RIVERBANK CITY COUNCIL AND LOCAL REDEVELOPMENT AUTHORITY BOARD MEETINGS

SPECIAL NOTICING OF MEETING PROCEDURES FOR

Tuesday, May 26, 2020 AT 6:00 P.M.

***NOTICE:* THIS MEETING WILL BE HELD BY THE FOLLOWING PROCEDURES IN ACCORDANCE WITH THE GOVERNOR'S NEW EXECUTIVE ORDER N-29-20, ISSUED ON MARCH 17, 2020, REGARDING THE OPEN MEETING REQUIREMENTS OF THE RALPH M. BROWN ACT (CALIFORNIA GOVERNMENT CODE SECTION 54950, ET SEQ.), AND THE FEDERAL AMERICANS WITH DISABILITIES ACT IN AN EFFORT TO HELP AVOID THE SPREAD OF COVID-19, TO MAXIMIZE TRANSPARENCY, AND PROVIDE PUBLIC ACCESS TO CITY COUNCIL MEETINGS.**

ADA COMPLIANCE STATEMENT

The City will make every effort to make reasonable modifications or accommodations from individuals with disabilities. Contact the Administration Dept. at (209) 863-7122 or the City Clerk at aaguilar@riverbank.org at least (72) hours prior to the meeting to enable the City to make reasonable arrangements for accessibility.

NOTICE REGARDING NON-ENGLISH SPEAKERS

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California 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.

PUBLIC "LIVE" VIEWING: Charter Government Channel – 2; AT&T U-VERSE Government Channel – 99; and YouTube Live Streaming at https://www.youtube.com/watch?v=7UN98ekdzdk.

PUBLIC COMMENTS: *If you believe your written comments were not received, please contact the City Clerk at cityclerk@riverbank.org or (209) 863-7198.*

Via U.S. Postal Service: Mail comments to City of Riverbank, Attn. City Clerk, 6707 Third Street, Suite A, Riverbank, CA 95367. (Must be received prior to the meeting.)

Via Email to cityclerk@riverbank.org:

- Emails *before* the meeting: (Will be distributed to the City Council)
  - **No later than 4:00 p.m.** on the day of the meeting; and
  - The ***subject line*** must contain the Agenda Item # and brief title. (e.g., Item 5.1 – Urgency Ordinance)
- Emails *during* the meeting:
  - The ***subject line*** must contain the Agenda Item # and brief title. (e.g., Item 5.1 – Urgency Ordinance)

Via Telephone: Call **(209) 863-7172;** only one call at a time may be received.

Via Other Platforms:
Interest in participating as an attendee on the ZOOM platform, you must email the City Clerk **no later than 1:00 p.m. on the day of the meeting** at cityclerk@riverbank.org to receive information. (This technological method may or may not be available.)

(BY TELECONFERENCE ONLY)

CITY OF RIVERBANK

REGULAR CITY COUNCIL AND

LOCAL REDEVELOPMENT AUTHORITY BOARD MEETINGS

(The City Council also serves as the LRA Board)

(**Location closed to the public**)

City Hall North • Council Chambers

6707 Third Street • Suite B• Riverbank • CA • 95367

AGENDA

TUESDAY, MAY 26, 2020 – 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 Luis Uribe (CM-D1)
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member District 3 Cal Campbell
Council/Authority Member District 4 Darlene Barber-Martinez

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.

1. PRESENTATIONS

There are 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 minutes as stated.** Under State Law, matters presented during the public comment period cannot be discussed or acted upon.

Send comments via email to cityclerk@riverbank.org or call (209) 863-7172, or other platforms posted. In the subject line indicate "#2 Public Comment"

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 28, 2020 City Council and Local Redevelopment Authority Board Minutes.

Item 3.C: Acceptance of the Parking and Trail Improvements at Jacob Myers Park Project and Authorization to File a Notice of Completion.

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

4. UNFINISHED BUSINESS

There are no Items to consider.

5. PUBLIC HEARINGS

There are no Items to consider.

6. NEW BUSINESS

Item 6.1: **A Resolution Authorizing the Mayor to Execute and Enter into a New Employment Agreement with Sean Scully as City Manager** – It is recommended that the Riverbank City Council: (1) approve the new City Manager Employment Agreement between the City of Riverbank and Sean Scully in a form approved by the City Attorney; and (2) authorize and direct the Mayor to execute the New Agreement on behalf of the City.

Item 6.2: **A Resolution Authorizing the City Manager to Execute and Enter into a New Employment Agreement with Marisela H. Garcia as Assistant City Manager/Administrative Services Director** – It is recommended that the Riverbank City Council: (1) approve the new Assistant City Manager Employment Agreement between the City of Riverbank and Marisela Garcia in a form approved by the City Attorney; and (2) authorize and direct the City Manager to execute the New Agreement on behalf of the City.

Item 6.3: **A Resolution Authorizing the City Manager to Execute and Enter into a New Employment Agreement with Sue Fitzpatrick as Parks and Recreation Director** – It is recommended that the Riverbank City Council: (1) approve the new Employment Agreement between the City of Riverbank and Sue Fitzpatrick in a form approved by the City Attorney; and (2) authorize and direct the City Manager to execute the New Agreement on behalf of the City.

Item 6.4: **Consider a Resolution to Participate in the Pavement Management Program (PMP) Update for Stanislaus County with Cost Sharing According to the Measure L Local Control Funds Distribution Methodology –** It is recommended that the City Council consider participating in the Pavement Management Program update.

Item 6.5: **Workshop: Ward Ave Affordable Housing Project** – It is recommended that the City Council receive information relating the potential future Ward Ave Affordable Housing Project.

Item 6.6: **General Local Public Health COVID-19 Update** – It is recommended that the City Council receive an update, discuss the matter, and provide any direction to staff as deemed necessary.

Item 6.7: **Utility Billing Discussion and Feedback** – It is recommended that the City Council provide feedback on the options presented regarding utility billing during the coronavirus ("COVID-19") pandemic.

Item 6.8: **CARES Act Funding Allocation Discussion** – It is recommended that the City Council provide feedback to staff regarding the use of the CARES Act Funding Allocation for the City of Riverbank.

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 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 3 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 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.
Under Negotiation: Price, terms of payment, or both

Item 8.2: **Threat to Public Services or Facilities**
Pursuant to Government Code § 54957
Consultation with: City of Riverbank Director of Emergency Services

Item 8.3: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to subdivision (b) of Government Code § 54956.9
Number of cases: (1) potential case

Item 8.4: **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code § 54956.9(a)
Name of Case: Stanislaus Consolidated Fire Protection District v. City of Riverbank and DOES 1-20
Stanislaus County Superior Court Case No. CV-19-004402

ADJOURNMENT – THE PUBLIC PORTION OF THE MEETING (The next regular City Council meeting – Tuesday, June 9th @ 6:00 pm)

9. REPORT FROM CLOSED SESSION

The Mayor's report on the following Closed Session Items will be made to the City Clerk, and the report will be reflected in the Minutes of this meeting. Anyone interested in obtaining the report from Closed Session may contact the City Clerk at cityclerk@riverbank.org or call (209) 863-7198.

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

Item 9.2: Report from Closed Session on Item 8.2 – **Threat to Public Services or Facilities**

Item 9.3: Report from Closed Session Item 8.3: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION –** (1) potential case

Item 9.4: Report from Closed Session on Item 8.4: **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:** Stanislaus Consolidated Fire Protection District v. City of Riverbank and DOES 1-20

ADJOURNMENT

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 21st day of May, 2020 /s/ *Annabelle H. Aguilar, CMC, City of Riverbank*

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

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 26, 2020
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 26, 2020
Subject:	Approval of the April 28, 2020, 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 28, 2020, 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 28, 2020, City Council and LRA Minutes

(BY TELECONFERENCE ONLY)
City of Riverbank
REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD
(The City Council also serves as the LRA Board)
(**Location closed to the public**)
City Hall North • Council Chambers
6707 Third Street • Suite B• Riverbank • CA • 95367

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

MINUTES OF
TUESDAY, APRIL 28, 2020

<u>Notice:</u> This meeting was held in accordance with the Governor's Executive Order N-25-20, issued on March 12, 2020, in regards to the open meeting requirements of the Ralph M. Brown Act (California Government Code Section 54950, et seq.), and the Federal Americans With Disabilities Act.

<u>CALL TO ORDER</u>

The City Council and Local Redevelopment Authority Board of the City of Riverbank met at 6:00 p.m. on this date at by teleconference only, with Mayor/Chair Richard D. O'Brien presiding.

<u>FLAG SALUTE</u> Mayor/Chair Richard D. O'Brien

<u>INVOCATION</u> There was no invocation.

<u>ROLL CALL</u>
Present by Teleconference:
Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair (CM-D4) Luis Uribe
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member District 3 Cal Campbell
Council/Authority Member District 4 Darlene Barber-Martinez

Staff Present: City Attorney Tom Hallinan, Assistant City Manager Marisela Garcia, Police Chief Ed Ridenour, and City Clerk Annabelle Aguilar

<u>AGENDA CHANGES:</u> Mayor/Chair Richard D. O'Brien – ***There were no changes.***

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

Item 1.1: ABC Grant Presentation – ***Deputy Mc Culloch made the presentation.***

2. PUBLIC COMMENTS (No Action Can Be Taken)

Mayor/Chair O'Brien announced that public comments sent to cityclerk@riverbank.org or calls made to (209) 863-7172 would be accepted for the next 3 minutes.

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.

There were no comments received.

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.

Mayor/Chair O'Brien announced that any public member wishing to pull an Item or comment could call in.

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

Item 3.B: Approval of the March 24, 2020 City Council and Local Redevelopment Authority Board Minutes.

Item 3.C: A **Resolution [No. 2020-016]** Designating the City Manager and Assistant City Manager as Authorized Agents to Execute and Application with the California Governor's Office of Emergency Services (CalOES) to Obtain Federal Financial Assistance for All Open and Future Disasters for up to Three (3) Years.

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

There were no comments received.

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

AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor/Chair O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

4. UNFINISHED BUSINESS

Mayor O'Brien announced that for the next 3 minutes, or until the presentation is over, public comments could be sent via email to cityclerk@riverbank.org or by calling (209) 863-7172, and proceeded to introduce Item 4.1.

Item 4.1: **Second Reading by Title Only of Proposed Ordinance No. 2020-007 Approving a Development Agreement By and Between the City of Riverbank and McRoy Wilbur Communities, Inc. for the Extension of the Diamond Bar East Subdivision Tentative Map 02-2014 (APNs 062-020-010 and 062-020-025)** – It is recommended that the City Council approve Ordinance No. 2020-007 for a Development Agreement which extends the life of approved Diamond Bar East Tentative Maps 02-2014 relating to real property located at 4424 Santa Fe Street (APNs 062-020-010 and 062-020-025).

Assistant City Manager Marisela Garcia presented the staff report.
There were no comments received.

ACTION: *By motion moved and seconded (Barber-Martinez / Campbell / passed 5-0) to approve a Development Agreement By and Between the City of Riverbank and McRoy Wilbur Communities, Inc. for the Extension of the Diamond Bar East Subdivision Tentative Map 02-2014 (APNs 062-020-010 and 062-020-025) by adoption of Ordinance No. 2020-007 as presented.*
Motion carried by unanimous City Council roll call vote.
AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

5. PUBLIC HEARING

There were no public hearings.

6. NEW BUSINESS

Mayor O'Brien announced that for the next 3 minutes public comments could be sent via email to cityclerk@riverbank.org or by calling (209) 863-7172, and proceeded to introduce Item 6.1.

Item 6.1: **Consider a Resolution [No. 2020-017] Deferring System Development Fees for McRoy-Wilbur Communities for Countryside 1 And 2** – It is recommended that the City Council consider the petition from McRoy-Wilbur Communities to defer payments for the System Development Fees assessed on the construction of dwelling units in the Countryside 1 and 2 subdivision and approve the Resolution.

Assistant City Manager Marisela Garcia presented the staff report.
There were no comments received.

<u>ACTION:</u> ***By motion moved and seconded (Uribe / Fosi / passed 5-0) to adopt <u>Resolution No. 2020-017</u> to approve Deferring System Development Fees for McRoy-Wilbur Communities for Countryside 1 And 2 as presented.***
Motion carried by unanimous City Council roll call vote.
AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Mayor O'Brien announced that for the next 5 minutes public comments could be sent via email to <u>cityclerk@riverbank.org</u> or by calling (209) 863-7172, and proceeded to introduce Item 6.2.

<u>Item 6.2:</u> **A Resolution [No. 2020—018] of Concurrence and Support for the Approval of the Fiscal Year 2020-2025 Regional Consolidated Plan (Con Plan); the Fiscal Year 2020-2021 Annual Action Plan (AAP); and the Fiscal Year 2020-2025 Regional Analysis of Impediments (AI) to Fair Housing Choice Prepared by the Stanislaus County Community Development Block Grant (CDBG) Consortium** – It is recommended that the City Council open the Community Meeting, accept Public Comment, and consider adopting a Resolution of Concurrence and support for the approval of the Fiscal Year 2020-2025 Regional Consolidated Plan (Con Plan); the Fiscal Year 2020-2021 Annual Action Plan (AAP); and the Fiscal Year 2020-2025 Regional Analysis of Impediments (AL to Fair Housing). The public notice for this meeting was published in the Riverbank News on April 15, 2020.

Assistant City Manager Marisela Garcia presented the staff report.
City Council discussed the item.

There were no written comments receive; a phone call was received by Mrs. Evelyn Halbert, however, there were technical difficulties and the comments were not received.

<u>ACTION:</u> ***By motion moved and seconded (Campbell / Uribe / passed 5-0) to adopt <u>Resolution No. 2020-018</u> of Concurrence and Support for the Approval of the Fiscal Year 2020-2025 Regional Consolidated Plan (Con Plan); the Fiscal Year 2020-2021 Annual Action Plan (AAP); and the Fiscal Year 2020-2025 Regional Analysis of Impediments (AI) to Fair Housing Choice Prepared by the Stanislaus County Community Development Block Grant (CDBG) Consortium as presented.***
Motion carried by unanimous City Council roll call vote.

AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Mayor O'Brien announced that for the next 5 minutes public comments could be sent via email to cityclerk@riverbank.org or by calling (209) 863-7172, and proceeded to introduce Item 6.3.

Item 6.3: **General Local Public Health COVID-19 Update –** It is recommended that the City Council receive an update, discuss the matter, and provide any direction to staff as deemed necessary.

Assistant City Manager Marisela Garcia reported that there were 324 COVID-19 cases in Stanislaus County, and 10 deaths, with a few of those deaths in Riverbank. There were 5,221 tests administered, due to the new testing site that opened in Salida, under the Baseline COVID-19 Test Program. The City's Senior Check-In Program has been well received by the public. The new order by the County Public Health Officer relaxed some of the restrictions for parks, however, discussion with the City Attorney had the City return to closing park amenities, playground structures, restrooms, tennis courts, and continue to keep Jacob Myers Park (JMP) closed. The Dog Park and the Trail in JMP had already been closed due to a remodel. Chief Ridenour spoke in regards to the level of enforcement that would be conducted at the City parks; mainly go along with the City's existing Ordinance on this matter, with a goal of educating the public to understand the safety measures implemented. Ms. Garcia reported that the City is working on a strategy to reopen offices to be ready for Council's direction, the City is procuring safety guards to be installed at the counters, and discussion on social distancing and how it could be managed.

City Council commented on social gatherings that have been seen at Silva Park and the Skate Park. Discussion on whether to open JMP, and recommendations on restrictions for a controlled reopening of Jacob Myers Park ensued.

Due to technical difficulties, City Attorney Tom Hallinan joined the meeting at 7:20 p.m.

A phone call comment was received by Mrs. Evelyn Halbert who asked if the Ordinance passed for the COVID-19 situation had to be brought back for consideration by the City Council. City Clerk Annabelle Aguilar informed Council that the Urgency Ordinance stated that the term of the Ordinance ends when the Governor declares that the Emergency of the COVID-19 outbreak has ended or if the Ordinance is rescinded by the City Council, whichever occurs first.

