



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

AGENDA

TUESDAY, NOVEMBER 22, 2016 – 6:00 P.M.

(THE AGENDA PACKET IS POSTED AT THE CITY CLERK'S OFFICE AND AT 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 Jeanine Tucker
Council/Authority Member Darlene Barber-Martinez
Council/Authority Member Cal Campbell
Council/Authority Member Leanne Jones Cruz
- AGENDA CHANGES:** Mayor/Chair Richard D. O'Brien

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.
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1. PRESENTATIONS

- Item 1.1:** Recognition of Vice Mayor Jeanine Tucker for Her Years of Exemplary and Dedicated Service to the Citizens of the City of Riverbank.

(Brief Recess)

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 8, 2016, City Council and Local Redevelopment Authority Minutes.

Item 3.B-1: Approval of the November 14, 2016, Special City Council Minutes.

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

4. UNFINISHED BUSINESS There are no items to consider.

5. PUBLIC HEARINGS There are no items to consider.

6. NEW BUSINESS

Item 6.1: **A Resolution Approving the Appointment of Sean Scully as the City Manager and Approving the Related Employment Agreement** – It is recommended that the Riverbank City Council approve the City Manager Employment Agreement between the City of Riverbank and Sean Scully.

Item 6.2: **A Resolution Approving the Appointment of Marisela H. Garcia as Assistant City Manager and Approving the Related Employment Agreement** – It is recommended that the Riverbank City Council approve an Assistant City Manager Employment Agreement between the City of Riverbank and Marisela H. Garcia.

7. COMMENTS (Information only – No action)

Item 7.1: Staff Comments

Item 7.2: Council/Authority Member Comments

Item 7.3: Mayor/Chair Comments

ADJOURNMENT (The next regular City Council meeting –Tuesday, Dec. 13 @ 6:pm.
The December 27th meeting is canceled)

FFIDAVIT 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 17 day of November, 2016

/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	<u>Regular City Council Meetings:</u> 6:00 p.m. on the 2nd and 4th Tuesday of every month, unless otherwise noticed. <u>Local Redevelopment Authority Board:</u> Meets on an "as needed" basis. The City Council also serves as the LRA Board.
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 technologically able, 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	• Charter – Channel 2 • AT&T Uverse – Channel 99 Visit www.riverbank.org to connect to meeting videos. (Note: Technical difficulty occurs on occasion preventing the televising or recording of the meeting.)
City Hall Hours	City Hall is open Monday – Thursday; 7:30 am – 5:30 pm and Fridays: 8:00 am – 5:00 pm; CLOSED alternating Fridays
Questions	Contact the City Clerk at (209) 863-7122 or cityclerk@riverbank.org

Any documents that are not privileged or part of a Closed Session provided to a majority of the City Council/LRA Board after distribution of the agenda packet, regarding any item on this agenda, will be made available for public inspection at North City Hall, 6707 Third Street, Riverbank, CA, during normal business hours.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.1

SECTION 1: PRESENTATIONS

Meeting Date:	November 22, 2016
Subject:	Recognition of Vice Mayor Jeanine Tucker for Her Years of Exemplary and Dedicated Service to the Citizens of the City of Riverbank
From:	Marisela H. Garcia, Interim City Manager/Director of Finance

RECOMMENDATION

It is recommended that the City Council recognize and thank Vice Mayor Jeanine Tucker for her years of exemplary and dedicated service to the citizens of the City of Riverbank.

BACKGROUND

On March 8, 2011 a special election was held in the City of Riverbank to fill the vacancy left by Councilmember Danny Fielder. Mrs. Jeanine Tucker was elected on that night and assumed her position on the City Council on March 14, 2011 and completed the remainder of the term until November 2012. On November 6, 2012 she was re-elected to fill a second term which expires this month.

Over the past 5 ½+ years, Jeanine's dedication to public service was demonstrated through the respect and admiration she garnered from the City Council and the citizens of Riverbank. She was appointed Vice Mayor in 2013 and will complete her second appointment as Vice Mayor this year.

Tonight, we formally recognize Councilmember Jeanine Tucker for her years of exemplary and dedicated service to our City.

FINANCIAL IMPACT

There is no financial impact associated with this report.

ATTACHMENTS

There are no attachments to this report.

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

SECTION 3: CONSENT CALENDAR

Meeting Date:	November 22 , 2016
Subject:	Waiver of Readings
From:	Marisela H. Garcia, Interim City Manager/Director of Finance
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:	November 22, 2016
Subject:	Approval of the November 8, 2016, City Council and Local Redevelopment Authority Minutes
From:	Marisela H. Garcia, Interim City Manager/Director of Finance
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 8, 2016, 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 8, 2016, City Council and LRA Minutes



**City of Riverbank
REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY MEETING**
(The City Council also serves as the LRA Board)

**MINUTES OF
TUESDAY, NOVEMBER 8, 2016**

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

INVOCATION: Reverend Charles Neal, Riverbank Ministerial Association

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

Absent Vice Mayor Jeanine Tucker

AGENDA CHANGES: Mayor/Chair Richard D. O'Brien – *no changes to the agenda.*

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.
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Interim City Manager/ Director of Finance Marisela Garcia declared a conflict with Item 6.2 and therefore would recuse herself from the discussion of this item. City Attorney Tom Hallinan stated that it was under his recommendation.

1. PRESENTATIONS There were no presentations.

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.

Charles Neal, Riverbank, thanked City Staff and Police Services for their assistance with a church event.

Richard Holmer, Riverbank, commented on the naming of a park as part of the Kaufman Development, and the Riverbank museum expansion fundraiser.

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 September 16, 2016, Special City Council Minutes.

Item 3.B-1: Approval of the September 22, 2016, Special City Council Minutes.

Item 3.B-2: Approval of the October 24, 2016, Special City Council Minutes.

Item 3.B-3: Approval of the October 25, 2016, City Council and Local Redevelopment Authority Minutes.

