



**CITY OF RIVERBANK
REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD
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, MAY 28, 2019– 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 Darlene Barber-Martinez (CM-D4)
Council/Authority Member District 1 Luis Uribe
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member District 3 Cal Campbell

CHANGES TO THE AGENDA: 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: Proclamation – Disability Awareness Month – June 2019.

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 requested by an individual Council/Authority Member or member of the public for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by motion of the City Council/LRA Board.

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

Item 3.B: Approval of the April 23, 2019, City Council and Local Redevelopment Authority Minutes.

Item 3.C: A **Resolution** of the City Council of the City of Riverbank, California, Authorizing the Destruction of Certain City Records Retained by the Public Works Department.

Item 3.D: A **Resolution** to Approve the Appointment of Julie Boos to the Riverbank Housing Authority Board of Commissioners for a Four-Year Term.

Item 3.E: A **Resolution** Authorizing the City Manager to Enter into a Professional Services Contract with Pros Consulting, Inc. for the Completion of the Citywide Park Master Plan.

Item 3.F: A **Resolution** Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds.

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 Proposed Ordinance No. 2018-005 Approving a Development Agreement By and Between the City of Riverbank and E & J Distributors LLC, a California Limited Liability Corporation Doing Business as Canna+Rise** – It is recommended that the City Council conduct the second reading by title only of proposed Ordinance No. 2019-005 and consider its adoption by roll call vote.

Item 4.2: **Continued Agenda Item: A Resolution Authorizing the City of Riverbank to Join the Stanislaus Urban County for the Purpose of Receiving Entitlement Funding from the Department of Housing and Urban Development (HUD) and to Authorize the City Manager to Execute the Agreement and Any Related Documents** – It is recommended Council consider the attached proposed resolution which approves the City of Riverbank's participation in the Stanislaus County Urban County, from July 1, 2020 to June 30, 2023.

5. PUBLIC HEARINGS

There are no items to consider.

6. NEW BUSINESS

Item 6.1: **Direction on Electronic Signage Options and a Resolution Authorizing the City Manager to Negotiate Entering into a Lease Agreement with Rogers Media Company for Electronic Signage** – It is recommended that the City Council:

1. Consider options provided and give direction to staff regarding the use and location of the electronic signage; and
2. Consider a Resolution to authorize the City Manager to negotiate a Lease Agreement with Rogers Media Company for said electronic signage; or
3. If direction is given to continue the matter for further research, table the resolution until the matter is reconsidered.

7. COMMENTS/REPORTS

A brief report on notable attendance of a meeting or conference or other notable topics of City business shall be made. The Brown Act does not allow for discussion or action of items by the City Council/LRA Board during this time.

Item 7.1: Staff

Item 7.2: Council/Authority Member

Item 7.3: Mayor/Chair

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 to Closed Session.

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

9. REPORT FROM CLOSED SESSION

Item 9.1: Report from Closed Session on Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** (1) potential case

ADJOURNMENT (The next regular City Council meeting – Tuesday, June 11th @ 6:pm

AFFIDAVIT OF POSTING

I 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 California Ralph M. Brown Act.

Posted this 23rd day of May, 2019

/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 of (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.

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> (The City Council also serves as the LRA Board.) 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 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/LRA Board, for which special notice has been given. During a specified portion of the hearing, any interested party is invited to present written or oral protests or support for the subject matter under consideration. Written testimony sent or delivered to the City Clerk must be received no later than 5:00 p.m. on the day of the meeting to allow for distribution to the City Council/LRA Board. Preparations for the meeting are conducted between 5:00 p.m. and 6:00 p.m. and therefore the City Clerk is not available during this time.
Written Public Comments	Anyone wishing to provide written public comments may do so <u>prior to 5:00 p.m. of the day of the meeting</u> to allow for distribution to the City Council. Comments must specify what agenda item they are referring to. Comments will become part of the record, however, they will not be read aloud at the meeting.
Televised / Video of Meetings	• Charter – Channel 2 • AT&T Uverse – Channel 99 • www.riverbank.org – video icon – under Agendas and Minutes link
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 aaguilar@riverbank.org

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.1

SECTION 1: PRESENTATIONS

Meeting Date:	May 28, 2019
Subject:	Proclamation – Disability Awareness Month – June 2019
From:	Sean Scully, City Manager
Submitted by:	Cheryl Stefani, Human Resources Analyst

RECOMMENDATION

It is recommended that the City Council read the Proclamation for Disability Awareness Month – June 2019; and present to Michelle Allen, Executive Director of Society for disABILITIES.

SUMMARY

The Society for disABILITIES has been helping enhance the lives of individuals with disabilities living in the Central Valley for 70 years. The Society is a community resource and referral agency, and operates the largest medical equipment inventory available for loan within Northern California. In addition, it provides a host of recreational programs ranging from bike camps to water skiing, pageants to proms. The Society believes recreational opportunities help to bolster self-confidence and make individuals realize their potential regardless of disabilities. By getting the public to focus on diverse capabilities rather than disabilities, hopefully the stigma and prejudice sometimes experienced in society will lessen. People with varied abilities can be independent, productive, and an integral part of the community in which they live. Disabilities do not discriminate and can affect anyone at any time, regardless of race, age, gender, creed, social status, etc. The Society for disABILITIES encourages residents to be cognizant of the needs and capabilities of persons with disabilities.

FINANCIAL IMPACT

There is no financial impact with the report.

ATTACHMENT

1. Proclamation



CITY OF RIVERBANK

PROCLAMATION

DISABILITY AWARENESS MONTH – JUNE 2019

WHEREAS, the City Council of the City of Riverbank has recognized healthy communities as a priority; and

WHEREAS, disabilities can affect all people, regardless of race, age, gender, or social status and the essence of life is not embodied by physical or mental perfection but it is an integral part of the human spirit; and

WHEREAS, increasing public awareness about diverse abilities is vital to fighting the stigma and discrimination that often serve as a barrier to employment, socialization, and individual well-being; and

WHEREAS, communities thrive when residents appreciate the unique gifts inside people of all abilities; and

WHEREAS, education, understanding, access engagement, and relationships are important components of a connected, livable, and healthy community; and

WHEREAS, the Society for disABILITIES will commemorate June 2019 and each June hereafter as *Disability Awareness Month*.

NOW, THEREFORE, LET IT BE PROCLAIMED by the City Council of the City of Riverbank that June 2019 is Disability Awareness Month within the City of Riverbank and we urge all of our citizens to become aware of the needs and capabilities of persons with disabilities.

May 28, 2019

Richard D. O'Brien
Mayor

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

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 28, 2019
Subject:	Waiver of Readings
From:	Sean Scully, 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 any proposed ordinances and resolutions for consideration, except by title.

SUMMARY

In lieu of reading the entire text of a proposed ordinance or resolution that is introduced for consideration for adoption and approval, by majority vote, the City Council/LRA Board may waive the reading of the text and introduce the ordinance or resolution by title only for the record.

The full text of the proposed ordinances and resolutions, and any related documents that are part of the agenda packet, are available for review by the public on the City's website and in the City Clerk's office at City Hall (North) upon distribution to a majority of the City Council/LRA Board; typically 72 hours prior to the scheduled date and time of the meeting.

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:	May 28, 2019
Subject:	Approval of the April 23, 2019, City Council and Local Redevelopment Authority Minutes
From:	Sean Scully, 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 April 23, 2019, 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. April 23, 2019, City Council and LRA Minutes



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

**MINUTES OF
TUESDAY, APRIL 23, 2019**

Verbatim proceedings of the meetings may be viewed on-line or a copy may be provided for a fee.

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

Present:

Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair Darlene Barber-Martinez (CM-D4)
Council/Authority Member District 1 Luis Uribe
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member District 3 Cal Campbell

AGENDA CHANGES: Mayor/Chair Richard D. O'Brien – *Announced Item 6.3 would be continued; comments would be received.*

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.

No one declared a conflict.

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.

No one spoke.

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 March 12, 2019, City Council and Local Redevelopment Authority Minutes.

Item 3.C: Recommend Approval of a **Resolution [No. 2019-025]** Adopting a List of Projects for Fiscal Year 2019-20 Funded by SB 1: The Road Repair and Accountability Act of 2017.

Item 3.D: A **Resolution [No. 2019-026]** to Rescind Resolution No. 2018-082 and to Conditionally Award Bid for the Riverbank Industrial Complex High-Voltage Electrical Project to American Systems Controls and Integration Inc. and Authorize the City Manager to Execute Future Change Orders.

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

ACTION: *By motion moved and seconded (Barber-Martinez / Uribe / passed 5-0) to approve Consent Calendar Items 3.A through 3.D as presented; Motion carried by unanimous City Council and LRA Board roll call vote.*

AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor/Chair O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

4. UNFINISHED BUSINESS There were no items to consider

5. PUBLIC HEARINGS

The public notice for Item 5.1 was published in the Riverbank News on 04/03/2019 and again on 04/10/2019, and three (3) large conspicuous notices were posted at the property site.

Item 5.1: **Consideration of a Resolution [No. 2019-027] to Approve the Vacation of the Old Burneyville Road Right of Way Adjacent to Lot APN 132-001-001** – It is recommended that the City Council formally vacate, by resolution, the right of way known as the Old Burneyville Road located north of the City Corporation Yard and adjacent to APN 132-001-001 for PG&E's use as a Gas Transmission In-Line Inspection Station site.

Public Works Director Michael Riddell presented the staff report.

Mayor O'Brien opened the public hearing at 6:08 p.m.

- *Mr. Jerry Smith, adjacent property owner made himself available for questions or concerns.*

Mayor O'Brien closed the public hearing at 6:08 p.m.

ACTION: *By motion moved and seconded (Uribe / Fosi / passed 5-0) to adopt Resolution No. 2019-027 to approve the Vacation of the Old Burneyville Road Right of Way Adjacent to Lot APN 132-001-001 for PG&E's use as a Gas Transmission In-Line Inspection Station site as presented.*

Motion carried by unanimous City Council roll call vote.

AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

6. NEW BUSINESS

Item 6.1: **A Resolution [No. 2019-028] to Appropriate an Additional \$265,000.00 from the Sewer Operations Reserve Fund (Fund 106) to Smoke Test the Entire Collection System for an Infiltration and Inflow Study** – It is recommended that the City Council adopt a Resolution authorizing the additional appropriation of \$265,000 to add to the \$400,000 already budgeted for in the Capital Improvement account for the contract to perform smoke testing throughout the entire city.

Public Works Director Michael Riddell presented the staff report.

City Council and Staff discussed the Item.

Mayor O'Brien requested to have a discussion on providing [financial] assistance, to prevent a known [safety/hazardous] issue from not being resolved.

Public Comment: Mr. Charles Neal spoke in regards clarification of what part of the sewer line was the homeowner's responsibility.

ACTION: *By motion moved and seconded (Campbell / Barber-Martinez / passed 5-0) to adopt Resolution No. 2019-028 to appropriate an Additional \$265,000.00 to the \$400,000 already budgeted from the Sewer Operations Reserve Fund (Fund 106) to Smoke Test the Entire Collection System throughout the entire city for an Infiltration and Inflow Study as presented.*

Motion carried by unanimous City Council roll call vote.

AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

Item 6.2: **A Resolution [No. 2019-029] to Award Bid for the Sewer Collection System Smoke Testing Project to National Plant Services, Inc. and Authorize the City Manager to Execute the Contract and Future**

Change Orders – Staff recommends that the City Council adopt the proposed resolution by roll call vote.

Public Works Director Michael Riddell presented the staff report.

ACTION: *By motion moved and seconded (Uribe / Barber-Martinez / passed 5-0) to adopt Resolution No. 2019-029 to Award Bid for the Sewer Collection System Smoke Testing Project to National Plant Services, Inc. and Authorize the City Manager to Execute the Contract and Future Change Orders as presented. Motion carried by unanimous City Council roll call vote.*
AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Item 6.3: **2018 General Plan and Housing Element Annual Progress Reports. A Resolution Adopting the 2018 General Plan and Housing Element Annual Progress Reports (APRs) as well as authorizing Staff to submit said Reports to the California Office of Planning and Research and California Department of Housing and Community Development** – Staff recommends approval of the City's 2018 General Plan and Housing Element Annual Progress Reports and to authorize Staff to submit said reports to the California Office of Planning and Research and California Department of Housing and Community Development.

This Item was declared to be continued to the May 14, 2019, meeting due to the lack of having the current 2018 reports. There were no public comments.

Item 6.4: **Proposition 68 Statewide Park Development and Community Revitalization Program Information** - It is recommended that the City Council hear information on upcoming Proposition 68 grants.

Parks and Recreation Director Sue Fitzpatrick presented the staff report.

City Council proposed projects for funding.

Public Comment: Mr. Charles Neal inquired about the use of funds to recover the cost of Consultants; which is allowed.

Item 6.5: **A Resolution [No. 2019-030] to Award Bid for Completion of the Citywide Park Master Plan to Pros Consulting, Inc. and to Appropriate Funds from the Park System Development Fee Account** – It is recommended that the City Council consider approving the Resolution to award the Bid for the completion of the Citywide Park Master Plan to Pros Consulting, Inc. and designate \$109,625 from the Parks System Development Fee Account to pay for this professional service.

Parks and Recreation Director Sue Fitzpatrick presented the staff report.

City Council and Staff discussed the Item.

ACTION: *By motion moved and seconded (Campbell / Fosi / passed 5-0) to adopt Resolution No. 2019-030 to Award Bid for Completion of the Citywide Park Master Plan to Pros Consulting, Inc. and to appropriate \$109,625 from the Parks System Development Fee Account to pay for this professional services as presented. Motion carried by unanimous City Council roll call vote.*
AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Item 6.6: **A Resolution [No. 2019-031] Appointing a Primary Member and Alternate Member to the Stanislaus Homeless Alliance Board** – It is recommended that the City Council consider the appointment of a Member of the City Council, either by nomination or volunteer, to serve as the primary member on the Stanislaus Homeless Alliance (SHA) Board, and to appoint the City Manager as the alternate member, pursuant to the SHA draft bylaws, and to ratify the appointments by Resolution.

City Manager Sean Scully presented the staff report.

City Council discussed the Item.

Public Comment: Mr. Charles Neal recommended Mayor O'Brien as the primary member.

Councilmember Uribe volunteered to be the primary member; Councilmember Campbell and Mayor O'Brien concurred.

ACTION: *By motion moved and seconded (Campbell / Fosi / passed 5-0) to adopt Resolution No. 2019-031 appointing Councilmember Uribe as the primary member and City Manager Sean Scully as the alternate member as presented. Motion carried by unanimous City Council roll call vote.*
AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Item 6.7: **Workshop on Urban County HUD Entitlement Funding and Riverbank Housing Division** – for informational purposes only.

City Manager Sean Scully and Assistant City Manager /Finance Director presented the staff report.

City Council and Staff discussed the Item.

This Item will be scheduled on the May 14th regular City Council meeting agenda for further consideration on whether the City will or will not become a member of the Urban County consortium.

7 COMMENTS/REPORTS

A brief report on attendance of a meeting or conference or other notable topics of business shall be made. The Brown Act does not allow for discussion or action by the City Council.

Item 7.1: Staff

- *City Manager Sean Scully announced: 1) that staff was working on a game plan for outreach to inform every one of the fireworks ordinance and no tolerance policy, and 2)*

announced the promotion of Cheryl Stefani to Human Resources Analyst; Mrs. Stefani thanked the Council.

Item 7.2: Council/Authority Member

- *Council/Authority Member Uribe announced that tomorrow he, along with other Council Members, will be attending the Legislative Action Day Conference in Sacramento, and announced the Citizens Awards Dinner, but was informed it had been canceled.*
- *Council/Authority Member Campbell commented on how the “Love Riverbank” event was well organized.*
- *Vice Mayor/Chair Barber-Martinez thanked the participants of the “Love Riverbank” event.*

Item 7.3: Mayor/Chair

Mayor/Chair O’Brien: 1) thanked the business sponsors and everyone who participated in “Love Riverbank”, 2) inquired about the electronic signs, and 3) stated he would like to formulate a housing plan to Self-Help.

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 REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8
Property: 062-031-005, 062-031-006, 062-031-007
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Aemetis, Inc.

Item 8.2: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code § 54956.9: (2) potential cases

Mayor/Chair O’Brien announced the Closed Session Item(s) and opened the Item(s) for public comment; no one spoke. The meetings were adjourned and City Council went into Closed Session at 7:19 p.m.

9. REPORT FROM CLOSED SESSION

Mayor/Chair O’Brien reconvened the meetings at 7:46 p.m.

Item 9.1: Report from Closed Session on Item 8.1: CONFERENCE WITH REAL PROPERTY NEGOTIATIONS – Aemetis, Inc.

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

Item 9.2: Report from Closed Session on Item 8.2: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** (2) potential cases

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

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meetings at 7:46 p.m.

ATTEST: (*Adopted 5/28/2019*)

APPROVED:

Marisela H. Garcia
Asst. City Manager/Recorder

Richard D. O'Brien
Mayor / Chair

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.C

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 28, 2019
Subject:	A Resolution of the City Council of the City of Riverbank, California, Authorizing the Destruction of Certain City Records Retained by the Public Works Department
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

It is recommended that the City Council authorize and order the destruction of Public Works records that have exceeded their retention period and that have been determined to hold no administrative, fiscal, historical, or legal value.

SUMMARY

To manage the City's Records, the City adopted Resolution No. 2001-18, which implements the *Local Government Records Retention Guidelines*. Pursuant to these guidelines records have been identified that have exceeded their retention period. The City Clerk who serves as the City's Custodian of Records, and the City Attorney have determined that the records have no administrative, fiscal, historical, or legal value and therefore recommend their destruction.

FINANCIAL IMPACT

There is no financial impact.