City Attorney Tom Hallinan reiterated that the opening of JMP should be consistent with the Urgency Ordinance.

City Council agreed to continue the matter to the next regular City Council meeting so that Staff could return with the presentation of a plan to reopen JMP and consider proposed controls due to the COVID-19 pandemic.

ACTION: ***By motion moved and seconded (Uribe / Campbell / passed 5-0) to continue the subject matter to the May 12th regular City Council meeting for the presentation***

of a reopening plan for JMP and proposed control measures due to the COVID-19 pandemic. Motion carried by unanimous City Council roll call vote.
AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Mayor O'Brien announced that for the next 5 minutes public comments could be made to cityclerk@riverbank.org or by calling (209) 863-7172, and proceeded to introduce Item 6.4.

Item 6.4: **Resolution [No. 2020-019] Strongly Recommending That All Residents or Visitors Within the City of Riverbank Wear a Face Mask or Covering That Covers the Nose and Mouth When Leaving Their Place of Residence –** Consider a resolution of the City Council of the City of Riverbank, California (the "City Council") strongly recommending that all residents or visitors within the City of Riverbank (the "City") wear a face mask or covering that covers the nose and mouth when leaving their place or residence (the "Resolution").

Assistant City Manager Marisela Garcia presented the staff report.
City Council discussed the Item.
There were no comments received.

ACTION: ***By motion moved and seconded (Barber-Martinez / Uribe / passed 5-0) to adopt Resolution No. 2020-019 Strongly Recommending that all Residents or Visitors within the City of Riverbank Wear a Face Mask or Covering that covers the Nose and Mouth When Leaving Their Place of Residence as presented.***
Motion carried by unanimous City Council roll call vote.
AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None

Mayor O'Brien announced that pubic comments could be emailed to cityclerk@riverbank.org for Closed Session Items. 8.1, 8.2, and 8.3.

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 - ***there were no comments.***

Item 7.2: Council/Authority Member

- ***Council/Authority Member Barber-Martinez reported that she would be participating in a League of California Cities to advocate for cities with a population of fewer than the 500,000*** *for State Legislators to consider the affects of COVID-19 to cities' budgets; in regards to the neighborhood pantry in the Crossroads area, she encouraged people to remember to practice social distancing, and requested those that are maintaining the pantry ensure that the food provided is safe for distribution.*

- ***Vice Mayor/Chair Uribe announced a scheduled bilingual phone townhall tomorrow at 2:00 p.m. on the COVID-19 by Congressman Josh Harder, and reported his attendance of a webinar "Protecting Local Government – Cyber Security", and that he would be attending several other webinars throughout the week.***

<u>Item 7.3:</u> Mayor/Chair

Mayor/Chair O'Brien: 1) Reported he is attending at least 3 webinars a day; 2) reported on CDBG funding availability for use on needs such as housing, homelessness, and city operations; 3) recommended that the Council and Staff make a positive video to encourage social distancing and connectivity; and 4) recommends reopening only with very safe strict guidelines.

<u>8. CLOSED SESSION</u>

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.

There were no comments received for the following Closed Session Items. Mayor/Chair O'Brien proceeded to introduce the Items.

<u>Item 8.1:</u> **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to subdivision (b) of Government Code § 54956.9
Number of cases: (2) potential cases

<u>Item 8.2:</u> **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.
Under Negotiation: Price, terms of payment, or both

<u>Item 8.3:</u> **Threat to Public Services or Facilities**
Pursuant to Government Code § 54957
Consultation with: City of Riverbank Director of Emergency Services

Mayor/Chair O'Brien announced that the Report of the Closed Session Items would be made to the City Clerk, which would be reflected in the Minutes, and anyone interested in the report could contact the City Clerk.

There being no further open public business, Mayor/Chair O'Brien adjourned the public portion of the meetings at 7:49 p.m.; the City Council and LRA Board went into Closed Session.

<u>ADJOURNMENT – THE PUBLIC PORTION OF THE MEETING</u> (The next regular City Council meeting – Tuesday, May 12th @ 6:pm)

<u>9. REPORT FROM CLOSED SESSION</u>

Closed Session discussion ended at 9:15 p.m.

<u>Item 9.1:</u> Report from Closed Session Item 8.1: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION –** (2) potential cases

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

<u>Item 9.2:</u> Report from Closed Session on Item 8.2: **CONFERENCE WITH REAL PROPERTY NEGOTIATIONS** – Aemetis, Inc.

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

<u>Item 9.3:</u> Report from Closed Session on Item 8.3 – **Threat to Public Services or Facilities**

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

<u>ADJOURNMENT</u>

There being no further business, Mayor/Chair O'Brien adjourned the Closed Session at 9:16 p.m.

ATTEST: (*Adopted 5/26/2020*)

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.C

SECTION 3: CONSENT CALENDAR

Meeting Date:	May 26, 2020
Subject:	Acceptance of the Parking and Trail Improvements at Jacob Myers Park Project and Authorization to File a Notice of Completion
From:	Sean Scully, City Manager
Submitted by:	Kathleen Cleek, Development Services Administration Manager Laura Graybill, Project Coordinator

RECOMMENDATION:

It is recommended that the City Council accept the completion of the Parking and Trail Improvements at Jacob Myers Park Project and authorize staff to file a Notice of Completion.

SUMMARY:

Ross F. Carroll, Inc. completed the construction of the Parking and Trail Improvements at Jacob Myers Park Project. William Kull, City Engineer and City staff have completed a final inspection and determined that construction has been completed per the plans and specifications.

The contract was awarded on January 28, 2020 to Ross F. Carroll, Inc. in the amount of $154,813.00. One contract change order was issued for this project in the amount of $14,746.75.

It is recommended that the Council accept the Parking and Trail Improvements at Jacob Myers Park Project as complete and authorize the Project Coordinator to record the Notice of Completion.

FISCAL IMPACT:

Funding has been programmed for this project with Measure L Funds. The total cost of construction is $169,559.75.

ATTACHMENTS:

1. Notice of Completion
2. Site Map

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

NAME CITY OF RIVERBANK
ATTN: DEVELOPMENT SERVICES
STREET ADDRESS 6707 THIRD STREET
CITY & STATE RIVERBANK, CA 95367

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the undersigned is City of Riverbank (Print Full Name)
3. The complete address of the undersigned is 6707 Third Street, Riverbank, CA 95367 (Address, City, State, Zip)
4. The nature of the title of the undersigned is:

   [X] Owner in Fee, **or** [ ] Vendee (Buyer) under Contract of Purchase, **or**

   [ ] Lessee, **or** [ ] Other

   If "Other," briefly list or describe appropriate designation or title ____________

5. The full names and complete addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

   Co-owner's Name(s) Co-owner's Complete Address (Number and Street, City, State, Zip)

   N/A

6. The names of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work of improvement herein referred to, include, but are not limited to the following individual(s) (if no transfer was made, insert the word "none"):

   Co-owner's Name(s) Co-owner's Complete Address (Number and Street, City, State, Zip)

   N/A

7. A work of improvement on the property described below was completed on May 26, 2020 (Date of Completion).

8. The name of the original contractor, if any, for the work of improvement was (if no contractor for the work of improvement as a whole, insert the word "none") Ross F. Carroll, Inc.

If notice covers completion of contract for only part of the work of improvement, check box and complete:

☐ The kind of work done or finished was construct all demolition, grading, subbase placement,
(Give General Description of Work Completed, e.g., Furnishing of Concrete for Sidewalks, etc.)
asphalt concrete paving and striping.

9. The property on which the work of improvement was completed is in the City of Riverbank, County of Stanislaus, State of California, and is described as follows:
Parking and Trail Improvements at Jacob Myers Park Project
(Set Forth Description of Jobsite Sufficient for Identification, Using Legal Description if Possible)

10. The street address of the said property is Jacob Myers Park, 23653 South Santa Fe Road
(Address, City, State, Zip, or if No Official Street Address, Insert the Word "None")
in Riverbank, CA 95367

Dated this 26th (Day) day of May (Month), 2020 (Year)

City of Riverbank
Laura Graybill, Project Coordinator

(Owner's Signature) (Owner's Typed or Printed Name)

VERIFICATION

I the undersigned, say:

I am the person who signed the foregoing notice. I have read and understand the above notice and know its contents, and the facts stated therein are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in City of Riverbank, County of Stanislaus, State of California on this 26th (Day) day of May (Month), 2020 (Year)

(Signature of Person Signing Notice of Completion)

City of Riverbank
Laura Graybill, Project Coordinator

This form is the notice of completion that a property owner may record to limit the time in which mechanics' liens may be recorded against a construction project (see CA Civil Code § 3093). For this purpose an "owner" is the person who causes a building, improvement, or structure to be constructed, altered, or repaired, whether the interest or estate is in fee, as a vendee (buyer) under contract or purchase, as lessee, or other interest or estate less that fee. If the interest is held by two or more persons as joint tenants or tenants in common, any one or more of the co-tenants may be deemed to be the owner. (CA Civil Code §§ 3092(g), 3093). **This form is for use with a private work of improvement only, and is not intended for public sector applications.**

If the owner records the notice within the applicable time period, the original contractor has sixty (60) days from the day the notice is recorded to record a claim of lien against the project (CA Civil Code § 3115); and all other persons who furnished labor, services, equipment, or materials must record their liens within thirty (30) days after the notice of completion is recorded (CA Civil Code § 3116). Otherwise, all persons who furnished labor, services, equipment, or materials have ninety (90) days after completion of the work of improvement in which to record their liens (CA Civil Code §§ 3115, 3116).

The owner must record the notice in the office of the county recorder of the county where the site is located within ten (10) days after the work of improvement is completed (CA Civil Code § 3093(e)). This applies equally to the project which is completed in phases. A notice of completion must be filed within ten (10) days after the completion of each phase of the project to shield owner properly (CA Civil Code § 3117).

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	A **Resolution** Authorizing the Mayor to Execute and Enter into a New Employment Agreement with Sean Scully as City Manager
From:	Douglas White, City Attorney
Submitted by:	Marisela H. Garcia, Assistant City Manager/Director of Finance

RECOMMENDATION

It is recommended that the Riverbank City Council ("City Council"): (1) approve the new City Manager Employment Agreement ("New Agreement") between the City of Riverbank ("City") and Sean Scully ("Mr. Scully") in a form approved by the City Attorney; and (2) authorize and direct the Mayor to execute the New Agreement on behalf of the City.

SUMMARY

The City Council entered into the first City Manager Employment Agreement ("First Agreement") with Mr. Scully on January 2, 2017 which provided for the terms and conditions of his employment. This initial contract was amended on September 25, 2018 and included items such as a term extension and additional negotiated benefits. A true and correct copy of the executed Second Agreement is attached hereto.

The terms of the Second Agreement included the following:

- Added one year to the original three-year term (new expiration date of January 2, 2021) with the possibility of a two-year extension.
- City Manager will receive a new annual base salary of one hundred and forty-seven thousand dollars ($147,000) with the possibility of a five percent (5%) salary increase effective January each year if the City Manager receives a performance evaluation rating of "satisfactory" or higher. This was consistent with the previous agreement.
- City Manager shall contribute 20% of the cost of healthcare, dental, and vision coverage, and the City will contribute the remaining 80% for the term of the agreement.

- City Manager will receive twenty (20) vacation days, twelve (12) sick days, twelve (12) paid holidays, and twelve (12) executive leave days each year. City Manager may cash out two (2) unused executive leave days at the end of the fiscal year.
- City Manager will be enrolled CalPERS 2%@ 60 Classic plan. City Manager will pay the employee contribution.
- The City will provide the City Manager with life insurance in the amount of fifty thousand dollars ($50,000).
- The City Manager will utilize his own vehicle for City-related travel and will receive a $200 per month auto allowance. In addition, employee may be reimbursed for mileage at the IRS mileage rate. The City Manager will use a City vehicle for City-related travel if a City vehicle is available.
- The City will pay the sum of five thousand dollars ($7,500.00) each year on behalf of the City Manager into a deferred compensation plan.
- The City Manager will receive a sixty-five dollar ($65) per month cell phone allowance.
- The City will contribute two hundred and ninety-two dollars ($292) per month to a pension plan for the City Manager.

In January 2020, the City Council conducted Mr. Scully's annual performance evaluation and review. Mr. Scully received an excellent rating. As such, Mr. Scully was entitled to a five percent (5%) salary increase effective January of 2020 pursuant to the terms of his Second Agreement. During Mr. Scully's January 2020 performance evaluation, the City Council decided to extend his employment agreement by two additional years, which may be extended for one additional year and add additional terms.

The Third Agreement makes the following changes to Mr. Scully Agreement:

- Section 3.4. Adds 2 years to the term of the contract (now expiring January 2, 2023) with the possibility of a one-year extension.
- Five percent (5%) step increase applied starting the first pay period in January 2020 increased the City Manager's annual base salary One Hundred Sixty-Five Thousand Two Hundred Seventy-One dollars and 56/100 ($165,271.56).
- Added Section 5.16 Longevity Incentive which would allow the City Manager to be eligible in the City's Longevity Pay pursuant to City Policy.

All other terms of the employment agreement remain the same.

FINANCIAL IMPACT

The fiscal impact to the City will be as follows: a five (5%) percent salary increase totaling if a “Satisfactory” Performance Evaluation is received in future year. This term is consistent with previous agreements. This will be included in future budgets.

STRATEGIC PLAN

These increases are both reasonable and consistent with the City’s goal of attracting, developing, and retaining quality staff.

ATTACHMENTS

1. City Manager Second Employment Agreement dated September 25, 2018
2. Proposed City Manager New Employment Agreement
3. Resolution

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this 25th day of September, 2018, by and between the City of Riverbank, a municipal corporation ("City") and Sean Scully ("Employee"), an individual. City and Employee may individually be referred to herein as "Party" or collectively as "Parties." There are no other parties to this Agreement.

RECITALS

A. City requires the services of a person with proven executive and administrative qualifications to fill the position of Riverbank City Manager ("City Manager").

B. City, acting by and through the Riverbank City Council ("City Council") has evaluated Employee's knowledge, experience, administrative skills, and abilities and desires to hire and appoint Employee as City Manager pursuant to the terms of this Agreement.

C. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as City Manager.

D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code ("Government Code") section 53260 *et seq*.

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

AGREEMENT

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

Section 2. Effective Date. This Agreement shall become effective on September 25, 2018 ("Effective Date").

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

Section 3.1. Appointment of City Manager and Duties. Employee shall serve as City Manager of City, and shall be vested with the powers, duties, and responsibilities set forth in Section 31.03(H) of the Riverbank Municipal Code ("R.M.C.") and under California law. Employee shall further perform the functions and duties specified under the laws of the State of California, the R.M.C., the Ordinances and Resolutions of the City, and such other duties and functions as the City Council may from time-to-time assign. The City Council may also designate Employee as the chief executive of other City-related legal entities, such as a redevelopment agency, financing authorities, or joint powers authorities.

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

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

Section 3.4. Term. The term of this Agreement shall be from the Effective Date -until January 2, 2021 ("Term"). The City Council may extend the Term for a period of two (2) years. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 7 below.

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

Section 5. Compensation and Evaluations.

Section 5.1. Base Salary. City shall pay Employee an annual salary of One Hundred and Forty-Seven Thousand Dollars ($147,000.00) ("Base Salary"), payable in installments at the same time that other City employees are paid. This Base Salary shall be effective retroactively to the first pay period in January 2018. This Base Salary does not constitute extra compensation for services previously rendered. This Base Salary is made retroactive to the first pay period of January 2018 to reflect a previously agreed upon increase in pay. A salary review shall occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive a five percent (5%) Base Salary increase each January upon receiving a performance evaluation of at least "Satisfactory."

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

Section 5.3. Review and Evaluation. The City Council agrees to review and evaluate Employee's performance of his duties as City Manager pursuant to the terms of this Agreement ("Review and Evaluation") on not less than an annual basis, and to provide Employee with a written performance review.

Employee will be evaluated in January 2019. If Employee receives a satisfactory performance rating or higher, Employee will receive a salary step increase effective the first pay period following the Review and Evaluation.

