



NOTICE: THIS MEETING WILL BE HELD 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.

**THE CITY OF RIVERBANK REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD MEETINGS**

(City Council also serves as the LRA Board)

TUESDAY, OCTOBER 13, 2020 – 6:00 P.M.

VIA TELECONFERENCE OR VIRTUAL PLATFORM ONLY – NO OPEN PUBLIC LOCATION

(CITY HALL IS LOCATED AT 6707 THIRD STREET, RIVERBANK. CA 95367)

A G E N D A

(THE AGENDA PACKET IS AT [HTTP://WWW.RIVERBANK.ORG/AGENDACENTER](http://www.riverbank.org/agendacenter))

- 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.
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1. PRESENTATIONS

- Item 1.1:** Proclamation - Code Enforcement Officer Appreciation Week.
- Item 1.2:** Progress Update on the Development of the City's Bicycle and Pedestrian Master Plan.

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 3 minutes or as stated by the presiding Officer**. Under State Law, matters presented during the public comment period cannot be discussed or acted upon.

Refer to Page 5 for the Public Comment Procedures.

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

Item 3.B-1: Approval of the August 19, 2020, Special City Council Minutes.

Recommendation: Approval of the Consent Calendar items by roll call vote.

4. UNFINISHED BUSINESS

Item 4.1: **Second Reading by Title Only of Proposed Ordinance No. 2020-011 to Approve Development Agreement 03-2019 By and Between the City of Riverbank and DT California, LLC, Doing Business as Aeriz** – It is recommended that Council adopt an Ordinance approving a development agreement by and between the City of Riverbank and DT California LLC, a Delaware limited liability company doing business as Aeriz.

Item 4.2: **Second Reading by Title Only a Proposed Ordinance No. 2020-012 Approving Development Agreement No. 02-2020 for the Ward Villas Affordable Housing Project to Extend the Life of the Approved Ward Villas Tentative Map 01-2015 to Real Property at 2912 Ward Avenue (APN 132-036-003)** – It is recommended that the City Council approve Ordinance No. 2020-012 for a Development Agreement which extends the life of approved Ward Villas Tentative Map 01-2015 relating to real property located at 2912 Ward Avenue (APN 132-036-003).

5. PUBLIC HEARINGS There are no Items to consider.

6. NEW BUSINESS

Item 6.1: **A Resolution Approving Applications For Per Capita Funds** – It is recommended that the City Council consider approving the Resolution for submittals of applications for per Capita Funds.

Item 6.2: **A Resolution Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds** – It is recommended that the City Council consider approving the Resolution Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds (Prop. 68).

Item 6.3: **Youth Commission Discussion and Direction** – It is recommended that the City Council provide direction to staff on the framework, scope and concept of the creation of a Youth Commission for the City of Riverbank.

Item 6.4: **Public Benefit Fund – Policy Review and Direction on Desired Amendments to Policy** – It is recommended that the City Council provide direction on any desired amendments to the Public Benefit Expenditure Policy.

Item 6.5: **Consideration of a Resolution of Support on Proposition 20 – The Reducing Crime and Keeping California Safe Act** – It is recommended that the City Council consider whether or not to approve the attached resolution provided by the League of California Cities supporting Proposition 20.

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: **PUBLIC EMPLOYMENT**
Pursuant to Government Code Section 54957(b) (1)
Title: Public Works Director/Interim LRA Director

Item 8.2: **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

Item 8.3: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8

Property: APN: 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 8.4: Threat to Public Services or Facilities

Pursuant to Government Code § 54957

Consultation with: City of Riverbank Director of Emergency Services

ADJOURNMENT OF THE PUBLIC PORTION OF THE MEETING – (The next regular meeting is on Tuesday, October 27th @ 6:00 p.m.)

9. REPORT FROM CLOSED SESSION

The Mayor's report on the 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.

ADJOURNMENT OF THE TUESDAY, OCTOBER 13, 2020 REGULAR MEETING**AFFIDAVIT OF POSTING**

I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted on an accessible public location, and the City's website 72 hours prior to the meeting in accordance to the California Ralph M. Brown Act.

Posted this 8th day of October, 2020

/s/ Annabelle H. Aguilar, CMC, City of Riverbank

ADA COMPLIANCE STATEMENT

In compliance with the Americans with Disabilities Act, and the Governor's Executive Order N-29-20, 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 (48) 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, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Council/LRA Board shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.



**PUBLIC PARTICIPATION PROCEDURES
FOR THE CITY COUNCIL/LRA MEETINGS HELD IN A
TELECONFERENCE OR VIRTUAL PLATFORM IN CONFORMANCE WITH
THE GOVERNOR'S EXECUTIVE ORDER N-29-20**

CHANGES TO THIS NOTICE OF PROCEDURES

In accordance with the Governor's Executive Order, should the meeting procedures change, the City may use the most rapid means of communication available at the time including, but not limited to, posting the notice of changes on the City's website.

PUBLIC "LIVE" VIEWING

- Charter Government Channel - 2
- AT&T U-VERSE Government Channel - 99
- YouTube Live Stream <https://www.youtube.com/watch?v=7UN98ekdzdk>
- Via ZOOM Platform (See instructions below)

SUBMITTING PUBLIC COMMENTS

- **Via Mail Service:** Mail comments to City of Riverbank, Attn. City Clerk, 6707 Third Street, Suite A, Riverbank, CA 95367. (Must be received **by 4:00 p.m.** on the day of the meeting.)
- **Via Email to cityclerk@riverbank.org:**
 - o Written comments via Email before the meeting: (Will be distributed to the City Council)
 - o **Submit No later than 4:00 p.m.** on the day of the meeting; and
 - o Indicate Agenda Item # in the ***subject line***.
 - o Emails during the meeting:
 - o Indicate Agenda Item # in the subject line.

Join via ZOOM Platform:

- Visit <https://zoom.us/j/94943925973?status=success> for a free account or to download the app.
- Join by this link: <https://us02web.zoom.us/j/82468188017>
- Join by accessing website: <https://zoom.us/join>
 - o **Webinar ID: 824 6818 8017**
- Join by telephone: **1 669 900 9128 or 1 346 248 7799, plus webinar ID**

HOW DO I COMMENT? The Mayor will announce when public comment may be made for the agenda item, at which time you will:

- **Using a computer** - click on the "raise hand" feature in the webinar controls. This will let us know you wish to speak.
 - o Once you confirm that you want to be unmuted, your 3 minutes will begin for you to make your comments.
- **Using a Phone** - Dial ***9**, which will notify us that you have a "raised hand"
 - o Once you are told "you may make your comments" you will have 3 minutes to make your comments.

Learn about using ZOOM - Visit <https://support.zoom.us/hc/en-us/categories/201146643>

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.1

SECTION 1: PRESENTATIONS

Meeting Date:	October 13, 2020
Subject:	Proclamation - Code Enforcement Officer Appreciation Week
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

No Action – Presentation Only

SUMMARY:

The State of California has proclaimed the second week of October as Code Enforcement Officer Appreciation Week. Code Enforcement Officers, or Neighborhood Improvement Officers as they are known in Riverbank, provide for the safety, health, and welfare of citizens through the enforcement of local, state, and federal laws and ordinances dealing with the various issues of building, zoning, housing, animal control, environmental, health, and life safety.