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

ACTION: *By motion moved and seconded (Jones Cruz / Barber-Martinez / passed 4-0) to approve Consent Calendar Items 3.A, through 3.B-3 as presented; Motion carried by unanimous City Council and LRA Board roll call vote.*
AYES: Barber-Martinez, Campbell, Jones Cruz, and Mayor/Chair O'Brien
NAYS: None / ABSENT: Tucker / ABSTAINED: None

4. UNFINISHED BUSINESS

Item 4.1 **Second Reading by Title Only and Adoption of Proposed Ordinance No. 2016-007 of the City Council of the City of Riverbank, California, Amending Chapter 73: Traffic Schedules of Title VII, Traffic Code of the Riverbank Municipal Code** – It is recommended that the City council conduct the second reading by title only of proposed Ordinance No. 2016-007 and consider its adoption by roll call vote.

Interim City Manager/Director of Finance Marisela Garcia presented the staff report.

ACTION: *By motion moved and seconded (Barber-Martinez / Campbell / passed 4-0) to approve the Second Reading by Title Only and Adoption of Ordinance*

No. 2016-007 of the City Council of the City of Riverbank, California, Amending Chapter 73: Traffic Schedules of Title VII, Traffic Code of the Riverbank Municipal Code as presented; Motion carried by unanimous City Council roll call vote.

AYES: Barber-Martinez, Campbell, Jones Cruz, and Mayor O'Brien

NAYS: None / ABSENT: Tucker / ABSTAINED: None

5. PUBLIC HEARINGS

There were no items to consider.

6. NEW BUSINESS

Item 6.1: **Proposition 64, the California Marijuana Legalization Initiative** – It is recommended that the City Council review the presented information regarding Proposition 64 and its potential impacts to the City and provide direction to staff.

Planning and Building Manager Donna Kenney presented the staff report.

City Council and Staff discussed the item. City Council agreed that the City's ordinance on smoking needed to be reviewed.

Police Chief Erin Kiely provided his comments on the subject matter.

Item 6.2: **Authorize Staff and City Attorney to Take the Necessary Steps to Create an Assistant City Manager Position** – It is recommended that the Riverbank City council ("City Council") provide staff and legal counsel direction on the creation of an Assistant City Manager position including the necessary changes to the Riverbank Municipal Code ("Code").

Interim City Manager/Director of Finance Marisela Garcia recused herself from the discussion of this item and exited the Chamber at 6:48 p.m.

City Attorney Tom Hallinan presented the staff report.

City Council agreed to proceed with this proposed process.

Public Comment: *Mrs. Evelyn Halbert inquired about the funding of the position due to the future forecasting of cuts based on the five-year forecast. Mayor O'Brien responded that funding issues would be addressed at the time of contract negotiations.*

Ms. Garcia returned to the dais at 6:52 p.m.

ACTION: *By motion moved and seconded (Campbell / Jones Cruz / passed 4-0) to authorize Staff and City Attorney to take the necessary steps to create an*

Assistant City Manager position, including the necessary changes to the Riverbank Municipal Code. Motion carried by unanimous City Council roll call vote.

AYES: Barber-Martinez, Campbell, Jones Cruz, and Mayor O'Brien

NAYS: None / ABSENT: Tucker / ABSTAINED: None

7. COMMENTS (Information only – No action)

Item 7.1: Staff Comments

- *Interim City Manager/Director of Finance Marisela Garcia reported on the water billing audit, and announced the closure of City offices every Friday for the Month of November and the first Friday of December.*

Item 7.2: Council/Authority Member Comments

- *Council/Authority Member Jones Cruz commented on the successful Haunted Hayride, expanding the Tot Time Trick or Treaters to downtown businesses, and the \$50 water disconnection notice.*
- *Council/Authority Member Campbell commented on Veteran's Day, the Christmas Parade, and acceptance of the results of the Election.*
- *Council/Authority Member Barber-Martinez commented on the Seniors Against Exploitation Event, the Citizen of the Year nomination forms, and the Veteran's Luncheon.*

Item 7.3: Mayor/Chair Comments

Mayor/Chair O'Brien commented on: 1) the County's 2016/2017 funding obligation for the construction of a light at Claribel and Roselle, 2) a resident's water bill that included water consumption, 3) and in accordance with the strategic planning, the reduction of billing delinquencies by implementation of a monthly utility billing.

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 THE CLOSED SESSION ITEM AND OPENED THE ITEM FOR COMMENT; NO ONE SPOKE, THE CITY COUNCIL RECESSED INTO CLOSED SESSION AT 6:59 P.M.

LRA Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** Significant exposure to litigation pursuant to subdivision (b) of Government Code § 54956.9: (2) potential cases

Item 8.2: **PUBLIC EMPLOYMENT**
Pursuant to Government Code Section 54957(b) (1)
Position Title: City Manager

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

9. REPORT FROM CLOSED SESSION

MAYOR/CHAIR O'BRIEN RECONVENED THE MEETINGS AT 7:48 P.M.

LRA Item 9.1: Report from Closed Session LRA Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** (2) cases

Chair O'Brien reported that direction was provided to staff.

Item 9.2: Report on Closed Session Item 8.2: **PUBLIC EMPLOYMENT** – City Manager Position

Mayor O'Brien reported that direction was provided to staff.

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meetings at 7:49 p.m.

ATTEST: (Adopted 11/22/2016)

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.B-1

SECTION 3: CONSENT CALENDAR

Meeting Date:	November 22, 2016
Subject:	Approval of the November 14, 2016, Special City Council Minutes
From:	Marisela H. Garcia Interim City Manager/Director of Finance
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

It is recommended that the City Council approve the Special City Council Minutes as presented.