The Employee's annual Review and Evaluation shall continue to be conducted in January of each year, or at the City Council's discretion.

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

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

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

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

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

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

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

Section 5.11. City-Related Business Travel Reimbursement. Employee's duties require that he have continuously available transportation for City business or other related purposes. Employee agrees to provide and utilize his own vehicle for City-related business. The City shall provide Employee with a monthly auto allowance of $200.00 per month. City shall reimburse Employee for any City-related business travel at the Internal Revenue Service ("IRS") mileage rate, which may change from time to time. Employee shall name City as an additional insured under Employee's automobile insurance coverage. Employee may use a City vehicle for travel on all City-related business based on availability.

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

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

Section 5.14. Deferred Compensation. City shall establish and maintain a deferred compensation plan and pay the sum of Seven Thousand Five Hundred Dollars ($7,500.00) per year on behalf of Employee into said deferred compensation plan payable in pro rata installments at the same time other employees of the City are paid.

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

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

Section 7. Termination of Employment and Severance.

Section 7.1. Voluntary Resignation. Employee may resign at any time and agrees to give City at least forty-five (45) days advance written notice of the effective date of the Employee's resignation, unless the Parties otherwise agree in writing. If the Employee retires from full time public service with City, Employee shall provide at least three (3) months advance written notice. The Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation, City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to Severance as set forth in Section 7.3 of this Agreement.

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

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

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

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

1. Conviction of a felony;

2. Disclosing confidential information of City;

3. Gross carelessness or misconduct;

4. Unjustifiable and willful neglect of the duties described in this Agreement;

5. Mismanagement;

6. Non-performance of duties;

7. Any conduct which violates City's Personnel Rules and for which a City employee may be terminated;

8. Repeated and protracted unexcused absences from City Manager's office and duties;

9. Willful destruction or misuse of City property;

10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;

11. Willful violation of federal, state, or City discrimination laws;

12. Continued substance abuse which adversely affects performance of Employee's duties as City Manager;

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

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

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

Section 8. <u>Indemnification.</u> City shall defend, hold harmless, and indemnify Employee against any tort, personnel, civil rights, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager in accordance with California's Government Claims Act (Government Code section 825 *et seq.*), and shall provide a defense to Employee in accordance with Government Code sections 995-996.5. City may decline to defend or indemnify Employee only as permitted by the Government Code. City may compromise and settle any such claim or suit and pay the amount of any resulting settlement or judgment. Provided, however, that City's duty to defend and indemnify shall be contingent upon Employee's good faith cooperation with such defense. In the event City provides funds for legal criminal defense pursuant to this Section, Employee shall reimburse City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code sections 53243-53243.4.

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

Section 10. Notices. Any notice or communication required hereunder between City and Employee must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Riverbank ATTN: City Clerk 6707 Third Street Riverbank, CA 95367
and	Churchwell White, LLP ATTN: Thomas P. Hallinan 1414 K Street, 3rd Floor Sacramento, CA 95814

If to Employee: Mr. Sean Scully
City of Riverbank
6707 Third St., Suite A
Riverbank, CA 95367; or
Personal Address indicated in Personnel Record

Section 11. General Provisions.

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

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

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

Section 11.4. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement have 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 breach would have a material effect hereon.

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

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

By:
Richard D. O'Brien, Mayor

Date Signed: 9/28/2018

By:
Annabelle H Aguilar, CMC, City Clerk

Date Signed: 09/27/2018

Approved as to Form and Content:

By:
Thomas P. Hallinan, City Attorney

EMPLOYEE:

By:
Sean Scully, an individual

Date Signed: 9/26/18

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE AND ENTER INTO A NEW EMPLOYMENT AGREEMENT WITH SEAN SCULLY AS CITY MANAGER

WHEREAS, pursuant to the City of Riverbank's ("City") Municipal Code section 31.03, the Riverbank City Council ("City Council") is authorized to hire and appoint the City Manager; and

WHEREAS, on January 2, 2017, the City Council adopted a resolution approving a three (3) year contract, to expire on January 2, 2020, between the City and Sean Scully; and

WHEREAS, the City Council renegotiated the initial contract and approved a Second Agreement on September 25, 2018 with Sean Scully as City Manager based on a favorable performance evaluation; and

WHEREAS, the City wishes to continue to employ Sean Scully as City Manager based on a favorable performance evaluation; and

WHEREAS, the City and Sean Scully now wish to enter into a new employment agreement for a term set to expire on January 2, 2023, which will adjust the City Manager's salary in future years based on a satisfactory evaluation and other benefits, and which is attached hereto as Exhibit A ("Employment Agreement").

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the Employment Agreement, attached hereto as **Exhibit A**, and authorizes the Mayor to execute and enter into the Employment Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 26th day of May, 2020; 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 – Employment Agreement

EMPLOYMENT AGREEMENT

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

RECITALS

A. City requires the services of a person with proven executive and administrative qualifications to fill the position of Riverbank City Manager ("City Manager").

B. City, acting by and through the Riverbank City Council ("City Council") has evaluated Employee's knowledge, experience, administrative skills and abilities and desires that Employee continue in his position as City Manager pursuant to the terms of this Agreement.

C. The Parties agree that this shall be the sole agreement between the Parties regarding the employment of Employee as City Manager.

D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code sections 36505 and 53260 et seq.

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

AGREEMENT

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

Section 2. Effective Date. This Agreement shall be retroactively effective to January 1, 2020 ("Effective Date").

Section 3. Appointment of City Manager Duties and Term.

3.1. Appointment and Duties of City Manager. Employee shall continue to serve as City Manager of City and shall be vested with the powers, duties, and responsibilities set forth in Section 31.03(H) of the Riverbank Municipal Code ("R.M.C.") and under California law. Employee shall further perform the functions and duties specified under the laws of the State of California, the R.M.C., the Ordinances, and Resolutions of the City, and such other duties and functions as the City Council may from time-to-time assign. The City Council may also designate Employee as the chief executive of other City related-legal entities, such as a redevelopment agency, financing authorities or joint power authorities. No modification or change in Employee's responsibilities, duties or position shall otherwise change or revoke any other provision of this Agreement.

3.2. No Secondary Employment. Employee agrees to devote all such productive time, ability and attention to the City's business as is necessary to the full performance of his duties. During the Term, as defined in Section 3.4 of this Agreement, Employee shall not hold secondary employment or engage in activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests. As such, Employee agrees that Employee will notify the City Council in writing if Employee wishes to accept secondary employment, and the City Council may determine whether there is the appearance of or an actual conflict, or potential conflict, with the satisfactory performance of Employee's duties and/or the best interest of the City. Employee shall not hold secondary employment, subject to any exceptions approved in writing by the City Council; however, Employee may volunteer for such nonprofit organizations as he may see fit, provided that such volunteer services shall not interfere with Employee's duties on behalf of the City.

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

3.4. Term. The term of this Agreement shall begin on the Effective Date and expire on January 2, 2023. ("Term"). The City Council may extend the Term for a period of one (1) year. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 6 below.

Section 4. At-Will Employment. Employee is an at-will employee serving at the pleasure of the City Council, as provided in Government Code section 36506 and R.M.C. Section 31.0 4(F) . Accordingly, Employee has no property right in his employment and the City Council may terminate Employee's employment and this Agreement at any time, with or without cause. Employee shall be entitled to Severance, as defined below, only if City terminates Employee's employment without cause as set forth in Section 7.3.

Section 5. Compensation and Evaluations.

5.1. Base Salary. In exchange for the performance of Employee's duties, City shall pay Employee an annual salary in the amount of One Hundred Sixty-Five Thousand, Two Hundred Seventy-One and 56/100's dollars ($165,271.56)("Base Salary"), payable at the same time as other similarly situated Director level employees are paid. A salary review will occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive a five percent (5%) step increase in Base Salary each January upon receiving a performance evaluation of at least "satisfactory."

5.2. Pro rata Decrease. Employee acknowledges that the Base Salary may be subject to pro rata decrease should the City Council adopt an unpaid Mandatory Furlough Program as a budgetary measure.

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

5.4. Healthcare Benefits. City provides medical benefits to its employees through the San Joaquin Valley Insurance Association. Employee shall contribute twenty percent (20%) of the total cost of premiums for his healthcare benefits the City will contribute the remaining eighty percent 80%. Employee shall contribute twenty percent (20%) of the cost of his dental and vision coverage and the City shall pay the remaining eighty percent (80%) during the term of this Agreement.

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

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

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

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

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

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

5.11. City-Related Business Travel Reimbursement. Employee's duties require that he have continuously available transportation for City business or other related purposes. Employee agrees to provide and utilize his own vehicle for City related business. The City shall provide Employee with a monthly auto allowance of $200.00 per month. City shall reimburse Employee for any City-related business travel at the Internal Revenue Service ("IRS") mileage rate, which may change from time to time. Employee shall name City as an additional insured under Employee's automobile insurance coverage. Employee may use a City vehicle for travel on all City-related business based on availability.

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

5.13. Pension Plan. City shall contribute Two Hundred and Ninety-Two Dollars ($292.00) per month to Employee's pension plan**.**

5. 14. Deferred Compensation. City shall establish and maintain a deferred compensation plan and pay the sum of ~~Five Thousand~~Seven Thousand Five Hundred Dollars ($~~5~~7,~~000~~500.00) per year on behalf of Employee into said deferred compensation plan, which will be payable in pro rata installments at the same time other similarly situated employee payments are made.

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

5.16 Longevity Incentive. Employee shall be eligible for Longevity Pay pursuant to City policy.

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

Section 7. Termination of Employment and Severance

7.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least forty-five (45) days advance written notice of the effective date of Employee's resignation unless the Parties otherwise agree in writing. If Employee retires from full-time public service with the City, the Employee shall provide at least three (3) months advance written notice. The Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation or retirement, the City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation or retirement, Employee shall not be entitled to Severance as set forth in Section 7.3 of this Agreement.

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

If Employee's termination is based on charges of misconduct that publicly stigmatizes Employee's reputation or impairs his ability to earn a living, or might damage his standing in a community, Employee may, within five (5) business days of the City Council's notice to Employee of the intent to terminate Employee's employment, make a written request for a "name-clearing" hearing (as described in *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340 and its progeny) before the City Council. The "name-clearing" hearing is solely to provide Employee the opportunity to clear his name. The hearing shall take place at a regularly scheduled City Council meeting or closed session in accordance with the City's Municipal Code, Personnel Rules, or standard practice, if applicable, and any applicable provisions of state law. The City Council may determine whether the allegations contained in the notice of termination are supported. If the City Council determines that the allegations are not supported, a decision shall be issued to reflect that Employee's termination was without fault. This decision will not, however, require that Employee be reinstated. In the event Employee does not request a "name-clearing" hearing before the City Council, the City Council's decision to terminate will be effective by the close of business on the fifth (5th) day after the City Council provided notice to Employee of its intent to terminate Employee's employment.

7.3. Termination Without Good Cause. In the event City terminates this Agreement without good cause as defined below in Section 7.4, the City shall pay Employee a sum equal to six (6) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code section 53260. Any cash settlement related to the termination of this Agreement received by Employee from the City, shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position while employed with the City, pursuant to Government Code section 53243.2. Severance shall be paid in the same manner as to other City employees unless otherwise agreed to by the City and Employee. In the event the City terminates this Agreement, and Employee's employment, Employee shall be entitled to continued medical and dental benefits at his own cost, pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

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

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

1. Conviction of a felony;
2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates the City's Personnel Rules and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from City Manager's offices and duties;
9. Willful destruction or misuse of City property;

10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;

11. Willful violation of federal, state or City discrimination laws;

12. Continued substance abuse which adversely affects performance of Employee's Duties as defined under this Agreement;

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

14. Disability that renders Employee unable to perform the essential functions of his job, which City is unable to reasonably accommodate without placing an undue burden on City;

15. Dishonesty; and

16. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests.

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

Section 8. **<u>Indemnification</u>**. City shall defend, hold harmless and indemnify Employee against any tort, personnel, civil rights, or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's Duties in accordance with California's Government Claims Act (Government Code section 825 et seq.) and shall provide a defense to Employee in accordance with Government Code sections 995-996.5. The City may decline to defend or indemnify Employee only as permitted by the Government Code. City may compromise and settle any such claim or suit and pay the amount of any resulting settlement or judgment; provided, however, that the City's duty to defend and indemnify shall be contingent upon Employee's good faith cooperation with such defense. In the event City provides funds for legal criminal defense pursuant to this Section, Employee shall reimburse City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code sections 53243-53243.4.

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

Section 10. **<u>Notices</u>**. Any notice or communication required hereunder between City and Employee must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Riverbank ATTN: City Clerk 6707 Third Street Riverbank, California 95367
and	Churchwell White LLP ATTN: Thomas P. Hallinan 1414 K Street, 3rd Floor Sacramento, CA 95814
If to Employee:	Marisela H. Garcia City of Riverbank 6706 Third Street, Suite A Riverbank, CA 95367 CC: personnel file

Section 11. **General Provisions**.

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

11.2. **Entire Agreement**. **The Parties agree that this Agreement** constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties relating to Employee's employment and supersedes and renders null and void all other prior or contemporaneous oral or written obligations, understandings and agreements of the Parties relating to the subject matter herein. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

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

11.4. <u>Authority</u>. 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, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

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

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

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

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

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

11.10. <u>Venue</u>. Venue for all legal proceedings shall be in the Superior Court for the State of California, in and for the County of Stanislaus.

11.11. <u>Attorney's Fees and Costs</u>. 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.

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

CITY:	**EMPLOYEE:**
City of Riverbank, a California municipal corporation	
By:______________________________ Richard D. O'Brien, Mayor	By:________________________ Marisela H. Garcia, an individual
Date Signed:________________________	Date Signed:__________________
By:______________________________ Annabelle Aguilar, City Clerk	
Date Signed:________________________	

Approved as to Form and Content:

By:______________________________
Thomas P. Hallinan, City Attorney

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.2

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	A **Resolution** Authorizing the City Manager to Execute and Enter into a New Employment Agreement with Marisela H. Garcia as Assistant City Manager/Administrative Services Director
From:	Douglas White, City Attorney
Submitted by:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the Riverbank City Council ("City Council"): (1) approve the new Assistant City Manager Employment Agreement ("New Agreement") between the City of Riverbank ("City") and Marisela Garcia ("Ms. Garcia") in a form approved by the City Attorney; and (2) authorize and direct the City Manager to execute the New Agreement on behalf of the City.

SUMMARY

In October of 2019 the Riverbank City Council negotiated the terms of an updated employment agreement for the Assistant City Manager Marisela Garcia. In 2017 the City Council appointed Ms. Garcia as the Assistant City Manager for the City of Riverbank, a position that included both duties as Assistant City Manager and Director of Finance. Since that time Ms. Garcia has temporarily assumed additional job responsibilities as a result of organizational changes. Specifically Ms. Garcia has taken over Human Resource Manager responsibilities on behalf of the City. The key purpose of the negotiations for a new employment agreement related to adding the job duties of Human Resources as well as other duties commonly assigned to that position (risk management etc). The result of the negotiations was a new title "Assistant City Manager/Administrative Services Director" which will be responsible for duties commonly associated with the Assistant City Manager, Director of Finance and Human Resources Manager. In an effort to bring all updated agreements at one time, this agreement was held for approval until the negotiation was completed for the City Manager's position as well as the Parks and Recreation Director (also included in this agenda) and the subsequent completion of the agreements by the City Attorney's office. The terms of the agreement compared to Ms. Garcia's 2017 agreement are generally the same with 5 key exceptions. The general terms will be listed below with the new negotiated provisions indicated in **bold type.** The complete draft agreement is located as exhibit A to the attached resolution.

The terms of the new agreement negotiated by the City Council are the following:

- **The term of the agreement will be for a four (4) year period retro actively beginning November 1, 2019 and expiring on November 1, 2023**.