FINANCIAL IMPACT:

None



CITY OF RIVERBANK
PROCLAMATION

NATIONAL CODE ENFORCEMENT OFFICER APPRECIATION WEEK

WHEREAS, the State of California has proclaimed the 2nd week of October as Code Enforcement Officer Appreciation Week; and

WHEREAS, Code Enforcement Officers protect the community's safety, health, and welfare through the enforcement of local, state, and federal laws and ordinances; and

WHEREAS, Code Enforcement Officers are highly dedicated, qualified, and trained professionals, who share the goals of preventing neighborhood deterioration, enhancing communities, ensuring safety, and preserving property values; and

WHEREAS, in their capacity, Code Enforcement Officers often have a highly visible role in the City of Riverbank, regularly interacting with the public and with a variety of federal, state, and local officials to achieve fair and expedient resolutions; and

WHEREAS, the City of Riverbank is proud to recognize and honor the City's Neighborhood Improvement Officers who serve as the Code Enforcement Officers, leading the way to improve and maintain the quality of life within our community.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Riverbank hereby proclaims the second week of October, 2020, to be known as Code Enforcement Officer Appreciation Week in the City of Riverbank, and calls upon the residents to join in recognizing and expressing their appreciation for their dedication and service.

October 13, 2020

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 1.2

SECTION 1: PRESENTATIONS

Meeting Date:	October 13, 2020
Subject:	Progress Update on the Development of the City's Bicycle and Pedestrian Master Plan
From:	Sean Scully, City Manager
Submitted By:	Kathleen Cleek, Development Services Admin. Manager

RECOMMENDATION

It is recommended that the City Council hear the progress update on the development of the City's Bicycle and Pedestrian Master Plan.

SUMMARY

On October 8, 2019, the City Council authorized the City Manager to enter into a professional service agreement with Alta Planning + Design (Alta) to assist in the development of a Bike & Pedestrian Master Plan. City staff has been working with Alta on the development of the plan along with an Advisory Committee. A website was also set up and flyers distributed requesting resident input.

The project aims to create a long-term vision and plan for the enhancement of the City's bicycle and pedestrian travel networks in order to improve conditions for residents as they relate to safety, connectivity, comfort and access. The progress update will include key findings from the project team's analysis of existing conditions, public outreach, and network needs. The team will also discuss the next steps of the project including recommendations, project prioritization and community outreach opportunities.

FISCAL IMPACTS

None at this time.

ATTACHMENTS

There are no attachments.

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

SECTION 3: CONSENT CALENDAR

Meeting Date:	October 13, 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:	October 13, 2020
Subject:	Approval of the July 28, 2020, Regular 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 July 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. July 28, 2020, City Council and LRA Minutes



(BY VIRTUAL PLATFORM ONLY)
City of Riverbank
REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD MEETINGS
(The City Council also serves as the LRA Board)
Conducted from various local virtual locations

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

MINUTES OF TUESDAY, JULY 28, 2020

Notice: This meeting was held in accordance with the Governor's Executive Order N-29-20, 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.

CALL TO ORDER

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

FLAG SALUTE

Mayor/Chair Richard D. O'Brien

INVOCATION

There was no invocation.

ROLL CALL

Present via
Virtual Platform:

Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair (CM-D1) 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 Manager Sean Scully, Assistant City Manager/ASD Marisela Garcia, City Attorney Tom Hallinan, City Clerk Annabelle Aguilar, Police Chief Ed Ridenour, Planning and Building Manager Donna Kenney, Parks and Recreation Director Sue Fitzpatrick.

AGENDA CHANGES: 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: Proclamation – National Health Center Week.

Mayor O'Brien read the Proclamation.

Item 1.2: Riverbank Representative Update by Stanislaus County Fire Protection District Board of Director Chad Homme.

Mr. Homme presented the report.

Item 1.3: PROS Consulting Update on the Citywide Park Master Plan.

PROS Consulting Mike Svetz presented the plan.

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 3 minutes or as stated by the presiding Officer**. Under State Law, matters presented during the public comment period cannot be discussed or acted upon.

Refer to Page 6 for the Public Comment Procedures page.

There were no public comments.

3. CONSENT CALENDAR

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

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

Item 3.B: A Resolution [No. 2020-061] of the City Council of the City of Riverbank, California, Authorizing the Destruction of Certain City Records Retained by the Parks and Recreation Department.

Item 3.C: Acceptance of the Eight Street Overlay Project Completed by George Reed, Inc. and Authorization to File a Notice of Completion.

Item 3.D: Re-adoption of **Ordinance No. 2020-008** Approving a Development Agreement By And Between the City of Riverbank and Canna Mart, LLC, a California Limited Liability Corporation Doing Business as Canna Mart.

Item 3.E: A Resolution [No. 2020-062] Approving Final Map 01-2020 for McRoy Wilbur Communities, Inc. (APN: 062-022-003). The project consists of a Tentative Map to subdivide approximately 9.40 acres into forty-nine (49) single-family detached residential lots (overall density of 5.21 du/acre), an approximately one (1) acre park, associated street, sewer, water, and storm drainage improvements

Recommendation: Approval of the Consent Calendar items by roll call vote.

ACTION: *By motion moved and seconded (Campbell / Uribe / passed 5-0) to approve Consent Calendar Items 3.A through 3.E 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

Item 4.1: A Second Reading by Title Only of Proposed Ordinance No. 2020-009 Amending Title XI: Business Regulations; Chapter 120: Cannabis Regulations; Section 120.61: Penalties, by Repealing Section 120.61 in its Entirety and Substituting it with a New Section 120.61 Penalties, to the Riverbank Municipal Code of Ordinances – It is recommended that the City Council consider adoption of proposed Ordinance No. 2020-009 by roll call vote.

City Manager Sean Scully presented the staff report.

There were no public comments.

ACTION: *By motion moved and seconded (Campbell / Fosi / passed 5-0) to approve Amending Title XI: Business Regulations; Chapter 120: Cannabis Regulations; Section 120.61: Penalties, by Repealing Section 120.61 in its Entirety and Substituting it with a New Section 120.61 Penalties, to the Riverbank Municipal Code of Ordinances by adoption of Ordinance No. 2020-009 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 HEARINGS

The public notices for all Public Hearing Item 5.1 was published in the Riverbank News on 7/15/2020.

Item 5.1: A Resolution [No. 2020-063] Granting an Easement Dedication to Pacific Gas and Electric on City Property (APN: 247-250-022, 247-250-004, & 247-260-002) as Described in the Easement Deed – It is

recommended that the City Council consider the proposed resolution granting an easement to PG&E for overhead power lines at City owned parcels (247-250-022, 247-250-004, & 247-260-002).

City Manager Sean Scully presented the staff report and clarified the request was to be able to provide electricity to Rodney P. Beard and Virginia Beard property owners of an agricultural property to the west of the City of Riverbank Waste Water Treatment Plant for a well.

Mayor O'Brien opened the public hearing at 6:57 p.m.; no spoke, the hearing was closed.

ACTION: *By motion moved and seconded (Uribe / Campbell / passed 5-0) to adopt Resolution No. 2020-063 for the approval of granting an Easement Dedication to Pacific Gas and Electric on City Property (APN: 247-250-022, 247-250-004, & 247-260-002) as Described in the Easement Deed 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

6. NEW BUSINESS

Item 6.1: **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.

Assistant City Manager/ASD Marisela Garcia presented the staff report; options provided were: 1) Status Quo: Continue with July 31, 2020 due date. Application of penalties occurs on August 1, 2020; 2) Delay the due date on the utility bill until August 14, 2020. Apply penalties on August 15, 2020; or 3) Do not apply penalties for delinquent bills after the July 31, 2020 due date.

City Council and Staff discussed the Item.

ACTION: *By motion moved and seconded (Uribe / Barber-Martinez / passed 5-0) to approve Option #3: Do not apply penalties for delinquent bills after the July 31, 2020 due date 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

Item 6.2: **CARES Coronavirus Relief Fund (CRF) Allocation Discussion** – It is recommended that the City Council provide feedback to staff regarding the use of the CARES Coronavirus Relief Fund (CRF) Allocation that has been allocated to the City of Riverbank by the County of Stanislaus.