SUMMARY

The Draft Minutes of the November 14, 2016, Special City Council meeting have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. November 14, 2016, Special City Council Minutes



**CITY OF RIVERBANK
SPECIAL CITY COUNCIL MEETING
MINUTES OF
MONDAY, NOVEMBER 14, 2016**

CALL TO ORDER:

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

FLAG SALUTE: Mayor Richard D. O'Brien

ROLL CALL: Mayor Richard D. O'Brien
Present Vice Mayor Jeanine Tucker
Councilmember Darlene Barber-Martinez
Councilmember Cal Campbell
Councilmember Leanne Jones Cruz

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

Interim City Manager/Director of Finance Marisela Garcia declared a conflict with item 4.2 and stated she would recuse herself from the discussion of this item.

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken)

Pursuant to Government Code in reference to a special meeting, the public has the opportunity to address the City Council only on items appearing on this special meeting notice. Individual comments are 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. For record purposes, please state your name and City of residence. When speaking, please address the entire City Council.

Scott McRitchie, Riverbank, spoke in regards to conducting a reception for the new City Manager and concerns of overburdening the Director of Finance with additional duties and responsibilities, possibly creating difficulty between the new City Manager and the Assistant City Manager; the need to have someone take over the day-to-day [Finance Dept.] responsibilities; and a deficit budget.

Anthony McKinney, Riverbank, gave his condolences to the Dowdy Family and the family of the Deputy Officer. Mr. McKinney spoke in opposition of the number of [special] Council

meetings being conducted, bypassing the process, purpose, and transparency of the Budget [Advisory] oversight Committee; hiring Administration staff as the Assistant; not utilizing the applicant pool from the City Manager recruitment; and adding to the current budget deficit. He requested to have the item pulled from action to allow for the designed processes to occur, to allow for community review, and to prevent further debt.

2. 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 recessing into Closed Session.

Mayor O'Brien announced the Items and opened the Items for comments; no one spoke, City Council recessed to Closed Session at 6:27 p.m.

Item 2.1: **PUBLIC EMPLOYMENT**
Pursuant to Government Code Section 54957(b) (1)
Position Title: City Manager

Item 2.2: **PUBLIC EMPLOYMENT**
Pursuant to Government Code Section 54957(b) (1)
Position Title: Director of Finance

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

3. REPORT FROM CLOSED SESSION

Mayor O'Brien reconvened the meeting at 6:55 p.m.

Item 3.1: Report on Closed Session Item 2.1: **PUBLIC EMPLOYMENT** – City Manager Position

Mayor O'Brien reported that the City Council found the City Manager contract acceptable, with one minor change needed.

Item 3.2: Report on Closed Session Item 2.2: **PUBLIC EMPLOYMENT** – Director of Finance

Mayor O'Brien reported that the City Council found the [Assistant City Manager] contract acceptable, with one minor change needed.

Mayor O'Brien stated that both employment contracts were well within the budget, expectations had been planned for, and that eventually money would be saved in the future adjustments.

4. BUSINESS

Item 4.1: **Approve City Manager Contract** – It is recommended that the Riverbank City Council approve the City Manager Employment Agreement between the City of Riverbank and Sean Scully.

Mayor O'Brien announced that based on the minor changes to the contract, this item would be considered at the November 22, 2016, [regular City Council] meeting.

Item 4.2: **Approve Assistant City Manager Contract** – It is recommended that the City Council APPROVE AN Assistant City Manager Employment Agreement between the City of Riverbank and Marisela H. Garcia.

Mayor O'Brien announced that based on the minor changes to the contract, this item would be considered at the November 22, 2016, [regular City Council] meeting.

Public Comment on Item 4.1 and 4.2

- *Mr. Scott McRitchie spoke in regards to his confusion of adding a position and indicating that the budget is balanced.*
- *Mr. Anthony McKinney spoke in regards to adding more responsibilities to a position that is having problems providing services, the new City Manager not having an opportunity to determine whether an Assistant is necessary, and the City Council reacting—planning to fail. He requested that the matter be taken through the proper channels for review, and to make a decision.*

ADJOURNMENT

There being no further business, Mayor O'Brien adjourned the meetings at 7:06 p.m.

ATTEST: (Adopted 11/22/2016)

Annabelle H. Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	November 22, 2016
Subject:	A Resolution Approving the Appointment of Sean Scully as the City Manager and Approving the Related Employment Agreement
From:	Thomas Hallinan, City Attorney
Submitted by:	Thomas Hallinan, City Attorney

RECOMMENDATION

It is recommended that the Riverbank City Council ("City Council") approve the City Manager Employment Agreement ("Agreement") between the City of Riverbank ("City") and Sean Scully ("Mr. Scully").

SUMMARY

In August 2016, the City began recruitment efforts to fill its vacant City Manager position. After interviewing several qualified candidates, the City Council directed staff to commence contract negotiations with Mr. Scully. Mr. Scully has spent the last decade working for municipalities throughout the Central Valley, beginning as an Assistant Planner of Economic Development in the City of Turlock, through his current position as City Manager in Gustine.

At the special meeting held on November 14, 2016, staff presented the City Council with the Agreement between the City and Mr. Scully. The Agreement reflects the agreed upon terms between Mr. Scully and City staff during negotiations. The Agreement will be effective on January 2, 2017.

The City Council provided direction to staff to make additional adjustments to the Agreement, agreeing to reimburse Mr. Scully for mileage expended for any City-related business at the standard Internal Revenue Service ("IRS") mileage rate for all miles associated with the trip, in lieu of a car allowance. Mr. Scully agreed to this change. The City Council further directed staff to bring the Agreement back to the City Council for final approval at the November 22, 2016, meeting.

FINANCIAL IMPACT

The Agreement will not initially result in increased costs for the City, as the terms and benefits set forth in the Agreement are similar to the prior City Manager's contract. The Agreement provides for a lower base salary than in the prior City Manager's contract but contemplates potential future increases. The Agreement also reflects an increased employee contribution (20%) towards health, dental and vision benefits.