- **Longevity Incentive is included to clarify that Ms. Garcia will be eligible for longevity increases in compliance with the same schedule already in place for Mid Management and Miscellaneous Bargaining Units (as has been general past practice). That longevity incentive is as follows:**

Years of Service	**Longevity Pay Rate**
13 but less than 20	**5% of Base Salary**
20+	**additional 2.5% of Base Salary (total of 7.5%)**

- **Employee shall not receive cost of living adjustments (COLA) currently agreed to with Mid Management and Miscellaneous Bargaining Units for the 2022 or 2023 years.**

- **The City will match Employee's contribution to the deferred compensation plan in an amount not to exceed Seventy-Five Dollars ($75.00) each pay period (previous agreement matched $25.00 per pay period).**

- **Employee shall earn twenty-five (25) working days of vacation per year with a maximum accrual of four hundred (400) hours. This will be consistent with other tiered vacation allowances for labor groups and at will employees based on years of service.**

- Effective July 1, 2019, Employee shall contribute fifteen percent (15%) of the total cost of healthcare benefits for Employee and any covered dependents and the City will contribute the remainder. Effective July 1, 2020, Employee shall contribute twenty percent (20%) of the total cost of healthcare benefits for Employee and any covered dependents and the City will contribute the remainder. The City will pay the full premium for Employee and family dental and vision coverage during the Term of this Agreement. (Same as previous agreement)

- Base salary $130,000 for the position is unchanged from the 2017 agreement. Since that time step increases and COLA adjustments have adjusted the salary to approximately $144,812.88. (Same as previous agreement).

- All other benefits, responsibilities, and requirements of the employment agreement are unchanged from the 2017 agreement.

All other terms of the employment agreement remain the same.

FINANCIAL IMPACT

Minimal difference in financial impact since the vast majority of the terms (and the base salary) remain the same as in the previous agreement. Any longevity or minor benefit increases listed in **bold type** above will be included in future budgets.

STRATEGIC PLAN

These increases are both reasonable and consistent with the City's goal of attracting, developing, and retaining quality staff.

ATTACHMENTS

1. Resolution
2. Proposed Employment Agreement for Assistant City Manager / Administrative Services Director

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AND ENTER INTO A NEW EMPLOYMENT AGREEMENT WITH MARISELA H. GARCIA AS ASSISTANT CITY MANAGER / ADMINISTRATIVE SERVICES DIRECTOR

WHEREAS, the City Council adopted Ordinance No. 2017-001, establishing the duties and powers of the Assistant City Manager; and

WHEREAS, City Council has approved the creation of a new position entitled Assistant City Manager/ Administrative Services Director and the City continues to require the services of a person with proven executive and administrative qualifications to fill the newly created position; and

WHEREAS, The City, acting by and through the City Council, has evaluated Employee's knowledge, experience, administrative skills and abilities and desires to appoint Employee as the Assistant City Manager/Administrative Services Director pursuant to the terms of this Agreement; and

WHEREAS, As part of her duties as Assistant City Manager/Administrative Services Director, Employee shall continue to perform her duties as the City's Assistant City Manager, which include the duties of Director of Finance, and she shall additionally assume the duties of the Human Resources Manager; and

WHEREAS, the agreement will be retroactive to November 1, 2019; and

WHEREAS, the City and Marisela Garcia now wish to enter into a new employment agreement for a term set to expire on November 1, 2023.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the Employment Agreement, attached hereto as **Exhibit A,** and authorizes the City Manager to execute and enter into the Employment Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 26th day of May, 2020; 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: Exhibit A – Employment Agreement

EMPLOYMENT AGREEMENT

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

RECITALS

A. Employee was formerly employed by City in the position of Director of Finance.

B. On January 10, 2017, the City Council adopted Ordinance No. 2017-001, establishing the duties and powers of the Assistant City Manager.

C. On February 10, 2017, the City Council adopted an employment agreement between the City and Employee appointing Employee to the position of Assistant City Manager for a term of four (4) years, which provided that Employee would continue to perform the duties of Director of Finance in addition to the duties of Assistant City Manager

D. The City Council has approved the creation of a new position entitled Assistant City Manager/ Administrative Services Director and the City continues to require the services of a person with proven executive and administrative qualifications to fill the newly created position.

E. The City, acting by and through the City Council, has evaluated Employee's knowledge, experience, administrative skills and abilities and desires to appoint Employee as the Assistant City Manager/Administrative Services Director pursuant to the terms of this Agreement.

F. As part of her duties as Assistant City Manager/Administrative Services Director, Employee shall continue to perform her duties as the City's Assistant City Manager, which include the duties of Director of Finance, and she shall additionally assume the duties of the Human Resources Manager.

G. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee.

H. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code sections 36505 and 53260 et seq.

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

AGREEMENT

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

Section 2. **Effective Date**. This Agreement shall be retroactively effective to November 1, 2019 ("Effective Date")

Section 3. **Appointment of Assistant City Manager/Administrative Services Director, Duties and Term**.

3.1. **Appointment and Duties**. Employee shall serve as the Assistant City Manager/Administrative Services Director of the City and shall be vested with the powers, duties, and responsibilities set forth in Title III, Chapter 31, Section 31.04 of the Riverbank Municipal Code ("R.M.C.") and California law. Employee shall further perform the functions and duties specified under the laws of the State of California, the R.M.C., the Ordinances, and Resolutions of the City, and such other duties and functions as the City Manager may from time-to-time assign.

In addition, Employee shall continue to perform duties of the Director of Finance and shall be vested with the powers, duties, and responsibilities set forth in Section 31.05 of the R.M.C. as part of her appointment as Assistant City Manager/Administrative Services Director. Employee shall further assume the duties of the Human Resources Manager as set forth in the Human Resources Manager job description, which is attached to this Agreement as **Attachment 1.**

Employee's job duties under this section 3.1 of this Agreement shall collectively be referred to as "Employee's Duties."

3.2. **No Secondary Employment**. Employee agrees to devote all of her productive time, ability, and attention to the City's business to the fullest extent necessary to perform her duties and responsibilities to the satisfaction of the City. During the Term, as defined in Section 3.4 of this Agreement, Employee shall not hold secondary employment or engage in activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests. As such, Employee agrees that Employee will notify the City Manager in writing if Employee wishes to accept secondary employment, so the City Manager may determine whether there is the appearance of or an actual conflict, or potential conflict, with the satisfactory performance of Employee's Duties and/or the best interest of the City. Employee shall not hold secondary employment, subject to any exceptions approved in writing by the City

Manager; provided, however, that Employee has the right to volunteer for such nonprofit organizations as she may see fit and further provided that such volunteer services shall not interfere with Employee's Duties on behalf of the City.

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

3.4. Term. The term of this Agreement shall be for four (4) years from the Effective Date ("Term"). The City Council may extend the Term for a period of one (1) year. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 6 below.

Section 4. At-Will Employment. Employee is an at-will employee serving at the pleasure of the City Council, as provided in Government Code section 36506 and R.M.C. Section 31.03(E). Accordingly, Employee has no property right in her employment and the City Manager may terminate Employee's employment and this Agreement at any time, with or without cause. Employee shall be entitled to Severance, as defined below, only if City terminates Employee's employment without cause as set forth in Section 6.3.

Section 5. Compensation and Evaluations.

5.1. Base Salary. Employee's initial annual salary under this Agreement is set at Step A, in the amount of One Hundred Thirty Thousand and 00/100's Dollars ($130,000.00) ("Base Salary"). Employee's Base Salary shall be payable in installments at the same time that the other similarly situated City employees are paid.

Effective the first pay period of January 2020, upon receipt of a satisfactory rating after a salary review pursuant to Section 5.3 of this Agreement, City shall increase Employee's Base salary to Step B, in the amount of One Hundred Forty-Four Thousand Eight Hundred Twelve Dollars and Eighty-Eight Cents ($144,812.88) Salary reviews shall occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive a step increase annually upon receiving a performance evaluation of at least "Satisfactory".

Effective the first full pay period of January 2020, Employee shall receive a cost of living adjustment ("COLA") in the same amount (3 %) as is provided to employees covered under the Riverbank Mid- Manager's Association January 4, 2019-December 31, 2022 MOU (" Mid Manager MOU") . Effective the first full pay period of January 2021, Employee shall receive COLA in the same amount (3%) as is provided to employees covered under the Mid- Manager MOU. Employee shall not receive a COLA increase in 2022 or 2023.

At any such time that the City Manager leaves employment with the City and Employee must fulfill the duties of City Manager, Employee will immediately receive a step increase. If Employee is already at Step E, then she will receive a five percent (5%) Base Salary increase for the time spent as City Manager.

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

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

5.4. Healthcare Benefits. City provides medical benefits to its employees. Effective July 1, 2019, Employee shall contribute fifteen percent (15%) of the total cost of healthcare benefits for Employee and any covered dependents and the City will contribute the remainder. Effective July 1, 2020, Employee shall contribute twenty percent (20%) of the total cost of healthcare benefits for Employee and any covered dependents and the City will contribute the remainder. The City will pay the full premium for Employee and family dental and vision coverage during the Term of this Agreement.

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

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

5.7. Vacation. Employee shall earn twenty-five (25) working days of vacation per year with a maximum accrual of four hundred (400) hours. Employee will carry over any existing vacation time from employment with City existing on the Effective Date of this Agreement.

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

5.9. Executive Leave. It is recognized that Employee must devote a great deal of time outside the normal office hours to City business. To that end, Employee shall receive ninety-six (96) hours of executive leave at the beginning of each fiscal year, twenty-four (24) of which may be cashed out if not used. Any unused executive leave expires on the June 30 of each fiscal year.

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

5.11. Deferred Compensation. City shall establish and maintain a deferred compensation plan and pay the sum of Two Hundred Fifty Dollars ($250.00) per month on behalf of Employee into said deferred compensation plan. City will also match Employee's contribution to the deferred compensation plan in an amount not to exceed Seventy-Five Dollars ($75.00) each pay period. City will also contribute to the Union Pension Retirement Fund at the rate of one hundred and seventy-three (173) hours worked time multiplied by the negotiated rate for any given year each month (e.g. 173 x .93 = $160.89). Employee shall receive any adjustment to this program granted to all other Department Heads.

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

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

5.13 Longevity Incentive. Longevity Pay is to recognize long-term employees of the City and designed to provide eligible employees compensation in addition to their regular Base Salary. Employee shall be eligible for longevity pay as follows:

Years of Service	Longevity Pay Rate
13 but less than 20	5% of Base Salary
20+	additional 2.5% of Base Salary (total of 7.5%)

The maximum longevity pay increase employees can receive during the term of their employment with the City is seven and a half percent (7.5%). Longevity pay compensation shall be effective the first full pay period following Employee's meeting the eligibility criteria.

Section 6. Termination of Employment and Severance.

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

6.2. Termination by City Manager. The City Manager may terminate this Agreement and remove Employee from her position as Assistant City Manager/Administrative Services Director at any time with or without cause, subject to ratification by the City Council. If Employee's termination is based on charges of misconduct that publicly stigmatizes Employee's reputation or impairs her ability to earn a living, or might damage her standing in a community, Employee may, within five (5) business days of the City Manager's notice to Employee of his or her intent to terminate Employee's employment, make a written request for a "name-clearing" hearing (as described in *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340 and its progeny) before the City Council. The "name-clearing" hearing is solely to provide Employee the opportunity to clear her name. The hearing shall take place at a regularly scheduled City Council meeting or closed session in accordance with the City's Municipal Code, Personnel Rules, or standard practice, if applicable, and any applicable provisions of state law. The City Council may determine whether the allegations contained in the notice of termination are supported. If the City Council determines that the allegations are not supported, a decision shall be issued to reflect that Employee's termination was without fault. This decision will not, however, require that Employee be reinstated to. In the event Employee does not request a "name-clearing" hearing before the City Council, the City Manager's decision to terminate will be effective by the close of business on the fifth (5th) day after the City Manager provided notice to Employee of his or her intent to terminate Employee's employment.

Upon termination for any reason, City shall compensate Employee for all accrued vacation and executive leave as well as thirty percent (30%) of sick leave earned but not used. This compensation shall be based upon Employee's Base Salary as of the date of employment termination.

6.3. Termination Without Good Cause. In the event City terminates this Agreement without good cause as defined below in Section 6.4, the City shall pay Employee a sum equal to six (6) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code section 53260. Any cash settlement related to the termination of this Agreement received by Employee from the City, shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position while employed with the City, pursuant to Government Code section 53243.2. Severance shall be paid in the same manner as to other City employees unless otherwise agreed to by the City and Employee. In the event the City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at her own cost, pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

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

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

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

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

14. Disability that renders Employee unable to perform the essential functions of her job, which City is unable to reasonably accommodate without placing an undue burden on City;

15. Dishonesty; and

16. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests.

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

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

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

Section 9. **Notices**. Any notice or communication required hereunder between City and Employee must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Riverbank ATTN: City Clerk 6707 Third Street Riverbank, California 95367
and	Churchwell White LLP ATTN: Thomas P. Hallinan 1414 K Street, 3rd Floor Sacramento, CA 95814
If to Employee:	Marisela H. Garcia City of Riverbank 6706 Third Street, Suite A Riverbank, CA 95367 CC: personnel file

Section 10. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

CITY:

City of Riverbank, a California municipal corporation

By:__________________________________
Sean Scully, City Manager

Date Signed:___________________________

By:__________________________________
Annabelle H. Aguilar, City Clerk

Date Signed:___________________________

Approved as to Form and Content:

By:__________________________________
Thomas P. Hallinan, City Attorney

EMPLOYEE:

By:__________________________
Marisela H. Garcia, an individual

Date Signed:____________________

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.3

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	A **Resolution** Authorizing the City Manager to Execute and Enter into a New Employment Agreement with Sue Fitzpatrick as Parks and Recreation Director
From:	Douglas White, City Attorney
Submitted by:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the Riverbank City Council ("City Council"): (1) approve the new Employment Agreement ("New Agreement") between the City of Riverbank ("City") and Sue Fitzpatrick ("Ms. Fitzpatrick") in a form approved by the City Attorney; and (2) authorize and direct the City Manager to execute the New Agreement on behalf of the City.

SUMMARY

In November of 2019 the Riverbank City Council negotiated the terms of an updated employment agreement for the Parks and Recreation Director Sue Fitzpatrick. Sue has worked for the City of Riverbank since October of 1999. For many of those years she has served as the City's Parks and Recreation Director in charge of all recreation programs, park facilities, special events and maintenance of general City facilities (buildings). In an effort to update all employment agreements and to clarify past practice as it relates to longevity incentives the City Council negotiated an updated agreement with Ms. Fitzpatrick in November of 2019. In an effort to bring all updated agreements at one time, this agreement was held for approval until the negotiation was completed for the City Manager's position as well as the Assistant City Managers position (also included in this agenda) and the subsequent completion of the agreements by the City Attorney's office. The terms of the agreement compared to the terms of Ms. Fitzpatrick's prior agreements are generally the same with three (3) key exceptions which will be detailed in **bold type** below. The complete draft agreement is located as exhibit A to the attached resolution.

The terms of the new agreement negotiated by the City Council are the following:

- **The term of the agreement will be for a three (3) years from the effective date (retroactive to December 11, 2019).**

- **Longevity Incentive is included to clarify that Ms. Fitzpatrick is eligible for longevity increases in compliance with the same schedule already in place for Mid Management and Miscellaneous Bargaining Units (as has been general past practice). That longevity incentive is as follows:**

Years of Service	**Longevity Pay Rate**
13 but less than 20	**5% of Base Salary**
20+	**additional 2.5% of Base Salary (total of 7.5%)**

- **Employee shall not receive cost of living adjustments (COLA) currently agreed to with Mid Management and Miscellaneous Bargaining Units for the 2022 or 2023 years.**

- **The City Attorney has clarified language in section 6.3 related to severance to ensure the provisions of this section are compliant with current state law.**

- Base salary $126,091.95 for the position is unchanged from current base salary for the position.

- All other benefits, responsibilities, and requirements of the employment agreement are generally consistent with the previous agreement.