ATTACHMENT

1. Resolution with Exhibit A – Public Works Department List of Records for Destruction

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF CERTAIN CITY RECORDS RETAINED BY THE PUBLIC WORKS DEPARTMENT

WHEREAS, effective records management guidelines provides a method in which a city can efficiently maintain, retain, preserve, and dispose of various types of records generated in the course of business; and,

WHEREAS, on February 26, 2001, the City Council adopted Resolution No. 2001-018 implementing the Local Government Records Retention Guidelines for the management and retention of citywide records; and,

WHEREAS, California Government Code Sections 34090, and 34090.5 set forth the policy and procedures for the destruction of certain city records; and,

WHEREAS, the City Clerk, who serves as the custodian of city records, administers the Records Management Program and final disposition of City records pursuant to the Records Retention Guidelines; and,

WHEREAS, records listed in Exhibit A are determined to have exceeded their retention period; and

WHEREAS, the City Clerk and the City Attorney have determined that there are no administrative, fiscal, historical, or legal value of said records and therefore have given written approval to the destruction of the records indicated in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank does hereby authorize and order:

1. The destruction of the inventoried records as specified in **Exhibit A** attached hereto and incorporated herein.
2. The destruction of said records are determined to be public records and do not contain any privileged information and therefore may be placed in the City's recycling process for recycled paper products.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 28th day of May, 2019; 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
City Clerk

Richard D. O'Brien
Mayor

Attachments: Exhibit A – Inventoried Records List

Exhibit A
CITY OF RIVERBANK
RECORDS DESTRUCTION CERTIFICATE
(PUBLIC WORKS DEPARTMENT)

PROJECT NAME	RECORDS DESTROYED	RECORD DATES	RETENTION	DESTRUCTION DATE
Reports	Backflow Test	2009-2014	CU + 2	2011-2016
Reports and Letters	Backflow Test	2009-2011	CU + 2	2011-2013
Logs and Reports	Well logs and Backflow Test	2007-2015	CU + 2	2009-2017
Reports	Backflow Test	2015-2016	CU + 2	2017-2018

*CU = CURRENT YEAR

DESTRUCTION APPROVAL

<i>We, the following, certify that the records above have been retained for the scheduled retention period in accordance to the City's Retention Schedule of Resolution No. 2001-018, required audits have been completed, and no pending or ongoing litigation or investigation involving these records is known to exist.</i>	
City's Records Custodian Approved for Destruction: Signature: _____ Date: _____ Annabelle Aguilar, CMC, City Clerk	
Approved for Destruction. Signature: _____ Date: _____ Tom Hallinan, City Attorney	
Authorized by Resolution No. 2019-_____ Adopted on: _____	
<i>I certify that the records approved, privileged or public, for destruction were appropriately destroyed on: _____.</i> Print Name & Title: _____ Signature: _____	

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.D

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 28, 2019
Subject:	A Resolution to Approve the Appointment of Julie Boos to the Riverbank Housing Authority Board of Commissioners for a Four-Year Term
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

It is recommended that the City Council consider the applicant and adopt the resolution to appoint Julie Boos to the Commission.

SUMMARY

The City Council of Riverbank serves as the appointing authority of the Riverbank Housing Authority (RHA). A memo was received by the RHA with a proposed applicant to serve on the Commission.

A non-tenant Commissioner vacancy currently exists and Julie Boos has applied for the four-year term, Commissioner seat. The RHA has stated that they have no reservations or objections to her appointment.

FINANCIAL IMPACT

There is no financial impact.

ATTACHMENT

1. Resolution
2. Exhibit A – RHA memo
3. Exhibit B – Application

CITY OF RIVERBANK

RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, TO
APPROVE THE APPOINTMENT OF JULIE BOOS TO THE RIVERBANK HOUSING
AUTHORITY BOARD OF COMMISSIONERS FOR A FOUR-YEAR TERM**

WHEREAS, pursuant to Health and Safety Code Section 34270, the City Council of the City of Riverbank adopted a resolution declaring the need for a Housing Authority (HA); and

WHEREAS, pursuant to the Health and Safety Code, the governing body of the Riverbank Housing Authority shall be a Commission that will consist of seven Commissioners, two of which shall be tenants of the Housing Authority, with one such Tenant Commissioner who shall be over the age of 62; and

WHEREAS, a recruitment was conducted by the Riverbank Housing Authority to fill the vacant seat previously held by former Commissioner Scott Mc Ritchie. The following applicant hereto as **Exhibit B** applied to serve on the Riverbank Housing Authority Board of Commissioners:

- Julie Boos, Commissioner, four-year term, from January 1, 2019 through December 31, 2022.

WHEREAS, a letter from the Riverbank Housing Authority attached hereto as **Exhibit A**, states there are no reservations or objections to the appointment of the applicant to the Commission.

NOW, THEREFORE BE IT RESOLVED that the City Council, of the City of Riverbank, as the Appointing Body for the Riverbank Housing Authority, does hereby appoint Julie Boos to the Riverbank Housing Authority Board of Commissioners.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 28th day of May, 2019; motioned by Councilmember _____, seconded by _____, and upon roll call was carried by the following City Council vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

Attachment: Exhibit A – Memo from the RHA
Exhibit B – Application copy

EXHIBIT A

Housing Authority of the



City of Riverbank

Burney Villa Homes ▪ Henrietta F. Rossi Apts. ▪ Fred W. Scheala Apts

MEMO

To: Annabelle Aguilar, City Clerk
From: Teresa Kinney, Administrative Analyst
Date: April 24, 2019
Re: Commissioner Applicant for Riverbank Housing Authority

Please note Stanislaus Regional Housing Authority has received an applications for an open commissioner position for Riverbank Housing Authority and have no reservations nor objections with the applicants.

- Name: Julie A. Boos
Phone:
Address: , Riverbank, CA
Position: Commissioner

Attachments:
Applications



EXHIBIT B

Housing Authority of the City of Riverbank

Burney Villa Homes • Henrietta J. Ross Apts. • Fred W. Schuele Apts.

THE HOUSING AUTHORITY OF THE CITY OF RIVERBANK
APPLICATION FOR HOUSING AUTHORITY COMMISSIONER

NAME: Julie A Boos

ADDRESS: Riverbank, CA 95367

PHONE: (HOME) _____ Cell (BUSINESS) _____

OCCUPATION: Retired

EMPLOYER: _____

ADDRESS: Danett

HOBBIES: Dancing, Walking, Reading, traveling,
helping others

Organizations to which you belong: St. Vincent de Paul, Forever young
Dance Club, Golden Agers, recently retired from
13 years with Riverbank Christian Food Sharing

List any experience you have had working with government housing: _____

Statement of your reasons for desiring to serve as a Housing Authority Commissioner: _____

Was asked and desire to serve others.

Signature: [Signature] Date: 2/22/19

Please return signed application to: Housing Authority of the County of Stanislaus
P. O. Box 581918
Modesto, CA 95358



RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.E

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 28, 2019
Subject:	A Resolution Authorizing the City Manager to Enter into a Professional Services Contract with Pros Consulting, Inc. for the Completion of the Citywide Park Master Plan
From:	Sean Scully, City Manager
Submitted by:	Sue Fitzpatrick, Director of Parks and Recreation

RECOMMENDATION

It is recommended that the City Council consider adoption of the Resolution for the completion of the Citywide Park Master Plan.

SUMMARY

At the April 23, 2019 City Council meeting Resolution No. 2019-030 was approved authorizing the City to award the bid to PROS Consulting for \$109,625 for completion of the Citywide Park Master Plan and some technical assistance with the prop. 68 grant application. This Resolution is to authorize the City Manager to execute the contract.

BACKGROUND

The City of Riverbank does not have a Citywide Park Master Plan. The City is currently operating at capacity at most of its facilities and parks and would like to prepare for growth to ensure that adequate recreation facilities are included as the population of the City increases. One of the City's goals for the plan is to research existing parks and facilities and map out the amenities that will be needed in the future.

The City standard contract and scope of services is attached in Exhibit A and Exhibit B. The project will begin once the contract is executed with a timeline of approximately 10 months. A final report and Citywide Park Master Plan will be presented to the City Council upon completion.

STRATEGIC PLAN

The Citywide Park Master Plan Project is relevant to the Strategic Plan's vision; ***The City of Riverbank is a regional leader in sustainable development offering a unique, culturally diverse, safe, and welcoming community with a thriving downtown,***

recreational opportunities for all ages and sustainable economy that supports our growing population.

FINANCIAL IMPACT

There would be no financial impact to the General Fund as there is adequate funding within the Parks System Development Fee Fund.

ATTACHMENT

1. Exhibit A: Standard Professional Services Contract
2. Exhibit B: Scope of Service
3. Resolution

EXHIBIT A CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT (“Agreement”) is made and entered into this 28th day of May 2019, (the “Effective Date”) by and between the City of Riverbank, a California municipal corporation (“City”), and PROS Consulting, Inc., a [State of Indiana S-Corporation] (“Consultant”). City and Consultant may herein be referred to individually as a “Party” and collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

A. City has [issued a request for proposals (“RFP”) for consultant services / determined that consultant services are required] for the preparation of the Citywide Park Master Plan.

B. Consultant has submitted a proposal to City that includes a scope of proposed consultant services, attached hereto and described more fully in **Exhibit A** (“Services”).

C. Consultant represents that it is qualified, willing and able to provide the Services to City, and that it will perform Services related to the Project according to the rate schedule attached hereto and described more fully in **Exhibit A** (the “Project Costs”).

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. Consulting Services. Consultant agrees, during the term of this Agreement, to perform the Services for City in connection with the Project. Any request for services in addition to the Services described in **Exhibit A** and will be considered a request for additional consulting services and not compensated unless the Parties otherwise agree in writing. No subcontract shall be awarded or an outside consultant engaged by Consultant unless prior written approval is obtained from City.

2. Compensation. City shall pay Consultant according to the fee schedule set forth in the Rates, as full remuneration for the performance of the Services. Consultant agrees to maintain a log of time spent in connection with performing the Services. On a monthly basis, Consultant shall provide City, in reasonable and understandable detail, a description of the services rendered pursuant to the Services and in accordance with the Rates. If the work is satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt. If City disputes any portion of any invoice, City shall pay the undisputed portion within the time stated above, and at the same time advise Consultant in writing of the disputed portion.

3. Reimbursement. City shall pay Consultant for reimbursable expenses related to travel, lodging, conference calls, reproduction and other costs incurred related to Consultant’s

performance of the Services. Such reimbursable costs shall be invoiced and billed to the City on a monthly basis, provided that in no event shall reimbursable expenses exceed that what is included in the costs listed in **Exhibit A and Part B of the Scope of Services**.

4. Confidential Information. Consultant understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Consultant shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Consultant written authorization to make any such disclosure, Consultant shall do so only within the limits and to the extent of that authorization. Such authorization does not guarantee that the City will grant any further disclosure of Confidential Information. Consultant may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project, and in such event, Consultant agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

5. Term. This Agreement shall become effective on the Effective Date and will continue in effect until the Services provided herein have been completed, unless terminated earlier as provided in Section 6 or 7 below (the "Term").

6. Termination. City may terminate this Agreement prior to the expiration of the Term ("Termination"), without cause or reason, by notifying Consultant in writing of City's desire to terminate this Agreement (the "Termination Notice"). Upon receipt of a Termination Notice, Consultant shall immediately cease performing the Services. Consultant will be entitled to compensation, as of the date Consultant receives the Termination Notice, only for Services actually performed.

7. Termination for Cause. Notwithstanding Section 6 above, this Agreement may be terminated by City for cause based on the loss or suspension of any licenses, permits or registrations required for the continued provision of the Services, or Consultant's malfeasance. Termination of the Agreement for cause as set forth in this Section shall relieve City from compensating Consultant.

8. Performance by Key Employee. Consultant has represented to City that Michael Svetz will be the person primarily responsible for the performance of the Services and all communications related to the Services. City has entered into this Agreement in reliance on that representation by Consultant.

9. Property of City. The following will be considered and will remain the property of City:

A. Documents. All reports, drawings, graphics, working papers and Confidential Information furnished by City in connection with the Services ("Documents"). Nothing herein shall be interpreted as prohibiting or limiting City's right to assign all or some of City's interests in the Documents.

B. Data. All data collected by Consultant and produced in connection with the Services including, but not limited to, drawings, plans, specifications, models, flow diagrams, visual aids, calculations, and other materials ("Data"). Nothing herein shall be interpreted as prohibiting or limiting City's right to assign all or some of City's interests in the Data.

C. Delivery of Documents and Data. Consultant agrees, at its expense and in a timely manner, to return to City all Documents and Data upon the conclusion of the Term or in the event of Termination.

10. Duties of City. In order to permit Consultant to render the services required hereunder, City shall, at its expense and in a timely manner:

A. Provide such information as Consultant may reasonably require to undertake or perform the Services;

B. Promptly review any and all documents and materials submitted to City by Consultant in order to avoid unreasonable delays in Consultant's performance of the Services; and

C. Promptly notify Consultant of any fault or defect in the performance of Consultant's services hereunder.

11. Representations of Consultant. City relies upon the following representations by Consultant in entering into this Agreement:

A. Qualifications. Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses, permits and registrations required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Consultant represents and warrants to City that Consultant shall, at Consultant's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and registrations that are legally required for Consultant to practice Consultant's profession at the time the Services are rendered.

B. Consultant Performance. Consultant represents and warrants that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Consultant shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs,

procedures and standards for such Services. All work or products completed by Consultant shall be completed using the best practices available for the profession and shall be free from any defects. Consultant agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Consultant shall re-perform or replace unsatisfactory Service at no additional expense to City.

12. Compliance with Laws and Standards. Consultant shall insure compliance with all applicable federal, state, and local laws, ordinances, regulations and permits, including but not limited to federal, state, and county safety and health regulations. Consultant shall perform all work according to generally accepted standards within the industry. Consultant shall comply with all ordinances, laws, orders, rules, and regulations, including the administrative policies and guidelines of Client pertaining to the work.

13. Independent Contractor; Subcontracting. Consultant will employ, at its own expense, all personnel reasonably necessary to perform the Services. All acts of Consultant, its agents, officers, employees and all others acting on behalf of Consultant relating to this Agreement will be performed as independent contractors. Consultant, its agents and employees will represent and conduct themselves as independent contractors and not as employees of City. Consultant has no authority to bind or incur any obligation on behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever. Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing.

14. Insurance. Consultant and all of Consultant's contractors and subcontractors shall obtain and maintain insurance of the types and in the amounts described in this paragraph and its subparagraphs with carriers reasonably satisfactory to City.

A. General Liability Insurance. Consultant shall maintain occurrence version commercial general liability insurance or an equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) for each occurrence.

B. Workers' Compensation Insurance. Consultant shall carry workers' compensation insurance as required by the State of California under the Labor Code. Consultant shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

C. Errors and Omissions Liability. Consultant shall carry errors and omissions liability insurance in the amount of no less than One Million Dollars (\$1,000,000.00) per occurrence or greater if appropriate for the Consultant's profession. Architects and engineers coverage is to be endorsed to include contractual liability. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the

insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

D. Other Insurance Requirements. Within five (5) days of the Effective Date, Consultant shall provide City with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required worker's compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Consultant shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the worker's compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City's Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied, or used by the Consultant, or automobiles owned, leased, or hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City; (c) be primary with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be in excess of Consultant's insurance and shall not contribute to it; (d) contain standard separation of insured provisions; and (e) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the City.

15. Indemnification. Consultant hereby agrees to indemnify and hold harmless City, its agents, officers, employees and volunteers, against all liability, obligations, claims, loss, and expense (a) caused or created by Consultant, its subcontractors, or the agents or employees of either, whether negligent or not, pertaining to or related to acts or omissions of Consultant in connection with the Services, or (b) arising out of injuries suffered or allegedly suffered by employees of Consultant or its subcontractors (i) in the course of their employment, (ii) in the performance of work hereunder, or (iii) upon premises owned or controlled by City. Consultant's obligation to defend, indemnify and hold City and its agents, officers, employees and volunteers harmless is not terminated by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

16. Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

17. Litigation. In the event that either Party brings an action under this Agreement for the breach or enforcement hereof, or must incur any collection expenses for any amounts due

hereunder the prevailing Party in such action shall be entitled to its costs including reasonable attorney's fees, whether or not such action is prosecuted to judgment.

18. Notices. Any notice or communication required hereunder between City or Consultant must be in writing, and may be given either personally, 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. Notices given by registered or certified mail 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, (b) on the date delivered as shown on a receipt issued by the courier, or (c) 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 the addresses in this paragraph set forth below:

If to City:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Clerk

With courtesy copies to:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Manager

And to:

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Consultant:

PROS Consulting, Inc.
201 South Capitol Avenue
Suite 5
Indianapolis, Indiana 46225
Attention: Michael Svetz

19. General Provisions.

A. Modification. No alteration, modification, or termination of this Agreement shall be valid unless made in writing and executed by all Parties.

B. Waiver. The waiver by any Party of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

C. Assignment. No Party shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

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

F. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

G. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.

H. Severability. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.

I. Audit. City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Consultant's charges to City under this Agreement.

J. Entire Agreement. This Agreement sets forth the entire understanding between the Parties as to the subject matter of this Agreement and merges all prior discussions, negotiations, proposal letters or other promises, whether oral or in writing.

K. Headings Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

L. Time is of the Essence. Time is of the essence in this Agreement for each covenant and term of a condition herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last day and date below written.

CITY:

CITY OF RIVERBANK, a California
municipal corporation

By: _____
Sean Scully, City Manager

Date: _____

Approved as to Form:

Tom Hallinan, City Attorney

CONSULTANT:

PROS Consulting, a [State of Indiana S-
Corporation]

By: _____

Name: _____

Date: _____

EXHIBIT A

Services

PROPOSED

EXHIBIT B SCOPE OF SERVICES

MASTER PLAN PROFESSIONAL SERVICES – PART A

Task 1 – Project Management, Research & Documentation

This kick-off meeting will be attended by key staff members, and PROS Team members to confirm the work plan of the project.

A. Kick-off Meeting & Project Management – The PROS Team will be in close and constant contact with your designated project coordinator throughout the project, to ensure constant feedback and timeliness of project deliverables. Detailed steps of this task include

- Confirmation & Outcome Expectations – The project goals, objectives, scope, and schedule will be confirmed. Discuss expectations of the completed project.
- Communications – Confirmation on lines of communication, points of contact, level of involvement by Department staff and local leaders, and other related project management details.
- Progress Reporting – The Consulting Team will develop status reports to the Department on a monthly basis, either in person or through video conferencing tools such as WebEx. More importantly, we will be in close and constant contact with your designated project coordinator throughout the performance of the project. The Consulting Team and the project manager will hold progress meetings as often as necessary, at least once per month, until the final plan is approved.

