returned with all related maintenance logs, operating manuals and other related materials and all such materials will be undamaged and contain all pages.

If this Lease is terminated by Lessor pursuant to paragraph 18 or in connection with an Event of Non-Appropriation, then unless title is already vested in Lessor, title to the Equipment shall immediately and without any further action by Lessee vest in Lessor. Transfer of title pursuant to this paragraph shall occur automatically without the necessity of delivery or receipt of any bill of sale, certificate of title or any other instrument of conveyance. Lessee shall nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer.

15. ADDITIONAL ACTION; EXPENSES. Lessee will promptly execute and deliver to Lessor such further documents, take such further action, and provide such information as Lessor may request in order to carry out more effectively the intent and purpose of this Lease, including the execution and delivery of appropriate financing statements to protect fully Lessor's interest hereunder in accordance with the Uniform Commercial Code or other applicable law, and/or comply with laws or regulations applicable to Lessor, Lessee, and/or the transaction evidenced by this Lease. Lessor and any assignee of Lessor is authorized to file one or more Uniform Commercial Code financing statements without the signature of Lessee or signed by Lessor or any assignee of Lessor as attorney-in-fact for Lessee. Lessee hereby grants to Lessor a power of attorney in Lessee's name, to apply for a certificate of title for any item of Equipment that is required to be titled under the laws of any jurisdiction where the Equipment is or may be used and/or to transfer title thereto upon the exercise by Lessor of its remedies upon an Event of Default by Lessee under this Lease. Lessee acknowledges that Lessor may incur out-of-pocket costs and expenses in connection with the transactions contemplated by this Lease, and accordingly agrees to pay (or reimburse Lessor for) the reasonable costs and expenses related to (a) filing any financing, continuation or termination statements, (b) any title and lien searches with respect to this Lease and the Equipment, and (c) documentary stamp taxes relating to the Lease, subject, however, to the provisions of paragraph 3 hereof. Lessee will do whatever may be necessary to have a statement of the interest of Lessor and any assignee of Lessor in the Equipment noted on any certificate of title relating to the Equipment and will deliver said certificate to Lessor. If Lessee fails to perform or comply with any of its agreements, Lessor may perform or comply with such agreements in its own name or in Lessee's name as attorney-in-fact and the amount of any payments and expenses of Lessor incurred in connection with such performance or compliance, together with interest thereon at the rate set forth in the related Supplement, shall be deemed rent payable by Lessee upon demand, subject, however, to the provisions of paragraph 3 hereof.

16. LATE CHARGES. If any payment, whether for rent or otherwise, is not paid within ten (10) days of when due, Lessor may impose a late charge of 5% of the amount past due (or the maximum amount permitted by applicable law if less). Payments thereafter received shall be applied first to delinquent installments and then to current installments.

17. DEFAULT. Each of the following events shall constitute an "Event of Default" hereunder: (a) Lessee shall fail to pay within ten (10) days of when due any installment of basic rent or any other amount due hereunder; (b) any certificate, statement, representation, warranty or financial or credit information heretofore or hereafter made or furnished by or on behalf of Lessee proves to have been false or misleading in any material respect or omitted any material fact, contingent or unliquidated liability or claim against Lessee; (c) Lessee shall fail to observe or perform any other agreement to be observed or performed by Lessee hereunder and the continuance thereof for ten (10) days following written notice thereof by Lessor to Lessee; (d) Lessee shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or of all or a substantial part of its assets; or (e) Lessee shall be in breach of or in default in the payment or performance of any material obligation under any credit agreement, conditional sales contract, lease, or other contract with Lessor, an affiliate of Lessor or any other person or entity, howsoever arising.

18. REMEDIES. Upon the occurrence of an Event of Default and at any time thereafter, Lessor may exercise any one or more of the remedies listed below as Lessor in its sole discretion may lawfully elect; provided, however, that upon the occurrence of an Event of Default specified in paragraph 17(d), an amount equal to the basic rental payments and other amounts due under this Lease during Lessee's then current fiscal period shall automatically become and be immediately due and payable without notice or demand of any kind. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy, and such remedies may be exercised concurrently or separately but only to the extent necessary to permit Lessor to recover amounts for which Lessee is liable hereunder.