Assistant City Manager/ASD Marisela Garcia presented the staff report.

SPENDING PLAN OPTIONS

1. Public Health Expenses

- a. Expenses for communication and enforcement by local governments of public health orders related to COVID-19 (i.e. Administrative staff, Code Enforcement, and Law Enforcement),
 - b. Expenses for acquisition and distribution of medical and protective supplies,
 - c. Expenses for disinfection of public areas and other facilities,
 - d. Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - e. Expenses for public safety measures undertaken in response to COVID-19.
- 2. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.**
- 3. Expenses of actions to facilitate compliance with COVID-19 related public health measures, such as:**
- a. Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions,
 - b. Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - c. Expenses to care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
- 4. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:**
- a. Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruptions caused by required closures.

City Council and Staff discussed the Item. Council spoke in favor using the funds to assist residents for payment of utilities, assist businesses, homelessness, provide personal protective equipment, and communication plans.

Mayor O'Brien requested a resolution to memorialize the use of the funds be placed on the next agenda's Consent Calendar. There was no objection to Staff beginning the funding programs immediately.

ACTION: *By motion moved and seconded (Uribe / Barber-Martinez / passed 5-0) to approve the CARES Coronavirus Relief Fund (CRF) Allocation of funding as directed and memorialize the direction of the use of funds by Resolution.*

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

Item 6.3: **Electronic Sign Update – Discussion Direction** – It is recommended that the City Council consider an update on the electronic sign update.

City Manager Sean Scully presented the staff report.

City Council and Staff discussed the electronic sign previously approved to be located at the Patterson Road water fountain location, the monument sign at the west Patterson Road entrance to Riverbank, and a trailer sign.

ACTION: *By motion moved and seconded (Fosi / Barber-Martinez / passed 5-0) to approve to 1) Proceed to continue with Valley Outdoor Sign to install the previously approved electronic sign at the water fountain location by September 1, 2020, or penalties [Developer has agreed to begin paying lease payments to the City of Riverbank whether or not the sign is active and completed]; 2) the City Manager to expend the appropriate amount of funds [proposed at \$25,000 to \$35,000 to replace the monument sign] at the west Patterson Road entrance; 3) have the City Manager return for portable signage; and 4) have the City Manager [recommend] additional signage in the City.*

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

7 COMMENTS/REPORTS

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

Item 7.1: Staff

- *City Manager Sean Scully announced that regular COVID-19 updates would be given again; the Riverbank housing market is very active; there is significant interest with the Crossroads West Project; the City's mask program [for COVID protection] is very successful; every care home in Riverbank were provided masks; the public hearings to begin soon for the Aemetis Master Developer contract, the Cannabis Cultivation and Manufacturing Project [at the Cannery location], and the River Walk Subdivision Project on the westside of Riverbank has conceptual drawings and environmental work. A joint Council and Planning Commission workshop will be scheduled to discuss the subdivision project.*

Item 7.2: Council/Authority Member

- *Council/Authority Member Fosi encouraged everyone to wear their mask and to be kind.*
- *Council/Authority Member Campbell agreed with Councilmember Fosi's comments.*
- *Council/Authority Member Barber-Martinez encouraged everyone to wear their mask, continue to remain safe, check on others during hot weather, and consider volunteering at the Christian Food Bank on Fridays from 10:00 a.m. to 12:00 p.m.*
- *Vice Mayor/Chair Uribe reported on the Stanislaus Homeless Alliance.*

Item 7.3: Mayor/Chair

Mayor/Chair O'Brien: 1) commented on the 6 to 12 days length of time for COVID-19 test results, the problem with the delay in notification, and the current 350 confirmed cases in Riverbank; 2) commented on leasing the City's light poles to a third party to manage and generate some funding of the 5G [wireless network technology] that is coming; and 3) requested a Council update on the Wastewater Treatment Plant Phase 1 engineering, design, and construction.

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 LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code section 54956.9(d)(1)

Name of Case: Elevations Plus, LLC v. City of Riverbank

Case No.: CV-20-002819

Item 8.2: LIABILITY CLAIMS

Pursuant to Government Code § 54956.95

Claimant: Lincoln Capitao

Agency claimed against: City of Riverbank

Item 8.3: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8

Property: APN: 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

Mayor/Chair O'Brien announced the Closed Session Item(s) and opened the Item(s) for public comment; no one spoke.

ADJOURNMENT – THE PUBLIC PORTION OF THE MEETING

The Mayor announced that the report on the Closed Session Items would be made to the City Clerk, and the report would 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. The meeting on August 11th is canceled. The next regular meeting was scheduled on August 25th @ 6:pm

There being no further open public business, Mayor/Chair O'Brien adjourned the public portion of the meetings at 8:23 p.m.

9. REPORT FROM CLOSED SESSION

Mayor O'Brien reported that direction was provided to staff for Items 8.1 and 8.2.

Mayor/Chair O'Brien reported that direction was provided to staff for Item 8.3.

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meeting at 8:33 p.m.

ATTEST: *(Adopted 10/13/2020)*

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

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

SECTION 3: CONSENT CALENDAR

Meeting Date:	October 13, 2020
Subject:	Approval of the August 19, 2020, Special City Council Minutes
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

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

SUMMARY

The Draft Minutes of the August 19, 2020, Special City Council meeting have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. August 19, 2020, Special City Council Minutes



(BY VIRTUAL PLATFORM ONLY)
CITY OF RIVERBANK
SPECIAL CITY COUNCIL MEETING
MINUTES OF
WEDNESDAY, AUGUST 19, 2020



Verbatim proceedings may be viewed on-line at www.riverbank.org or a copy may be obtained for a fee.

Notice: *This meeting was held in accordance with the Governor's Executive Order N-29-20, 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.*

CALL TO ORDER:

The City Council of the City of Riverbank met at 6:00 p.m. on this date by virtual platform with Mayor O'Brien presiding.

FLAG SALUTE

Mayor Richard D. O'Brien

INVOCATION

There was no invocation.

ROLL CALL

Virtually Present:

Mayor/Chair Richard D. O'Brien
Vice Mayor Luis Uribe (CM-D1)
Councilmember District 2 Cindy Fosi
Councilmember District 3 Cal Campbell
Councilmember District 4 Darlene Barber-Martinez

Staff Present: City Manager Sean Scully, City Attorney Tom Hallinan, and City Clerk Annabelle Aguilar.

CONFLICT OF INTEREST

Any Council 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.

Mayor O'Brien and Councilmember Barber-Martinez declared their recusal upon Council's consideration of the resolution pertaining to their nomination to the November 3rd ballot.

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

Pursuant to Government Code in reference to a special meeting, the public has the opportunity to address the City Council/Planning Commission only on items appearing on this special meeting notice. Individual comments are limited to a **maximum of 3 minutes** per person and each person may speak once during this time. Time cannot be yielded

to another person. Written public comments received via email **no later than today by 4:00 p.m.** will be provided to the City Council for consideration. Email cityclerk@riverbank.org and indicate Item Number in the subject line. For comments during the ZOOM meeting, refer to the procedures page.

There were no written comments received by 4:00 p.m. and no one requested to comment.

2. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council unless requested by an individual Council 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.