FINANCIAL IMPACT

Minimal difference in financial impact since the vast majority of the terms (and the base salary) remain the same as in the previous agreement. Any longevity or minor benefit increases listed in **bold type** above will be included in future budgets.

STRATEGIC PLAN

These increases are both reasonable and consistent with the City's goal of attracting, developing, and retaining quality staff.

ATTACHMENTS

1. Resolution
2. Proposed Employment Agreement for Parks and Recreation Director

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AND ENTER INTO A NEW EMPLOYMENT AGREEMENT AS PARKS AND RECREATION DIRECTOR

WHEREAS, in November of 2019 the City Council negotiated the terms of an updated employment agreement with the Parks and Recreation Director; and

WHEREAS, Sue Fitzpatrick has worked for the City of Riverbank since 1999 and desires to continue her employment with the City under this new agreement; and

WHEREAS, The City, acting by and through the City Council, has evaluated Employee's knowledge, experience, administrative skills and abilities and desires to appoint Employee as the Parks and Recreation Director pursuant to the terms of this Agreement; and

WHEREAS, the City and Sue Fitzpatrick now wish to enter into a new employment agreement that will be retroactive to December 11, 2019, and for a term set to expire on December 11, 2022.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the Employment Agreement, attached hereto as **Exhibit A**, and authorizes the City Manager to execute and enter into the Employment Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 26th day of May, 2020; 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: Employment Agreement

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made by and between the City of Riverbank, a municipal corporation ("City"), and Sue Fitzpatrick, an individual ("Employee"). The City and Employee may individually be referred to herein as "Party" or collectively as "Parties". There are no other parties to this Agreement.

RECITALS

A. Employee began employment with the City on October 18, 1999 ("Anniversary Date").

B. Employee is presently employed with the City and serves as the Director of Parks and Recreation. The Director of Parks and Recreation is the head of the Parks and Recreation Department and provides departmental and complex administrative support to the Riverbank City Manager ("City Manager").

C. The City Manager is authorized to appoint City staff pursuant to the City Code of Riverbank ("City Code") section 31.03(H)(12).

D. The Parties wish to enter into a new employment agreement as Employee wishes to continue her employment with the City, and the City wishes to continue Employee's employment with the City as Director of Parks and Recreation.

E. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as Director of Parks and Recreation and replace any previous employment relationships and benefits previously conferred on the Director of Parks and Recreation.

F. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code ("Government Code") sections 36505 and 53260 *et seq*.

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

AGREEMENT

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

Section 2. Effective Date. This Agreement shall be retroactively effective to December 11, 2019, once executed by both the City and Employee ("Effective Date").

Section 3. Appointment of Director of Parks and Recreation, Duties, and Term.

Section 3.1. Appointment of Director of Parks and Recreation and Duties. Employee shall serve as the Director of Parks and Recreation of the City, and shall be vested with the powers, duties, and responsibilities set forth in City Code, California law, ordinances, and resolutions, and such other duties and functions as the City Manager may from time-to-time assign.

Section 3.2. No Secondary Employment. Employee agrees to devote all of her productive time, ability, and attention to the City's business to the fullest extent necessary to perform her duties and responsibilities to the satisfaction of the City. During the Term, as defined in Section 3.5 of this Agreement, Employee shall not hold secondary employment or engage in activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests. As such, Employee agrees that Employee will notify the City Manager in writing if Employee wishes to accept secondary employment, so the City Manager may determine whether there is the appearance of or an actual conflict, or potential conflict, with the satisfactory performance of Employee's Duties and/or the best interest of the City. Employee shall not hold secondary employment, subject to any exceptions approved in writing by the City Manager; provided, however, that Employee has the right to volunteer for such nonprofit organizations as she may see fit and further provided that such volunteer services shall not interfere with Employee's duties as Director of Parks and Recreation on behalf of the City.

.

Section 3.3. Exempt Employee. The general business hours for City employees are Monday through Friday, 7:30 a.m. to 5:30 p.m. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq*.). Employee shall not receive overtime or extra compensation for hours worked outside of the City's general business hours, which are necessary to fulfill the duties of the Director of Parks and Recreation position, unless otherwise provided in this Agreement.

Section 3.4. Schedule. The Director of Parks and Recreation's daily and weekly work schedule shall vary in accordance with the work required to be performed. The Director of Parks and Recreation position may include frequent attendance at evening meetings and frequent irregular hours as necessary to meet deadlines and achieve objectives. The City Council and the City Manager recognize that the Director of Parks and Recreation must devote a great deal of her time outside normal office hours to business of the City and, to that end, will be allowed to take Executive Leave, as defined in Section 5.11 of this Agreement, as she shall deem appropriate during said normal office hours.

Section 3.5. Term. The term of this Agreement shall be for three (3) years from the Effective Date ("Term"). No later than three (3) months prior to the expiration of the

Term, the City Manager shall provide written notice to Employee as to whether the City Manager intends to extend the Term. Termination of this Agreement shall be in accordance with Section 6 below.

Section 4. <u>At-Will Employment</u>. Employee is an at-will employee serving at the pleasure of the City Council and City Manager, as provided in Government Code section 36506 and City Code section 31.01. Accordingly, the City Manager may terminate Employee's employment at any time, with or without cause. Only if Employee is terminated by the City without Good Cause, as defined in Section 6.3 of this Agreement, shall Employee be entitled to a Severance, as defined in Section 6.3 of this Agreement.

Section 5. <u>Compensation and Evaluations</u>.

Section 5.1. Base Salary. City agrees to pay Employee an annual salary of One Hundred Twenty Six Thousand Ninety One and Ninety Five Cents (126,091.95) ("<u>Base Salary</u>"), payable in installments at the same time the other City employees are paid.

Effective the first pay period of January 2021, Employee shall receive a cost of living increase ("COLA") in the same amount (two percent (2%)) as is provided to the "Miscellaneous Employee" group of employees covered by the 2018-2022 Memorandum of Understanding between the City and the Northern California District Council of Laborers Local AFL:CIO #1130 ("2018-2022 Miscellaneous Employee MOU"). Employee shall not receive a COLA in 2022 or 2023.

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

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

Section 5.4. Healthcare Benefits. Employee shall receive healthcare benefits under the same terms and conditions as provided to employees under Section 7.01 the 2018-2022 Miscellaneous Employee MOU during the Term of this Agreement.

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

Section 5.6. Deferred Compensation. City shall establish and maintain a deferred compensation plan and pay the sum of Twenty-Five Dollars ($25.00) each pay period on behalf of Employee into said deferred compensation plan. City will also match Employee's contribution to the deferred compensation plan in an amount not to exceed Twenty-Five Dollars ($25.00) each pay period. City will also contribute One Hundred Ten Dollars and Sixteen Cents ($110.16) each month to the Union Pension Retirement Fund. Employee shall receive any adjustment to this program granted to all other City Department Heads.

Section 5.7. Retirement. City shall pay the employer cost of participation in the California Public Employees Retirement System ("CalPERS"). Employee will be enrolled in the CalPERS 2% @ 55 Classic plan. Employee shall pay the seven percent (7%) employee contribution.

Section 5.8. Vacation. Employee shall be entitled to five (5) weeks of vacation annually. Employee may not accumulate more than four hundred hours (400) of vacation leave.

Section 5.9. Sick Leave. Employee shall earn sick leave at the rate of one (1) working day for each month of service.

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

Section 5.11. Executive Leave. It is recognized that Employee must devote a great deal of time outside the normal office hours to City business. To that end, Employee shall receive ninety-six (96) hours of executive leave ("Executive Leave") at the beginning of each fiscal year, sixteen (16) of which may be cashed out if not used. Any unused Executive Leave expires on the June 30 of each fiscal year.

Section 5.12. City Vehicle. Employee may have the use of a City vehicle for travel on all City-related business.

Section 5.13. Professional and Educational Development. City agrees to budget for reasonable costs of travel and business expenses for Employee to attend professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for the City, including, but not limited to, annual conferences of the League of California Cities, and such other regional and local government groups and committees thereof on which Employee serves as a member, provided such travel and business expenses are included within the annual budget. City agrees to pay Employee's annual membership dues to professional organizations that benefit the Employee and the City as designated and approved in the final budget.

Section 5.14. Longevity Benefits. Longevity Pay is to recognize long-term employees of the City and designed to provide eligible employees compensation in addition to their regular Base Salary. Employee shall be eligible for longevity pay as follows:

Years of Service	Longevity Pay Rate
13 but less than 20	5% of Base Salary
20+	additional 2.5% of Base Salary (total of 7.5%)

The maximum longevity pay increase employees can receive during the term of their employment with the City is seven and a half percent (7.5%). Longevity pay compensation shall be effective the first full pay period following Employee's meeting the eligibility criteria.

Section 6. Termination of Employment and Severance.

Section 6.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least thirty (30) days advance written notice of the effective date of Employee's resignation, unless the Parties otherwise agree in writing. If Employee retires from full time public service with the City, Employee shall provide three (3) months advance written notice. Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation or retirement, the City shall pay to Employee all salary and benefit amounts, both accrued and owing, under this Agreement. In the event of voluntary resignation or retirement, Employee shall not be entitled to Severance, as set forth in Section 6.3 of this Agreement.

Section 6.2. Termination by City Manager. The City Manager may terminate this Agreement and remove Employee from her position as Director of Parks and Recreation at any time with or without cause and with or without notice, subject to ratification by the City Council. If Employee's termination is based on charges of misconduct that publicly stigmatizes Employee's reputation or impairs her ability to earn a living, or might damage her standing in a community, Employee may, within five (5) business days of the City Manager's notice to Employee of his or her intent to terminate Employee's employment, make a written request for a "name-clearing" hearing (as described in *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340 and its progeny) before the City Council. The "name-clearing" hearing is solely to provide Employee the opportunity to clear her name. The hearing shall take place at a regularly scheduled City Council meeting or closed session in accordance with the City's Municipal Code, Personnel Rules, or standard practice, if applicable, and any applicable provisions of state law. The City Council may determine whether the allegations contained in the notice of termination are supported. If the City Council determines that the allegations are not supported, a decision shall be issued to reflect that Employee's termination was without fault. This decision will not, however, require that Employee be reinstated to. In the event Employee does not request a "name-clearing" hearing before the City Council, the City Manager's decision to terminate will be effective by the close of business on the fifth (5th) day after the City Manager provided notice to Employee of his or her intent to terminate Employee's employment.

Section 6.3. Termination Without Good Cause. In the event the City terminates this Agreement without Good Cause, as defined in Section 6.4 below, the City shall pay Employee a sum equal to four (4) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code section 53260. Any cash settlement related to the termination of this Agreement received by Employee from the City, shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position while employed with the City, pursuant to Government Code section 53243.2. Severance shall be paid in the same manner as to other City employees unless otherwise agreed to by the City and Employee. In the event the City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at her own cost, pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

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

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

1. Conviction of a felony;

2. Disclosing confidential information of City;

3. Gross carelessness or misconduct;

4. Unjustifiable and willful neglect of the duties described in this Agreement;

5. Mismanagement;

6. Non-performance of duties;

7. Any conduct which violates the City's Personnel Rules and for which a City employee may be terminated;

8. Repeated and protracted unexcused absences from the Director of Parks and Recreation's office and duties;

9. Willful destruction or misuse of City property;

10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;

11. Willful violation of federal, state or City discrimination laws;

12. Continued substance abuse which adversely affects performance of Employee's duties as the Director of Parks and Recreation;

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

14. Disability that renders Employee unable to perform the essential functions of his job, which City is unable to reasonably accommodate without placing an undue burden on City;

15. Dishonesty; and

16. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests.

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

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

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

Section 9. Notices. Any notice or communication required hereunder between the City and Employee must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Riverbank Attn: City Clerk 6707 Third Street Riverbank, CA 95367
and	Churchwell White, LLP Attn: Thomas P. Hallinan 1414 K Street, 3rd Floor Sacramento, CA 95814
If to Employee:	City of Riverbank Attn: Sue Fitzpatrick 6707 Third Street Riverbank, CA 95367 w/cc: home address on file

Section 10. General Provisions.

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

10.2. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties relating to

Employee's employment and supersedes and renders null and void all other prior or contemporaneous oral or written obligations, understandings and agreements of the Parties relating to the subject matter herein. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

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

By:___________________________________
Sean Scully, City Manager

Date Signed:___________________________

By:___________________________________
Annabelle Aguilar, City Clerk

Date Signed:___________________________

Approved as to Form and Content:

By:___________________________________
Thomas P. Hallinan, City Attorney

EMPLOYEE:

By:
____
Sue Fitzpatrick, an individual

Date Signed:__
____

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.4

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	Consider a **Resolution** to Participate in the Pavement Management Program (PMP) Update for Stanislaus County with Cost Sharing According to the Measure L Local Control Funds Distribution Methodology
From:	Sean Scully, City Manager
Submitted by:	Kathleen Cleek, Development Services Administration Manager

RECOMMENDATION

It is recommended that the City of Riverbank City Council consider participating in the Pavement Management Program update for Stanislaus County with cost sharing according to the Measure L Local Control Funds Distribution Methodology.

SUMMARY

On April 15, 2020 the StanCOG Policy Board voted to implement a Pavement Management Program update for Stanislaus County. The cost sharing for the PMP update will follow the Measure L Local Control Funds Distribution Methodology. The anticipated cost for the PMP update is $600,000. The City of Riverbank's allocation to this plan is approximately $20,520.

BACKGROUND

Pavement management is the process of planning the maintenance and repair of a network of roadways or other paved facilities to optimize pavement conditions over the network. A Pavement Management Program is undertaken to inspect and rate the pavement condition in a given area. The program performs a cost effectiveness analysis of various maintenance and rehabilitation strategies, which assists local agency staff in making the best decision on use of available resources. The overall purpose of the program is to maintain and rehabilitate roadway assets to maximize their lifespan in a cost-effective manner.

An update to the PMP will assist the City in conducting a field survey of pavement condition, an analysis of a variety of potential funding scenarios that consider optimal pavement strategies and treatments, and potential impacts to pavement condition and deferred maintenance.

The California Streets and Highways Code 2108.1 requires cities and counties to develop and adopt their PMP inventory information to be eligible for grant funding. StanCOG has agreed to act as the lead for the 2020 PMP update and dedicate staff time to management of the project.

Once StanCOG determines the level of local agency participation, StanCOG staff will release a Request for Proposal to acquire the professional services of a qualified consultant to perform the work.

STRATEGIC PLAN

The Pavement Management Plan update meets the City's Strategic Plan Goal to improve public safety by the maintenance and improvement of infrastructure such as roadways.

FINANCIAL IMPACT

Under the Measure L Local Road Distribution Methodology, the City of Riverbank's Measure L Fund allocation is approximately 20,520.

ATTACHMENT

1. Resolution

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, TO PARTICIPATE IN THE PAVEMENT MANAGEMENT PROGRAM (PMP) UPDATE FOR STANISLAUS COUNTY WITH COST SHARING ACCORDING TO THE MEASURE L LOCAL CONTROL FUNDS DISTRIBUTION METHODOLOGY

WHEREAS, On April 15, 2020 the StanCOG Policy Board voted to implement a Pavement Management Program update for Stanislaus County; and

WHEREAS, the cost sharing for the PMP update will follow the Measure L Local Control Funds Distribution Methodology; and

WHEREAS, the anticipated cost for the PMP update is $600,000 and the City of Riverbank's allocation to the plan is approximately $20,520; and

WHEREAS, an update to the PMP will assist the City in conducting a field survey of pavement condition, an analysis of a variety of potential funding scenarios that consider optimal pavement strategies and treatments, and potential impacts to pavement condition and deferred maintenance; and

WHEREAS, the California Streets and Highways Code 2108.1 requires cities and counties to develop and adopt their PMP inventory information to be eligible for grant funding; and

WHEREAS, StanCOG has agreed to act as the lead for the 2020 PMP update and dedicate staff time to management of the project; and

WHEREAS, once StanCOG determines the level of local agency participation, StanCOG staff will release a Request for Proposal to acquire the professional services of a qualified consultant to perform the work;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby agrees to participate in the Pavement Management Program (PMP) update for Stanislaus County with cost sharing according to the Measure L Local Control Funds Distribution Methodology;

AND, BE IT FURTHER RESOLVED that the City Council of the City of Riverbank agrees that the City's allocation for the updated Pavement Management Program will come from Measure L funds.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 26th day of May, 2020; 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

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.5

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	**Workshop:** Ward Ave Affordable Housing Project
From:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the City Council receive information relating the potential future Ward Ave Affordable Housing Project.