a) Lessor may, by written notice to Lessee, terminate this Lease as to any or all of the Equipment subject hereto and declare an amount equal to all basic rental payments payable by Lessee pursuant to this Lease and other amounts payable by Lessee under such Lease to the end of Lessee's then current fiscal period to be immediately due and payable, as liquidated damages and not as a penalty, and the same shall thereupon be and become immediately due and payable without further notice or demand, and all rights of Lessee to use the Equipment shall terminate but Lessee shall be and remain liable as provided in this paragraph 18. Lessee shall at its expense promptly deliver the Equipment to Lessor at a location or locations within the continental United States designated by Lessor. Lessor may also enter upon the premises where the Equipment is located and take immediate possession of and remove the same with or without instituting legal proceedings.

b) Lessor may proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Lease.

c) In the event Lessor repossesses the Equipment, Lessor shall either retain the Equipment in full satisfaction of Lessee's obligation hereunder or sell or lease each item of Equipment in such manner and upon such terms as Lessor may in its sole discretion determine and continue to hold Lessee liable for the difference between (i) the basic rental payments and other amounts payable by Lessee pursuant to this Lease to the end of the Lessee's then current fiscal period, and (ii) the net proceeds of any such sale or lease (after deducting all expenses of Lessor in exercising its remedies under this Lease), subject, however to the provisions of paragraph 3 hereof.

d) To the extent permitted by applicable law and subject to the provisions of paragraph 3 hereof, Lessor may recover interest on any amount recoverable under this paragraph 18 from the date it becomes payable until fully paid at the rate of the lesser of 12% per annum or the highest rate permitted by law.

e) Lessor may exercise any other right or remedy available to it by law or by agreement, and may in any event recover legal fees and other costs and expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder, including expenses of repossession, repair, storage, transportation, and disposition of the Equipment, subject, however, to the provisions of paragraph 3 hereof. Any payment received by Lessor may be applied to unpaid obligations as Lessor in its sole discretion determines.

Lessee grants Lessor a security interest in the Equipment, and if applicable, in any escrow fund established in connection with the funding of this Lease, to secure its obligations under such Supplement, all other Supplements and all other indebtedness at any time owing by Lessee to Lessor. Lessee agrees that upon the occurrence of an Event of Default, in addition to all of the other rights and remedies available to Lessor hereunder, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code.

No express or implied waiver by Lessor of any breach of Lessee's obligations hereunder shall constitute a waiver of any other breach of Lessee's obligations hereunder.

19. NOTICES. Any notice hereunder to Lessee or Lessor shall be in writing and shall be deemed to have been given when delivered personally or deposited with a nationally-recognized overnight courier service or in the United States mails, postage prepaid, addressed to recipient at its address set forth above or at such other address as may be last known to the sender.

20. NET LEASE AND UNCONDITIONAL OBLIGATION. This Lease is a completely net lease and except as expressly provided in paragraph 3 hereof, Lessee's obligation to pay rent and all other amounts payable by Lessee hereunder is absolute, unconditional and irrevocable, and shall be paid without any abatement, reduction, setoff or defense of any kind.

21. NON-CANCELABLE LEASE. This Lease cannot be canceled, prepaid or terminated except as expressly provided herein or in the applicable Supplement.

22. SURVIVAL OF INDEMNITIES. Lessee's obligations under paragraphs 7, 8, and 18 shall survive termination or expiration of this Lease.

23. PURCHASE OF EQUIPMENT BY LESSEE; PREPAYMENT. Provided that Lessee is not then in default under this Lease, such Lease will terminate, the security interest of Lessor in the Equipment under such Lease will be terminated or Lessee will acquire title to the Equipment under such Lease free and clear of all liens and encumbrances created by, or arising through or under, Lessor: (a) at the end of the full scheduled term of such Lease, upon payment in full of all basic rental payments and other amounts payable by Lessee under such Lease for the full scheduled term of such Lease; (b) on the date Lessee pays to Lessor the payoff amount due under paragraph 12 with respect to all items of Equipment under this Lease; or (c) on any rental payment due date, upon payment by Lessee of the then applicable Termination Balance under such Lease as set forth on the related Supplement or an exhibit thereto plus the basic rental payment amount due on such date and all other amounts then due by Lessee under such Lease, provided that Lessee shall have given Lessor not less than 30 days' prior written notice of its intent to make such payment.