Item 2.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

ACTION: *By motion moved and seconded (Uribe / Campbell / passed 5-0) to approve Consent Calendar Items 3.A 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

3. BUSINESS

Item 3.1: A **Resolution [No. 2020-064]** Directing that Pursuant to Election Code Section 10229 the Course of Action Shall Be the Appointment of Incumbent Richard D. O'Brien to the Office of Mayor and Request to Cancel Further County Election Services Related to the Conduct of the Election of this Office; and

A **Resolution [No 2020-065]** Directing that Pursuant to Election Code Section 10229 the Course of Action Shall Be the Appointment of Incumbent Darlene Barber-Martinez to the Office of Councilmember District 4 and Request to Cancel Further County Election Services Related to the Conduct of the Election of this Office; or

A **Resolution** Directing that Pursuant to Election Code Section 10229 the Course of Action Shall Be to Hold the Scheduled Consolidated General Municipal Elections on Tuesday, November 3, 2020 for [(To Be Determined) Office of Mayor At-Large; or, Office of Councilmember District 4; or, Offices of the Mayor and Councilmember District 4]

It is recommended that the City Council discuss and consider the adoption of the proposed resolutions to declare the action so ordered for the nomination of only one person for the office of Mayor, and the nomination of only one person for the office of Councilmember District 4.

City Clerk/Elections Official Annabelle Aguilar presented the Certificate of Facts of the results of the nomination of only one person for the Office of Mayor and only one person for the Office of Councilmember District 4, and informing them that they could adopt one of the following courses of action:

- 1) Appoint to the office the person who has been nominated; or*
- 2) Hold the election if either no one or only one person has been nominated (allows for a write-in candidate to qualify by October 20, 2020).*

City Council considered the aforementioned resolutions separately.

Mayor O'Brien recused himself from consideration of proposed Resolution No. 2020-064 and Vice Mayor Uribe presided. Elections Official Annabelle Aguilar confirmed that the Mayor had been placed in a waiting a room and no longer could access the meeting.

Vice Mayor Uribe introduced Resolution No. 2020-064 for consideration. Elections Official Annabelle Aguilar presented the resolution to consider appointing the only nominee to the Office of Mayor, which was Incumbent Richard D. O'Brien pursuant to Elections Code 10229 as if elected, and to cancel this Election.

There were no public comments.

ACTION: *By motion moved and seconded (Campbell / Fosi / passed 4-0) to adopt Resolution No. 2020-064 Directing that Pursuant to Election Code Section 10229 the Course of Action Shall Be the Appointment of Incumbent Richard D. O'Brien as if Elected to the Office of Mayor and Request to Cancel Further County Election Services Related to the Conduct of the Election of this Office as presented. Motion carried by unanimous City Council roll call vote.*
AYES: Barber-Martinez, Campbell, Fosi, and Vice Mayor Uribe
NAYS: None / ABSENT: None / ABSTAINED: None

Mayor O'Brien was returned to the virtual meeting to continue to preside over the remainder of the meeting, and was informed of the decision.

Councilmember Barber-Martinez was placed in a waiting room for consideration of the next proposed Resolution No. 2020-065. Elections Official Annabelle Aguilar confirmed that she had been placed in a waiting room and could no longer access the meeting.

Mayor O'Brien introduced Resolution No. 2020-065 for consideration. Elections Official Annabelle Aguilar presented the resolution to consider appointing the only nominee to the Office of Councilmember District 4, which was Incumbent Darlene Barber-Martinez pursuant to Elections Code 10229 as if elected, and to cancel this Election.

There were no public comments.

ACTION: *By motion moved and seconded (Uribe / O'Brien / passed 4-0) to adopt Resolution No. 2020-065 Directing that Pursuant to Election Code Section 10229 the Course of Action Shall Be the Appointment of Incumbent Darlene Barber-Martinez as if Elected to the Office of Councilmember District 4, and Request to Cancel Further County Election Services Related to the Conduct of the Election of this Office as presented.*

Motion carried by unanimous City Council roll call vote.

AYES: Campbell, Fosi, Uribe, and Mayor O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

Councilmember Darlene Barber-Martinez was returned to the virtual meeting, and was informed of the decision.

4. COMMENTS

City Manager Sean Scully commented on the tremendous amount of work for a one-person City Clerk's office and the level of confidence in the City Clerk commending her for taking care of the City's Elections and all other work. Members of the Council also commended and thanked her for her work.

Councilmember Barber-Martinez announced the availability of masks from the City.

Mayor O'Brien announced that the next regular meeting would be very long, and that he and the City Manager would be meeting with the Air Quality Control Board for monitoring of the air quality throughout [Riverbank] and to also inform the School [District] of the air quality around the schools.

ADJOURNMENT

There being no further business, Mayor O'Brien adjourned the meeting at 6:31 p.m.

ATTEST: *(Adopted 10/13/2020)*

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.1

SECTION 4: UNFINISHED BUSINESS

Meeting Date:	October 13, 2020
Subject:	Second Reading by Title Only of Proposed Ordinance No. 2020-011 to Approve Development Agreement 03-2019 By and Between the City of Riverbank and DT California, LLC, Doing Business as Aeriz
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that Council adopt an Ordinance (Attachment 1) approving a development agreement by and between the City of Riverbank and DT California LLC, a Delaware limited liability company doing business as Aeriz.

SUMMARY

DT California LLC ("The Applicant") has requested a Development Agreement (Attachment 2) and Conditional Use Permit to allow for commercial cannabis cultivation, distribution, manufacturing, and limited retail activities to be located at 2906 Santa Fe Street. The former cannery site is proposed to be developed in three (3) Phases. Phase 1 would consist of cannabis cultivation in existing Building 4 and cannabis extraction, manufacture, distribution, and limited retail in existing Building 5. Phase 2 would consist of cannabis cultivation in existing Buildings 1, 2, and 3. Phase 3, not yet finalized, could consist of new building(s) for cultivation with parking and landscaping improvements.

The project site has a General Plan Land Use Designation of Mixed Use (MU) and is zoned Cannery District (CD) within the Downtown Specific Plan. Any parcel(s) that was purchased by the applicant at the same time as the cannery site and is not zoned Cannery District, is not a part of this project or approvals (Attachment 3).

The Planning Commission at a special meeting on September 1, 2020 with a vote of 4-1(absence) recommended that the City Council approve Development Agreement 03-2019. They also approved with a vote of 4-1(absence) Conditional Use Permit 01-2020. Both approvals are required for a cannabis business to operate.

ATTACHMENTS

- Attachment 1 - Ordinance No. 2020-011
- Attachment 2 – Aeriz Development Agreement with Exhibits
- Attachment 3 – Aeriz First Reading Staff Report 9-22-2020

**CITY OF RIVERBANK
ORDINANCE NO. 2020-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING DEVELOPMENT AGREEMENT 03-2019 BY AND BETWEEN THE
CITY OF RIVERBANK AND DT CALIFORNIA, LLC, DOING BUSINESS AS AERIZ**

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

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

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

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

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

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

WHEREAS, DT California, LLC, a limited liability company doing business as "Aeriz" submitted an application to the City for consideration of a development agreement to operate a cannabis facility with cultivation, manufacturing, distribution, and limited retail operations (the "Project"); and

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

WHEREAS, DT California, LLC has agreed to purchase that certain real property located at 2906 Santa Fe Street in the City of Riverbank, Assessor's Parcel Numbers 132-034-012, 132-023-020, and 132-034-017 which DT California, LLC intends to develop the Project; and

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

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15332 (a-e) of Article 19 of the California Code of Regulations applicable to in-fill development projects; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 1, 2020, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, on September 22, 2020, and October 13, 2020, the City Council held duly noticed public hearings to consider the Development Agreement; and

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

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank.
2. In accordance with Government Code section 65864 *et seq.*, the City Council finds that the Development Agreement:
 - a. Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan; and
 - b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and

- c. Will not adversely affect the orderly development of property or the preservation of property values; and
- d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and
- e. Contains a legal description of the property.

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

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

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

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

SECTION 4. Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*). Phases 1 and 2 of the Project are categorically exempt from CEQA pursuant to Section 15332 (a-e) of Title 14 of the California Code of Regulations applicable to in-fill development projects. Phase 3 will receive additional CEQA analysis before development.