STRATEGIC PLAN

Consideration of hiring a new City Manager who meets the City Council's approval is consistent with the City's goal of attracting, developing and retaining quality staff.

ATTACHMENTS

1. Resolution
2. City Manager Employment Agreement

CITY OF RIVERBANK

RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, APPROVING THE APPOINTMENT OF SEAN SCULLY AS CITY
MANAGER AND APPROVING THE RELATED EMPLOYMENT AGREEMENT**

WHEREAS, the City of Riverbank ("City") began recruitment efforts to fill its vacant City Manager position in August 2016; and

WHEREAS, the City Council recruited several qualified candidates for the position and conducted interviews on October 24, 2016, and subsequently narrowed the list to the top two candidates; and

WHEREAS, the City Council held additional interviews with the top two candidates on October 25, 2016; and

WHEREAS, the City Council directed City staff to offer the position to Sean Scully and negotiate an employment agreement with him on behalf of the City; and

WHEREAS, the City and Mr. Scully now wish to enter into a City Manager Employment Agreement (the "Agreement"), which is attached hereto as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Riverbank hereby approves the Agreement between Mr. Scully and the City for employment of City Manager, and authorizes the Mayor to execute the Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 22nd day of November, 2016; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Annabelle Aguilar
City Clerk

Richard O'Brien
Mayor

Exhibit A

City Manager Employment Agreement

PROPOSED

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2016 by and between the City of Riverbank, a municipal corporation, ("City") and Sean Scully ("Employee"), an individual. City and Employee may individually be referred to herein as "Party" or collectively as "Parties". There are no other parties to this Agreement.

RECITALS

- A. City requires the services of a person with proven executive and administrative qualifications to fill the position of Riverbank City Manager ("City Manager").
- B. City, acting by and through the Riverbank City Council ("City Council") has evaluated Employee's knowledge, experience, administrative skills and abilities and desires to hire and appoint Employee as City Manager pursuant to the terms of this Agreement.
- C. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as City Manager.
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code ("Government Code") Section 53260 *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties, and in consideration of the benefits that accrue to each, it is agreed as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above ("Recitals") are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 11 of this Agreement, Sections 1 through 11 will prevail.

Section 2. Effective Date. This Agreement shall become effective on January 2, 2017 ("Effective Date").

Section 3. Appointment of City Manager, Duties and Term.

Section 3.1. Appointment of City Manager and Duties. Employee shall serve as City Manager of City, and shall be vested with the powers, duties, and responsibilities set forth in Section 31.03(H) of the Riverbank Municipal Code ("R.M.C.") and under California law. Employee shall further perform the functions and

duties specified under the laws of the State of California, the R.M.C., the Ordinances and Resolutions of the City, and such other duties and functions as the City Council may from time-to-time assign. The City Council may also designate Employee as the chief executive of other City-related legal entities, such as a redevelopment agency, financing authorities, or joint powers authorities.

Section 3.2. No Secondary Employment. Employee agrees to devote all of his productive time, ability and attention to the City's business. During the Term, as defined in Section 3.4 of this Agreement, Employee shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Council. Provided, however, that Employee has the right to volunteer for such nonprofit organizations as he may see fit; and further provided that such volunteer services shall not interfere with his duties on behalf of the City.

Section 3.3. Exempt Employee. The general business hours for City employees are Monday through Fridays, 9:00 a.m. to 5:00 p.m. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*). Employee shall not receive overtime or extra compensation for hours worked outside of the City's general business hours, which are necessary to fulfill the duties of the City Manager position, unless otherwise provided in this Agreement.

Section 3.4. Term. The term of this Agreement shall be for three (3) years from the Effective Date ("Term"). The City Council may extend the Term for a period of two (2) years. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 7 below.

Section 4. At-Will Employment. Employee is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and R.M.C. Section 31.03(E). Accordingly, City Council may terminate Employee's employment at any time, with or without cause by a three (3) member vote of the City Council pursuant to R.M.C. Section 31.03(E). Employee shall only be entitled to Severance, as defined below, if City terminates Employee's employment without cause as set forth in Section 7.3.

Section 5. Compensation and Evaluations.

Section 5.1. Base Salary. City shall pay Employee an annual salary of One Hundred and Forty Thousand Dollars (\$140,000.00) ("Base Salary"), and payable in installments at the same time that the other City employees are paid. A salary review shall occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive a five percent (5%) Base Salary increase each January upon receiving a performance evaluation of at least "Satisfactory."

Section 5.2. Pro-rata Decrease. Employee acknowledges that the Base Salary may be subject to a pro-rata decrease based on the City Council's adoption of an unpaid Mandatory Furlough Program adopted as a budgetary measure.

Section 5.3. Review and Evaluation. The City Council agrees to review and evaluate Employee's performance of his duties as City Manager pursuant to the terms of this Agreement ("Review and Evaluation") on not less than an annual basis, and to provide Employee with a written performance review. Employee will be evaluated within the first six (6) months of his employment, in June 2017. The annual Review and Evaluation shall then be conducted in June of each year, or at the City Council's discretion.

Section 5.4. Healthcare Benefits. City currently provides medical benefits to its employees through the San Joaquin Valley Insurance Association, which may be adjusted from time-to-time. Employee shall contribute twenty percent (20%) of the cost of his healthcare benefits, and the City will contribute the remaining eighty percent (80%) during the Term of this Agreement. Employee shall contribute twenty percent (20%) of the cost of his dental and vision coverage, and the City will contribute the remaining eighty percent (80%) during the Term of this Agreement.

Section 5.5. Life Insurance. City will provide Employee with life insurance in the amount of Fifty Thousand Dollars (\$50,000).

Section 5.6. Retirement Plan. City shall pay the employer cost of participation in the California Public Employees Retirement System ("CalPERS"). Employee shall pay employee cost of such participation. Employee will be enrolled in the CalPERS 2% @ 60 Classic plan, Employee shall pay the seven percent (7%) employee contribution.