B. Relevant Plan and Document Review – The PROS Team will collect, log and create electronic copies as appropriate (MS Word/Excel and Adobe Acrobat) of key data and information to facilitate dissemination of information. This will assess the long term goals as expressed in relevant existing plans and studies such as:

- Existing general plan, Master Plans, and other reports
- Additional studies
- Recreational programs, flyers, procedures
- City Strategic Plan
- Upcoming planned developments and specific plans

C. GIS Shapefile – PROS Team member WRT will produce a GIS ready shapefile for use by the City. The database will include at a minimum the following:

- Size (acreage of turf)
- Park amenities
- Furnishings- benches, fountains
- Structures- shade shelters, maintenance sheds, pools, recreation facilities, etc.
- Play equipment for specific age groups, water features
- Programming located at each site
- Operations- Joint use
- Rates, reservations, fees
- Landscape and Lighting Districts
- Proposed site features

Our team has two approaches for onsite data collecting the following two methodologies after discussion with City staff:

- ArcGIS Collector. Uses a professional data collecting tool for fieldworkers to capture/ edit data on a mobile app. Compatible with other ArcGIS family applications.
- Google My Maps. Similar tool for onsite data collecting. Needs to transfer to ArcGIS later (from Google my maps to KML format, then convert into shapefiles).

D. Demographic & Recreation Trends Analysis – The Consulting Team will utilize the City's projections and supplement with census tract demographic data obtained from Environmental Systems Research Institute, Inc. (ESRI), the largest research and development organization dedicated to Geographical Information Systems (GIS) and specializing in population projections and market trends; for comparison purposes data will also be obtained from the U.S. Census Bureau. This analysis will provide an understanding of the demographic environment for the following reasons:

- To understand the market areas served by the park and recreation system and distinguish customer groups.
- To determine changes occurring in the City and the region, and assist in making proactive decisions to accommodate those shifts.
- Provide the basis for Equity Mapping and Service Area Analysis

The demographic analysis will be based on US 2010 Census information, 2018 updated projections, and 5 (2023) and 10 (2028) year projections. The following demographic characteristics will be included:

- Population density; Age Distribution; Households; Gender; Ethnicity; Household Income

From the demographic base data, sports, recreation, and outdoor trends are applied to the local populace to assist in determining the potential participation base within the community. For the sports and recreation trends, The Consulting Team utilizes the Sports & Fitness Industry Association's (SFIA) 2018 Study of Sports, Fitness and Leisure Participation, ESRI local market potential, as well as participation trends from the Outdoor Foundation on outdoor recreation trends.

Task 2 – Community Outreach

The PROS Team will utilize a robust community engagement process that is consistent with community values and procedures to obtain input from stakeholders, interest groups and the community to validate recommendation of the Master Plan. This community engagement process will include the following strategies:

- A. Key Leadership and Stakeholder Interviews** – Within the first 30 days of the project, the PROS Team will perform interviews with key community leaders and stakeholders to evaluate the future vision for City of Riverbank parks and recreation. The community values, strengths and challenges, trends, and level of services provided will also be evaluated during this time. Interviews could include; Planning Commission, City Council, School Officials, Sports and Recreation Associations, Leaders and Officials in neighboring communities, Key Partners/Philanthropic Groups, and others as mutually determined.
- B. Community Focus Groups and User Groups** –The PROS Team will conduct five to six focus group meetings over one (1) day of interviews/focus groups with key community leaders and stakeholders to evaluate their vision for parks and recreation in Riverbank. These interviews/focus groups will help the PROS Team gain an understanding of the community

values, strengths and weaknesses of the park and recreation system, and level of services provided.

- C. Electronic Survey (OPTIONAL)** – Also, the PROS Team can create an online survey administered through www.surveymonkey.com. This survey will be promoted through the project website and the Department's outreach mediums to maximize outreach and response rates. These surveys will provide non statistically valid data complementing the stakeholder and focus group recommendations for park amenities, specific programs, trail linkages, indoor recreation facility components, usage, and pricing strategies.
- D. Statistically-Valid Needs Analysis Survey** – The Consulting Team will perform a random, scientifically valid community-wide household survey to quantify knowledge, need, unmet need, priorities and support for system improvements that include park, facility, programming, and trail needs of the City. The survey would be administered by phone or by a combination of a mail/phone survey and will have a minimum sample size of 375 completed surveys at a 95% level of confidence and a confidence interval of +/- 5%. Prior to the survey being administered, it would be reviewed by the City staff.
- E. Public Workshop/Forum Meetings** – We propose to conduct two (2) initial public forums and one (1) follow-up meeting conducted during the final briefings component of the plan. The purpose for these meetings will be to ensure opportunities for the general public to discuss their options and perceptions surrounding parks, trails and recreation. These meetings will bring forward new ideas and alternative approaches from within the City and around the nation to help spark creative thinking such as using the PROS Team's real-time interactive polling to solicit feedback.

Task 3 – Recreation Programming

- A. Recreation Program and Services Assessment**– Recreation programs and special events are the backbone of park and recreation agencies. This assessment will review how well the City of Riverbank aligns itself with community needs. The goal of this process is to provide recreation program enhancements that result in successful and innovative recreation program offerings. The Consulting Team will provide insight into recreation program trends from agencies all around the country. The process includes analysis of:

- Age segment distribution
- Lifecycle analysis
- Core program analysis and development
- Similar provider analysis/duplication of service
- Market position and marketing analysis
- User fee analysis for facilities and programs/services
- Review of program development process
- Backstage support, or service systems and agency support needed to deliver excellent service

Ultimately, the outcome of the process will be the creation of a dynamic recreation program plan that results in increased registration, drives customer retention and loyalty, improves customer satisfaction, and increases revenues. Additionally, it will help focus staff efforts in core program areas and create excellence in those programs deemed most important by program participants.

Task 4 – Parks and Amenities Recommendations

- A. Park Classifications and Level of Service Standards**– The PROS Team will work with the City of Riverbank to review and confirm, modify or add to existing park classifications, and preferred facility standards for all park sites, trails, open space amenities including common areas and indoor and outdoor facilities. These classifications will consider size, population served, length of stay, and amenity types/services. Facility standards include level of service standards and the population served per recreational facilities and park amenities. Any new or modified classification or standard will be approved as required. These are based on regional, statewide or nationally accepted parks and recreation standards, as well as the PROS Team’s national experience and comparison with peer/survey agencies. These standards will be adapted based on the needs and expectations of the City of Riverbank.
- B. Geographical Analysis through Mapping** – The Consulting Team will work with the City to determine appropriate GIS mapping. The Consulting Team can utilize GIS to perform geographical mapping to identify service area analysis for specific facilities and programs. This includes mapping by classification and major amenities by facility standards as applied to population density and geographic areas. A service area is defined as a measured area around a park or amenity whose radius encompasses the population associated with the appropriate facility standard for each park classification and amenity. Using the facility standards and service areas provided by the Consulting Team for each park and major facility type (amenity), a series of maps by each park classification and major amenities will be prepared. The Consulting Team will provide maps in digital format (Adobe Acrobat PDF format) and hard copy.
- C. Design Guidelines and Standards** – Design standards/guidelines will be drafted to establish aesthetic standards for improvements in City parks and provide a uniform level of quality across the system for each park classification. The design guidelines and standards may include:
- Evaluation of way-finding signs and strategy to create a standard approach
 - Type of recreational facilities and programming (e.g., sports facilities, water features, picnic pavilions)
 - Type of benches, lighting, planters, bicycle racks, trash receptacles and other landscape amenities
 - Types of plantings – e.g., trees, shrubs, flowering plants or groundcover - native and or climate appropriate plants that meet WELO, help improve safety, and enhance biodiversity.
 - Stormwater and groundwater recharge opportunities
 - Maintenance facilities in parks such as truck access, loading, green waste
 - Type of irrigation systems and controllers
- D. Development Criteria** – The PROS Team will Current or proposed development standards review related to park development. Following this review, recommendations will be provided and included in the recommendations chapter of the master plan.
- E. Prioritized Facility and Program Priority Rankings**– The Consulting Team will synthesize the findings from the community input, survey results, standards, demographics and trends analysis, park and facility inventory, recreation services assessment and the service area mapping into a quantified facility and program priority ranking. This priority listing will be compared against gaps or surplus in recreation services, parks, facilities and amenities. This

will list and prioritize facility, infrastructure, amenities, and program needs for the parks and recreation system and provide guidance for a future Capital Improvement Plan. The analysis will include probable future parks, recreation facilities, open spaces and trail needs based on community input, as well as state and national user figures and trends. Also, a set of prioritized recommendations for maintenance and renovation of parks, trails and recreation facilities will be developed. The Team will conduct a work session with staff to review the findings and make revisions as necessary.

F. Funding and Revenue Strategies – Funding strategies will be developed based in part to our review and analysis of the facilities as well as the national experience brought by The Consulting Team. The Consulting Team has identified numerous funding options that can be applied to the Master Plan based on the community values. The funding strategies to be evaluated for recommendations will include at a minimum:

- Fees and charges options and recommendations
- Endowments/Non-profits opportunities for supporting operational and capital costs
- Sponsorships to support programs, events, and facilities
- Partnerships with public/public partners, public/not-for-profit partners and public/private partnerships
- Dedicated funding sources to support land acquisition and capital improvements
- Development agreements to support park acquisition, open space and park and facility development
- Earned Income options to support operational costs
- Land or facility leases to support operational and capital costs
- Identify grant opportunities and resources to construct parks and facilities identified in the Master Plan including suggested timelines

Task 5 – Implementation & Master Plan Development

The Master Plan will be framed and prepared through a series of workshops with staff. The overall vision and mission statements will be affirmed or modified, and direction for the City will be established along with individual action strategies that were identified from all the research work completed. Key recommendations and tactics that support each action strategy to its fullest outcome will be outlined in a strategy matrix with priorities, timelines, measurement, and teams within the City or external partners to focus on. Specific tasks include:

A. Develop Vision, Mission and Goals/Objectives– The supporting vision and mission statements will be affirmed or developed with senior staff in a work session. Following this effort, goals/objectives and policies will be established and prioritized. A status briefing will be presented to gain input and consensus on direction.

B. Implementation Plan Development - Upon consensus of all technical work, the remaining action plan will be completed with supporting strategies, actions, responsibilities, priorities/timelines and cost estimates. These strategies will be classified as short-term, mid-term or long-term strategies and priorities. This will be reviewed with senior Department staff in a half-day workshop. The Consulting Team will propose a prioritization schedule and methodology used on successful master plans across the United States from their work. Action plans will be established in the following key areas:

- Park and Land Acquisition – Recommendations that provide for short and long term enhancement of parkland acquisition in the City of Riverbank. This will include useable and workable definitions and recommendations for designated park and facilities with acreages and parameters defined as appropriate.
- Park and Facility Operations and Maintenance – Recommendations that provide for short and long term enhancement of park and facility management practices of the Department.
- Programs and Services – Recommendations that provide for short and long term development and maintenance of programs and services provided by the Department, including opportunities to improve meeting user needs.
- Financial and Budgetary Capacity Development – Recommendations that provide for short and long term enhancement of the financial and budgetary capacity of the Department related to parks and lands.
- Policies and Practices – Specific policies and practices for the Department that will support the desired outcomes of the Master Plan will be detailed.

C. Draft Report Preparation and Briefings – The PROS Team will prepare a draft Master Plan with strategies taking into account all analysis performed City. A draft master plan will be prepared based on research and community outreach that will include the following chapters:

- Executive Summary
- Introduction
- Context: Setting, demographics and planning context
- Inventory: Parks, community facilities, joint use agreements, existing programs, facility rentals, fees, etc.
- Needs Assessment: Survey results, current needs and deficiencies
- Best Practices and Design Guidelines: Trends, sustainability, provisions for shade, safety and security, site furnishings, public art, access, inclusion, etc.
- Funding Mechanisms: Grants, park-in-lieu standards, community partner programs etc.
- Appendices

D. Final Master Plan Presentations, Preparation, and Production – Upon comment by all senior City staff and City Council, the PROS Team will revise the Draft Master Plan to reflect all input received. Once the draft Master Plan is approved, the Consulting Team will prepare a final summary report and present for final approval and adoption.

Final Deliverables:

- Output 1: 50% Preliminary Draft Parks and Recreation Master Plan (3 hard copies/ 1 electronic)
- Output 2: 90% Preliminary Draft Parks and Recreation Master Plan (3 hard copies/1 electronic)
- Output 3: 100% Draft Parks and Recreation Master Plan (3 hard copies/1 electronic)
- Output 4: Final Parks and Recreation Master Plan (2 large copies for framing, 5 hard copies/ 2 electronic)

Meetings

Project team will attend project progress meetings and a City Council meeting (limited to 6 meetings)

Master Plan – Part A Compensation

Task 1 - Project Management, Research & Documentation	
A. Kick-off Meeting & Project Management	\$ 2,640
B. Relevant Plan and Document Review	\$ 1,540
C. GIS Shapefile	\$ 11,130
D. Demographic and Recreation Trends Analysis	\$ 2,340
Expenses	\$ 1,800
Subtotal Dollars	\$ 19,450
Task 2 - Community Outreach	
A. Key Leadership and Stakeholder Interviews	\$ 1,650
B. Community Focus Groups and User Groups	\$ 1,650
C. Electronic Survey (OPTIONAL)	\$ -
D. Community Needs Assessment Statistically-Valid Survey	\$ 12,195
E. Public Workshop/Forum Meetings	\$ 3,360
Expenses	\$ 1,500
Subtotal Dollars	\$ 20,355
Task 3 - Recreation Programming	
A. Recreation Program and Services Assessment	\$ 5,280
Expenses	\$ 800
Subtotal Dollars	\$ 6,080
Task 4 - Parks and Amenities Recommendations	
A. Park Classifications and Level of Service Standards	\$ 2,040
B. Geographica Analysis through Mapping	\$ 3,040
C. Design Guidelines and Standards	\$ 1,860
D. Development Criteria	\$ 3,720
E. Prioritized Facility and Program Priority Rankings	\$ 3,300
F. Funding and Revenue Strategies	\$ 3,380
Expenses	\$ 1,700
Subtotal Dollars	\$ 19,040
Task 5 - Implementation Plan & Master Plan Development	
A. Develop Vision, Mission and Goals/Objectives	\$ 1,320
B. Implementation Plan Development	\$ 3,380
C. Draft Report Preparation and Briefings	\$ 7,080
D. Final Master Plan Presentations, Preparation and Production	\$ 7,120
Expenses	\$ 2,000
Subtotal Dollars	\$ 20,900
TOTAL EXPENSES	\$ 7,800
TOTAL FEES	\$ 78,025
TOTAL DOLLARS	\$ 85,825
Optional Tasks	
Electronic Survey	

PROPOSITION 68 PROFESSIONAL SERVICES – PART B

General:

We understand the landscape architectural services are to include the following items listed below. The landscape architect shall provide landscape architectural services as defined herein. For purposes of this agreement, the services do not include the physical construction to which the service relates.

1. Standards: The Services Shall:
 - a. The Landscape Architect shall perform its services in accordance with the generally accepted professional standard of care and skill ordinarily practiced by professional consultants in like disciplines performing services of a similar nature under similar circumstances at the same time and in the same locale. It is understood that the Landscape Architect makes no warranty or guarantee, either expressed or implied under this Agreement or otherwise, in connection with the Landscape Architect's services.
 - b. The Landscape Architect will exercise due professional care to comply with applicable laws, rules, codes, regulations, and orders of any governmental or public authority having jurisdiction over the Work in force at time of issuance of documents for bid.

Scope of Services

Task 1: Site visit - During the site visit, WRT will inventory and analyze the two selected park sites to determine idea implementation. We will gather information about the existing park configuration, access, and condition of facilities/ amenities, in order to help position the parks for the Grant funding application.

Task 2: Determine future application sites – WRT will work with the Parks and Recreation department to identify the 1st and 2nd round park for the Prop 68 Grant funding.

Task 3: Assistance with community meetings – Our team will help prepare materials and handouts for 10 community meetings. We will develop conceptual graphics to be presented at these meetings to help convey the designs for the 2019 Prop 68 selected parks described in task 1 and 2. The engagement process and exhibits may include the following:

- Meeting 1: Existing conditions and design opportunities; boards and PPT.
- Meeting 2: On-site pop-up with boards*; on-line engagement using survey monkey
- Meeting 3: Conceptual design workshop with movable pieces; table top posters.
- Meeting 4: Conceptual designs refined with more detailed elements identified, prioritization activity to inform budget; boards and PPT*

Final design presentation and grant support activities; boards*

These meetings will repeat for the 2nd selected park and may even parallel with the Park Master plan outreach efforts.

* Asterix indicates meetings that WRT can provide workshop materials to staff and reduce costs by not attending. Cost can be managed by attending certain meetings only and providing materials to the Riverbank Parks and Recreation team when not attending in person.

Task 4: Conceptual site plan – Concurrent to the community meetings, WRT will develop design alternatives and the preferred conceptual site plan for the two selected parks to be used in the grant proposal (round 1 and round 2 park). This plan will reconfigure the existing park layout creating a comprehensive park master plan. This plan will be aided using notes and callouts to identify all proposed elements on the conceptual park plan.

Task 5: Preliminary cost estimate – This cost estimate will reflect the 2 selected parks which will detail the cost of materials and suggested park components such as play structures and other park furnishings.

Task 6: Long term cost estimate – PROS will develop a long-term plan for maintenance, and lifecycle repair of park amenities for both parks.

PROPOSITION 68 PROFESSIONAL SERVICES – PART B COMPENSATION

- A. Basic Services: For the above professional services, the Landscape Architect shall be paid on a time and materials basis not to exceed the total costs listed below (depending on selection). Below are two different cost models to complete Part B. The column on the left assumes some of the tasks listed can be combined with the work and original scope of the Parks Master Plan, and the column on the right is more of a stand-alone document to complete Part B of the Grant work.

<i>Task</i>	<i>Compensation</i>
1 & 2-Site Visit & Future application site	\$ 3,800
3-Assistance with community meetings	\$8,000 * (assumes WRT will attend 2 or 3 in-person community meetings- divided between round 1 & 2; assistance for the remaining outreach meetings)
4-Conceptual site plans	\$ 8,500
5-Preliminary cost estimates	\$ 2,000
6-Long term cost estimates	\$ 1,500
TOTAL	\$ 23,800

CITY OF RIVERBANK

RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A
PROFESSIONAL SERVICES CONTRACT WITH PROS CONSULTING, INC. FOR
THE COMPLETION OF THE CITYWIDE PARK MASTER PLAN**

WHEREAS, the City of Riverbank, as part of the Strategic Plan, has recognized the need for a Citywide Park Master Plan; and

WHEREAS, the City is currently operating at capacity at most of its facilities and parks and one of the City's goals for the plan is to research existing parks and facilities and map out the amenities that will be needed in the future to prepare for growth as the population of the City increases; and

WHEREAS, the City Council was presented with the results from the bid process for the Citywide Park Master Plan and it was recommended to Award the Bid to PROS Consulting; and

WHEREAS, on April 23, 2019 Resolution No. 2019-030 was adopted awarding the bid to PROS Consulting, Inc. in the amount of \$109,625; and

WHEREAS, in order to procure the professional services of PROS Consulting Inc., the City of Riverbank must enter into an agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank authorizes the City Manager to execute the Professional Services Agreement with PROS Consulting, Inc. for the completion of the Citywide Park Master Plan.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 28th day of May, 2019; 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
City Clerk

Richard D. O'Brien
Mayor

Attachment: Copy of Contract and Scope of Work

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.F

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 28, 2019
Subject:	A Resolution Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds
From:	Sean Scully, City Manager
Submitted by:	Sue Fitzpatrick, Director of Parks and Recreation

RECOMMENDATION

It is recommended that the City Council consider approving the Resolution Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds.