SECTION 5. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Riverbank hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6. This Ordinance shall become effective thirty (30) days from and after its final passage February 11, 2020, provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on January 28, 2020. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 13th day of October, 2020; motioned by Councilmember _____, seconded by Councilmember _____; moved said ordinance by a City Council _____ vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

Tom P. Hallinan, City Attorney

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

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

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 2020, by and between the **CITY OF RIVERBANK**, a California municipal corporation ("City"), and **DT California, LLC**, a Delaware limited liability company ("Developer"). City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

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

Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use (including the leasing of) real property to conduct Commercial Cannabis Activity, as defined in Section 1.4 (v) of this Agreement and to operate a Cannabis Dispensary, as defined in Section 1.4(n) of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 (k) of this Agreement, as amended from time to time (the “Project”) and the Municipal Code of the City of Riverbank as amended to comply with changes in the California Cannabis Laws. The Project is phased as shown in Recital I.
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the “Development Agreement Statute”), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 (“City Development Agreement Resolution”) authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. The City Development Agreement Resolution requires a written application with specified data to be submitted to City for consideration of any development agreement.
- H. Developer submitted an application to City for consideration of a development agreement for the Project.
- I. Developer holds an agreement to purchase that certain real property located at 2906 Santa Fe Street in the City of Riverbank, County of Stanislaus, State of California, Assessor’s Parcel Numbers 132-023-020, 132-034-017, and 132-034-020 (collectively, the “Site”), more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**. The site historically was operated as a cannery that processed the region’s fruits and vegetables and, at one time, consisted of buildings totaling at least 503,900 square feet and perhaps as much as 785,000 square feet. The Project area is depicted in the Site Plan attached hereto as **Exhibit C**. Phase 1 of the Project includes use of Buildings 4 and 5 on the Site Plan. Phase 2 of the Project includes use of Buildings 1, 2, and 3 on the Site Plan. A potential Phase 3 may consist of future new construction on the vacant areas of the Property.

- J. Government Code section 65865 requires that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- K. Developer holds a legal and equitable interest in the form of an agreement to purchase the Site for the purpose of owning the Site and operating the Project.
- L. On August 22, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- M. Government Code section 65867.5 and the City Development Agreement Resolution require the Planning Commission hold a public hearing to review an application for a development agreement.
- N. On September 1, 2020, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's applications for this Agreement and for Conditional Use Permit No. 01-2020.
- O. On September 1, 2020, the Planning Commission recommended the City Council adopt Ordinance No. 2020-XXX, which would allow the Developer to develop and operate the Project at the Site and approved Conditional Use Permit No. 01-2020 with Resolution 2020-010.
- P. On September 22, 2020, pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2020-XXX.
- Q. This Agreement is entered into pursuant to the Development Agreement Statute and the City Development Agreement Resolution.
- R. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) redevelop an infill location in the City center (iii) create a physical environment that is consistent with and complements City's goals and visions; (iv) protect natural resources from adverse impacts; (v) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; (vi) reduce the economic risk of development of the Site to both City and Developer; and (vii) create opportunities for job creation.
- S. The Parties intend, through this Agreement, to allow Developer to develop and operate the Project in accordance with the terms of this Agreement.
- T. The City Council has determined that this Agreement is consistent with City's General Plan, City's Downtown Specific Plan ("Specific Plan") and its associated

Cannery District zone (“Zoning”) and has conducted all necessary proceedings in accordance with Riverbank Municipal Code for the approval of this Agreement.

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

AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

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

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

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

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description
Exhibit B	Site Plan
Exhibit C	Floor Plans
Exhibit D	Notice of Non-Performance Penalty
Exhibit E	Indemnity Agreement
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

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

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional Licenses” has the meaning set forth in Section 2.4.

(c) “Adult-use cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.

(d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.

(e) “Application” means the cannabis business application for a development agreement required by Riverbank Municipal Code Chapter 120 and Section 4 of the City Development Agreement Resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(w) “Conditional Use Permit” means a Conditional Use Permit No. 01-2020 approved by the Planning Commission and issued by City pursuant to the Riverbank Municipal Code.

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

(y) “Cultivation Area” means the square footage where any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis within the Canopy (as defined in 3 Cal.C.Reg.§8000(f)) takes place on the Site. Developer shall notify City of the Cultivation Area by the Effective Date of this Agreement. In the event Developer wishes to expand the Cultivation Area at any time during this Agreement, Developer shall notify City within ten (10) days after any expansion. Developer agrees to

allow City access to the Site at any time between the hours of 6:00 a.m. and 11:00 p.m. on any day of the week, or at any reasonable time, to ensure compliance with this requirement.

(z) “Developer” means DT California, LLC, a Delaware limited liability company. Developer also has the meaning set forth in Section 6.1.

(aa) “Development Agreement Statute” has the meaning set forth in Recital E.

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

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

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

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

(dd) “Indemnification Agreement” has the meaning set forth in Section 6.3.

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

(ff) “Marijuana” has the same meaning as “Cannabis” as defined in Subsection 1.4 (e) and those terms may be used interchangeably.

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

(hh) “MCRSA” has the meaning set forth in Recital A.

(ii) “Ministerial Fee” or “Ministerial Fees” has the meanings set forth in Section 4.1.

(jj) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement and any amendment described as minor herein.

(kk) “Mortgage” has the meaning set forth in Article 7.

(ll) “Non-Performance Penalty” has the meaning set forth in Section 4.5.

(mm) “Notice of Non-Performance Penalty” has meaning set forth in Section 4.5.

(nn) “Notice of Termination” has the meaning set forth in Section 9.1.

(oo) “Planning Commission” means the City of Riverbank Planning Commission as established by Riverbank Municipal Code section 32.35.

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

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

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

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

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

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

(vv) “State” means the State of California.

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

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

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

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

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

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

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

Section 1.7. Term. The “Term” of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is required, directed, or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for no longer than one (1) year (the “Tolling Period”). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds five (5) calendar years to comply with federal or state law.

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

Section 1.8. Priority of Enactment. In the event of a conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval

superior to the approvals listed thereafter: (a) General Plan, (b) Specific Plan, (c) Zoning, (d) Agreement, (e) Conditional Use Permit, and (f) Subsequent City Approvals.

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

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

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Thirty Thousand Dollars (\$30,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

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

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

ARTICLE 2 DEVELOPMENT OF PROPERTY

Section 2.1. Vested Right of Developer. During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested

in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

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

Section 2.3. Permitted Uses and Development Standards.

(a) **Authorized Licenses.** Developer shall be authorized to develop, construct, and use, or have one or more affiliates use, the Site for Commercial Cannabis Activity consistent with the following license types (the "Authorized Licenses"):

All Indoor Types	Cultivation
Type 6,7	Manufacturer
Type 10	Retailer
Type 11	Distribution

(b) **Limited Retail Activity.** Developer's retail activity at the Site will be limited to commercial cannabis industry operators and will not be open to the general public. Developer shall maintain visitor logs and sale records of retail activity at the Site which shall be subject to periodic inspection by City upon 24-hour notice to ensure compliance with this Section. Developer may seek authorization from City to open retail activity to the general public. Any such request shall be processed as a Major Amendment.