Section 5.7. Vacation. Employee shall earn twenty (20) working days of vacation per year with a maximum accrual of four hundred (400) hours. Employee shall immediately be credited with ten (10) days of vacation.

Section 5.8. Sick Leave. Employee shall earn sick leave at the rate of one (1) working day for each month of service.

Section 5.9. Executive Leave. It is recognized that Employee must devote a great deal of time outside the normal office hours to City business. To that end, Employee shall receive ninety-six (96) hours of executive leave at the beginning of each fiscal year, sixteen (16) of which may be cashed out if not used. Any unused executive leave expires on the June 30 of each fiscal year. Employee shall immediately be credited with forty (40) hours of executive leave.

Section 5.10. Holidays. Employee shall be entitled to observe, with pay, the twelve (12) observed holidays as outlined in the City's Personnel Rules.

Section 5.11. City-Related Business Travel Reimbursement. Employee's duties require that he have continuously available transportation for City business or other related purposes. Employee agrees to provide and utilize his own vehicle for City-related business. City shall reimburse Employee for any City-related business travel at the Internal Revenue Service ("IRS") mileage rate, which may change from time to time. Employee shall name City as an additional insured under Employee's automobile insurance coverage. Employee may use a City vehicle for travel on all City-related business based on availability.

Section 5.12. Cell Phone Allowance. Employee shall receive a Sixty-Five Dollars (\$65.00) per month cell phone allowance.

Section 5.13. Pension Plan. City shall contribute Two Hundred and Ninety Two Dollars (\$292.00) to Employee's pension plan.

Section 5.14. Deferred Compensation. City shall establish and maintain a deferred compensation plan and pay the sum of Five Thousand Dollars (\$5,000.00) per year on behalf of Employee into said deferred compensation plan payable in pro rata installments at the same time other employees of the City are paid.

Section 5.15. Professional Development. City agrees to budget for reasonable costs of travel and business expenses for Employee to attend professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for City. These funds may be limited by the City Council in times of economic distress.

Section 6. Residence. At the time of appointment of Employee, City does not require as a condition of appointment that Employee reside within twenty (20) miles of the City limits of the City of Riverbank. However, Employee voluntarily agrees that as soon as practical after reporting to work, Employee will reside within twenty (20) miles of the City because of the uniqueness of the duties of City Manager. One of the duties of the City Manager is to acquire and maintain a harmonious relationship with the residents of the City as well as with the City Council and the City employees. Employee and City are of the strong opinion that the uniqueness of the position can best be served by the Employee residing within twenty (20) miles of the City, and Employee desires to reside within 20 miles of the City and agrees to do so. As the managerial head of the City, Employee must be readily available to respond to any and all City emergencies requiring his administration and direction.

Section 7. Termination of Employment and Severance.

Section 7.1. Voluntary Resignation. Employee may resign at any time and agrees to give City at least forty-five (45) days advance written notice of the effective date of the Employee's resignation, unless the Parties otherwise agree in writing. If the Employee retires from full time public service with the City, the Employee shall provide at least three (3) months advance written notice. The Employee's actual retirement date

will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation, City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to Severance as set forth in Section 7.3 of this Agreement.

Section 7.2. Termination by City Council. The City Council may terminate this Agreement and remove Employee from his position as the City Manager at any time with or without cause by a three-fifths (3/5) vote of the entire City Council subject to the provisions of sections 31.03(E) and 31.03(F) of the R.M.C. Employee shall not be removed from office during or within a period of ninety (90) days following any general or special municipal election held at which a member of the City Council is elected. Upon termination, for any reason, City shall compensate Employee for all accrued vacation and executive leave. This compensation shall be based upon Employee's salary as of the date of employment termination.

Section 7.3. Termination Without Good Cause. In the event City terminates this Agreement without cause, as defined below in Section 7.4, City shall pay Employee a sum equal to six (6) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code Section 53260, including without limitation, that the maximum amount of Severance pay that Employee may receive shall be the lesser of (i) six (6) months base salary or (ii) if the unexpired term of the contract is greater than eighteen (18) months, the maximum cash settlement shall be an amount equal to the monthly salary of the Employee multiplied by eighteen (18). Any cash settlement related to the termination of this Agreement received by Employee from City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his office or position while employed with City pursuant to Government Code Section 53243.2. This Severance shall be paid in the same manner as other employees unless otherwise agreed to by the City and Employee. In the event City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at his cost pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

Section 7.4. Termination For Good Cause. The City may at any time immediately terminate this Agreement for Good Cause as defined in this Section 7.4. If Employee is terminated for good cause the City shall not be required to pay any Severance under this Agreement, and City shall have no obligation to Employee beyond those benefits accrued as of Employee's last day of employment and those City is obligated to provide under federal or state law.

"Good Cause" for purposes of this Agreement, means a fair and honest cause or reason for termination. These reasons include, but are not limited to:

1. Conviction of a felony;

2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates City's Personnel Rules and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from City Manager's office and duties;
9. Willful destruction or misuse of City property;
10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;
11. Willful violation of federal, state or City discrimination laws;
12. Continued substance abuse which adversely affects performance of Employee's duties as City Manager;
13. Refusal to take or subscribe any oath or affirmation which is required by law; or
14. Permanent disability of Employee, or Employee becoming otherwise unable to perform the duties of City Manager, by reason of sickness, accident, illness, injury, mental incapacity or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves.

Notwithstanding any provision in this Agreement to the contrary, the City Council may suspend Employee with full pay and benefits at any time during the Term of this Agreement.

Section 8. Indemnification. City shall defend, hold harmless and indemnify Employee against any tort, personnel, civil rights or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission

Section 9. Bonding. City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

If to City: City of Riverbank
ATTN: City Clerk
6707 Third Street
Riverbank, California 95367

City of Riverbank
City Manager Employment Agreement
Page 7 of 10

If to Employee:

Mr. Sean Scully

Section 11. General Provisions.