24. COUNTERPARTS. Lessor may in its sole discretion, accept a photocopy, electronically transmitted facsimile or other reproduction of this Master Lease and/or a Supplement (a "Counterpart") as the binding and effective record of this Master Lease and/or a Supplement whether or not an ink signed copy hereof or thereof is also received by Lessor from Lessee, provided, however, that if Lessor accepts a Counterpart as the binding and effective record of this Master Lease or a Supplement, the Counterpart acknowledged in writing by Lessor shall constitute the record hereof or thereof. Lessee represents to Lessor that the signature that appears on the Counterpart that is transmitted by Lessee to Lessor in any manner described above is intended by Lessee to authenticate the Counterpart notwithstanding that such signature is electronic, facsimile or a reproduction and Lessee further agrees that a Counterpart of this Master Lease or a Supplement received by Lessor, shall, when acknowledged in writing by Lessor, constitute an original document for the purposes of establishing the provisions hereof and thereof and shall be legally admissible under the best evidence rule and binding on and enforceable against Lessee. If Lessor accepts a Counterpart of a Supplement as the binding and effective record thereof only such Counterpart acknowledged in writing by Lessor shall be marked "Original" and to the extent that a Supplement constitutes chattel paper, perfection of a security interest by possession may only be accomplished by possession of the Counterpart that bears Lessor's ink signed acknowledgement and is marked "Original.

25. NON-WAIVER. No course of dealing between Lessor and Lessee or any delay or omission on the part of Lessor in exercising any rights hereunder shall operate as a waiver of any rights of Lessor. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent shall be binding upon Lessor unless it is in writing and signed by Lessor. To the extent permitted by applicable law, Lessee hereby waives the benefit and advantage of, and covenants not to assert against Lessor, any valuation, inquisition, stay, appraisement, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or re-leasing made under the judgment, order or decree of any court or under the powers of sale and re-leasing conferred by this Lease or otherwise. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages as set forth in paragraph 18 or which may otherwise limit or modify any of Lessor's rights or remedies under paragraph 18.

26. MISCELLANEOUS. This Master Lease and related Supplement(s) constitute the entire agreement between Lessor and Lessee and may be modified only by a written instrument signed by Lessor and Lessee. Any provision of this Lease which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only, are not part of this Lease and shall not be deemed to effect the meaning or construction of any of the provisions hereof. In the event there is more than one Lessee named in this Master Lease or in any Supplement, the obligations of each shall be joint and several. This Lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the state in which Lessee is located. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE HEREBY WAIVES ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING UNDER OR IN CONNECTION WITH THIS LEASE. TIME IS OF THE ESSENCE WITH RESPECT TO THE OBLIGATIONS OF LESSEE UNDER THIS LEASE.

Supplement

to Master Governmental Lease-Purchase Agreement

Wells Fargo Equipment Finance, Inc. | 733 Marquette Avenue, Suite 700 | MAC N9306-070 | Minneapolis, MN 55402

WELLS FARGO

Supplement Number ____________ dated as of ___________ to
Master Governmental Lease-Purchase Agreement
Number ___________ dated as of _____________

Name and Address of Lessee:
Sample Customer
1234 Main Street
Sample, HI 00000

Notice: Lessor reserves the right to withdraw the terms of this Supplement and issue a modified Supplement without notice to Lessee if Lessor is not in receipt of a fully executed original or facsimile of this document within five (5) business days of the date of this Supplement. However, in that event, no such modifications will be binding on Lessee unless and until Lessee executes the modified document containing all such modifications.

This is a Supplement to the Master Governmental Lease-Purchase Agreement identified above between Lessor and Lessee (the "Master Lease"). Pursuant to the Master Lease (all the terms and conditions of which are incorporated herein by reference, except to the extent that they relate solely to other Supplements or Equipment listed on other Supplements) and this Supplement, Lessor is leasing to Lessee, and Lessee is leasing from Lessor, the Equipment described below. Lessee represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Lease (including, without limitation, Section 6 thereof) are true and correct as though made on the date of execution of this Supplement.

Equipment Description: See Schedule A attached hereto and made a part hereof.

After Lessee signs this Lease, Lessee authorizes Lessor to insert any missing information or change any inaccurate information (such as the model year of the Equipment or its serial number or VIN) into this Equipment Description.

Equipment Location: 124 Sample Road, Sample, NY 00000

SUMMARY OF PAYMENT TERMS	
Payment term (Months):	Finance Amount: **$**
Payment Frequency:	Total Rent: **$**
Basic Rental Payment: **$**	Interest Rate:
Number of Payments:	Final Purchase Option Price: **$1.00**
Advance Payments: **First** due on signing Lease	

Additional Provisions: Exhibit A is attached hereto pursuant to Section 4 of the Master Lease. The Termination Balance shall be the amount set forth on Exhibit A opposite the date of determination of the Termination Balance.

THIS AGREEMENT INCLUDES THE TERMS ON THE ATTACHED PAGE(S).

Lessor: Wells Fargo Equipment Finance, Inc.	Lessee: Sample Customer
By	By
Title	Title
Commencement Date	