(c) **Affiliate Access and Operation.** Developer shall be permitted to use, or have one or more affiliates use, the Site consistent with the Authorized Licenses for the Term of this Agreement and during the time Developer is, or affiliates are, applying for the Authorized Licenses with the applicable State Licensing Authority, subject to the applicable assignment provisions in section 10.1 of this Agreement. Notwithstanding the foregoing, Developer is, or its affiliates are, required to apply for and obtain the Authorized Licenses from the State of California. If the State Licensing Authority does not grant an Authorized License to Developer or Developer's affiliate, Developer or affiliate, as the case may be, shall immediately cease the Commercial Cannabis Activity sought under the Authorized License denied by the State Licensing Authority. Developer shall within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license to Developer or an affiliate. If no Authorized Licenses are granted by the State of California, Developer shall immediately cease operations. In this situation, the Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer may request to add to the Authorized Licenses additional license types once that license is applied for or obtained from the appropriate State Licensing Authority (the “Additional Licenses”). Any such Additional License shall be processed as a Major Amendment.

Section 2.5. Conditional Use Permit. Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain the Conditional Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Riverbank Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program.

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

(a) Future Development at Site. Developer may seek Subsequent City Approvals, as defined in Section 3.1 below, for the construction of additional buildings on the Site. Such approvals may necessitate revisions or amendments to the Specific Plan. In the event Developer’s proposed development of the Site requires an amendment to the Specific Plan, Developer shall pay for all costs related to the preparation of the Specific Plan amendment and any applicable environmental analysis required under CEQA. Such approvals also may necessitate amendment of the Conditional Use Permit or the processing of a new conditional use permit and Developer shall pay for the processing costs of either.

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

Developer shall comply with any and all administrative guidelines adopted by City that govern or pertain to the Project as set forth in this section. For Commercial Cannabis Activity of a retail nature, nothing in this Agreement shall be construed as limiting the ability of City to amend the Riverbank Municipal Code or issue rules or administrative guidelines associated with implementation of the Cannabis Business Pilot Program consistent with Developer's operation of the Project under this Agreement, or Developer's obligation to strictly comply with the same. For Commercial Cannabis Activity of a manufacturing or cultivation nature, City shall limit any amendments to the Riverbank Municipal Code and issuance of rules and regulations and guidelines to those needed to comply with changes to State or applicable Federal law or as necessary to address public health and safety emergencies at the Site.

Section 2.7. Initiatives and Referenda. If any City ordinance, rule or regulation, addition to the Riverbank Municipal Code or other measure of any kind ("Ballot Measure Matters") is enacted or imposed by a city council – sponsored or citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, the Conditional Use Permit, Subsequent City Approvals, including any amendment to the Conditional Use Permit or a subsequent conditional use permit, or reduce, limit or otherwise prevent the development rights or assurances provided to Developer in this Agreement, such Ballot Measure Matters shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.8. Regulation by Other Government Entities. Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

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

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

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

Section 2.12. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project or the Site. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency, then City may select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City. City shall allow Developer to provide input on the matters addressed in this Section 2.12. In addition, before and after City's determination under this Section 2.12, the Parties shall meet and confer on methods to minimize any adverse effect on the Project or the Site, including, without limitation, an adjustment in the Public Benefit rates.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

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

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

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

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

ARTICLE 4

PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2A. Public Benefit – Retail.

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

Effective Date	Public Benefit Due.
First (1 st) Business Day, of the 1 st Month Following Opening of the On-Site Store to the Public through the entire term of the Agreement so long as retail facility is in operation.	\$7,000 or 5% of Gross Receipts from Operations (Retail), whichever amount is greater, and due each month.

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

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

(d) The Public Benefit Amount-Retail shall, at all times, be no higher than the lowest amount charged by the City for public benefit on any other retail cannabis use in the City.

Section 4.2.B. Public Benefit – Other Than Retail.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the “Public Benefit – Other Than Retail”). In consideration of the foregoing, Developer shall remit to City for the various categories of Commercial Cannabis Activity other than retail as follows:

Cultivation		
Years Covered	Public Benefit Rate	When Applied and Due

Years 1-4	\$2.50 per square foot per year of the Cultivation Area	Applied when space is used for commercial cannabis cultivation within the Cultivation Area and is due annually.
Years 5-8	\$2.75 per square foot per year of the Cultivation Area	
Years 9-12	\$3.25 per square foot per year of the Cultivation Area	
Years 13-16	\$3.50 per square foot per year of the Cultivation Area	
Years 17-20	\$4.00 per square foot per year of the Cultivation Area	

Manufacturing		
Years Covered	Public Benefit Rate	When Applied and Due
Years 1-4	1.0% of Gross Receipts from Operations (Manufacturing)	Applied when space is used for manufacturing and is due quarterly.
Years 5-8	1.25% of Gross Receipts from Operations (Manufacturing)	
Years 9-12	1.75% of Gross Receipts from Operations (Manufacturing)	
Years 13-16	2.0% of Gross Receipts from Operations (Manufacturing)	

Years 17-20	2.5% of Gross Receipts from Operations (Manufacturing)	
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Distribution from Project of Products of Third Parties (Type 11 License)		
Years Covered	Public Benefit Rate	When Applied and Due
Year 1	4% of Gross Receipts from Third-Party Product Distribution Operations	Starting the second (2 nd) quarter following the issuance of the Conditional Use Permit and is due quarterly.
Years 2-20	5% of Gross Receipts from Third-Party Product Distribution Operations	Due quarterly.

Distribution from Project's Cultivation and Manufacturing Facilities (Type 11 License)		
Years Covered	Public Benefit Rate	When Applied and Due
Years 1-20	None	N/A

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

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

(d) The cultivation and manufacturing rates in subsection (a) shall be reviewed by the Parties every twenty-four (24) months to ensure that the rates of public benefit paid pursuant to this Section 4.2.B are on a par or more favorable than similar payments required in other local jurisdictions (cities and counties) in the State, whatever form such payments take (i.e., public benefit payments, taxes, charges, assessments, fees or other similar payments.)

Section 4.2.C. Other Public Benefits. The Parties agree that the Project will provide public benefits other than the payments provided for in Section 4.2.A and Section 4.2.B and may provide additional public benefits. For example, Developer estimates that development of Phase 1 and Phase 2 of the Project should provide between 200 and 400 jobs in the City. Further, the Project involves reuse of a currently unused property near the City center constituting in-fill development that will put the Site back into active economic use. In addition, the Project may have additional benefits such as an internship program for the new careers available in the Project and a program for training developmentally disabled persons for employment on the site. The Parties shall cooperate and use reasonable efforts to achieve these additional benefits and any others the Parties agree to pursue.

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

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

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

Section 4.5. Penalty. Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer fail to make any payment when due as required by this Agreement, including the Public Benefit

Amount, City may impose a “Non-Performance Penalty.” A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer a “Notice of Non-Performance Penalty,” attached hereto as **Exhibit D**. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

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

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

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

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

ARTICLE 6 INSURANCE AND INDEMNITY

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

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

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

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

(iii) Contain standard separation of insured provisions.

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

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

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

(iii) Contain standard separation of insured provisions.

(c) Workers’ Compensation Insurance. Developer shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s employees employed at or on the Project, and in the case any of the work is subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers’ compensation insurance with statutory limits and employer’s liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

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

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this

Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

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

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

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

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

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

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

Section 6.5. Waiver of Damages; Exclusion. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer other than those expressly specified in this Section 6.5.

- (a) Initial Approval or Disapproval of Agreement. Developer acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against City in the event that this Agreement or the Conditional Use Permit, are: (1) not approved by the City Council or (2) are approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed.
- (b) Referendum. Developer further acknowledges that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard.
- (c) Breach of Agreement. Developer waives all claims for damages against City for breach of this Agreement, except that Developer may make a claim for damages against City for breach of this Agreement in a sum not to exceed the amount actually paid by Developer in Public Benefit – Other Than Retail payments under Section 4.2.B of this Agreement in the twelve (12) full months prior to the breach asserted by Developer.