SUMMARY

At the April 23, 2019 City Council meeting, the Director of Parks and Recreation gave a report on the Proposition 68 funding available. Proposition 68 funding will distribute \$650,275,000 throughout competitive grants in multiple rounds for creation of a new park, expanding an existing park or renovating an existing park. The first round of grant funding is due August 5, 2019. The minimum grant request is \$200,000 and the maximum request is \$8,500,000. Approval is being requested to submit a grant application for this grant funding.

BACKGROUND

The Proposition 68 grant fund projects must meet the criteria of having less than 3 acres per 1,000 people within a half mile radius or have a median household income of less than \$51,026 within a half mile radius of the project site. The Community Center Park (Veteran's Park) meets this criteria.

The renovations that would be included in this project at the Community Center Park may include the pool locker room renovation, ADA improvements at the community pool, expansion of the pool to include an additional pool and/or water feature/splash pad, a new accessible shaded playground with inclusive play equipment, a half basketball court behind the Teen Center and possible fitness equipment within the park area.

The grant application requires five community meetings to receive input on the project and three community partners. A site plan and cost estimate will be presented to the City

Council at the 5th community meeting which will be at the June 11, 2019 City Council meeting.

STRATEGIC PLAN

This project is relevant to the Strategic Plan by Enhancing the Quality of Life through maintaining and developing our parks.

FINANCIAL IMPACT

There would be no financial impact to the General Fund as there is no match requirement for these grant funds.

ATTACHMENT

1. Resolution

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING THE APPLICATION FOR STATEWIDE PARK DEVELOPMENT AND COMMUNITY REVITALIZATION PROGRAM GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application: and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the filing of an application for the Community Center Park Renovation Project.

AND, BE IT FURTHER RESOLVED that the City Council of the City of Riverbank hereby declares and determines that the City as the Applicant:

1. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
2. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project; and
3. Certifies that the Applicant has reviewed, understands and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Delegates the authority to the City Manager to conduct all negotiations, sign amendments, and payment requests, which may be necessary for the completion of the Grant Scope; and
5. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines; and

6. Will consider promoting inclusion per Public Resources Code 80001(b)(8A-G).

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 28th day of May, 2019; 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
City Clerk

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.1

SECTION 4: UNFINISHED BUSINESS

Meeting Date: May 28, 2019

Subject: Second Reading by Title Only and Adoption of Proposed **Ordinance No. 2018-005** Approving a Development Agreement By and Between the City of Riverbank and E & J Distributors LLC, a California Limited Liability Corporation Doing Business as Canna+Rise

From: Sean Scully, City Manager

Submitted by: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council conduct the second reading by title only of proposed Ordinance No. 2019-005 and consider its adoption by roll call vote.

INTRODUCTION

A Public Hearing was conducted at the regular City Council meeting on May 14, 2019, to receive public opinions or evidence for or against the proposed Ordinance after its first reading and introduction by title only. After consideration, the City Council requested a clarification made in the Development Agreement to Section 4.2, Public Benefit, to clarify that fees are monthly fees to be paid quarterly; this clarification has been made to the Development Agreement. The City Council proceeded to approve the first reading of the Ordinance (now titled Ordinance No. 2019-005) which moved said Ordinance to the May 28, 2019, regular City Council meeting for its second reading by title only and consideration of its adoption.

SUMMARY

E & J Distributors LLC ("The Applicant") has requested a Development Agreement (Attachment 2) and Conditional Use Permit to allow for a commercial cannabis distribution located at 5729 Terminal Avenue.

The project area is located along Terminal Avenue, at City Limit and north of county industrial parcels, east of the BNSF railroad tracks, south of industrial businesses and nonconforming residences, and west of a residential subdivision and ranchettes. The project site is a 6,000 square foot building, located on an approximately one (1) acre

parcel. The project site has an existing general plan land use designation of Industrial / Business Park (I/BP) and is zoned Light Industrial (M-1). Pursuant to Riverbank Municipal Code Chapter §120 the zoning is appropriate for a proposed cannabis distribution use (wholesale to wholesale).

The Planning Commission at their regular meeting of April 16, 2019 with a vote of 5-0 recommended that the City Council approve Development Agreement 01-2019 with Resolution 2019-009 (Attachment 3). They also approved with a vote of 5-0 Conditional Use Permit 02-2019 with Resolution 2019-010 (Attachment 4).

BACKGROUND

Starting in 1996, citizens of the State of California approved Proposition 215, the Compassionate Use Act (“CUA”). The CUA was approved to allow Californians with a serious illness to legally possess, use, and cultivate cannabis for medical use under state law.

In addition, in 2003, the legislature of California adopted Senate Bill 420 which entitled the Medical Cannabis program. This program authorized qualified patients and their primary caregivers to cultivate and use cannabis for medical purposes without being subject to criminal prosecution under the state penal code.

On October 9, 2015 Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). This Act established a statewide regulatory and licensing structure for the cultivation, processing, transporting, testing, and distribution of medical cannabis to qualified patients and their primary caregivers.

On November 8, 2016, the citizens of California approved Proposition 64 (Adult Use of Cannabis). In accordance with Proposition 64 recreational use of cannabis is now legal throughout the state, but reserved the right to police commercial cannabis activity to each local jurisdiction.

Lastly, on August 8, 2017 and August 22, 2017, the Riverbank City Council adopted Ordinance No. 2017-007, which provides a regulatory structure for commercial cannabis activities in the City of Riverbank ONLY in the General Commercial (C-2), Commercial – Industrial (CM), Cannery District, Highway Boulevard (HB), Downtown General (DG), Downtown Core (DC), Light industrial (M-1), and Research and Development (R&D) zoning districts. In addition, this ordinance bans all commercial cannabis activities within 600 feet from a school, commercial day care facility, or youth center.

As a part of the regulatory structure established by Ordinance No. 2017-007, an applicant seeking to establish a commercial cannabis business must apply for a Development Agreement and a Conditional Use Permit. These entitlements lock-in fees for the applicant, set performance standards with the city, and establish a timeline.

ANALYSIS

E & J Distributors LLC is proposing to establish a cannabis distribution facility located at 5729 Terminal Avenue. The proposed project site is zoned Light Industrial (M-1), and therefore is in conformance with Ordinance No. 2017-007, listed above. The proposed project site is not within 600 feet of any school, commercial day care facility, or youth center.

The Applicants are proposing to conduct a cannabis distribution (wholesale to wholesale) in an existing 6,000 square foot building on an approximately one (1) acre site (Attachment 4 Exhibit A). The Applicant is not requesting any changes to the Site Plan and proposes no signage. Business will be conducted from 8am – 4pm, seven days a week, and will include approximately 5-6 employees. There is no storefront and the public is not permitted on site. The business will feature a fenced shipping and receiving area, security office, manager and employee offices, and several storage area, including a mezzanine (Attachment 4 Exhibit B).

The site will feature enhanced security to ensure safety in and around the site. A 24-hour security system will be installed with security guards on-site during regular business hours. High-definition cameras are to be located around the exterior of the project site. These cameras will be monitored 24-hours a day and will cover all of the project site. Interior security will feature cameras, automatic locking doors, and interior fencing to restrict access.

- A. Development Agreement – Pursuant to Riverbank Ordinance No. 2017-007, the Applicant has negotiated with the Riverbank City Council to establish a Development Agreement for the project.
- B. Conditional Use Permit – Also pursuant to Riverbank Ordinance No. 2017-007, the Applicant requested a Conditional Use Permit to allow for a cannabis distribution (wholesale to wholesale) located at 5729 Terminal Avenue.

PLANNING COMMISSION

On April 16, 2019, the Planning Commission held a duly noticed public hearing to consider the proposed Project. Four (4) Planning Commissioners and one (1) Alternate Commissioner were present at this meeting, including Chairmen Dinan, Commissioner Ball, Commissioner Stewart, Commissioner Fenrich, and Alternate Commissioner Steve Link.

On April 15, 2019, the City received an email from residents Laurie and Cody Avery, who also spoke at the meeting in opposition of the Project. A second citizen, Evelyn Halbert spoke of some of the same concerns. They are concerned that the location is too close to residences and a bus stop (the children of the neighborhood board across the street at 7:20 am weekday mornings), an increase in traffic, an increase in crime, objectionable odors, and a decrease in property values. Similar concerns were brought up by the public during the hearings for Flavors, a dispensary. Staff monitoring of Flavors the past twelve

(12) months has shown there has been a decrease in crime in the area, no objectionable odors have been reported, and online property values appear stable. In addition, much of the traffic congestion at Oakdale Road and Patterson Road is attributed to drivers making illegal left turns into the McDonalds parking lot from northbound Oakdale Road. Staff has not received any complaints concerning a nearby school bus stop on Oakdale Road.

The applicant proposes transporting bulk cannabis and cannabis products from a State licensed cultivation or manufacturing facility to their location, acquiring laboratory testing for the State, packaging the materials, and then labeling the products (with State approved labels) before distributing them wholesale to State licensed dispensaries. There will be no manufacturing of products or storefront sales on site. The products are expected to arrive and leave the rear (south) of the facility in 5-6 secure sprinter vans per week that are owned by the applicant. The public driving by will only see employee vehicles in the parking lot of an existing industrial building that is without business signage.

Conditions of Approval include a requirement for LiveScans (background checks), the hours of construction for the Tenant Improvements, the regulation of exterior lighting, and a hold harmless clause among other legal requirements.

ENVIRONMENTAL DETERMINATION

This Development Agreement and Conditional Use Permit were reviewed pursuant to the California Environmental Quality Act (CEQA). Per Section 15061 (b-3), the proposed project is not subject to CEQA as CEQA only applies to projects which have the potential for causing a significant effect on the environment.

FISCAL IMPACT

The project would provide Canna+Rise with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. Canna+Rise seeks to offset these impacts through a monthly payment classified as a “Public Benefit” amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the project on the community.

The major elements of the development agreement are summarized below:

- The term of the agreement is five (5) years.
- Canna+Rise proposes the operation of a cannabis distribution facility (wholesale to wholesale).
- Canna+Rise plans operating on approximately six thousand (6,000) square feet of space for the distribution facility.
- The project would provide Canna+Rise with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. Canna+Rise seeks to offset these impacts through a monthly payment classified as a “Public Benefit” amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the project on the community.

Canna+Rise will pay to the City a Public Benefit of:

- o \$6,000 or four percent (4%) of gross receipts (per month to be paid quarterly from operations every quarter starting the second quarter), whichever is greater, each for the first twelve (12) months following the issuance of a Conditional Use Permit;
- o \$10,000 or five percent (5%) of gross receipts from operations every quarter, whichever is higher, for months thirteen (13) through twenty-four (24) following the issuance of a Conditional Use Permit; and
- o \$15,000 or five percent (5%) of gross receipts from operations, whichever is higher, for each month thereafter through the end of the term of the development agreement.

STRATEGIC GOALS

The City of Riverbank Strategic Planning Session is a plan and set of goals that Riverbank will work towards for the next three (3) years. The completion of development agreements for cannabis activities is a specific objective. It is consistent with the established General Plan goal to Achieve and Maintain Financial Stability and Sustainability as part of the City's Vision "To be recognized as a premier community where individuals, families and businesses thrive in a safe and beautiful environment."

PUBLIC NOTICE

On April 30, 2019, pursuant to Government Code sections 65867, 65090, and 65091, the City mailed notice of the hearing to properties within 300 feet of the project location. On May 1, 2019, the City published notice of the hearing in the Riverbank News and posted notice at City Hall North, the Community Center, and emailed it to the Library.

RECOMMENDATION

Staff recommends approval of the Development Agreement based upon the following findings:

1. The proposed project is consistent with the Riverbank Municipal Code.
2. The proposed project is exempt from CEQA as CEQA only applies to projects that have the potential to harm the environment, and,
3. The proposed project is consistent with the 2005-2025 General Plan.

ATTACHMENTS

1. Proposed Ordinance 2019-XXX to adopt the Development Agreement
2. Proposed Development Agreement (Exhibits A-G included)
3. Planning Commission Resolution 2019-009 (DA recommendation)
4. Planning Commission Resolution 2019-010 (CUP approval)
 - Exhibit A – Site Map
 - Exhibit B – Floor Plan

CITY OF RIVERBANK

ORDINANCE NO. 2019-XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF RIVERBANK AND E & J DISTRIBUTORS LLC, A CALIFORNIA
LIMITED LIABILITY CORPORATION DOING BUSINESS AS CANNA+RISE**

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.*, which authorizes the City of Riverbank ("City") and an individual with an interest in real property to enter a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, E & J Distributors LLC., a California limited liability corporation doing business as Canna+Rise ("Canna+Rise") submitted an application to the City for

consideration of a development agreement to operate a cannabis distribution facility (the "Project") and

WHEREAS, Canna+Rise proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, Canna+Rise has a lease agreement to occupy that certain real property located at 5729 Terminal Avenue in the City of Riverbank, Assessor's Parcel Number 075-020-016 on which Canna+Rise intends to develop the Project; and

WHEREAS, City and Canna+Rise seek to enter a development agreement for the Project (the "Development Agreement") pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 16, 2019, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, on May 14, 2019, and May 28, 2019, the City Council held duly noticed public hearings to consider the Development Agreement; and

WHEREAS, the City Council of the City, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank.
2. In accordance with Government Code section 65864 *et seq.*, the City Council finds that the Development Agreement:
 - a. Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan; and

- b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and
- c. Will not adversely affect the orderly development of property or the preservation of property values; and
- d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and
- e. Contains a legal description of the property.

NOW, THEREFORE, THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Riverbank approves a Development Agreement by and between E & J Distributors LLC., a California limited liability corporation doing business as Canna+Rise, and the City of Riverbank for the development of the Project, and instructs the City Manager to execute the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

SECTION 2. The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement; or as otherwise required pursuant to the terms of the Development Agreement.

SECTION 3. Notice of the public hearing on the proposed Development Agreement was published in the Riverbank News, a newspaper of general circulation; and notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

SECTION 4. Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*). The Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility.

SECTION 5. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional

or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Riverbank hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6. 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 May 14, 2019. 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 __, 2015; motioned by Councilmember _____, seconded by Councilmember _____, moved said ordinance by a City Council roll call vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

Annabelle H. Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of ____, 2019, by and between the **CITY OF RIVERBANK**, a California municipal corporation ("City") and **E & J DISTRIBUTORS LLC.**, a California limited liability company doing business as **CANNA+RISE** ("Developer"). City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

- A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use real property to operate a Cannabis distribution business, in strict accordance with California Cannabis Laws, and the Municipal Code of the City of Riverbank, as each may be amended from time to time (the "Project").
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 ("City Development Agreement Resolution") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. The City Development Agreement Resolution requires a written application with specified data to be submitted to the City for consideration of any development agreement.
- H. Developer submitted an application to the City for consideration of a development agreement for the Project.
- I. Developer leases that certain real property located at 5729 Terminal Avenue in the City of Riverbank, County of Stanislaus, State of California, Assessor's Parcel Number 075-020-016, of which Developer intends to improve approximately six thousand (6,000) square feet of space (the "Site"), more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**.
- J. Government Code section 65865 requires that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- K. Developer has leased the Site for the purpose of operating the Project. A copy of the lease is attached hereto as **Exhibit C**, within satisfaction of the requirement of Riverbank Municipal Code Chapter 120. The legal owner of the Site is aware of, and agrees to, the operation of the Project upon the Site.
- L. On November 20, 2017, the Riverbank Planning Commission ("Planning Commission") adopted Resolution No. 2017-025 recommending the Riverbank City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.

- M. On December 12, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- N. Government Code section 65867.5 and the City Development Agreement Resolution requires the Planning Commission hold a public hearing to review an application for a development agreement.
- O. On April 16, 2019, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.
- P. On April 16, 2019, the Planning Commission recommended the City Council adopt Ordinance No. 2019-____, which would allow Developer to operate the Project at the Site.
- Q. On May 14, 2019, pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2019-____.
- R. This Agreement is entered into pursuant to the Development Agreement Statute and the City Development Agreement Resolution.
- S. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) create a physical environment that is consistent with and complements City's goals and visions; (iii) protect natural resources from adverse impacts; (iv) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; and (vi) reduce the economic risk of development of the Site to both City and Developer.
- T. The Parties intend through this Agreement to allow Developer to develop and operate the Project in accordance with the terms of this Agreement.
- U. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with Riverbank Municipal Code for the approval of this Agreement.

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

AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following "Exhibits" are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description
Exhibit B	Site Map
Exhibit C	Site Lease
Exhibit D	Notice of Non-performance Penalty
Exhibit E	Indemnification Agreement
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) "Additional Insureds" has the meaning set forth in Section 6.1.
- (b) "Additional Licenses" has the meaning set forth in Section 2.4.
- (c) "Adult-use cannabis" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.
- (d) "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) "Application" means the cannabis business application for a development agreement required by Riverbank Municipal Code Chapter 120 and Section 4 of the City Development Agreement Resolution.

(f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.

(g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(h) “Authorized License” has the meaning set forth in Section 2.3.

(i) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(j) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Riverbank Municipal Code.

(k) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable laws that may be enacted or approved.

(l) “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.

(m) “Cannabis Business Pilot Program” means the cannabis business program established and authorized by Riverbank Municipal Code chapter 120.

(n) “Cannabis Dispensary” means a business that engages in Commercial Cannabis Activity related to the retail sale of cannabis pursuant to a Type 10 license.

(o) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(p) “City” means the City of Riverbank, a municipal corporation having general police powers.

(q) “City Council” means the City of Riverbank City Council, as described in Riverbank Municipal Code Section 10.05.

(r) “City Development Agreement Resolution” has the meaning set forth in Recital F.

(s) “City Manager” means the City Manager of the City of Riverbank, or his or her designee, as described in Riverbank Municipal Code Section 31.03.