11.1. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by the City and Employee.

11.2. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

11.3. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

11.4. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

11.5. Headings. The headings in this Agreement are included for convenience only and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

11.6. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

11.7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

11.8. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

11.9. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

11.10. Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Stanislaus in the State of California.

11.11. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been entered into by and between
EMPLOYEE and CITY as of the date of the Agreement set forth above.

CITY:

City of Riverbank, a municipal corporation
of the State of California

EMPLOYEE:

By: _____
Richard D. O'Brien, Mayor

By: _____
Sean Scully, an individual

Date Signed: _____

Date Signed: _____

By: _____
Annabelle Aguilar, City Clerk

Date Signed: _____

Approved as to Form and Content:

By: _____
Thomas P. Hallinan, City Attorney

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.2

SECTION 6: NEW BUSINESS

Meeting Date:	November 22, 2016
Subject:	A Resolution Approving the Appointment of Marisela H. Garcia as Assistant City Manager and Approving the Related Employment Agreement
From:	Thomas Hallinan, City Attorney
Submitted by:	Thomas Hallinan, City Attorney

RECOMMENDATION

It is recommended that the Riverbank City Council ("City Council") approve an Assistant City Manager Employment Agreement ("Agreement") between the City of Riverbank ("City") and Marisela H. Garcia.

SUMMARY

On November 8, 2016, the City Council provided direction to staff and legal counsel to take the necessary steps to create an Assistant City Manager position and make the corresponding changes to the Riverbank Municipal Code ("R.M.C.").

At the special meeting held on November 14, 2016, staff presented the City Council with the Agreement between the City and Ms. Garcia. The Agreement contains substantially the same terms as Ms. Garcia's current employment agreement with the City, but will contain corresponding adjustments based on an increase in duties and responsibilities. The Agreement will only become effective when the ordinance establishing the Assistant City Manager position becomes effective. Staff anticipates presenting the City Council with a proposed ordinance creating the Assistant City Manager position at the first City Council meeting in December for introduction and first reading.

The City Council provided direction to staff to make adjustments to the Agreement. Specifically, the City Council requested that the Agreement allow Ms. Garcia to cash out sixteen (16) hours of executive leave, rather than the proposed eighty (80) hours in the Agreement. The City Council also directed staff to bring the Agreement back to the City Council for final approval at the November 22, 2016, meeting.

FINANCIAL IMPACT

Any budgetary adjustments necessary to accommodate the terms of this Agreement will be based on the difference between Ms. Garcia's current salary structure and one for the Assistant City Manager position.

STRATEGIC PLAN

While the Assistant City Manager position is not specifically included in the City's Strategic Plan, it is consistent with the City's goal of attracting, developing and retaining quality staff.

ATTACHMENTS

1. Resolution
2. Assistant City Manager Employment Agreement

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING THE APPOINTMENT OF MARISELA H. GARCIA AS ASSISTANT CITY MANAGER AND APPROVING THE RELATED EMPLOYMENT AGREEMENT

WHEREAS, the departure of the previous City Manager resulted in the City Council approving on July 26, 2016, Interim City Manager duties to the current duties of the Director of Finance Marisela Garcia as a temporary solution; and

WHEREAS, the departure provided an opportunity to review the City's organizational structure to create professional growth opportunities for City employees; and

WHEREAS, the creation of a succession plan is consistent with the City's strategic plan to attract, develop, and retain quality staff; and

WHEREAS, on November 8, 2016, the City Council directed staff and legal counsel to take the necessary steps to create an Assistant City Manager position and make the corresponding changes to the Riverbank Municipal Code (RMC); and

WHEREAS, an offer of the Assistant City Manager position was made to Ms. Garcia, to include retention of the Director of Finance duties and responsibilities; and

WHEREAS, an employment agreement for the Assistant City Manager position has been negotiated with Ms. Garcia; and

WHEREAS, the City and Ms. Garcia wish to enter into an employment agreement, attached hereto as **Exhibit A**; and

WHEREAS, said approved agreement shall not take effect until the amendment to the RMC becomes effective, establishing the Assistant City Manager position.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the Employment Agreement between Ms. Marisela H. Garcia and the City of Riverbank for employment of Assistant City Manager to include the duties and responsibilities of the Director of Finance, and authorize the Mayor to execute the Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular City Council meeting held on the 22nd day of November, 2016; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

Annabelle H. Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

Attachment: Exhibit A – Copy of Employment Agreement

PROPOSED

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__ by and between the City of Riverbank, a municipal corporation, ("City") and Marisela H. Garcia ("Employee"), an individual. City and Employee may individually be referred to herein as "Party" or collectively as "Parties". There are no other parties to this Agreement.

RECITALS

- A. On November 8, 2016, the Riverbank City Council ("City Council") directed staff to take the necessary steps to create an Assistant City Manager position.
- B. On _____, 20____, the City Council adopted Ordinance No. _____, establishing the duties and powers of the Assistant City Manager.
- C. The City requires the services of a person with proven executive and administrative qualifications to fill the position of Assistant City Manager.
- D. Employee has served as the City's Director of Finance since December 2006.
- E. The City, acting by and through the City Council, has evaluated Employee's knowledge, experience, administrative skills and abilities and desires to hire and appoint Employee as Assistant City Manager pursuant to the terms of this Agreement.
- F. Employee shall continue her duties as the City's Director of Finance.
- G. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as Assistant City Manager.
- H. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code ("Government Code") Section 53260 *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties, and in consideration of the benefits that accrue to each, it is agreed as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above ("Recitals") are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 10 of this Agreement, Sections 1 through 10 will prevail.

Section 2. Effective Date. This Agreement shall become effective on the effective date of Ordinance No. _____ (“Effective Date”).

Section 3. Appointment of Assistant City Manager, Duties and Term.