ARTICLE 7 MORTGAGEE PROTECTION

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

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

- (a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging

a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than ninety (90) calendar days written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such ninety (90) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) After expiration of the ninety (90) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within ninety (90) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable conditional use permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal or equitable proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 within thirty (30) calendar days from the expiration of the ninety (90) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional forty-five (45) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in ninety (90) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

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

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, or if required more frequently under the conditions of approval

of any operable conditional use permit for the Project, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least twenty (20) calendar days prior to such periodic review. Developer shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable. The reasonable cost for City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

Section 8.3. Estoppel Certificates.

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

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

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

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings, including, without limitation, specific performance, to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 8.1(c) of this Agreement.

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

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

ARTICLE 9 TERMINATION

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

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

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

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

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. Developer in its sole discretion may sell, assign, or transfer all or any part of its rights, title, and interest in the Site under this Agreement. Developer shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of the Commercial Cannabis Activity subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager. Notwithstanding the above, the City Manager shall evaluate in good faith any request for a transfer of rights to a third party under this Agreement, and shall not unreasonably withhold approval of such request. The City Manager's evaluation shall take into consideration the experience of and resources available to the prospective transferee relative to their ability to competently assume the Commercial Cannabis Activity for the Project. Additionally, the City Manager may, at his or her discretion, deny a transfer request for any of the reasons contemplated in California Code of Regulations, tit. 16, sections 5017-5018.

Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, or if Developer assigns its rights and responsibilities to an affiliate as allowed in this Section 10.1, City and Developer shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit G**.

Section 10.2. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by

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

If to City: City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attention: City Manager

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

If to Developer: DT California, LLC
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attention: David Thomas

With copy to: Aronberg Goldghen
330 N. Wabash Avenue, Suite 1700
Chicago, IL 60611-3596
Attention: Paul A. Gilman

and: Petrulakis Law & Advocacy, APC
P.O. Box 92
Modesto, CA 95354
Attention: George A. Petrulakis

Section 10.4. Governing Law and Dispute Resolution. The governing law and dispute resolution mechanisms under this Agreement are as follows:

(a) Governing Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

(b) Negotiation. In the event of any dispute, claim, controversy, or breach arising out of or relating to this Agreement, other than unlawful detainer and any action

for equitable or injunctive relief, the Parties will use their good faith efforts to settle the dispute, claim, controversy, or breach by negotiating in good faith, and they will attempt to reach a solution satisfactory to both parties no later than forty-five (45) days from the date that either Party gives written notice of its intent to negotiate in good faith to the other Party. Each party may bring up to three (3) people to this negotiation. Should the parties be unable to resolve the dispute, claim, controversy, or breach giving rise to the negotiation, any written claim notice or response will be admissible in any subsequent proceeding for the sole purpose of demonstrating the Parties completed negotiations pursuant to this subsection (b).

(c) Mandatory Mediation. If the negotiation under subsection (b) is unsuccessful, the Parties shall initiate mandatory mediation under this subsection (c) whereby any dispute, claim, controversy or breach arising out of or relating to this Agreement, will be submitted to mediation. The Parties shall select one mediator. If the Parties cannot agree on a mediator, either Party may petition the Superior Court of Stanislaus County for the appointment of a mediator by the presiding judge. Each Party shall submit a brief memorandum setting forth its position on the issues that need to be resolved. The mediation shall be held in Stanislaus County, California or another place chosen by the Parties. Before the mediation proceedings begin, the mediator and all parties to the mediation will execute an agreement to maintain confidentiality of the proceedings under California Evidence Code §§703.5 and 1115–1129 and California Code of Civil Procedure §1775.10, or successor statutes, in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution including court proceedings, arbitration, or reference hearings. The City Manager and Mr. David Thomas will attend the mediation sessions in person with other representatives of the Parties. Persons other than the Parties, the Parties' representatives and the mediator may attend the mediation sessions only with the permission of the Parties. Confidential information disclosed to a mediator by the Parties or by witnesses during the course of the mediation will not be divulged by the mediator. All records, reports, or other documents received by the mediator will be confidential. There will be no stenographic or tape recording of the mediation process.

(d) Post-Mediation Dispute Resolution. If mediation under subsection (c) does not result in a resolution of the dispute, claim, controversy, or breach within ninety (90) days from the date the matter was submitted to mediation, the Parties may proceed to litigation. Notwithstanding the foregoing, the Parties may agree, under a separate agreement, to submit the dispute, claim, controversy, or breach to binding or non-binding arbitration or to hearing by a referee in accordance with California Code of Civil Procedure §§ 638-645.2.

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

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

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this

Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

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

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

Section 10.11. Standard Terms and Conditions.

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

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

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

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

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

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

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

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

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

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

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

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

“CITY”

Date: _____, 2020

CITY OF RIVERBANK, CA
a California Municipal Corporation

By: _____
Sean Scully
City Manager

Attest:

By: _____
Annabelle Aguilar
City Clerk

Approved to as Form

By: _____
Tom Hallinan
City Attorney

“DEVELOPER”

Date: _____, 2020

DT California, LLC, a Delaware limited
liability company

By: DT Management Group, LLC, an
Illinois limited liability company
Its: Manager

By: _____
David Thomas
Its: Manager

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

Exhibit A

Legal Description

Order No. 140-1907909-86

Exhibit "A"

Parcel 1:

Lots 1 and 2 in Block 2 of the City of Riverbank, as per Map thereof recorded October 11, 1910 in Book 5 of Maps, Page 16, Stanislaus County Records.

Parcel 2:

Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 42, 43, 44, 45, 46, 47, 48, 49, 50, and the North 100 feet of the East 1/2 of Lot 51 of Riverbank Acreage Tract, as per Map thereof recorded March 23, 1912 in Volume 6 of Maps, at Page 33, Stanislaus County Records.

Excepting that portion granted to the State of California by Instrument recorded June 8, 1971 in Book 2398 Page 697, Official Records, described as portion of Lots 11 and 12 of the Riverbank Acreage Tract, as per Map thereof recorded March 23, 1912 in Volume 6 of Maps 1 Page 33, Stanislaus County Records, said portion described as follows:

Beginning at the intersection of the Westerly line of said Lot 11 with the Southerly line of existing State Highway Route 10-STA-108 P.M. 32.3; thence (1) along said Southerly line North 89° 54' 00" East, 185.33 feet; thence South 81° 59' 08" West, 181.56 feet; thence South 89° 54' 00" West, 5.50 feet to said Westerly line; thence along last said line North 00° 06' 00" E., 25.00 feet to the point of beginning.

Excepting therefrom:

The following described portion of Lot 11 of Riverbank Acreage Tract as per map of said tract recorded in Volume 6 of Maps at Page 33, Stanislaus County Records, and being located in the Northeast 1/4 of Section 26, Township 2 South, Range 9 East, Mount Diablo Meridian more particularly described as follows:

Beginning at the Southwest corner of said Lot 11; thence along west line of said Lot 11, North 01°05'00" East 265.00 feet to the South line of the right of way granted to the State of California by Instrument recorded June 8, 1971 in Book 2398 Page 697, Official Records; thence, along said South line, South 88°55'00" East 5.50 feet; thence, continuing along said South line, North 83°10'08" East 82.28 feet; thence, parallel with and 87.00 feet Easterly from said west line of Lot 11, South 01°05'00" West 276.33 feet to a point on the South line of said Lot 11; thence, along said South line, North 88°55'00" West 87.00 feet to the point of beginning.