SUMMARY

As part of strategic planning the City Council has (for many years) placed particular emphasis on the encouragement of all type of housing developments. One important component of a robust housing stock is the availability of affordable housing. In general, Riverbank has an excellent track record of partnering with developers on high quality affordable housing projects. In recent months staff have worked on a number of different strategies to fund affordable housing projects and development in Riverbank.

More recently, local real estate broker and developer Cary Pope has approached City staff with a possibility for an affordable housing project at the previously approved Ward Ave (Ward Villa's) project site. Mr. Pope is interested in developing the lots as for purchase affordable homes. In the attached correspondence he has indicated his general concept for the property as well as a number of requests to make the project truly affordable.

It should be noted that this item is not agendized for approval, but rather for the Council to familiarize themselves with the project and ask questions related to the proposal. A formal item including appropriate detailed documents will be provided at a future meeting for Council to consider. It should also be noted that these matters will also require the review and consideration by the Planning Commission as a number of changes to the previously approved "Ward Villas" project will be requested by Mr. Pope.

Staff along with Mr. Pope will share additional detail on the project at the time of the meeting.

FINANCIAL IMPACT

Unknown at this time, dependent on ultimate Council direction and approval.

ATTACHMENTS

1. Correspondence from Cary Pope March 12th
2. Correspondence from Cary Pope May 19th

March 12, 2020

To: Sean Scully

City Manager, City of Riverbank

6707 Third Street

Riverbank, CA 95367

From: Cary Pope

1120 Scenic Drive

Modesto, CA 95350

Re: Affordable Housing project on Ward Ave., Riverbank

Sean –

I appreciate your interest in working with me and my team on the proposed 26 unit affordable housing project on Ward Ave. in Riverbank. As you know, this project has an approved Tentative Map for 28 lots and has been approved for some time with a recent extension of the map life. Our interest in this project is to develop the site as approved but dropping 1 lot on each side of the street to allow for a little bit more width for the remaining lots. The original design and approval also allowed for a common wall or a "zero lot line" configuration for the homes. We will be abiding by that original concept, although we will be using different plans than what was originally approved so our product will be cheaper to build and be much more affordable to the buying public, yet still maintaining very attractive elevations and colors along with functional floor plans. As just stated, these will be homes that will be "for sale" to those families that have been shut out of the home buying process due to skyrocketing prices both state-wide and locally. In order to achieve this goal, we will need cooperation from the city and the county in several areas of layered funding, fee reduction, fee elimination and down payment assistance. If we get this cooperation as stated, we feel we can provide a product that will allow these families to purchase their own home, thereby releasing some of the rental housing stock locally that these folks are most likely residing in now and giving these families real "pride of ownership". In order to achieve this, we are formally asking the city and the county for the following:

1. Fast-track all plan approvals and meetings
2. Inject $ 250,000 or more into the project to be used for off-site development
3. "Defer" or remove city fees and costs on the building permit side equal to approx. $ 25,000 per unit
4. Work with the County to defer the per unit County fee of approx. $ 7,500
5. Allow the project to utilize the city's "Down payment assistance" program for all buyers that qualify

6. There may also be some fees and costs when we get to the recordation of the Final Map that could be helpful as well, i.e. Swainson's Hawk (if applicable and allowable), park fees, etc.

If there are grant opportunities available that could lower the cost to the eventual homeowner we would also like to work with the city on these as well. We would like to get the city's "nod" on this concept as we would like to move forward as quickly as we can which requires that we start spending a fair amount of money to get further answers on development and construction costs. Just to clarify, originally when we were looking at this project we thought that we would be doing modular homes – We have since abandoned that concept as the cost savings were not enough to justify the concessions that would be required on design – And we want great designs with very livable units as these customers deserve it.

Please let me know if there is anything the city needs at this time to further clarify any issues or questions as we could be delivering these homes at precisely the right time as interest rates are at historic lows. We would be available anytime should a presentation or meeting be needed. Thank you so much for your consideration and we look forward to moving this project to the next stage.

Sincerely,

Cary Pope

May 19, 2020

To: Sean Scully
City Manager
City of Riverbank
6707 3rd Street
Riverbank, CA 95367

From: Cary Pope
3237 Riverside Dr.
Riverbank, CA 95367

Re: Ward Ave. Affordable Project

Hi Sean –

First and foremost, I hope all is well in these odd biblical times we are all living in. It certainly makes one think about what is most important in their life! I am writing today to request a public hearing presumably from the City Council to review and approve numerous items relating to a 28 lot Single Family home project on Ward Ave. in Riverbank. Below is a summary of the requests:

1. Review and approve the proposed floor plans and elevations
2. Remove the requirement of a block wall along Ward Ave.
3. Allow paving in Don Rafael Street rather than grass pavers
4. Any items that would be in a conventional HOA to be put in the CFD
5. Extend the life of the Tentative Map with a Development Agreement
6. Allow a minimum 14 foot rear yard setback
7. Waive fees that are identified on Exhibit “A” of this letter
8. Waive development fees relating to the Final Map including but not limited to Park fees, inspection and plan check
9. Obtain grant monies up to $ 400,000 to offset the cost of the offsite development costs to keep the project “affordable”.
10. Utilize the city’s Down Payment Assistance Program to those borrowers that qualify
11. Re-name the project

We are excited to bring this Affordable project to you for consideration to allow those working families that have been shut out of the buying experience the opportunity to purchase their own home. Please let me know if you need any additional information and I will be happy to provide. Thank You – Cary Pope

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.6

SECTION 6:NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	General Local Public Health COVID-19 Update
From:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the City Council receive an update, discuss the matter, and provide any direction to staff as deemed necessary.

SUMMARY

As Council is aware, the spread of the COVID-19 virus has reached Stanislaus County. At the time this staff report was published there were 593 confirmed cases within Stanislaus County, with 14 of those cases in Riverbank. As of May 20th there were 26 reported deaths within the County. Please see http://schsa.org/tabs.shtm#home for the latest data related updates on the local virus. The local Emergency Operations Center (EOC) continues to be activated at a level 1 response (7 day a week coverage). Staff has participated in updates and information sharing with the EOC, Stanislaus County and all 9 Stanislaus Cities. Staff created a response plan to limit public access to City offices as well as cancelling many different routine classes and events. On Monday March 16th Management authorized closure of City offices to the public effective 12:00 Noon, per Council direction that order will remained in place through at least May 31st unless a change is requested by the City Council. In addition, Council as part of their ratification of the Local Emergency Declaration have issued a shelter in place advisory where possible (not mandatory). Subsequently the State and Stanislaus Public Health Official have issued additional orders more clearly defining and restricting the stay at home order. In addition, in April the City Council approved a resolution recommending face masks be worn by residents when they leave their place of residence.

Updates to a number of important changes in the past two weeks are being provided and can be denoted in *italics*. The remainder of the updates are items that have been in place and will continue until otherwise directed. Some of those changes include the following:

- *At the May 12th City Council meeting Council authorized reopening of a number of parks and recreation facilities. Per state law, some facilities such as*

Playgrounds, Swimming Pool and Picnic Areas are required to remain closed under the current State order. Since the May 12th meeting staff has carried forth Council's direction on reopening. Thus far most facilities have been used at reduced levels with the community generally observing appropriate social distancing guidelines.

- *Stanislaus County issued an attestation to the state requesting a variance from phase two state order which would have allowed Stanislaus County as a whole to proceed into expanded stage two (additional business openings etc.). That request was denied by the Governor's office.*

- *On or about May 5th the Governor amended the variance requirements to generally include the following:*

  1. *Stable or downtrend in hospitalizations (we peaked around mid-April on that per the County models)*
  2. *In 2 week period test positivity of 8% or less? (Currently we have been hovering at or around 6%)*
  3. *PPE supply for 14 days on hand.*

- *Due to these changes the Stanislaus County Board of Supervisors submitted an amended attestation requesting a variance. The general consensus was that this request would be granted which would allow for expanded business reopening with modifications (restaurants and retail). On May 20th the California Department of Public Health posted that Stanislaus County's requested variance had been approved which moves the County into phase/stage 2B. Information on the variance can be found here:*
  https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Stanislaus_County_Attestation.pdf

- *Even with the variance approval, hair salons, gyms and theaters are required to remain closed within phase 2B. Staff have received numerous requests from businesses of this type to allow reopening. Per Council direction those businesses have been informed that they must continue to comply with the State order.*

- *Staff have continued to complete plans for modifications and changes to prepare for eventual office reopening to the public. At this time the City Attorney's review of the state order does not indicate that Governmental offices are part of the phase 2 reopening. Council can discuss this in detail at the meeting.*

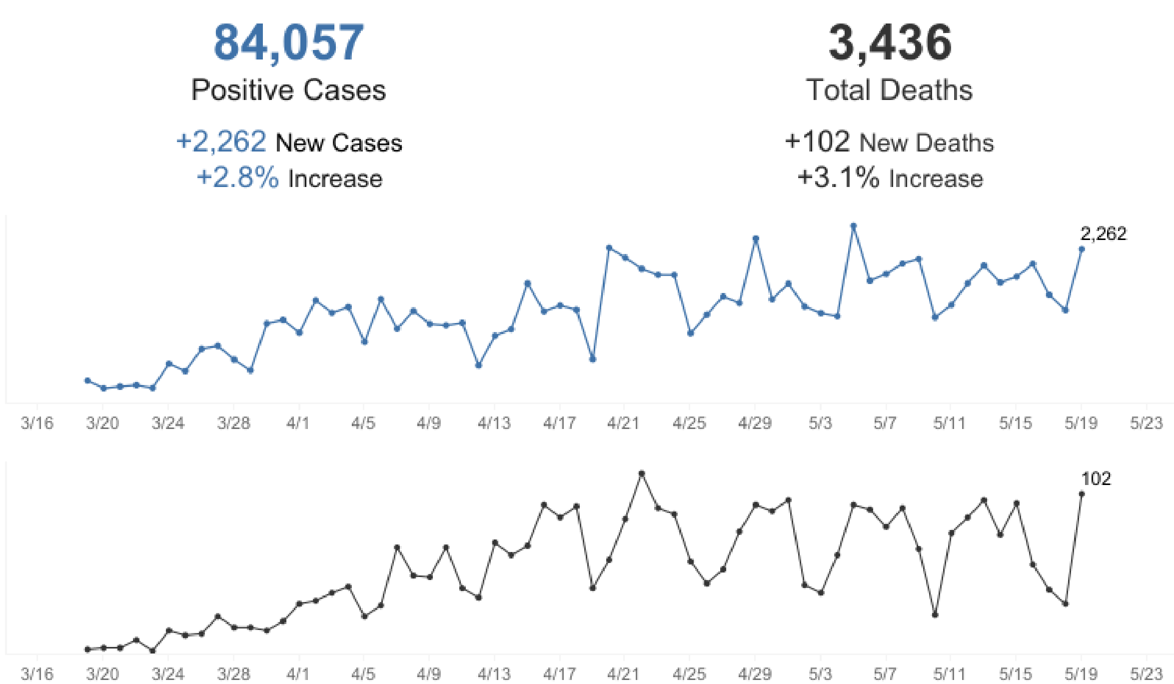
- *Staff continue to provide services to the community without interruption.*

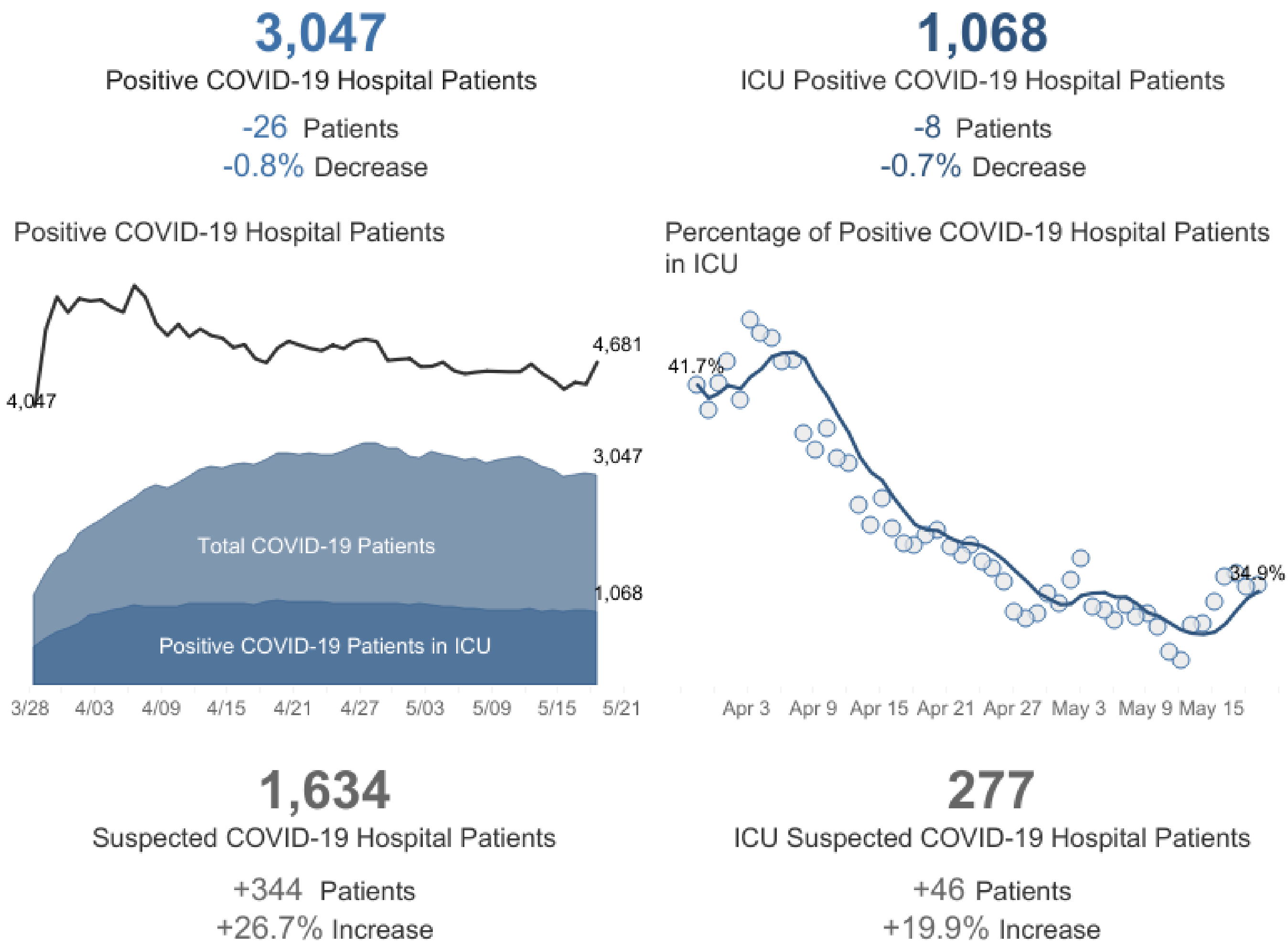
Updated Data:

- *Stanislaus County is instituting two additional drive-through testing sites located in Keyes and Patterson, bringing the total to three for the County*. The Baseline COVID-19 Testing Program expands the availability of screening and testing throughout the County. Residents are asked to perform an online screening to determine their eligibility for the program. The online screener can be accessed via the Public Health Services Agency website at https://www.projectbaseline.com/study/covid-19/. Currently, the testing is showing that of all tests given approximately 6% are coming back positive for COVID 19.

ADDITIONAL ANALYSIS

While a general review of the data related to local COVID infection rates is critical in determining local public policy, it is also helpful to consider and review state and nationwide data related to the virus. In general, the primary topic being discussed is a risk analysis of phase reopening and what that reopening might do to infection rates. In addition, if infection rates increase the follow-up concern is availability of ICU beds in the hospital system. The infographics below shows general California COVID related data as a comparison point.