Section 3.1. Appointment of Assistant City Manager and Duties. Employee shall serve as the Assistant City Manager of the City, and shall be vested with the powers, duties, and responsibilities set forth in _____ of the Riverbank Municipal Code (“R.M.C.”) and California law. Employee shall further perform the functions and duties specified under the laws of the State of California, the R.M.C., the Ordinances, and Resolutions of the City, and such other duties and functions as the City Manager may from time-to-time assign.

Section 3.2. Director of Finance Duties. Employee shall also remain the Director of Finance and shall be vested with the powers, duties, and responsibilities set forth in Section 31.04 of the R.M.C.

Section 3.3. No Secondary Employment. Employee agrees to devote all of her productive time, ability and attention to the City’s business. During the Term, as defined in Section 3.4 of this Agreement, Employee shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Manager. Provided, however, that Employee has the right to volunteer for such nonprofit organizations as she may see fit; and further provided that such volunteer services shall not interfere with her duties on behalf of the City.

Section 3.4. Exempt Employee. The general business hours for City employees are Monday through Fridays, 9:00 a.m. to 5:00 p.m. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*). Employee shall not receive overtime or extra compensation for hours worked outside of the City’s general business hours, which are necessary to fulfill the duties of the Assistant City Manager and Director of Finance position, unless otherwise provided in this Agreement.

Section 3.5. Term. The term of this Agreement shall be for four (4) years from the Effective Date (“Term”). The City Council may extend the Term for a period of one (1) year. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 7 below.

Section 4. At-Will Employment. Employee is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and R.M.C. Section 31.03(E). Accordingly, the City Manager may terminate Employee’s employment at any time, with or without cause. Employee shall only be entitled to

Severance, as defined below, if City terminates Employee's employment without cause as set forth in Section 6.3.

Section 5. Compensation and Evaluations.

Section 5.1. Base Salary. City shall pay Employee an annual salary of One Hundred and Thirty Thousand Dollars (\$130,000) ("Base Salary"), Step _____, and payable in installments at the same time that the other City employees are paid. A salary review shall occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive any cost of living adjustment that is granted to all City employees. Employee shall receive a step increase annually upon receiving a performance evaluation of at least "Satisfactory". At any such time that the City Manager leaves employment with the City and Employee must fulfill the duties of City Manager, Employee will immediately receive a step increase. If Employee is already at Step E, then she will receive a five percent (5%) Base Salary increase for the time spent as City Manager.

Section 5.2. Pro-rata Decrease. Employee acknowledges that the Base Salary may be subject to pro-rata decrease based on the City Council's adoption of an unpaid Mandatory Furlough Program adopted as a budgetary measure.

Section 5.3. Review and Evaluation. The City Manager agrees to review and evaluate Employee's performance of her duties as Assistant City Manager pursuant to the terms of this Agreement ("Review and Evaluation") on not less than an annual basis, and to provide Employee with a written performance review. The annual Review and Evaluation shall be conducted in January of each year. If Employee does not receive a performance evaluation of at least "Satisfactory", Employee may appeal to the City Council for a new performance evaluation.

Section 5.4. Healthcare Benefits. City provides medical benefits to its employees through the San Joaquin Valley Insurance Association. Employee shall contribute towards her healthcare benefits in increments of five percent (5%) on an annual basis beginning each fiscal year, but not to exceed a twenty percent (20%) total Employee contribution.

From the Effective Date of this Agreement to June 30, 2017, the City shall pay the full premium for Employee's health care benefits. Beginning on July 1, 2017, Employee shall contribute five percent (5%) of the cost of her healthcare benefits and the City will contribute the remainder. On July 1, 2018, Employee shall contribute ten percent (10%) of the cost of her healthcare benefits and the City will contribute the remainder. On July 1, 2019, Employee shall contribute fifteen percent (15%) of the cost of her healthcare benefits and the City will contribute the remainder. On July 1, 2020, Employee shall contribute twenty percent (20%) of the cost of her healthcare benefits and the City will contribute the remainder. The City will pay the full premium for Employee and family dental and vision coverage during the Term of this Agreement.

Section 5.5. Life Insurance. City will provide Employee with life insurance in the amount of Fifty Thousand Dollars (\$50,000).

Section 5.6. Retirement Plan. City shall pay the employer cost of participation in the California Public Employees Retirement System (“CalPERS”). Employee shall pay employee cost of such participation. Employee will be enrolled in the CalPERS 2.5% @ 55 Classic plan, Employee shall pay the seven percent (7%) employee contribution.

Section 5.7. Vacation. Employee shall earn twenty (20) working days of vacation per year with a maximum accrual of four hundred (400) hours. Employee will carry over any existing vacation time from employment with City existing on the Effective Date of this Agreement.

Section 5.8. Sick Leave. Employee shall earn one (1) day of sick leave per month of employment. Employee will carry over any existing sick leave from employment with City existing on the Effective Date of this Agreement.

Section 5.9. Executive Leave. It is recognized that Employee must devote a great deal of time outside the normal office hours to City business. To that end, Employee shall receive ninety-six (96) hours of executive leave at the beginning of each fiscal year, sixteen (16) of which may be cashed out if not used. Any unused executive leave expires on the June 30 of each fiscal year.

Section 5.10. Holidays. Employee shall be entitled to observe, with pay, the twelve (12) observed holidays as outlined in the City’s Personnel Rules.

Section 5.11. Deferred Compensation. City shall establish and maintain a deferred compensation plan and pay the sum of Two Hundred and Fifty Dollars (\$250.00) per month on behalf of Employee into said deferred compensation plan. Employer will also match Employee’s contribution to the deferred compensation plan in an amount not to exceed Twenty Five Dollars (\$25.00) each pay period. City will also contribute to the Union Pension Retirement Fund at the rate of one hundred and seventy-three (173) hours worked time multiplied by the negotiated rate for any given year each month (e.g. $173 \times .93 = \$160.89$). Employee shall receive any adjustment to this program granted to all other Department Heads.