(t) “Charged Party” has the meaning set forth in Section 8.1.

(u) “Charging Party” has the meaning set forth in Section 8.1.

(v) “Commercial Cannabis Activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of cannabis or a cannabis product that requires a state license pursuant to MAUCRSA.

(w) “Conditional Use Permit” means a conditional use permit issued by City pursuant to the Riverbank Municipal Code.

(x) “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(y) “Developer” means E & J Distributors, LLC. doing business as Canna+Rise. Developer also has the meaning set forth in Section 6.1.

(z) “Development Agreement Statute” has the meaning set forth in Recital C.

(aa) “Exhibits” has the meaning set forth in Section 1.3.

(bb) “Gross Receipts from Operations” means total revenue actually received or receivable from operation of the Project, including: all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in “gross receipts” shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;

2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payment required under Section 4.2, all sales of cannabis products through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(cc) "Indemnification Agreement" has the meaning set forth in Section 6.3.

(dd) "Major Amendment" means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ee) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(ff) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*, as may be amended from time to time.

(gg) "MCRSA" has the meaning set forth in Recital A.

(hh) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

(ii) "Minor Amendment" means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement and any amendment described as minor herein. A Minor Amendment also has the meaning set forth in Section 2.4.

(jj) "Mortgage" has the meaning set forth in Article 7.

(kk) "Non-Performance Penalty" has the meaning set forth in Section 4.3.

(ll) "Notice of Non-Performance Penalty" has the meaning set forth in Section 4.3.

(mm) "Notice of Termination" has the meaning set forth in Section 9.1.

(nn) "Planning Commission" means the City of Riverbank Planning Commission as established by Riverbank Municipal Code section 32.35.

(oo) “Processing Costs” has the meaning set forth in Section 1.11.

(pp) “Project” has the meaning set forth in Recital D.

(qq) “Project Litigation” has the meaning set forth in Section 10.7.

(rr) “Public Benefit” has the meaning set forth in Section 4.2.

(ss) “Public Benefit Amount” has the meaning set forth in Section 4.2.

(tt) “Site” has the meaning set forth in Recital G.

(uu) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.

(vv) “State Cannabis Regulations” means the regulations promulgated by the State Licensing Authorities pursuant to the California Cannabis Laws.

(ww) “State Taxing Authority” has the meaning set forth in Section 4.2.

(xx) “Subsequent City Approvals” has the meaning set forth in Section 3.1.

(yy) “Term” has the meaning set forth in Section 1.7.

(zz) “Type 11 license” or “Distribution” means a state license issued by the Bureau pursuant to the California Cannabis Laws for the distribution of cannabis and cannabis products (in this case, wholesale to wholesale).

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent of Developer or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the “Effective Date”).

Section 1.7. Term. The “Term” of this Agreement is five (5) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is required, directed, or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for no longer than one (1) year

(the “Tolling Period”). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling period exceeds one (1) calendar year to comply with federal or state law.

(b) Developer’s Tolling or Termination. Developer may not temporarily halt or terminate this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

Section 1.8. Priority of Enactment. In the event of a conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (c) Conditional Use Permit, and (d) Subsequent City Approvals.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Ten Thousand Dollars (\$10,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, “Processing Costs”), and the first installment of the Public Benefit. The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) Apportionment of Processing Costs. If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may terminate this Agreement.

(b) **Accounting.** Developer may request, and City shall issue within a reasonable time, an accounting and written acknowledgement of Processing Costs paid to City.

ARTICLE 2 DEVELOPMENT OF PROPERTY

Section 2.1. Vested Right of Developer. During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer shall have the vested right to develop and use the Project consistent with this Agreement, the Conditional Use Permit, and Subsequent City Approvals.

Section 2.3. Permitted Uses and Development Standards. Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license type (the "Authorized License"):

Type 11	Distributor
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Developer shall be permitted to use the Site consistent with the Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Developer shall begin operations of the Cannabis Business Project under the Authorized License within six (6) months of the issuance of a Conditional Use Permit or adoption of the operative ordinance approving this Agreement, whichever is later, unless Developer is prevented from doing so due to any event or circumstance set forth in section 8.6 of this Agreement. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, Developer shall immediately cease Commercial Cannabis Activity on the Site. Developer shall also, within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer may request to add to the Authorized License additional license types once that license is applied for or obtained from the appropriate State Licensing Authority (the "Additional Licenses").

Section 2.5. Conditional Use Permit. Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain a Conditional Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Riverbank Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Riverbank Municipal Code or issue rules or administrative guidelines associated with implementation of the Cannabis Business Pilot Program or Developer's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. The exercise of this discretion is not prohibited or limited in any way by this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

(a) Contemplated City Rules and Guidelines. City anticipates issuing additional rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. City may establish requirements that are identical to or place a higher standard of care as existing provisions of the California Cannabis Laws, State Cannabis Regulations, or any amendments thereto. City reserves the right to adopt additional categories of rules or guidelines that are not listed in this section as part of the Cannabis Business Pilot Program. Developer shall comply with any and all administrative guidelines adopted by City that govern or pertain to the Project.

Section 2.7. Initiatives and Referenda. If any City ordinance, rule or regulation, or addition to the Riverbank Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such Riverbank Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.8. Regulation by Other Government Entities. Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations

that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.9. Developer's Right to Rebuild. Developer may renovate portions of the Site any time within the Term of this Agreement consistent with the Riverbank Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.10. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

Section 2.11. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Riverbank Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Cannabis Business Pilot Program. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Riverbank Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.12. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably

possible to so address such health and safety emergency, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City shall permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement, the Riverbank Municipal Code, and any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Riverbank Municipal Code, and any applicable state law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer. Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4

PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and

monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a “Ministerial Fee” and collectively, the “Ministerial Fees”).

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the “Public Benefit”). In consideration of the foregoing, Developer shall remit to City as follows:

Effective Date	No Public Benefit Due.
First (1 st) Business Day of 1 st Month of the Second Quarter Following Issuance of the Conditional Use Permit.	\$6,000 or 4% of Gross Receipts per month, paid quarterly, whichever is greater (“ <u>Tier 1 Amount</u> ”).
First (1 st) Business Day of 1 st Month of the Quarter for months Thirteen (13) through Twenty-four (24) Following Issuance of the Conditional Use Permit.	\$10,000 or 5% of Gross Receipts per month, paid quarterly, whichever is greater (“ <u>Tier 2 Amount</u> ”).
1 st Business Day of the 1 st Month of the Quarter for Month Twenty-five (25) Following Issuance of the Conditional Use Permit Through the End of the Term.	\$15,000 or 5% of Gross Receipts per month, paid quarterly, whichever is greater (“ <u>Tier 3 Amount</u> ”).

(b) Collectively, these amounts shall be known as the “Public Benefit Amount”.

(c) Developer shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee Administration, or either’s successor agency (the “State Taxing Authority”) for sales tax purposes showing the true and correct amount of Gross Receipts from Operations of the Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

Section 4.3. Reporting. Developer shall provide City with copies of any reports provided to a state cannabis licensing agency within forty-five (45) calendar days of that submission.

Any failure or refusal of Developer to provide any statement or report to City, the State Taxing Authority, or any other State Licensing Authority as required within the time required, or to pay such sums due hereunder when the same are due and payable in accordance with the provisions of this Agreement, may constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit.

Section 4.4. Records. Developer shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the applicable State Cannabis Regulations. All records required by this Section shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee.

Section 4.5. Penalty. Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Penalty." A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer a "Notice of Non-Performance Penalty," attached hereto as **Exhibit D**. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

Section 4.6. Interest on Unpaid Non-Performance Penalty. If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) calendar days following delivery of the Notice of Non-performance Penalty.

Section 4.7. Protections from City Tax. Notwithstanding Section 4.2, for the Term of this Agreement, Developer shall be exempt from any City tax, including a business license tax, on commercial cannabis businesses. Notwithstanding the foregoing, Developer and the Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Stanislaus, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event the Public Benefit Amount is invalidated for any reason, Developer shall be subject to any applicable tax on commercial cannabis businesses from the start date of such invalidation through the remaining Term of this Agreement.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods and the existing level of service of City infrastructure and services to accommodate for the Project.

ARTICLE 6 INSURANCE AND INDEMNITY

Section 6.1. Insurance. Developer shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, "Developer" for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) General Liability Insurance. Developer shall maintain commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) Automotive Liability Insurance. Developer shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) Workers' Compensation Insurance. Developer shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Developer's employees employed at or on the Project, and in the case any of the work is subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, its agents, employees, contractors, or subcontractors to take out or

maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals. Developer shall execute the indemnification agreement ("Indemnification Agreement") attached hereto as **Exhibit E**.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer and, therefore, Developer hereby waive all claims for damages against City for breach of this Agreement. Developer further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed. Developer further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waive all claims for damages against City in this regard.

ARTICLE 7 MORTGAGEE PROTECTION

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Site or Project, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than ten (10) calendar days written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such ten (10) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) After expiration of the ten (10) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within ten (10) calendar days, the

Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 within thirty (30) calendar days from the expiration of the ten (10) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in ten (10) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer is in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer until the default is cured, or the Agreement is terminated.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable. The reasonable cost for

City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

Section 8.3. Estoppel Certificates.

(a) City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Developer, Developer's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(b) At Developer's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 9.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

Section 8.7. Appeals. Developer may appeal any adverse decision or action of City pursuant to Riverbank Municipal Chapter 99.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the “Notice of Termination” attached hereto as **Exhibit F**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer’s Obligations. Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City’s Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. Developer shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager. This assignment prohibition applies to the corporate and business entities of Developer that are a Party to this Agreement. Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City and Developer shall execute an “Assignment and Assumption Agreement” in the form attached hereto as **Exhibit G**.

Section 10.2. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law,

including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer 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 (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) 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
6707 3rd Street
Riverbank, California 95367
Attention: City Manager

and

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Developer:

E & J Distributors LLC, DBA Canna+Rise
4236 Geer Road
Hughson, CA 95326
Attention: Julian Farhoud

If to Developer:

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Sacramento, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the award may be entered in any court having jurisdiction thereof.

Section 10.5. Invalidity of Agreement / Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer agree that Developer may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the

aforementioned, City may request, and Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer operate the Project in violation of the Agreement, or State Cannabis Regulations, as many be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Stanislaus.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) Completeness of Instrument. This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) Captions. The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) Number and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations, partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) 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 state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no 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.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions 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.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

“CITY”

Date: May 14, 2019

CITY OF RIVERBANK, CA
a California Municipal Corporation

By: _____
Sean Scully
City Manager

Attest:

By: _____
Annabelle Aguilar
City Clerk

Approved to as Form

By: _____
Tom Hallinan
City Attorney

“DEVELOPER”

Date: May 14, 2019

E & J DISTRIBUTORS. DBA
CANNA+RISE, a California limited liability
corporation

By: _____

Its: _____

California All-Purpose 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 _____)

On _____, before me _____, a 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 California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose 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 _____)

On _____, before me _____, a 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 California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

Exhibit A

LEGAL DESCRIPTION

5729 Terminal Ave., Riverbank

Parcel 2 as per the Official Map filed October 20, 1989, in Book 42 of Parcel Maps.

APN: 075-020-016

Site Plan



Exhibit C

Lease Agreement

PROPOSED

Exhibit D

Notice of Non-Performance Penalty

DATE: _____, 20__

PARTIES: CITY OF RIVERBANK, a California municipal corporation
6707 3rd Street
Riverbank, California 95367

E & J DISTRIBUTORS LLC DBA CANNA+RISE, a California
limited liability corporation

THIS NOTICE OF NON-PERFORMANCE PENALTY ("Penalty Notice") is being executed by the City of Riverbank, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2019, City recorded a development agreement between the City and E & J Distributors LLC. DBA Canna+Rise ("Developer"), dated May 14, 2019 (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Section 4.2 of the Development Agreement, Developer agrees to pay to City a Public Benefit on the first business day of each quarter following the second quarter during the term of the Development Agreement.
- C. On _____, 20__, the Public Benefit was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts ("Penalty"). As of _____, 20__, the past due amount equals \$_____. The Penalty owed by Developer equals \$_____ ("Penalty Amount").
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice ("Penalty Due Date").

- F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then in addition to the Penalty Amount specified in subdivision (E), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum ("Penalty Interest Payment"), computed from the Penalty Due Date specified in subdivision (F). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of _____, 20____, the Penalty Interest Payment amount equals \$_____.
- G. Nothing contained herein shall constitute a waiver of City's future claims for the Public Benefit, Penalty, or interest on the Penalty.

NOW, THEREFORE, City hereby provides Developer the Penalty Notice required by Section 4.5 of the Development Agreement. This Penalty Notice shall be effective upon notice pursuant to Section 10.3 of the Development Agreement.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit E

INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING (“Agreement”) is made and entered into on this ____ day of _____ 2019, (“Effective Date”) by and between the City of Riverbank, a California municipal corporation (“City”) and E & J Distributors LLC, DBA Canna+Rise (“Applicant”). City and Applicant may be referred to herein individually as a “Party” or collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

A. 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 Senate Bill 420, entitled the Medical Marijuana Program (“MMP”), which authorizes qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.

B. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

C. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”). AUMA legalizes the cultivation, commercial sale, and possession of recreational cannabis for adults age 21 and older.

D. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction.

E. Riverbank Municipal Code (“R.M.C.”) chapter 120 authorizes cannabis businesses to operate within the City under specified restrictions pursuant to a Cannabis Pilot Program.

F. Applicant intends to improve, develop, and use real property to operate a cannabis dispensary business within the City (the “Project”) in strict compliance with MAUCRSA and R.M.C. chapter 120. Applicant must obtain certain land use entitlements including a Development Agreement and a conditional use permit (“Land Use Entitlements”) prior to initiating the Project.

G. Applicant has an agreement to purchase that certain real property located in the City of Riverbank, identified as Stanislaus County Assessor’s Parcel Number 075-020-016 (the “Property”), shown on **Exhibit A** attached hereto (“Property Description”).

H. As a condition of approval of the Land Use Entitlements, City has required Applicant to enter into this Agreement.

I. It is in the public interest for City and Applicant to enter into this Agreement, as Applicant will benefit from City’s processing of the Project.

J. Applicant desires to enter into this Agreement to fulfill a condition of approval of the Project, which is a prerequisite for construction of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and agreements set forth below, the Parties agree as follows:

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 19 of this Agreement, Sections 1 through 19 shall prevail.

Section 2. Applicant’s Indemnification Obligations.

2.1. Indemnification for Land Use Entitlements. To the fullest extent permitted by law, Applicant shall indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, and volunteers (collectively, “City’s Agents”) from any and all liability arising out of a claim, action, or proceeding against the City, or City’s Agents, to attack, set aside, void, or annul, an approval concerning the Land Use Entitlements by reason of the action or inaction of City, or City’s Agents. Applicant’s duty to indemnify and hold harmless shall not extend to any claim, action or proceeding arising from the gross negligence or willful misconduct of City, or City’s Agents.

Applicant’s obligations under this Agreement to indemnify City shall apply to any claim, lawsuit or challenge against City brought against the Project, specifically including, but not limited to, any legal challenge based on the California Environmental Quality Act, codified in California Public Resources Code section 21000 et seq.; actions or proceedings brought to challenge the validity of environmental documents prepared in conjunction with the approval of the Project or Land Use

Entitlements, or the requirements of any other federal, state, or local laws, including, but not limited to, general plan, specific plan, and zoning requirements.

2.2. Tender of Defense. Upon receiving notice of a claim and pursuant to Article 6 of the Land Use Entitlements, Applicant shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. Regardless of whether Applicant chooses to defend City pursuant to Section 6.4 of the Land Use Entitlements, City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter.

2.3. Deposit for Costs. Applicant shall make a refundable deposit to the City within thirty (30) days of written notification from the City ("Cost Deposit"), to cover the estimated fees and costs associated with the City's defense of any claim, action or proceeding. Applicant shall make any and all additional payments to City to replenish the Cost Deposit within thirty (30) days of written notice from City.

2.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of the Land Use Entitlements, which shall entitle City to all remedies available under law including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of the Land Use Entitlements. Applicant's failure to indemnify City shall be a waiver by Applicant of any right to proceed with the Project, or any portion thereof, and a waiver of Applicant's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of the Land Use Entitlements, or City's failure to defend any claim, action or proceeding based on Applicant's failure to indemnify City.

2.5. Satisfaction of Judgment. With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses or liabilities which Applicant has indemnified City against, Applicant shall pay and satisfy any judgment, award, settlement or decree that may be rendered or agreed against City and City's Agents arising out of any final, non-appealable judicial or administrative action.

2.6. Payment of Costs and Fees. Applicant's obligations under this Agreement to defend and indemnify City shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against City, or all settlement costs which arise out of City's processing or approval of the Project.

2.7. Continuing Obligation. Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of Developmentship of the real property upon which the Project is located (or any interest therein). However, Applicant may be released from such obligations if Applicant obtains City's prior written consent to such transfer, which consent shall not be unreasonably withheld.

Section 3. City's Obligations. City shall notify Applicant of any claim, action or proceeding within ten (10) business days of receiving service of any claim, action or proceeding. If City fails to notify Applicant of any claim, action, or proceeding, Applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless City. City shall have and retain, in its sole discretion, the right to not participate in the defense of any claim, action, or proceeding. At its sole discretion, the City may participate at its own expense in the defense, but such participation shall not relieve Applicant of any obligation imposed by this Agreement.

Section 4. Notice. Any notice or communication required hereunder between City and Applicant 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
6707 3rd Street
Riverbank, California 95367
Attention: City Clerk

With copy to City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attn: City Manager
sscully@riverbank.org

and Churchwell White, LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

doug@churchwellwhite.com

If to Applicant: E & J Distributors LLC, DBA Canna+Rise
4236 Geer Road
Hughson, CA 95326
Attention: Julian Farhoud

and

Section 5. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by the City and Applicant.

Section 6. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the action 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.

Section 7. Agreement is Voluntary. The Parties acknowledge that they have entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement. This Agreement incorporates the entire understanding of the Parties and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its contents and legal effect.

Section 8. Time of Essence. Time is of the essence for this Agreement, and each section contained within this Agreement is made and declared to be a material, necessary, and essential part of this Agreement.

Section 9. 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.

Section 10. 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.

Section 11. Noninterference. No Party will do anything to interfere with or inhibit the ability of the other to comply with their respective obligations under the terms of this Agreement._

Section 12. Ambiguities. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

Section 13. 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.