At the time this report was written the State of California information about the approved variance had only just been released. Staff will review the implications for Riverbank businesses and citizens, that information will be presented at the City Council meeting.

DIRECTION

Council should provide additional direction on operational items related to City services as well as local emergency response and policy. Due to the rapidly changing nature of this emergency, additional up to date data and analysis will be provided at the time of the meeting.

FINANCIAL IMPACT

Unknown at this time.

ATTACHMENTS

None

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.7

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	Utility Billing Discussion and Feedback
From:	Sean Scully, City Manager
Submitted by:	Marisela H. Garcia, Assistant City Manager/Director of Finance

RECOMMENDATION

It is recommended that the City Council provide feedback on the options presented regarding utility billing during the coronavirus ("COVID-19") pandemic.

SUMMARY

City Hall lobby closures have continued to limit resident's ability to make payments in person. In addition, many residents have made contact with staff stating that they have faced layoffs and work schedule reductions during this time in certain economic segments hindering their ability to make payment. It is requested that Council provide feedback on potential options regarding payment of utility bills which are due by June 1, 2020.

BACKGROUND

The transmission of COVID-19 has occurred at an accelerated pace since its introduction into the United States just weeks ago. With the rate of transmission only increasing, it is imperative that local jurisdictions do everything in their power to prepare for, respond to, mitigate, and recover from COVID-19.

On March 16, 2020, the Assistant Director of Emergency Services issued a Proclamation of Existence of a Local Emergency. Proclaiming a local emergency is a prerequisite for requesting and receiving any available federal or state funding. By declaring a local emergency, the City can obtain additional resources, establish an immediate plan, and respond quickly to urgent situations. This will minimize disruptions and allow the City to focus on day-to-day operations while addressing the spread of CODIV-19 as effectively and efficiently as possible.

As part of the COVID-19 response, the City has closed all City buildings in an effort to protect the public and employees. This has hindered our residents' ability to make in-person payment on the utility bill that is currently due on June 1, 2020. As of the writing of this report, the City had yet to determine the length of time that City offices will be closed. The City has publicized the various alternative payment options available to the public such as:

- Online via Xpress Bill Pay
- Online via residents online banking service
- Phone via Xpress Bill Pay (1-800-720-6847)
- Check/Money Order in City Drop Box at City Hall South
- In person at two "Checkfree Pay" Authorized Locations: Riverbank Food Center and O'Brien's Market.

On March 16, 2020 Governor Newsom issued an Executive Order which authorizes local governments to halt evictions for renters and homeowners, slows foreclosures, and utility bills. The Governor has asked the CPUC to monitor measures undertaken by public and private utility providers to implement customer service protections for critical utilities, including electric, gas, water, internet, landline telephone, and cell phone service on a weekly basis.

Given the guidance from the Governor and in an effort to avoid having residents appear at City Hall South on June 1, 2020 to make payment prior to the deadline we are presenting the following options for feedback:

1. Status Quo: Continue with June 1, 2020 due date. Application of penalties occurs on June 2, 2020.
2. Delay the due date on the utility bill until June 15, 2020. Apply penalties on June 16, 2020
3. Do not apply penalties for delinquent bills after the June 1, 2020 due date.
4. Do not perform shut-offs for delinquent billings during the months of June/July.

It is requested that Council provide feedback on any one or combination of options presented.

STRATEGIC PLAN

This report is indirectly related to the City Council's Strategic Plan Goal to "Improve Public Safety" and "Maintain a High Quality of Life".

FINANCIAL IMPACT

Option 1: No financial impact to the City
Option 2: Delays the cash flow to the City
Option 3: Loss of approximately $30,000 in fees
Option 4: Delays in cash flow to the City

ATTACHMENT

There are no attachments to this item.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.8

SECTION 6: NEW BUSINESS

Meeting Date:	May 26, 2020
Subject:	CARES Act Funding Allocation Discussion
From:	Sean Scully, City Manager
Submitted by:	Marisela H. Garcia, Assistant City Manager/Director of Finance

RECOMMENDATION

It is recommended that the City Council provide feedback to staff regarding the use of the CARES Act Funding Allocation for the City of Riverbank.

SUMMARY

On March 27, 2020 Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Act identified additional funding for the Community Development Block Grant (CDBG) program to support preparation for, and response to, the community impacts of the COVID-19 pandemic. Riverbank will be entitled to receive approximately $108,000 in CARES CDBG funding.

BACKGROUND

The CARES Act adopted on March 27, 2020 will provide one-time time funding to three state-level programs:

1. **Emergency Solutions Grant CARES Act Stimulus (ESG-CV)**: to provide financial assistance, overnight shelter, Rapid-Rehousing, transitional housing

2. **Community Development Block Grant CARES Act Stimulus (CDBG-CV)**: for acquisition, Admin and Economic Development, Public Services and facility improvements, and;

3. **Housing Opportunities for Persons with AIDS CARES Act Stimulus (HOPWA-CV)**: for permanent housing in facilities, permanent housing placement, short term or transitional housing facilitates, supportive services, Tenant Based Rental Assistance.

The goals of these funding sources are to provide homelessness assistance and prevention services, increase economic development opportunities, maintain or increase public services, and maintain or increase public facilities.

The City of Riverbank recently joined the Stanislaus County CDBG Urban County (the Consortium) which will entitle the City for funding directly from the Department of Housing and Urban Development (HUD) beginning July 1, 2020. Because technically the City is not an entitlement city until such time, we are eligible for a direct allocation of funds via the CARES Act. The City will receive approximately $108,790 in CDBG-CV CARES funding. The CARES Act prescribes that grantees can identify up to three activities for their allocation from the following list of prioritized activities:

- **Public Services to respond to COVID-19 impacts**: services can include items such as rental assistance and utility payment assistance for individuals who may have lost their job as a result of COVID-19,
- **Public Facility improvements**: to increase capacity for healthcare facilities,
- **Housing Facilities**: for persons experiencing homelessness,
- **Economic Development**: to support needs for working capital and furniture, fixtures, and equipment focusing on safety requirements.

Stanislaus County has been discussing coordination the use of these funds amongst the County and the nine cities to avoid a duplication of efforts. The County will be receiving a direct allocation of CARES funding as well and has been working with United Way and the Community Services Agency on a survey to identify the specific needs within all of the County. A large portion of their funding will be used to address these identified needs, including homelessness. In addition, the County (via the Small Business Relief Program), allocated $3,000,000 in funding to sustain small businesses throughout the County. They assisted approximately 344 small businesses, with seven of those being Riverbank businesses.

Tonight staff is requesting feedback on the potential use of the City's allocation of CARES funding. The City will need to apply for these funds via a simplified NOFA (Notice of Funding Availability) application process and will need to identify the specific activities to be funded.

STRATEGIC PLAN

This report directly relates to the City's Strategic Plan goal to "Ensure Financial Stability".

FINANCIAL IMPACT

There is no financial impact associated with this report.

ATTACHMENT

1. State of California 2019-2020 Annual Action Plan Substantial Amendment Public Comment Draft

State of California 2019-2020 Annual Action Plan Substantial Amendment

Public Comment Draft

The following amendment language will be added to the 2019-2020 Annual Action Plan to allow the state access to emergency funding intended to provide a timely response to the impacts of the COVID-19 pandemic. The full text of the existing plan may be found at https://www.hcd.ca.gov/policy-research/plans-reports/docs/Draft-2019-20-Annual-Action-Plan.pdf.

Executive Summary

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

Introduction

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act". The Act identified additional funding for the Emergency Solutions Grant (ESG) Program, the Community Development Block Grant (CDBG) program, and the Housing Opportunities for Persons with AIDS (HOPWA) to support preparation for, and response to, the community impacts of the COVID-19 pandemic. The distribution plan of the U.S. Department of Housing and Urban Development (HUD) for the additional funding includes multiple phases: an initial phase that would allow for quick access to funding necessary to address the immediate crisis resulting from the rising pandemic, as well as later phases that would support post-pandemic community recovery.

The 2019-2020 Annual Action Plan (AP) is being amended to incorporate additional funding in the initial phase (FY 2019-2020) of HUD's CARES Act distribution plan, and to describe the Methods of Distribution (MOD) for the CARES Act funding in the CDBG, ESG, and HOPWA programs.

Summary of Citizen Participation Process and consultation process

The Substantial Mmendment to the 2019-2020 Annual Action Plan (AP Amendment) addressing additional funding from the CARES Act will be available for a public comment period of 5 days per waiver of federal regulations. The waiver may be found at https://www.hudexchange.info/resource/6007/availability-of-waivers-of-community-cpd-grant-program-and-consolidated-plan-requirements-to-prevent-the-spread-of-covid19-and-mitigate-economic-impacts-caused-by-covid19/. The waiver allows for added flexibility in the ESG and HOPWA programs.

The draft AP Amendment is available for comment from all interested members of the public from **Thursday, April 16, 2020 to Wednesday, April 22, 2020.**

The draft AP Amendment and the public notice document are available for review on HCD's website at http://www.hcd.ca.gov/policy-research/plans-reports/index.shtml.

Please submit written comments to ConsolidatedPlan@hcd.ca.gov.

Comments may also be mailed to:

Department of Housing and Community Development
Federal Branch Suite 200
2020 W. El Camino Ave
Sacramento CA, 95833

AP-12 Participation - 91.115, 91.300(c)

Summary of citizen participation process/Efforts made to broaden citizen participation

The AP Amendment addressing additional funding from the CARES Act will be available for a public comment period of 5 days per waiver of the federal regulations. The draft AP Amendment is available for comment from all interested members of the public from **Thursday, April 16, 2020 to Wednesday, April 22, 2020.**

The draft AP Amendment and the public notice document are available for review on HCD's website at http://www.hcd.ca.gov/policy-research/plans-reports/index.shtml.

AP-15 Expected Resources – 91.320(c) (1,2)

Introduction

The CARES Act provides one-time funding for the following three state-level programs (funding designations for CARES Act funds is Coronavirus (CV):

- Emergency Solutions Grant CARES Act Stimulus (ESG-CV),
- Housing Opportunities for Persons with Aids CARES Act Stimulus (HOPWA-CV), and
- Community Development Block Grant CARES Act Stimulus (CDBG-CV).

Anticipated Resources

The anticipated resources for the ESG-CV, HOPWA-CV, and CDBG-CV programs are based on award letters received in early April 2020 and indicate actual awards for these funds. Future funding for the ESG-CV and CDBG-CV is expected to address longer term impacts of the COVID-19 pandemic, however those funds will be programmed through future plans and amendments. See table of anticipated resources on following page.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Reminder of ConPlan	Narrative Description
			Annual Allocation	Program Income	Prior Year Resources	Total		
ESG-CV	Public Federal	Financial Assistance, Overnight shelter, Rapid-Rehousing, Transitional housing	$43,990,603	$0	$0	$43,990,603	$0	One-time award of funds – March 2020
CDBG-CV	Public Federal	Acquisition, Admin and Economic Development, Public Services and Facility Improvements	$19,331,744	$0	$0	$19,331,744	$0	One-time award of funds – March 2020
HOPWA-CV	Public Federal	Permanent housing in facilities, Permanent housing placement, Short term or transitional housing facilities, STRMU Supportive Services, Tenant Based Rental Assistance (TBRA)	$578,909	$0	$0	$578,909	$0	One-time award of funds – March 2020

AP-20 Annual Goals and Objectives – 91.320(c)(3) &(e)

Goals Summary Information

The figures below represent estimates of allocation goals and objectives for the additional funding provided under the CARES Act. These figures are determined by the funding recipients' priority needs.

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Estimated Funding	Goal Outcome Indicator	Total
1	Provide homeless assistance and prevention services	2020	2020	Homeless	Homeless assistance and prevention services	ESG-CV $43,990,603 HOPWA-CV $578,909	Tenant-based rental assistance/ Rapid Rehousing (Households Assisted)	TBD
							Homeless Person Overnight Shelter (Persons Assisted)	TBD
							HIV/AIDS Housing Operations (Household Housing Units)	TBD
							Homelessness Prevention (Persons Assisted)	TBD
							Household Housing Unit Other	TBD

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Estimated Funding	Goal Outcome Indicator	Total
2	Increase economic development opportunities	2020	2020	Non-Housing Community Development	Economic Development Opportunities	CDBG-CV - TBD	Jobs created/retained (Jobs)	TBD
							Businesses Assisted (Businesses Assisted)	TBD
3	Maintain or increase public services	2020	2020	Non-Housing Community Development	Public Services	CDBG-CV - TBD	Public service activities supporting response to COVID-19 (Persons Assisted)	TBD
4	Maintain or increase public facilities	2020	2020	Non-Housing Community Development	Public Facilities	CDBG-CV - TBD	Public Facility activities supporting healthcare capacity and housing for persons experiencing homelessness	TBD

AP-25 Allocation Priorities – 91.320(d)

Introduction

The amended percentages below are based on the expected amount of funds that will be awarded by each new program funded by the CARES Act for federal Fiscal Year (FY) 2019-2020 for eligible activities that fall within that goal. The percentages below will depend on funding awardees' needs and demand for activities within the specified goal categories.

Funding Allocation Priorities

Program	Increase the supply of affordable rental housing (%)	Expand homeownership and improve existing housing (%)	Provide homeless assistance & prevention services (%)	Increase economic development opportunities (%)	Maintain or increase public services (%)	Maintain or increase public facilities (%)	Colonias Set-Aside (%)	Total (%)
CDBG-CV	0	0	TBD %	TBD %	TBD %	TBD %	0 %	100%
ESG-CV	0	0	100%	0	0	0	0	100%
HOPWA-CV	0	0	100%	0	0	0	0	100%

AP-30 Methods of Distribution – 91.320(d)&(k)

Introduction

The CARES Act provides one-time funding for the following three state-level programs:

- Emergency Solutions Grant CARES Act Stimulus (ESG-CV),
- Housing Opportunities for Persons with Aids CARES Act Stimulus (HOPWA-CV), and
- Community Development Block Grant CARES Act Stimulus (CDBG-CV).

CARES Act funding will be distributed using the existing methods of distribution for the HOPWA-CV funds. The CDBG-CV and ESG-CV funds will use streamlined distribution methods to ensure funding can be distributed and expended as quickly as possible on activities that address immediate and medium-term responses to the COVID-19 pandemic. Eligible activities must be related to COVID-19 response and recovery.

Distribution Methods

CDBG-CV (Community Development Block Grant CARES Act Stimulus Program)

CDBG-CV funding will be distributed to all CDBG-eligible non-entitlement jurisdictions as a formula grant based on the formula prescribed in the Department's Permanent Local Housing Allocation (PLHA) program (https://www.hcd.ca.gov/grants-funding/active-funding/plha.shtml), which is based on the formula used for allocating the Community Development Block Grant to entitlement jurisdictions (https://www.hudexchange.info/onecpd/assets/File/CDBG-Formula-Appropriation-Process-Transcript.pdf). The estimated formula allocation is below. The method of distribution may change as HCD sees fit or as advised by HUD to properly address the needs addressed by the CARES Act allocation or any future special allocation.