Section 5.12. Professional and Educational Development. City agrees to budget for reasonable costs of travel and business expenses for Employee to attend professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for the City, including but not limited to annual conferences of the League of California Cities, and such other regional and local government groups and committees thereof on which Employee serves as a member, provided such travel and business expenses are included within the annual budget. City agrees to pay Employee’s annual membership dues to professional organizations that benefit the Employee and the City as designated and approved in the final budget.

City agrees that postgraduate education is important for this position. To this end, the City agrees to pay Two Thousand Five Hundred Dollars (\$2,500.00) each fiscal year for books, tuition, and school-related costs. These monies would be reimbursed to the Employee upon documentation that she received a passing grade in the course and the course is related to public administration. Any reimbursement would be amortized over three (3) years and the Employee would be required to pay a proportional percentage if she resigns or is terminated prior to the three (3) year expiration date.

Section 6. Termination of Employment and Severance.

Section 6.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least forty-five (45) days advance written notice of the effective date of the Employee's resignation, unless the Parties otherwise agree in writing. If the Employee retires from full time public service with the City, the Employee shall provide at least three (3) months advance written notice. The Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation, the City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to Severance as set forth in Section 6.3 of this Agreement.

Section 6.2. Termination by City Manager. The City Manager may terminate this Agreement and remove Employee from her position as Assistant City Manager at any time with or without cause, subject to ratification by the City Council. Within ten (10) days of the City Manager's termination of this Agreement, Employee may make a written request for a hearing before the City Council in closed session. At the hearing, Employee may submit written testimony, information or documentation to the City Council for consideration. Any oral testimony on behalf or in support of Employee will be limited to oral testimony from Employee only. Any written or oral testimony, information or documentation submitted to the City Council in closed session will be confidential. Upon termination for any reason, City shall compensate Employee for all accrued vacation and executive leave as well as thirty percent (30%) of sick leave earned but not used. This compensation shall be based upon Employee's salary as of the date of employment termination.

Section 6.3. Termination Without Good Cause. In the event City terminates this Agreement without cause, as defined below in Section 6.4, the City shall pay Employee a sum equal to six (6) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code Section 53260, including without limitation, that the maximum amount of Severance pay that Employee may receive shall be the lesser of (i) six (6) months base salary or (ii) if the unexpired term of the contract is greater than eighteen (18) months, the maximum cash settlement shall be an amount equal to the monthly salary of the Employee multiplied by eighteen (18). Any cash settlement related to the termination of this Agreement received by Employee from City

shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position while employed with City Pursuant to Government Code Section 53243.2. This Severance shall be paid in the same manner as other Employees unless otherwise agreed to by the City and Employee. In the event City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at her cost pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act (“COBRA”).

Section 6.4. Termination For Good Cause. The City may at any time immediately terminate this Agreement for good cause as defined in this Section 6.4. If Employee is terminated for good cause the City shall not be required to pay any Severance under this Agreement, and City shall have no obligation to Employee beyond those benefits accrued as of Employee’s last day of employment and those City is obligated to provide under federal or state law.

“Good Cause” for purposes of this Agreement, means a fair and honest cause or reason for termination. These reasons include, but are not limited to:

1. Conviction of a felony;
2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates the City’s Personnel Rules and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from the City Manager’s office and duties;
9. Willful destruction or misuse of City property;
10. Conduct that in any way has a direct, substantial, and adverse effect on the City’s reputation;
11. Willful violation of federal, state or City discrimination laws;
12. Continued substance abuse which adversely affects performance of Employee’s duties as City Manager;

13. Refusal to take or subscribe any oath or affirmation which is required by law; or

14. Permanent disability of Employee, or Employee becoming otherwise unable to perform the duties of City Manager, by reason of sickness, accident, illness, injury, mental incapacity or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves.

Notwithstanding any provision in this Agreement to the contrary, the City Council may suspend Employee with full pay and benefits at any time during the Term of this Agreement.

Section 7. Indemnification. City shall defend, hold harmless and indemnify Employee against any tort, personnel, civil rights or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Assistant City Manager or Director of Finance in accordance with California's Government Claims Act (Government Code Section 825 *et seq.*), and shall provide a defense to Employee in accordance with Government Code Sections 995-996.5. The City may decline to defend or indemnify Employee only as permitted by the Government Code. City may compromise and settle any such claim or suit and pay the amount of any resulting settlement or judgment. Provided, however, that the City's duty to defend and indemnify shall be contingent upon Employee's good faith cooperation with such defense. In the event City provides funds for legal criminal defense pursuant to this Section, Employee shall reimburse City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243-53243.4.

Section 8. Bonding. City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 9. Notices. Any notice or communication required hereunder between City and Employee must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or

communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Riverbank
ATTN: City Clerk
6707 Third Street
Riverbank, California 95367

and Churchwell White, LLP
ATTN: Thomas P. Hallinan
1414 K Street, 3rd Floor
Sacramento, CA 95814

If to Employee: Marisela H. Garcia

Section 10. General Provisions.

10.1. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by the City and Employee.

10.2. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

10.3. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

10.4. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former

requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

10.5. Headings. The headings in this Agreement are included for convenience only and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

10.6. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

10.7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

10.8. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

10.9. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

10.10. Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Stanislaus in the State of California.

10.11. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been entered into by and between EMPLOYEE and CITY as of the date of the Agreement set forth above.

CITY:

City of Riverbank, a municipal corporation
of the State of California

By: _____
_____, City Manager

Date Signed: _____

By: _____
Annabelle Aguilar, City Clerk

Date Signed: _____

Approved as to Form and Content:

By: _____
Thomas P. Hallinan, City Attorney

EMPLOYEE:

By: _____
Marisela H. Garcia, an individual

Date Signed: _____