Section 14. 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. The Parties will act in good faith to carry out the intent of this Agreement._

Section 15. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 16. Venue. Venue for all legal proceedings shall be in the Superior Court of California, in and for the County of Stanislaus.

Section 17. 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.

Section 18. 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._

Section 19. 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.

[SIGNATURE PAGE TO FOLLOW]

PROPOSED

IN WITNESS THEREOF, the Parties have executed this Agreement on the day, month and year first above written.

APPLICANT

E & J Distributors LLC. DBA Canna+Rise, a
California limited liability corporation

By: _____

Name: _____

Its: _____

Date: _____

CITY

City of Riverbank, a California municipal
corporation

By: _____

Sean Scully, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____

Douglas L. White, Deputy City Attorney

Exhibit F

Notice of Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

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

NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT

DATE: _____, 20____

PARTIES: CITY OF RIVERBANK, a California municipal corporation
6707 3rd Street
Riverbank, California 95367

E & J DISTRIBUTORS LLC., DBA CANNA+RISE, a California limited liability
corporation

THIS NOTICE OF TERMINATION AND RELEASE (the "Release") is being executed by the City of Riverbank, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2019, City recorded a development agreement between the City and E & J Distributors LLC., DBA Canna+Rise ("Developer"), dated _____, 2019 (the "Development Agreement"), relating to the development and operation of a cannabis distribution facility.
- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires five (5) years from _____, 2019, on _____, 2024.

- C. Pursuant to Section 9.1 of the Development Agreement, once terminated, the Development Agreement has no further force or effect, unless otherwise set forth in the Development Agreement.

NOW, THEREFORE, City hereby terminates, cancels, and otherwise releases Developer and Developer's heirs, executives, administrators, successors, and assigns from their obligations in the Development Agreement on this ____ (day) of ____ (month), 20__, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit G

Assignment and Assumption Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

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

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20____, by and between E & J Distributors LLC., DBA Canna+Rise ("Developer") and _____ ("Assignee"). Developer may be referred to herein as ("Assignor").

RECITALS

A. On _____, 2019, Assignor and the City of Riverbank (the "City") entered into that certain agreement entitled "Development Agreement by and between the City of Riverbank, a California municipal corporation and E & J Distributors LLC., DBA Canna+Rise relating to the improvement, development, and use of real property to operate a cannabis distribution facility (the "Development Agreement")", originally recorded upon Stanislaus County Assessor's Parcel Number 075-020-016 (the "Property").

B. Section 10.1 of the Development Agreement prohibits the sale, assignment, or transfer by Assignor of any portion of Assignor's interests, rights, or titles described in that section of the Development Agreement ("Assignable Rights") to a third party without prior written approval by the City Manager of the City of Riverbank (the "City Manager").

C. Assignor intends to assign, and Assignee intends to assume, the Assignable Rights under the Development Agreement.

D. In accordance with the terms of the Development Agreement, Assignor has provided to City Manager a written request for consent to assignment. City Manager has received the information he or she deems appropriate and consulted with the City Attorney for the purpose of determining that Assignee is a qualified applicant for purposes of the foregoing terms of the Development Agreement. This Agreement is intended to meet the requirements Section 10.1 of the Development Agreement for an Assignment and Assumption Agreement, and is executed with the consent of City Manager as contemplated in the Development Agreement.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. The foregoing Recitals are true and incorporated herein by this reference as though set forth in full.
2. Assignor hereby assigns to Assignee all of the Assignable Rights of Assignor under the Development Agreement.
3. Assignee hereby assumes all of the burdens and obligations of Assignor under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Property and Assignable Rights. It is the express intention of Assignor and Assignee that, upon the execution of this Agreement, Assignee shall become substituted for Assignor as the “Developer” under the Development Agreement.
4. This Agreement shall take effect and be binding only upon City Manager’s consent to and approval of the Agreement.
5. Assignee represents and warrants that it has reviewed and is familiar with the terms and conditions of the Development Agreement. Assignee acknowledges that the Assignable Rights are as set forth in Section 10.1 of the Development Agreement, and the duties of Assignor thereunder and the duties of Assignee hereunder, as between Assignee and the City, shall be without reference to any underlying agreements or understandings that may exist between Assignee, Assignor, or any other party with respect to the subject matter hereof, and that the City is not party to such other agreements.
6. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[Signatures on the following page]

ASSIGNOR / DEVELOPER:

E & J Distributors LLC., DBA Canna+Rise, a
California limited liability company

Its: _____

ASSIGNEE

_____, a
California _____

By: _____

AGREED TO AND ACCEPTED:

CITY OF RIVERBANK
a California municipal corporation

City Manager

**CITY OF RIVERBANK
RESOLUTION NO. 2019-009**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK,
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
RIVERBANK AND E & J DISTRIBUTORS LLC., A CALIFORNIA LIMITED LIABILITY
CORPORATION DOING BUSINESS AS CANNA+RISE**

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.*, which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, E & J Distributors LLC., a California limited liability company doing business as Canna+Rise (collectively "Canna+Rise") submitted an application to the City for consideration of a development agreement to operate a cannabis distribution facility, wholesale to wholesale (the "Project"); and

WHEREAS, Canna+Rise proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, Canna+Rise has a lease agreement to occupy that certain real property located at 5729 Terminal Avenue in the City of Riverbank, Assessor's Parcel Number 075-020-016 on which Canna+Rise intends to develop the Project; and

WHEREAS, City and Canna+Rise seek to enter a development agreement for the Project (the "Development Agreement") pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 16, 2019, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, the Planning Commission finds that an ordinance approving the Development Agreement will allow the City to adequately regulate and address all impacts of the Project in the City in accordance with state law; and

WHEREAS, the Planning Commission finds that the ordinance is in the best interest of the health, welfare, and safety of the public.

NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF RIVERBANK HEREBY RECOMMENDS CITY COUNCIL APPROVAL OF ORDINANCE NO. 2019-XXX, APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF RIVERBANK AND E & J LLC., A CALIFORNIA LIMITED LIABILITY COMPANY DOING BUSINESS AS CANNA+RISE, ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY THIS REFERENCE.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 16th day of April, 2019; motioned by Commissioner Ball, seconded by Commissioner Stewart, and upon roll call was carried by the following Planning Commission vote of 5-0

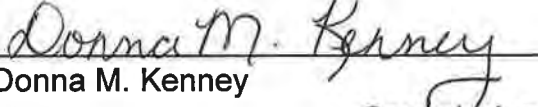
AYES: Commissioner's: Dinan, Ball, Stewart, Fenrich and Link

NAYS: None

ABSENT: Hughes

ABSTAIN: None

Attest:


Donna M. Kenney
Secretary to the Planning Commission

Approved:


John Dinan
Chairperson

**City of Riverbank
Planning Commission
Resolution No. 2019-010**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK
APPROVING THE REQUEST OF E & J DISTRIBUTORS LLC., FOR A
CONDITIONAL USE PERMIT TO OPERATE A CANNABIS DISTRIBUTION FACILITY
WITHIN THE LIGHT INDUSTRIAL (M-1) ZONING DISTRICT LOCATED AT
5729 TERMINAL AVENUE, APN: 075-020-016**

WHEREAS, the Community Development Department of the City of Riverbank has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Riverbank Municipal Code, Section 153.360-153.374; and

WHEREAS, the project proponent is E & J Distributors LLC.; and

WHEREAS, the applicant is requesting to operate a cannabis distribution facility (wholesale to wholesale) within the Light Industrial (M-1) zoning district; and

WHEREAS, the property has a general plan designation of Industrial / Business Park (I/BP); and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

WHEREAS, the proposed Use Permit is consistent with all applicable general and specific plans; and

WHEREAS, the proposed Conditional Use Permit with the conditions of approval is in conformity with both the intent and provisions of the Zoning Ordinance, RMC 153.216 of the City of Riverbank Code of Ordinances; and

WHEREAS, the project was found to be categorically exempt according to the California Environmental Quality Act, Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment; and

WHEREAS, the request of E & J Distributors LLC. for the Conditional Use Permit is hereby granted and approved, subject to the following conditions:

- 1) This approval is dependent upon and limited to the proposals and plans contained, supporting documents submitted, presentations made to staff, Planning Commission and/or City Council as affirmed to by the applicant. Any variation from these plans, proposals, supporting documents or presentations is subject to review and approval by staff prior to implementation.

- 2) The applicant shall secure and comply with all applicable state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- 3) The applicant shall comply with all regulations and code requirements of the Community Development Director, City Engineer, Building Official, Stanislaus Consolidated Fire Protection District, the Police Chief, State of California, and any other agencies requiring review of the project. If required, these agencies shall be supplied copies of the final maps, site plans, public improvement plans, grading plans and building plans.
- 4) This use permit is for the wholesale distribution of cannabis and cannabis products only. Retail sales (storefront) are expressly prohibited.
- 5) All conditions of approval for this project shall be written by the project developer on all building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all construction plans kept on the project site. It is the responsibility of the building developer to ensure that the project contractor is aware of, and abides by, all conditions of approval. Prior approval from the Community Development Director must be received before any changes are constituted in site design, building design, building colors or materials, etc.
- 6) Site plan shall be in substantial conformance to the existing site plan as submitted. Any proposed changes to the exterior of the building or site shall be reviewed by the Community Development Director, who will determine if Architecture and Site Plan Review is required. If required, plans shall be prepared, wet signed and sealed by a civil engineer, land surveyor, or architect registered in the State of California and licensed to prepare site and/or building plans.
- 7) Should the project be found, at any time, not to be in compliance with any of the Conditions of Approval, if the site receives numerous Health and/or Safety violations, or should the applicant construct or operate this development in any way other than specified in the Application or Supporting Documents or presentations to staff, Planning Commission or City Council, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to be violated.
- 8) All business partners and employees shall obtain background checks (Live Scans) before operations may commence.

- 9) Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the applicant a copy of this signed resolution and an approved building permit.
- 10) The hours of construction, including equipment warm-up, shall be limited to 7:00 a.m. to 6:30 p.m. on weekdays and 8:00 a.m. to 5:00 p.m. on weekends and legal holidays.
- 11) All new construction, including tenant improvements, requires building permits in accordance with all applicable building and fire codes.
- 12) The applicant shall defend, indemnify and hold harmless the City of Riverbank, its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval, or any aspect of the City's consideration of applicant's project. The applicant recognizes and agrees that applicant's voluntary commitment to meet the obligations described in this condition is an integral factor in the City's approval of this project. The intent of this condition is to require the applicant to bear the cost of any and all litigation instituted to overturn or in any way modify the City's approval of this project. Such costs include without limitation, any award of attorney's fees and costs to a prevailing plaintiff or petitioner.
- 13) This approval may be recalled to the Planning Commission for review at any time due to complaints regarding lack of compliance with conditions of approval, traffic congestion, noise generation, or other adverse operating characteristics. At such time, the Commission may revoke the approval or add/modify conditions approval.
- 14) All new exterior light fixtures shall be shown on plans subject to staff review and approval. All lights attached to buildings shall provide a soft "wash" of light against the wall. All building and parking or yard lights shall conform to City Standards and shall compliment the site and building architecture.
- 15) The Project and Project applicant shall strictly comply with all administrative guidelines promulgated by the City for the operation of a cannabis distribution facility, specifically including any administrative guidelines later adopted by the City, or as may be changed from time to time.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission that the requested Conditional Use Permit is approved subject to those conditions established by Resolution No. 2019-010 and attached Exhibits A and B.

Passed and adopted by the Planning Commission of the City of Riverbank at a regular meeting held on the 16th of April, 2019, motioned by Commissioner Ball, seconded by Commissioner Fenrich, and upon roll call was carried by the following vote 5 - 0:

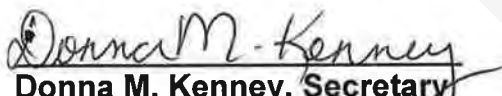
AYES: Commissioners: Dinan, Ball, Stewart, Fenrich and Link

NOES: None

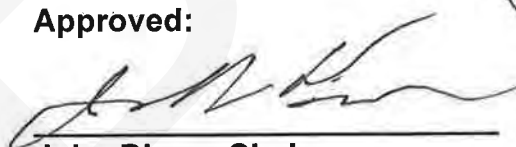
ABSENT: Hughes

ABSTAIN: None

Attest:


Donna M. Kenney, Secretary
Planning and Building Manager

Approved:


John Dinan, Chairperson
Planning Commission

Exhibits: **A – Site Plan**
 B – Floor Plan

PROJECT:

E&J DISTRIBUTORS, LLC.

5729 TERMINAL AVE., RIVERBANK, CA. 95367

CONSULTANT(s):

The Don DeGraff expressly reserves its common law copyright and others applicable property rights in these plans. These plans are not to be reproduced, changed, or copied in any form or manner whatsoever, nor are they to be assigned to a third party without first obtaining the written permission and consent of the Designer. In the event of unauthorized reuse of these plans by a third party, the third party shall hold the Designer harmless, and shall bear the cost of the Designer's legal fees, associated with defending and enforcing these rights.

PROJECT DEVELOPMENT

DATE	ISSUED FOR

REVISIONS

NO.	DATE	DESCRIPTION
1		

SHEET DESCRIPTION

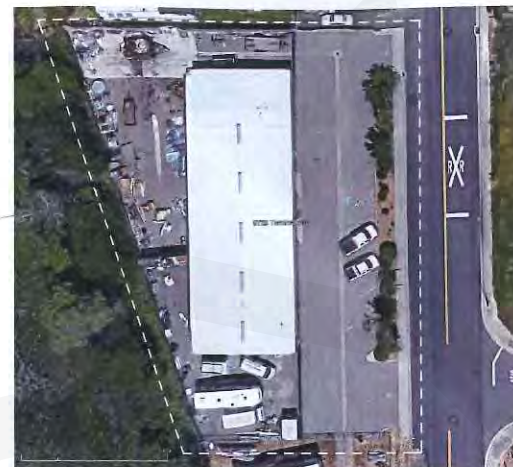
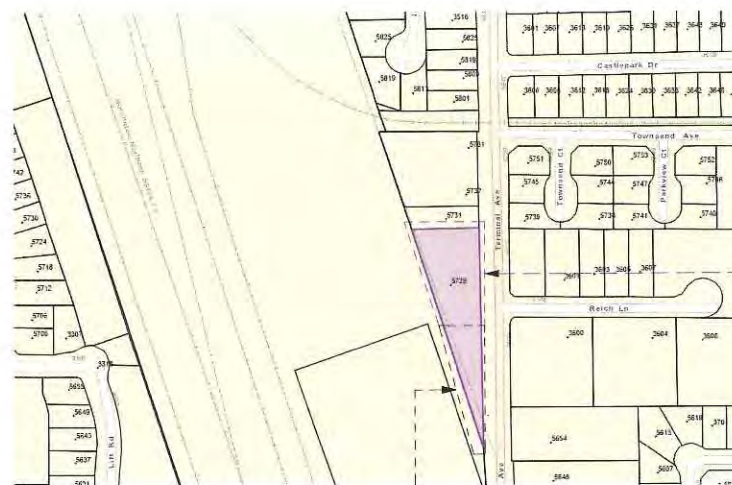
Site Plan

DESIGNER:
DON DEGRAFF
PROJECT NO:

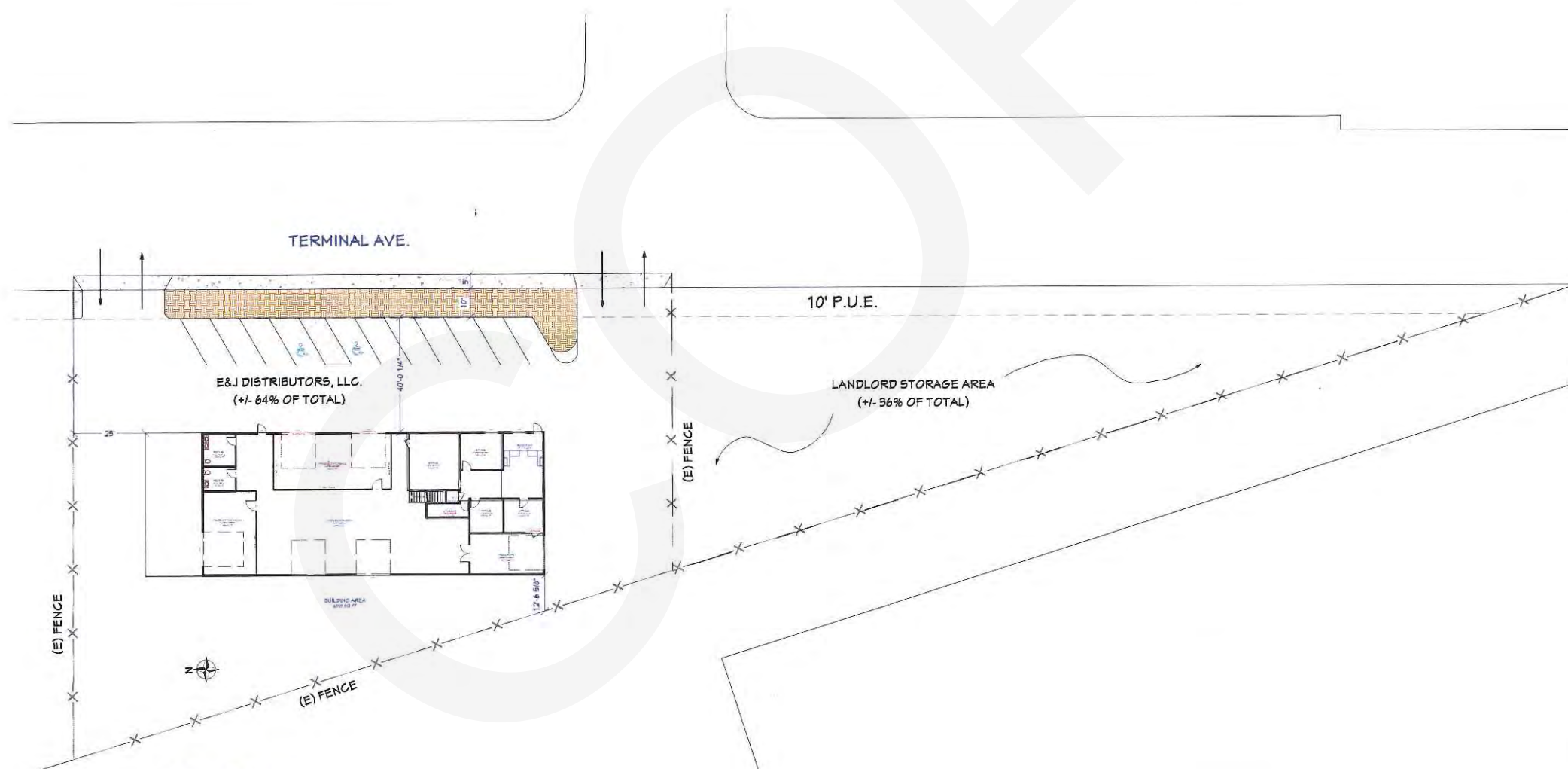
PRINT DATE:
2/16/2019
SCALE:
SEE DRAWING

SHEET NO.