Jurisdiction	Estimated Allocation
Alpine County	$60,664
Alturas	$70,681
Amador City	$58,699
Amador County	$119,594
American Canyon	$104,665
Anderson	$92,486
Angels	$72,450
Arcata	$156,917
Artesia	$120,969
Arvin	$123,523
Atwater	$141,006
Auburn	$106,826
Avenal	$93,272
Benicia	$126,077
Biggs	$63,021
Bishop	$74,610
Blue Lake	$60,860

Jurisdiction	Estimated Allocation
Los Banos	$167,721
Loyalton	$60,271
Madera County	$244,134
Mammoth Lakes	$72,843
Maricopa	$59,485
Marina	$140,416
Mariposa County	$114,487
Marysville	$98,379
McFarland	$100,540
Mendocino County	$311,904
Merced County	$277,135
Modoc County	$68,128
Mono County	$68,717
Montague	$61,253
Mount Shasta	$80,111
Napa County	$127,648
Nevada City	$70,289

Brawley	$134,719
Butte County	$297,171
Calaveras County	$184,025
Calexico	$181,668
Calimesa	$79,129
Calipatria	$68,717
Calistoga	$75,985
Capitola	$93,664
Carmel-by-the-Sea	$73,039
Chowchilla	$98,379
Clearlake	$130,006
Coalinga	$91,897
Colfax	$64,199
Colusa	$76,574
Colusa County	$74,414
Corcoran	$101,522
Corning	$82,468
Crescent City	$72,057
Del Norte County	$125,487
Dinuba	$132,166
Dixon	$102,897
Dorris	$59,288
Dos Palos	$73,825
Dunsmuir	$64,199
El Centro	$192,668
El Dorado County	$427,801
Etna	$59,878
Eureka	$167,131
Exeter	$87,182
Farmersville	$87,575
Ferndale	$63,413
Firebaugh	$85,022
Fort Bragg	$95,237
Fort Jones	$61,646
Fortuna	$96,808
Fowler	$72,254
Glenn County	$95,237
Grass Valley	$120,773
Greenfield	$124,702
Gridley	$82,468
Grover Beach	$108,005
Guadalupe	$90,129
Nevada County	$273,010
Orange Cove	$90,325
Orland	$82,468
Oroville	$122,148
Pacific Grove	$105,843
Palos Verdes Estates	$86,200
Parlier	$119,005
Pismo Beach	$88,754
Placer County	$405,604
Placerville	$98,772
Plumas County	$108,005
Plymouth	$60,075
Point Arena	$60,075
Portola	$67,146
Rancho Mirage	$153,381
Red Bluff	$110,558
Rio Dell	$70,485
Rio Vista	$85,807
Riverbank	$108,790
San Benito County	$108,005
San Joaquin	$70,092
San Juan Bautista	$67,735
San Juan Capistrano	$210,740
Sand City	$59,838
Santa Cruz County	$504,411
Scotts Valley	$92,486
Shasta County	$255,724
Shasta Lake	$91,111
Sierra County	$60,271
Siskiyou County	$126,666
Solano County	$114,290
Soledad	$107,808
Sonora	$81,485
South Lake Tahoe	$147,685
St. Helena	$79,325
Suisun City	$137,863
Susanville	$83,058
Sutter County	$103,683
Sutter Creek	$70,092
Taft	$80,700
Tehama	$58,463
Tehama County	$166,385

Gustine	$65,575
Hidden Hills	$63,610
Hollister	$160,649
Holtville	$73,628
Humboldt County	$306,993
Huron	$88,754
Imperial	$81,485
Imperial County	$154,953
Indian Wells	$79,129
Industry	$58,463
Inyo County	$92,486
Ione	$67,146
Jackson	$77,950
King City	$119,594
Kings County	$145,720
Lake County	$215,454
Lakeport	$70,681
Lassen County	$90,915
Lemoore	$129,416
Lincoln	$181,078
Lindsay	$104,468
Live Oak	$79,914
Livingston	$97,004
Loomis	$72,843

Trinidad	$58,895
Trinity County	$108,397
Truckee	$93,272
Tulare County	$520,126
Tulelake	$61,057
Tuolumne County	$215,847
Ukiah	$115,665
Vernon	$58,267
Wasco	$120,773
Weed	$68,325
Westmorland	$64,788
Wheatland	$64,199
Williams	$72,057
Willits	$82,271
Willows	$83,450
Winters	$79,129
Woodlake	$80,111
Yolo County	$121,755
Yountville	$72,254
Yreka	$90,915
Yuba County	$242,759
Total Local Assistance	$18,751,792
State of California Operations	$579,952
Program Total	**$19,331,744**

A total of 17 percent of the allocation will be available to each awarded jurisdiction for program administration costs. Costs incurred in COVID-19 response prior to allocation may be eligible for reimbursement as per the CARES Act. Applicants will be asked to identify pre-agreement costs as part of the simplified application.

Allocations will be made through the state's Grants Network System and will be administered on an activity basis. Any allocations that are not claimed by the respective jurisdiction will, at the end of the application and award period, be tabulated and at the Department's discretion, used to increase awarded allocations. Grantees will be able to identify up to three activities for their allocation from the following activities prioritized for CDBG-CV funding:

- Public services to respond to COVID-19 impacts
- Public facility improvements to increase capacity for healthcare facilities
- Housing facilities for persons experiencing homelessness
- Economic development to support needs for working capital and furniture, fixtures, and equipment focusing on safety requirements

As permitted in the CARES Act, HUD has elected to waive the federal caps on public services for services that are in response to COVID-19 impacts. Grantees will be required to document that the services funded through CDBG-CV are in response to COVID-19. Any services provided that are not in response to COVID-19 will be subject to the federal 15 percent public services cap.

The Department is seeking waivers from the state statutory requirements that at least 51 percent of annual CDBG allocations be made available to housing and housing-related activities, 30 percent set-aside for economic development activities, 5 percent set-aside for Colonias, and 1.25 percent set-aside for non-federally recognized Native American tribes and communities for CDBG-CV funding in FY 2019-2020. Further, the Department is seeking to waive the 50 percent expenditure rule and statutory requirements for Housing Element submittal and adoption. These waivers will apply only to CDBG-CV funding and will not apply to funds awarded through the 2019 and 2020 annual CDBG allocations.

Funding from the 2019 and 2020 annual CDBG allocations for economic development activities currently available in an open Notice of Funding Availability (NOFA) will be made available on an over-the-counter first come basis to help support needs for economic development. These funds will not be subject to the CDBG-CV waivers, and applicants will be expected to meet all of the NOFA and application requirements.

The Public Facilities allocation priority for CDBG-CV is primarily for public facilities related to the provision of health and medical care, and that support housing for persons experiencing homelessness in compliance with the recommendations found at the following link: https://www.hudexchange.info/resource/6004/covid19-systemwide-protocol-for-people-experiencing-homelessness/.

This method of distribution is expected to facilitate immediate fund utilization and improve emergency response to critical community needs resulting from the COVID-19 pandemic.

ESG-CV (Emergency Solutions Grants CARES Act Stimulus Program)

The ESG-CV special allocation provided in the CARES Act will be utilized to prevent, prepare for, and respond to coronavirus among individuals and families who are experiencing homelessness or receiving homelessness assistance; and to support additional homelessness assistance and homelessness prevention activities to mitigate the impacts created by coronavirus.

Any future special ESG allocations will be addressed and allocated according to HUD guidance.

Describe the state program addressed by the Method of Distribution.

HCD’s ESG program is traditionally distributed by formula to two separate allocations: Continuum of Care (CoC) and Balance of State (BoS). CoC allocations contain a city or county that receives ESG funds directly from HUD. BoS funds are allocated to Service Areas that do not contain a city or county that receives ESG funds directly from HUD. The ESG-CV CARES funding allocation will utilize a formula-based method of distribution for CoC and BoS Service Areas which considers factors such as HUD’s homeless Point in Time (PIT) count, poverty rates, extremely low-income household renter cost burden data, coronavirus infection rates and HUD's unsheltered homeless figures.

The entirety of the federally allocated ESG-CV funds are to be utilized to address homelessness and may be used for currently eligible activities related to crisis response including:

- Emergency Shelter (ES),
- Homeless Prevention (HP),
- Street Outreach (SO),
- Rapid Rehousing (RR), and
- Homeless Management Information System (HMIS) (24 CFR §576.100).

Currently, HCD intends to distribute the funds in a direct allocation method or over the counter application method.

Describe all of the criteria that will be used to select applications and the relative importance of these criteria.

The ESG-CV funding allocation will utilize a formula-based method of distribution for CoC and BoS Service Areas which considers factors such as HUD's homeless Point in Time (PIT) count, poverty rates, extremely low-income household renter cost burden data, coronavirus infection rates and HUD's unsheltered homeless figures.

Allocation

Funds will be allocated to CoC Service Areas either to currently approved units of general-purpose local government, known as Administrative Entities (AEs), or directly to the CoC provided the CoC is a state and federally recognized non-profit government entity and has capacity to administer the funding. If the CoC does not meet these requirements, the CoC must designate an AE to administer the funding for that CoC Service area. The allocations will be made to approved AEs listed in the 2020 Continuum of Care NOFA, Appendix A issued February 28, 2020 and to CoCs listed in the 2020 Balance of State NOFA Appendix A issued February 28, 2020. These AEs must commit to administering ESG-CV funds, in collaboration with their CoC, throughout their CoC Service Area, including ensuring access to ESG-CV funds by households living in non-entitlement areas.

The estimated formula allocation is below. These allocations are estimates and may be adjusted as the formula is finalized.

CoC #	CoC Name (Grantee)	ESG-CV Allocation
526	Amador, Calaveras, Tuolumne and Mariposa Counties CoC	$548,000
604	Bakersfield/Kern County CoC	$907,000
519	Chico/Paradise/Butte County CoC	$922,000
523	Colusa, Glenn, Trinity Counties CoC	$548,000
512	Daly/San Mateo County CoC	$834,000
521	Davis/Woodland/Yolo County CoC	$837,000
525	El Dorado County CoC	$437,000
514	Fresno/Madera County CoC	$1,008,000
522	Humboldt County CoC	$984,000
613	Imperial County CoC	$1,028,000
530	Inyo, Mono, Alpine Counties CoC	$365,000
529	Lake County CoC	$670,000
600	Los Angeles City & County CoC	$5,224,000
507	Marin County CoC	$600,000
509	Mendocino County CoC	$705,000
520	Merced City & County CoC	$871,000
517	Napa City & County CoC	$341,000
531	Nevada County CoC	$444,000
502	Oakland/Alameda County CoC	$1,748,000
611	Oxnard/San Buenaventura/Ventura County CoC	$651,000
516	Redding/Shasta, Siskiyou, Lassen, Plumas, Del Norte, Modoc, Sierra Counties CoC	$856,000
505	Richmond/Contra Costa County CoC	$1,065,000
608	Riverside City & County CoC	$1,478,000
515	Roseville/Rocklin/Placer County CoC	$505,000
503	Sacramento City & County CoC	$1,143,000
506	Salinas/Monterey, San Benito Counties CoC	$857,000
609	San Bernardino City & County CoC	$1,247,000
601	San Diego City and County CoC	$2,060,000
500	San Jose/Santa Clara City & County CoC	$2,290,000
614	San Luis Obispo County CoC	$468,000
602	Santa Ana/Anaheim/Orange County CoC	$2,445,000
603	Santa Maria/Santa Barbara County CoC	$1,031,000
504	Santa Rosa/Petaluma/Sonoma County CoC	$791,000
511	Stockton/San Joaquin County CoC	$751,000
527	Tehama County CoC	$676,000
510	Turlock/Modesto/Stanislaus County CoC	$857,000

518	Vallejo/Solano County CoC	$755,000
513	Visalia, Kings, Tulare Counties CoC	$1,192,000
508	Watsonville/Santa Cruz City & County CoC	$984,000
524	Yuba City & County/Sutter County CoC	$672,000
	Local Assistance	$41,795,000
	State Operations	$2,195,603
	Total	**$43,990,603**

The above allocation processes are the current suggested allocation methods and may change as HCD sees fit or as advised by HUD to properly address the needs addressed by the CARES Act allocation or any future special allocation.

HCD will enter into a contract with the AE, and the AE will contract directly with its selected providers. The AE shall collaborate with the CoC in administering an application selection. The local government Administrative Entities (AEs) will select applications for funding using a process that is:

1. Fair and open and avoids conflicts of interest in project selection, implementation, and the administration of funds;
2. Follows procurement requirements of 24 CFR Part 200;
3. Evaluates provider capacity and experience, including the ability to deliver services in non-entitlement areas;
4. Utilizes data and considers community input to identify unmet needs;
5. Prioritizes activities that address the highest unmet need, considering other available funding and system-wide performance measures;
6. Considers project-level performance measures when evaluating proposals;
7. Incorporates reasonable performance standards as set forth in the Action Plan based on HUD requirements and guidance. If the applicant has not implemented the proposed activity or similar activity within the past three years, the Continuum of Care shall work with the funded applicant to ensure it meets reasonable performance standards specified in the Action Plan in the contract year;
8. Complies with federal ESG requirements; and
9. Considers any other practices promoted or required by HUD.

Describe the process for awarding funds to state recipients and how the state will make its allocation available to units of general local government, and non-profit organizations, including community and faith-based organizations. (ESG ONLY)

ESG-CV funds will be distributed to either local governments (AEs) or non-profit homeless service providers (CoCs) per the above *Allocation*, according to factors which may include HUD's homeless PIT count, poverty rates, extremely low-income household renter cost burden data, coronavirus infection rates and rates of unsheltered homeless according to the standard ESG Method of Distribution and criteria discussed previously.

Describe how resources will be allocated among funding categories.

Individual homeless service providers may propose uses of funds in accordance with their needs.

ESG-CV Administration

Grantees may receive approximately 5 percent of their formula allocation for Administration as defined in the federal regulations.

Homeless Service Provider Indirect Cost Allocation

As permitted by the applicable grantee, homeless service providers receiving funds from an AE or CoC may charge an indirect cost allocation as calculated pursuant to 24 CFR §576.109.

The above allocation processes are the current suggested allocation methods and may change as HCD sees fit or as advised by HUD to properly address the needs addressed by the CARES Act allocation or any future special allocation.

Describe threshold factors and grant size limits.

Minimum and Maximum Grant Limits

Grantees will be responsible for setting any minimum and maximum grant amounts to subgrantees since they will be evaluating provider applications and managing the contracts. HCD will be monitoring grantees to ensure that they can effectively manage the number of awards made.

What are the outcome measures expected as a result of the method of distribution?

The method of distribution for ESG-CV is designed to align with the CARES Act and any future special allocation goals. The specific goals and goal outcome indicators associated with ESG-CV activities in the Strategic Plan are addressing and preventing homelessness (Goal Outcome Indicators: Households Assisted, Persons Assisted).

For the CARES Act funding allocation, ESG-CV anticipates serving as many unsheltered homeless as possible, if not all unsheltered homeless; increasing the availability of Rapid Rehousing facilities; and increasing the number of Rapid Rehousing recipients, Emergency Shelter services recipients, and Homeless Prevention services recipients proportionate to the currently undetermined total CARES Act funding allocation to HCD.

HOPWA-CV (Housing Opportunities for Persons with AIDS CARES Act Stimulus Program)

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) supplemental HOPWA funds, will allow our HOPWA grantees to pay for an increased number of hotel/motel and extend the length of time they can provide short-term rent, mortgage, and utility (STRMU) assistance to eligible households to prevent homelessness of a tenant or mortgagor of a dwelling for a period of up to 24 months. Hotel/motel assistance will provide lodging at hotels, motels, or other locations to quarantine HOPWA-eligible persons or their household members. The Office of AIDS (OA) will notify current HOPWA grantees about the available funds. Distribution of funds will be based on need, COVID-19 impact in the jurisdiction, and number of persons to be served.

AP-65 Homeless and Other Special Needs Activities – 91.320(h)

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

As part of the CARES Act, HUD has temporarily waived FMR limits for the ESG-CV funding. This waiver impacts both the existing ESG allocations as well as the ESG-CV funding. The waiver is intended to help address the wide variances in housing costs, not just between urban and rural areas, but nation-wide. This waiver will be critical in ensuring that the funding can be used as intended to help people in the timeframe required to make a timely response to community needs.

HUD has proposed additional regulatory relief as part of the CARES Act, by providing increased administration percentages, reduced match requirements, and reduced use restrictions on the ESG-CV funds. These reduced restrictions, along with the urgency required to get the ESG-CV funds utilized, necessitated a waiver of the state's ESG regulations, which included the proscribed method of distribution as well as use requirements that had frustrated CoCs and homelessness responders. The Department will be exploring the opportunity to transition from ESG regulations to more flexible guidelines to support adaptability and responsiveness to the ongoing impacts of the COVID-19 virus and evolving needs to effectively reduce homelessness in the state.