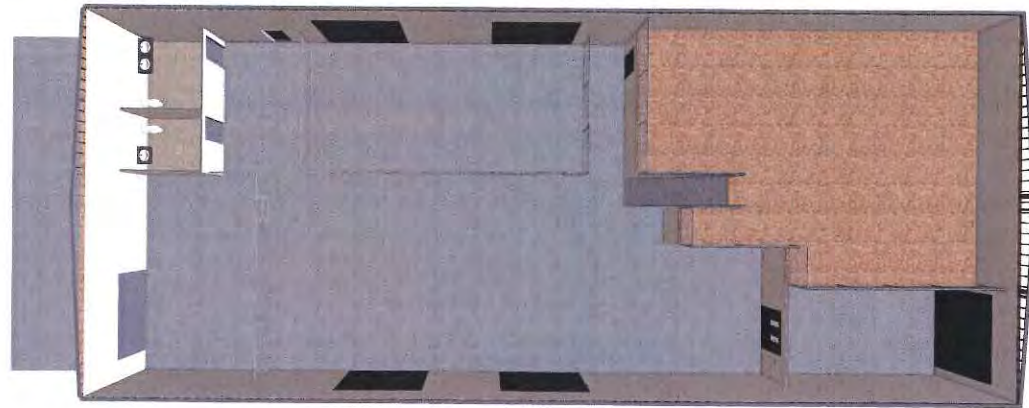
C-1



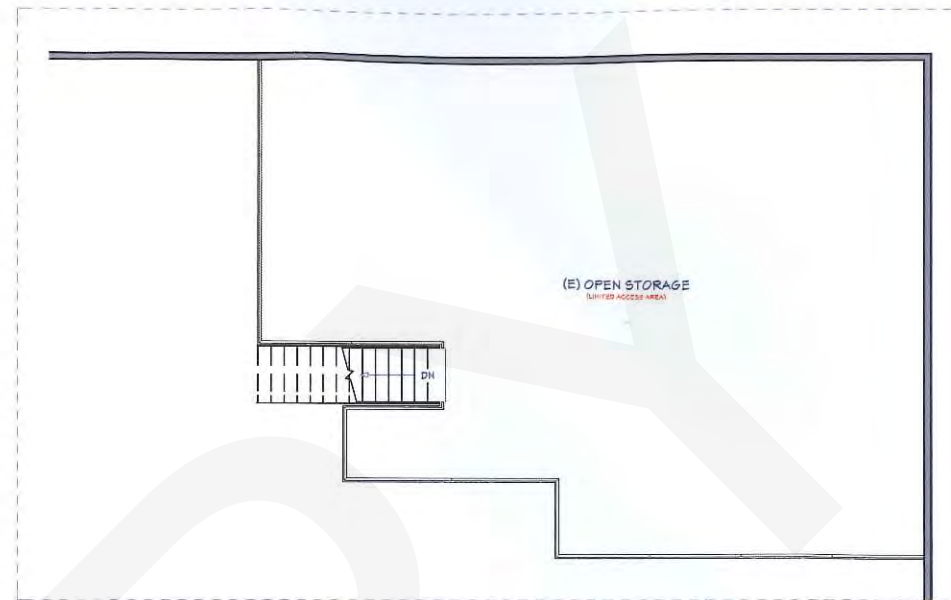
PORTION OF LOT USED BY
E&J DISTRIBUTORS
LOT USAGE: +/- 64% OF TOTAL



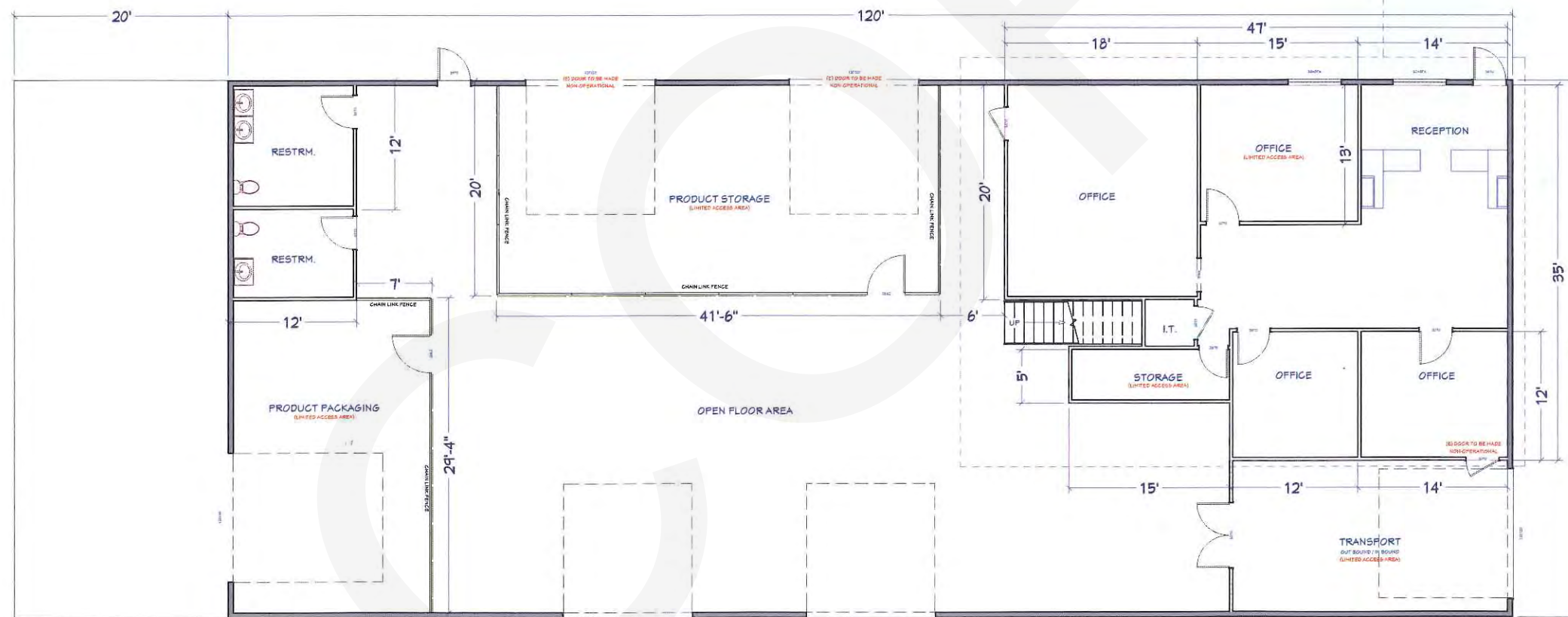
Site Plan
1 in = 30 ft



OVER VIEW



MEZZANINE LEVEL
1/8 in = 1 ft



FLOOR PLAN
1/8 in = 1 ft

BUILDING AREA
6000 SQ FT

PROJECT:
E&J DISTRIBUTORS, LLC.
5729 TERMINAL AVE., RIVERBANK, CA. 95367

CONSULTANT(S):

The Don DeGraff expressly reserves its common law copyright and others applicable property rights in these plans. These plans are not to be reproduced, changed, or copied in any form or manner whatsoever, nor are they to be assigned to a third party without first obtaining the written permission and consent of the Designer. In the event of unauthorized reuse of these plans by a third party, the third party shall hold the Designer harmless, and shall bear the cost of the Designer's legal fees, associated with defending and enforcing these rights.

PROJECT DEVELOPMENT

DATE	ISSUED FOR

REVISIONS

NO.	DATE	DESCRIPTION
1		

SHEET DESCRIPTION

Floor Plan

DESIGNER:
DON DEGRAFF
PROJECT NO:
PRINT DATE:
2/16/2019
SCALE:
SEE DRAWING

SHEET NO.
A-1

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.2

SECTION 4: UNFINISHED BUSINESS

Meeting Date: May 28, 2019

Subject: **Continued Agenda Item: A Resolution** Authorizing the City of Riverbank to Join the Stanislaus Urban County for the Purpose of Receiving Entitlement Funding from the Department of Housing and Urban Development (HUD) and to Authorize the City Manager to Execute the Agreement and Any Related Documents

Submitted by: Sean Scully, City Manager

RECOMMENDATION

It is recommended Council consider the attached proposed resolution which approves the City of Riverbank's participation in the Stanislaus County Urban County, from July 1, 2020 to June 30, 2023.

UPDATE

At the May 14th City Council meeting the Riverbank City Council continued this item to allow more time for research and clarity on options relating to opportunities for grant application funding (if Riverbank were to join the Urban County). In addition, the Council requested information whether or not Riverbank could use its current portfolio balance in the HOME program for transitional housing type projects versus the original purpose for the funds (first time homebuyers and rehab projects).

Since the May 14th Council meeting staff has been able to chat with County representatives regarding Council questions about accessibility of grant funds if Riverbank were to join the Urban County. In general the information obtained indicates that if Riverbank were to join the Urban County CDBG and federal HOME grant programs would not be accessible to Riverbank outside of the normal allotments Riverbank would receive as part of the Urban County. However the City would still be able to apply for Cal HOME grant funding as long as the grant monies did not include federal dollars. These types of grants are not typically available on a yearly basis, rather they are more sporadically issued. The City would receive an allotment of CDBG funding as part of the consortium (original outlined later in this report) as well as HOME funds administered by the City of Turlock.

Staff has also performed some research relating to Council's question if Riverbank's current balance of HOME funds (currently approximately \$1,000,000) could be

reallocated away from First Time Home Buyers / Rehab programs and more generally used to fund a transitional housing project serving homeless individuals. Although we have not received a direct response from HUD on this, Staff has had discussions with other housing professionals who have generally indicated that there is a process where HUD may consider these types of requests and such requests have been approved in the past. There is no specific detail on the likelihood of approval of the request nor the timeline for a decision.

(NOTE): The remainder of the report is substantively the same as the report provided on May 14th.

BACKGROUND

On a yearly basis Stanislaus County solicits the City of Riverbank's interest in joining the Stanislaus Urban County HUD Entitlement Funding group. The group is currently made up of Ceres, Hughson, Newman, Oakdale, Patterson, Waterford and Stanislaus County. Traditionally the City of Riverbank has respectfully declined this invitation as the City has had its own internal active housing and grants program for many years. However, recent conditions and regulations have hampered the City's ability to have as active a housing division as it once had. On April 23rd the City Council conducted a workshop to discuss the current state of the housing division as well as the benefits and drawbacks of entering into the urban county program (a copy of that presentation is attached for reference).

As was outlined in the workshop, there are a variety of advantages and disadvantages to joining the Urban County program. The primary reason for consideration (at a Council level) is related to the housing division's difficulty processing loans due to the HUD maximum purchase price limit of \$284,000 under the HOME program. Inability to process loans creates issues with acquiring future grants as well as the requirement that program income (funds received from loan repayment) be spent prior to new grants being awarded. While overall, the City has been successful winning CDBG grants, the past cycles have not resulted in successful grant applications.

Discussion on Major Advantage and Disadvantage:

Guaranteed Yearly Allocation: Inclusion in the Urban County would result in Riverbank becoming entitled to a specific amount of funding which is allocated based on criteria developed directly by HUD. Although no specific yearly allocation has been forecasted for Riverbank by HUD yet, Stanislaus County has advised that a good comparative example would be the City of Oakdale due to similarity in population. Based on this analysis staff estimates the yearly allocation to be approximately \$170,000 per year. These funds must be spent on **public infrastructure and public facilities only**. Community center upgrades, park improvements, ADA improvements, roadway safety upgrades are all examples of potential projects which could be funded by this revenue. Estimated revenues for the three year term of this agreement would be approximately \$510,000.

Inability to Apply for Yearly Grant Funding: The most significant draw back to joining the urban county is that the City will not be able to apply for CDBG grant funding during the three year term. This does not preclude the City from applying for grants from other sources of funding (CA State - HOME, SB1 grants, Prop 68 etc). If the City elects to join the urban county the funds would be limited to the amount allocated, therefore the City may need to bank funds for more than one year to accomplish larger scale more expensive projects.

General Benefits and Drawbacks:

Benefits to Joining Urban County:

- § Annual Guaranteed Allocation
- § For Infrastructure/Public Facility Improvements Only
 - § i.e. ADA Improvements, Community Center Phase II (kitchen)
- § Administration Funds included to reimburse for staff time
- § Can continue using program income for housing projects
- § Can apply for HOME Grant funds for Housing Programs

Drawbacks:

- § Can no longer apply for CDBG Funding from HCD
 - § Limit the number of projects the City can perform
- § May need several years to accumulate funds for larger projects
- § Inconsistent funding for Housing Programs (Homebuyers & Rehab)
- § Must continue to monitor old housing program loans with no admin funds from new grants to offset.

Since the City of Riverbank has had a long standing a successful housing program, the loan portfolios (\$3.95M CDBG and \$6.06M HOME) will continue to provide housing loan/rehab opportunities for residents in the future. However, the availability of those funds will be dependent on future payoffs of current loans. Because of the variability of those potential payoffs it is very difficult to forecast how much funding would be available year to year. It is likely that overall less funding would be available for home/rehab loans depending on CDBG loan repayments.

Conclusion

The key consideration of this opportunity centers on weighing the benefits of a yearly guaranteed allocation versus the potential of future CDBG grant awards. While the potential upside of large scale CDBG grant awards is considerable, there is no guarantee that the City would be successful in these highly competitive grant applications. A yearly allocation would allow for more strategic project planning but the projects would likely be slightly smaller in scale than a large scale CDBG grant award.

Due to the limited term of the agreement (3 years) the exposure to this decision is limited by that timeline. In other words, if Council chose to enter into the urban county program staff could evaluate the actual benefits of the program and at the end of the agreement

the City could choose to continue with the program or exit the program and return to the original configuration. If the City chooses to enter into the urban county the City would still be responsible for long term monitoring of the portfolio (with limited admin funds).

STRATEGIC PLAN

This workshop directly relates to the goals of “ensure the City’s continued financial stability” and “enhance quality of life”.

ATTACHMENTS

1. Resolution
2. Letter of request from Stanislaus County RE Urban County
3. Draft Cooperative Agreement w/ Stanislaus County
4. Presentation from City Council workshop conducted

CITY OF RIVERBANK

RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE CITY OF RIVERBANK TO JOIN THE
STANISLAUS URBAN COUNTY FOR THE PURPOSE OF RECEIVING
ENTITLEMENT FUNDING FROM THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT (HUD) AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE
THE AGREEMENT AND ANY RELATED DOCUMENTS**

WHEREAS, the City of Riverbank received a letter and draft cooperative agreement hereto attached as **Exhibit A** from Stanislaus County requesting a decision on whether or not the City of Riverbank will join the Urban County; and

WHEREAS, joining the Urban County would be for the purpose of receiving entitlement funding from the Department of Housing and Urban Development Community Development Block Funds; and

WHEREAS, the cities of Ceres, Hughson, Newman, Oakdale, Patterson, Waterford and Stanislaus County are current participants of the Urban County Program; and

WHEREAS, the Riverbank City Council held a workshop on April 23, 2019, to examine and discuss the analysis of advantages and drawbacks of joining the Urban County Program; and

WHEREAS, the City of Riverbank acknowledges the advantages and restrictions of inclusion to the Urban County; and

WHEREAS, the term of participation is from June 1, 2020 to July 30, 2023.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby desires to join the Stanislaus Urban County for the period of June 1, 2020 through July 30, 2023, and authorizes the City Manager to execute the agreement and any related documents.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 14th day of May, 2019; 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 – Letter and Agreement

PROPOSED



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

1010 10TH Street, Suite 3400, Modesto, CA 95354
Planning Phone: (209) 525-6330 Fax: (209) 525-5911
Building Phone: (209) 525-6557 Fax: (209) 525-7759

April 15, 2019

Sean Scully
City Manager
6707 Third Street
Riverbank, CA 95367

SUBJECT: PARTICIPATION IN THE STANISLAUS URBAN COUNTY

Dear Mr. Scully:

Every three years current participating cities, as well as nonparticipating cities, have an opportunity to enter into an agreement to become a part of a qualified "Urban County" for the purpose of being eligible to receive U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) entitlement funds. The next three year program cycle for the Stanislaus Urban County covers July 1, 2020 to June 30, 2023.

The current Stanislaus Urban County members are the cities of Ceres, Hughson, Newman, Oakdale, Patterson, Waterford, and Stanislaus County. The cities of Modesto and Turlock are each, in their own right, HUD entitlement jurisdictions and accordingly do not qualify to join the Stanislaus Urban County. The City of Riverbank is not a participant, but is qualified to join the Stanislaus Urban County.

Please note that members are not eligible to apply for grants under the State CDBG program while they are part of the Stanislaus Urban County and, that in becoming a part of the Stanislaus Urban County, they automatically participate in the HOME Investment Partnership Program (HOME), administered by the City of Turlock, and Emergency Solutions Grant (ESG) programs. While members may only receive a formula allocation under the HOME and ESG programs as part of the Stanislaus Urban County, members are not prohibited from applying for HOME or ESG funds directly from the State, if the State allows.

The purpose of this letter is to request your submittal of a **Letter of Intent** stating your cities desire to continue, join, or request exclusion from the Stanislaus Urban County. Your response must be received no later than **April 30, 2019** and will be forwarded to HUD. A notice of qualification from HUD is anticipated to be supplied in early October 2019.

For those wishing to participate, **Cooperation Agreements** covering the next three year program cycle have been enclosed for your review. Cooperative Agreements must be executed by your authorized governing body and returned to the Stanislaus County Planning Department, along with a **formal resolution**, no later than **June 3, 2019**.

Thank you for your attention to this matter. Please contact me, or Ana San Nicolas, if you have any questions regarding this request.

Sincerely,

Angela Freitas
Director

Enclosures: Four (4) Cooperation Agreements to be signed and returned, along with the formal resolution, no later than **June 3, 2019**

cc: Annabelle Aguilar, City Clerk via email

COOPERATION AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2019, by and between the CITY OF _____, hereinafter referred to as "City", and COUNTY OF STANISLAUS, hereinafter referred to as "County."

WITNESSETH

WHEREAS, the City is a duly constituted municipal corporation under the laws of the State of California, and is empowered thereby to undertake essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing; and

WHEREAS, the County is a duly constituted subdivision of the State of California, and is also empowered by State law to undertake essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing; and

WHEREAS, California Government Code Section 6502 authorizes two or more public agencies to jointly exercise any power common to both; and

WHEREAS, the COUNTY and participating cities, including the City, form the Stanislaus Urban County ("Urban County") for purposes of receiving entitlement funds from the Department of Housing and Urban Development ("HUD"); and

WHEREAS, it is mutually desired by the parties hereto to enter into a Cooperation Agreement, in accord with the Housing and Community Development Act of 1974 ("HCDA"), as amended, and applicable Federal rules and regulations adopted pursuant thereto; whereby the parties shall jointly undertake community development and housing assistance activities, including the Community Development Block Grant Entitlement ("CDBG"), Emergency Solutions Grants ("ESG"), and the HOME Investment Partnerships ("HOME") Programs funded by HUD.

NOW, THEREFORE, BE IT HEREBY RESOLVED as follows:

1. The parties hereto agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, pursuant to the Housing and Community Development Act of 1974 ("HCDA"), as amended, and the HOME Investment Partnerships Act, as amended. This agreement shall become effective October 1, 2020, and be in effect until terminated, but termination may not occur before September 30, 2023. This agreement shall remain in effect until the CDBG, ESG, and HOME funds received during the Urban County's 20-21- (July 1, 2020 to June 30, 2021), 21-22 (July 1, 2021 to June 30, 2022), and 22-23 (July 1, 2022 to June 30, 2023) program years, and any related

program income received by the City, are expended and any funded activities are completed.

2. The County and City, along with all Urban County participants, agree to form the following committee and panel to coordinate and review Urban County information:
 - a. Technical Committee: consisting of one (1) representative from the County and one (1) representative from each Urban County participating city. The purpose of the committee is to review proposed funding and existing funding for HUD projects, and any other documentation required by HUD for the implementation and administration of the CDBG, ESG, and HOME Programs. Documentation shall include, but not limited to, a list of specific projects to be undertaken and priorities for implementation for the housing and community development projects. The committee will facilitate distribution of information to residents of the Urban County concerning community development and housing needs; and shall provide residents with an opportunity to participate in the development of programs and priorities.
 - b. Grant Review Panel: consisting of one (1) representative from the County and one (1) representative from each Urban County participating city and one (1) representative from the local Continuum of Care (CoC). The committee will meet a minimum of 2 times a year to review grant applications and proposals in response to a County released Notice of Funding Availability (NOFA). Grant Review Panel duties shall include reviewing and scoring of applications, and attendance during all grant applicant presentations.
3. a. After deduction of administrative expenses, which shall not exceed 20%, all of the net CDBG monies shall be sub-allocated to the participating jurisdictions according to the general distribution formula established by HUD which is based on the latest available countywide data on population, the extent of poverty, and the extent of housing overcrowding. However, a different distribution is hereby expressly authorized if and when necessary to comply with Title I of the HCDA. If any project submitted by an Urban County member has CDBG documentation that is found to be ineligible by HUD, the proposed project shall not be funded. In such an event, the County, acting in concert with the Technical Committee may submit an alternative priority project which is within the original cost and in line with the stated needs and objectives of County, provided such a re-submission conforms with the rules and regulations of the HCDA.
- a. 4. a. City may terminate its participation in this Cooperation Agreement by a single majority vote of its governing body. Such termination shall take effect only at the end of the federal three-year Urban County qualification period in

which the action is taken. City may participate in a HOME Program only through the Urban County; and that it may not participate in a HOME consortium with other local governments except through the Urban County, regardless of whether the Urban County receives a HOME formula allocation.

The next such qualification period will end September 30, 2023. However, City may void this Cooperation Agreement by written notice received by the Director of the Stanislaus County Planning and Community Development Department, 1010 10th Street, Suite 3400, Modesto, California 95354, prior to September 30, 2023, if City is advised by HUD that City is eligible to be designated as a metropolitan city entitled to CDBG formula funding and City elects to accept designation as a metropolitan city. If this Cooperation Agreement is not voided by City prior to September 10, 2019 (or later date if approved in writing by HUD) under the circumstances listed in the previous sentence, City must remain a part of the urban county for the entire three-year urban county qualification period.

5. Under this Agreement, the County shall be the primary general-purpose local governmental unit pursuant to the HCDA. The County shall apply for grants, administer all funds received, and undertake or assist in undertaking essential community development and housing assistance activities. Based on recommendations made by the Technical Committee, the County shall have the authority to carry out activities which will be funded from annual CDBG, and ESG, funds covered by this Agreement. Records shall be kept by County in accordance with approved accounting procedures, and said records shall be available for public inspection at all times.
6. County and City, along with all Urban County participants, shall take all actions necessary to assure compliance with the Urban County's certification required by Section 104 (b) of Title I of the HCDA, including the National Environmental Policy Act of 1969, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, the Fair Housing Act, Section 109 of Title I of the HCD, as amended. Use of Urban County funds for activities, in or in support of, any participating city that does not affirmatively further fair housing within its own jurisdiction or that impedes the County's actions to comply with the County's fair housing certification shall be prohibited. Pursuant to 24 CFR 570.501(b), City is subject to the same requirements applicable to sub-recipients, including the requirement of a written agreement described in 24 CFR 570.503. County and City shall comply with all other applicable laws.
7. City shall report to County any program income generated by the expenditure of CDBG funds. Such program income may be retained by City to be used for CDBG eligible activities. County has the responsibility for monitoring and reporting to HUD on the use of program income, thereby requiring appropriate record keeping and reporting by City as may be needed for this purpose. In the case of HOME Investment Partnerships Program funds, the City shall report program income to

the entity responsible for HOME fund administration and it shall be the responsibility of that entity to report to HUD on the use of program income.

8. City shall not sell, trade, or otherwise transfer all or any portion of such funds to another city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly received CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the HCDA.
9. The following standards shall apply to real property acquired or improved in whole or in part using CDBG funds that is within the control of a participating City:
 - a. City shall give County timely notification of any modification or change in the use of the real property from that planned at the time of acquisition or improvement including disposition.
 - b. City shall reimburse the allocation account in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of funds other than CDBG) of property acquired or improved with CDBG funds that is sold or transferred for a use that does not qualify under the CDBG regulations.
 - c. City shall pay to County any program income generated from the disposition or transfer of property prior to or subsequent to the close-out, change of status or termination of the cooperation agreement between County and City. Any program income shall be allocated by County for eligible activities in accordance with all CDBG requirements as may then apply.
10. The parties hereto agree that the responsible entity with the final responsibility for analyzing needs, setting objectives, developing plans, selecting projects for community development and housing assistance, selecting CDBG Public Service and ESG programs to be funded, and filing the Consolidated Plan, and other plans and reports required by the HCDA, is the Stanislaus County Board of Supervisors.
11. By executing this Agreement, City understands the following:
 - b. City may not apply for grants under the Small Cities or State CDBG or ESG Programs funded during the period in which it participates in the Urban County;
 - c. City may only receive ESG funding by a formula allocation as part of a participating member of the Urban County unless otherwise authorized by HCD or HUD.
 - d. This agreement remains in effect until CDBG, ESG, HOME funds, along with any program income received with respect to activities carried out during the

three-year qualification period, are expended and the funded activities completed. The County and the City cannot terminate or withdraw from the cooperation agreement while it remains in effect.

12. The cooperating unit of general local government has adopted and is enforcing:
 - a. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
 - b. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction. The phrase "cooperating unit of general local government" has the same meaning in this Cooperation Agreement as it does in HUD Notice #CPD 19-04.
13.
 - a. Each Party mutually agrees, pursuant to Government Code §894.5, to indemnify, hold harmless, and defend the other Party, its County Board of Supervisors, City Councils, boards and commissions, officers, agents, employees, and volunteers (collectively, the "indemnified Parties") in an amount equal to its proportionate share of liability on a comparative fault basis. This indemnity obligation shall exist with respect to any claim, loss, liability, damage, lawsuit, cost or expense that arises out of, or is any way related to, the performance of services pursuant to this Agreement. This indemnity obligation extends, without limitation, to any injury, death, loss, or damage which occurs in the performance of the Agreement and that is sustained by a third party, agent, or contractor of a Party. Each Party executing this Agreement certifies that it has adequate self-insured retention of funds to meet any obligation arising from this Agreement, and it shall continue to maintain such funds throughout the Term of this Agreement. Notwithstanding the foregoing, nothing herein shall be construed to require any Party to indemnify any other Party from any Claim arising from the sole negligence or willful misconduct of another Party. Nothing in this section shall be construed as authorizing an award of attorney fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable. Any policy limits shall not act as a limitation upon the amount of indemnification to be provided.
 - b. At its sole discretion, the indemnified Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the indemnitor of any obligation imposed by this Agreement. The Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense. The Parties agree to defend themselves from any claim, action or proceeding arising out of the

concurrent acts or omissions of each Party. In such cases, the Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs. Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, the Parties may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault. The provisions of this section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

COUNTY OF STANISLAUS

CITY OF _____

By: _____
Jody Hayes
Chief Executive Officer

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Terms and provisions of this agreement are fully authorized under State and local law. This cooperation agreement provides full legal authority for Stanislaus County.

Thomas E. Boze
County Counsel

Urban County HUD Entitlement Funding Invitation

Riverbank City Council Meeting
May 14, 2019

A Little History – Riverbank Housing Division

§ CDBG has funded Housing projects since:

- § 1986 – Housing Rehabilitation (HR) Program
- § 2000 – First Time Homebuyers (HB) Program

§ Current Loan Portfolio Balance:

- § CDBG: \$3,955,000
- § HOME: \$6,062,000

§ Successful Grant Applications:

- § 2003 - \$500,000 Funding for 4 HR Projects
- § 2004 - \$1,454,000 Funding for 17 HR & HB Projects
- § 2010 - \$400,000 Funding for 5 HR Projects
- § 2013 - \$1,000,000 Funding for HR & HB (\$460,000 disencumbered)

A Little History – Riverbank Housing Division

§ Current Issues:

§ Unsuccessful Grant Applications:

§ 2016 - \$2,000,000 Funding for HR/HB, Community Center & Infrastructure (ADA)

§ 2017 - \$1,600,000 Funding for HR/HB, Community Center

§ Housing Market boom

§ HUD Max Purchase Price Limit: \$284,000

§ Average home values at \$329,000

§ Unaffordable for our low income residents

§ Inability to use Program Income to fund new loans

§ CDBG: \$287,000

§ HOME: \$1,000,000

Stanislaus Urban County Invitation

- § Every three years an agency has an opportunity to enter into an agreement to be part of a qualified “Urban County” and become an entitlement city
- § **Entitlement City:** City is entitled to annual funding based on a formula directly from Dept. of Housing & Urban Development (HUD)
 - § Develop viable urban communities,
 - § Provide decent housing & suitable living environment,
 - § Expand economic opportunities
- § Potential Annual Allocation: \$170,000 (includes administration funds)
- § Funding can be used for Public Infrastructure & Public Facilities ONLY

Stanislaus Urban County Invitation

Benefits

- § Annual Guaranteed Allocation
- § For Infrastructure/Public Facility Improvements Only
 - § i.e. ADA Improvements, Community Center Phase II (kitchen)
- § Administration Funds included to reimburse for staff time
- § Can continue using program income for housing projects
- § Can apply for HOME Grant funds for Housing Programs

Drawbacks

- § Can no longer apply for CDBG Funding from HCD
 - § Limit the # of projects we can perform
- § May need several years to accumulate funds for larger projects
- § Inconsistent funding for Housing Programs (Homebuyers & Rehab)
- § Must continue to monitor old housing program loans with no admin funds from new grants to offset.

Potential Future – Riverbank Housing Division

- § Long Term Monitoring must continue for current loan portfolio (limited admin funds)
- § Rely strictly on loan repayments to continue funding First Time Home Buyer Loans through CDBG (cannot apply for new grants).
 - § CDBG Funding has no Max Purchase Price Limit
 - § Greater flexibility to reallocate payoffs to other purposes (infrastructure, facilities, economic development)
- § Can continue to apply for HOME Funds
 - § Can fund First Time Homebuyer & Housing Rehab Program
 - § HOME Funds can be used for new Affordable Housing Development

Recommendation

Provide direction to staff on whether there is any interest in accepting the Stanislaus Urban County invitation

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	May 28, 2019
Subject:	Direction on Electronic Signage Options and a Resolution Authorizing the City Manager to Negotiate Entering into a Lease Agreement with Rogers Media Company for Electronic Signage
From:	Sean Scully, City Manager
Submitted by:	Sue Fitzpatrick, Director of Parks and Recreation

RECOMMENDATION

It is recommended that the City Council:

1. Consider options provided and give direction to staff regarding the use and location of the electronic signage; and
2. Consider a Resolution to authorize the City Manager to negotiate a Lease Agreement with Rogers Media Company for said electronic signage; or
3. If direction is given to continue the matter for further research, table the resolution until the matter is reconsidered.

SUMMARY

The Director of Parks and Recreation and the Building Manager have explored options for signage that can direct traffic to the downtown, inform citizens about civic/community events and promote downtown activity. Two potential sites will be presented to the City Council for review.

BACKGROUND

During the June 25, 2018 Strategic Planning session, one of the goals set was to assist in the expansion of economic development opportunities for businesses. Signage that would direct traffic to downtown to promote downtown activity was to be explored and a report provided to the City Council. It was also determined that since the signage which was previously along 108 at the Cannery blew down a few years ago, new signage to publicize City events was needed.

Signage options have been researched over the past few months. The primary goal was to find an option for electronic signage that would not impact the City's General Fund and instead possibly be a revenue generator for the City. The Parks and Recreation Director and Building Manager would like to propose to the City Council for

consideration an agreement with Rogers Media Company. This company would provide the installation, operation and management of the sign. Rogers Media Company has a long history of partnering with public agencies on similar electronic signage projects in the central valley. The general revenue sharing details are as follows: the City would receive approximately 20% of the revenue from advertising with a baseline minimum of \$15,000 per year. If advertising revenues exceed the baseline amount (after development costs are repaid) the City would receive whichever amount is greater (20% or 15,000). Due to the significant upfront development cost, the company typically negotiates longer term contracts to protect the initial investment. If directed by Council, the City Manager could negotiate an agreement with Rogers Media Company that would be a long term (approximately 25 years) agreement.

Any ads which the City deems inappropriate will not be posted. The City would give basic guidelines as to what is not approved such as cigarettes, alcohol etc. If there is any question about approval, the City would be consulted and anything the City objects to would be promptly removed.

Advertisements would be flipped every 8 seconds with a total of 1 minute and 4 seconds of advertisements. The City would be given one of those segments to advertise City events or to promote the downtown. This could be a good incentive for new businesses.

Benefits of Electronic Signage to the City of Riverbank would include the following:

- Promote Downtown Core Business Activity.
- Quick promotion of City events.
- A communication tool to Riverbank residents for safety & welfare.
- Law Enforcement benefit in terms of Amber Alerts, Criminal Activity etc.
- Financial benefit to the City in monthly rental paid for sign placement.

The following sites are those that are suggested by Rogers Media and City staff after touring the City. They are listed as option #1 and option #2. A third option is listed as well if the City Council decides that research on other signage options or locations is needed.

Option #1

US 108, Callandar Ave. at Patterson Rd. East Face & West Face, this is proposed as 10 x 20 Digital Faces, Facing East & West, further referred to as the "Fountain Site".

Advantages of the "Fountain Site" are it is the most recognizable location in Riverbank and offers easy access to utilities. It has great exposure from both directions and a small sign will be impactful. It is likely that sign could be developed slightly more quickly due to the fact that the property is currently owned by the City of Riverbank.

The disadvantages of the "Fountain Site" are the concern about the impact on the landmark site of the fountain and possible blocking of local business signage.

Option #2

US 108, west of 4th Street, East Face and West Face. This is proposed as a 10 x 30 West Facing Digital and a static East Facing sign (this face must static due to residents east of sign that would be impacted). Further referred to as the “Del Rio Site”.

Advantages of the “Del Rio Site” are that there is great exposure from both sides. The sign would be on private property and could be a more conducive location for a sign. The larger format allows for more robust advertising.

The disadvantages of the “Del Rio Site” are the neighborhood proximity does not allow for a double sided electronic sign due to excessive light. The property lease/buy would need to be negotiated. Staff has already had initial discussions with the property owner of the Del Rio who has indicated he is very interested in selling/leasing a small portion of his property for this project. Local churches/schools could limit what could be advertised such as cannabis related products, alcohol, etc. If approved to move forward with this site, the process may take slightly longer to erect a sign due to working through a property owner.

Option #3

The Director of Parks and Recreation and Building Manager could research other signage options and present them to the City Council at a later date, along with consideration of the proposed resolution.

STRATEGIC PLAN

The item was specifically listed in the strategic plan under section 4.1 “develop and use electronic billboard to share information”. In addition, this item is relevant to the Strategic Plan to help expand economic development opportunities for Businesses.

FINANCIAL IMPACT

This project would generate funds in the amount of a minimum of \$15,000 per year. Estimates of ad revenues provided by Rogers Media company estimate that the City’s share of ad revenues after the sign is established would likely be much higher than the \$15,000 minimum.

ATTACHMENT

1. Resolution

CITY OF RIVERBANK

RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE ENTERING
INTO A LEASE AGREEMENT WITH ROGERS MEDIA COMPANY FOR
ELECTRONIC SIGNAGE**

WHEREAS, the City of Riverbank, as part of its strategic plan, desires to use electronic signage, which is known to be a beneficial advertisement tool to attract the public's attention; and

WHEREAS, use of electronic signage provides the opportunity to invite the public to City sponsored events, as well as, promote activities to the downtown area; and

WHEREAS, use of the signage could also serve as a communication tool for public safety and welfare purposes such as Amber Alerts, criminal activity alerts or precautions, and emergency alerts or precautions; and

WHEREAS, use of the signage provides the City an opportunity to generate revenue from advertising through electronic signage with Rogers Media Company who will install, maintain and operate the sign; and

WHEREAS, upon the direction provided by the City Council, the terms of a lease agreement with Rogers Media Company will need to be negotiated.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank authorizes the City Manager to negotiate a lease agreement with Rogers Media Company for electronic signage pursuant to the direction of City Council.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 28th day of May, 2019; 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
City Clerk

Richard D. O'Brien
Mayor