Parcel 3:

That portion of Riverbank Acreage Tract, in the County of Stanislaus, State of California, as per Map filed in Volume 6 of Maps, at Page 33, Stanislaus County Records, being land within the boundaries of certain streets shown on said Map heretofore been abandoned, described as follows, to wit:

- A. That portion of 60 foot wide Topeka Street, running Easterly from the East lines of Lots 13 and 20 of said tract to the Westerly line of Railroad Avenue.
- B. That portion of 60 foot wide Santa Fe Street, running Easterly from the East line of Lots 20 and 45 of said tract to the Westerly line of Railroad Avenue.
- C. That portion of 60 foot wide Stanislaus Street running Easterly from a point 75 feet West of the East lines of Lots 46 and 51 of said tract to the Westerly line of Railroad Avenue.
- D. That portion of 50 foot wide Railroad Avenue running Northerly, from the North line of Sierra Street produced Easterly to the South line of Atchison Street (Oakdale - Sonora Highway).
- E. That portion of Railroad Avenue described as follows: Beginning at a point on the East line of Section 26, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, that bears South 0° 10' 25" West 90.00 feet from the intersection of the North right of way line of said Sierra Street and the East line of said Section 26; thence North 0° 10' 25" East along the East line of said Section 26, a distance of 90.00 feet to the North right of way line of said Sierra Street; thence North 88° 55' 32" West along said North right of way line, a distance of 42.00 feet; thence in a Southeasterly direction to the point of beginning.

Excepting that portion of Railroad Avenue granted to the City of Riverbank, in Deed recorded January 26, 1972 in Book 2448 Page 254, described as follows:

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{CW096294.7}

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CITY OF RIVERBANK
& DT CALIFORNIA, LLC
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Commencing at the intersection of the Northerly prolongation of the East line of Railroad Avenue with the Easterly prolongation of the North line of Sierra Street; thence North $88^{\circ} 55'$ West along the prolongation North line of Sierra Street 40.03 feet to the point of beginning; thence South $27^{\circ} 35'$ East, 58.50 feet; thence South $21^{\circ} 52'$ East 33.96 feet to a point on the East line of Railroad Avenue, said point also being on the East line of said Section 26; thence North $25^{\circ} 28' 50''$ West, 92.34 to the point of beginning.

Parcel 4:

An irregular shaped parcel of land in the City of Riverbank, County of Stanislaus, State of California, being a portion of the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Southwesterly corner of said Northwest quarter of Section 25; thence North (bearing assumed for purposes of this description) along the Westerly line of said Northwest quarter, said Westerly line being also the Easterly line of Railroad Avenue (50 feet wide) 447.92 feet to the most Southwesterly corner of that certain parcel of land described in that certain Deed from the Atchison, Topeka, & Santa Fe Railway Company to Hershel California Fruit Products Company, Inc. dated June 7, 1955; thence continuing North along the Westerly line of last said parcel, also being the Westerly line of the Northwest quarter of said Section 25, a distance of 422.67 feet to the Southwesterly corner of that certain parcel of land conveyed by the Atchison, Topeka & Santa Fe Railway Company to Riverbank Canning Co. by deed dated April 24, 1936; thence continuing Northerly along the Westerly line of last said parcel, a distance of 183.4 feet to a point hereinafter referred to as point "A"; thence continuing Northerly along said Westerly line 397.77 feet; thence Southeasterly along the arc of a curve that is concentric with and distant Southwesterly 200.00 feet measured radially from the Northeasterly line of that certain parcel of land as described in deed to the San Francisco and San Joaquin Valley Railway Company (predecessor in interest to the Atchison, Topeka & Santa Fe Railway Company) recorded May 15, 1899 in Volume 67 of Deeds, Page 162, records of said County, concave Northeasterly and having a radius of 11,509.82 feet to a point that is distant Easterly along a direct line 108.2 feet from the hereinabove described point "A"; thence Southeasterly along a direct line 133.2 feet to a point in a line that is parallel with and distant Southwesterly 200.5 feet, measured at right angles from said Northeasterly line of last said parcel; thence Southeasterly along said parallel line 41.8 feet to a point in the Northerly line of that certain parcel of land as described in deed dated June 7, 1955 from the Atchison, Topeka and Santa Fe Railway Company to Hershel California Fruit Products Co., Inc., said point being in a line that is parallel with and distant Southwesterly at right angles 50.5 feet from the centerline of the main track of the Atchison, Topeka and Santa Fe Railway Company; thence along said parallel line South $17^{\circ} 24' 30''$ East 972.55 feet to the Southerly line of said Northwest quarter; thence along last said Southerly line, being the center line of Patterson Road (50 feet wide), North $88^{\circ} 51' 30''$ West, a distance of 445.83 feet to the point of beginning.

Parcel 5:

An irregular shaped parcel of land in the City of Riverbank, County of Stanislaus, State of California, being a portion of the 200 foot wide right of way of the Atchison, Topeka and Santa Fe Railway Company in the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the intersection of the Southerly line of said Northwest quarter, said Southerly line being also the center line of Patterson Road (50 feet wide) with the Easterly line of that certain 16.3 acre parcel of land described in deed dated May 3, 1899, and recorded May 15, 1899, in Volume 67 of Deeds, Page 162, records of said County, said Easterly line being parallel and/or concentric with and distant Easterly 150.00 feet measured at right angles and/or radially from the center line of the Atchison, Topeka and Santa Fe Railway Company's "Original Main Tract"; thence North $17^{\circ} 24' 30''$ West (bearing assumed for purpose of this description) along said Easterly line 284.72 feet to a point in a line that is concentric with and distant Northeasterly 30.00 feet measured radially from the center line of said Railway Company's "Oakdale Branch Main Tract" as said track is designated in the records of said Railway Company, last said point being the true point of beginning for this description; thence North $17^{\circ} 24' 30''$ West, continuing along said Easterly line 788.58 feet; thence Northerly, continuing along said Easterly line, along the arc of a curve, tangent to last said course, concave Easterly and having a radius of 11,309.20 feet, a distance of 328.53 feet; thence Northerly, continuing along said Easterly line; to the Southeasterly corner of that certain parcel described in easement granted to the Atchison, Topeka and Santa Fe Railway Company to the City of Riverbank, in document dated the 28th of April, 1961, and recorded on December 15, 1961 in Volume 1729 Page 172, Official Records of Stanislaus County, California; thence Westerly, along the Southerly boundary of last said parcel conveyed to the City of Riverbank, to the Northwesterly corner of that certain parcel described in deed from Carnation Company to Contadina Foods, Inc., dated May 31, 1969, and recorded October 30, 1969 in Volume 2300 Page 180, records of Stanislaus County, said point being on a line that is parallel and/or concentric with and distant Easterly 100 feet, measured at right angles and/or radially, from the Westerly line of said railway right-of-way; thence Southerly, along last said parallel and/or concentric line, to the Northwest corner of that certain parcel of land described in grant deed from the Atchison, Topeka and Santa Fe Railway Company, to Hershel California Fruit Products Co., Inc., dated April 21, 1959, and recorded in Volume 1588 Page 428, Official Records of Stanislaus County, said point being in a line that is parallel with and distant Easterly 46.00 feet measured at right angles from the tangent portion of said "Original Main Tract", hereinabove described as having a bearing of North $17^{\circ} 24' 30''$ West; thence South $17^{\circ} 24' 30''$ East along last said parallel line 743.77 feet; thence South $25^{\circ} 45' 21''$ East 199.74 feet to a point in a line

Page 14

that is concentric with and distant Northeasterly 30.00 feet measured radially from the center line of said "Oakdale Branch Main Tract"; thence South 40° 09' 40" East 193.92 feet to the true point of beginning.

Excepting therefrom all minerals, oil and gas as reserved by Atchison, Topeka and Santa Fe in deed recorded November 4, 1964 as Instrument No. 43717 in Volume 1989 of Official Records, Page 65.

An excluding that certain real property described on Exhibit A-1 attached hereto:

Also Excepting therefrom:

Parcel One:

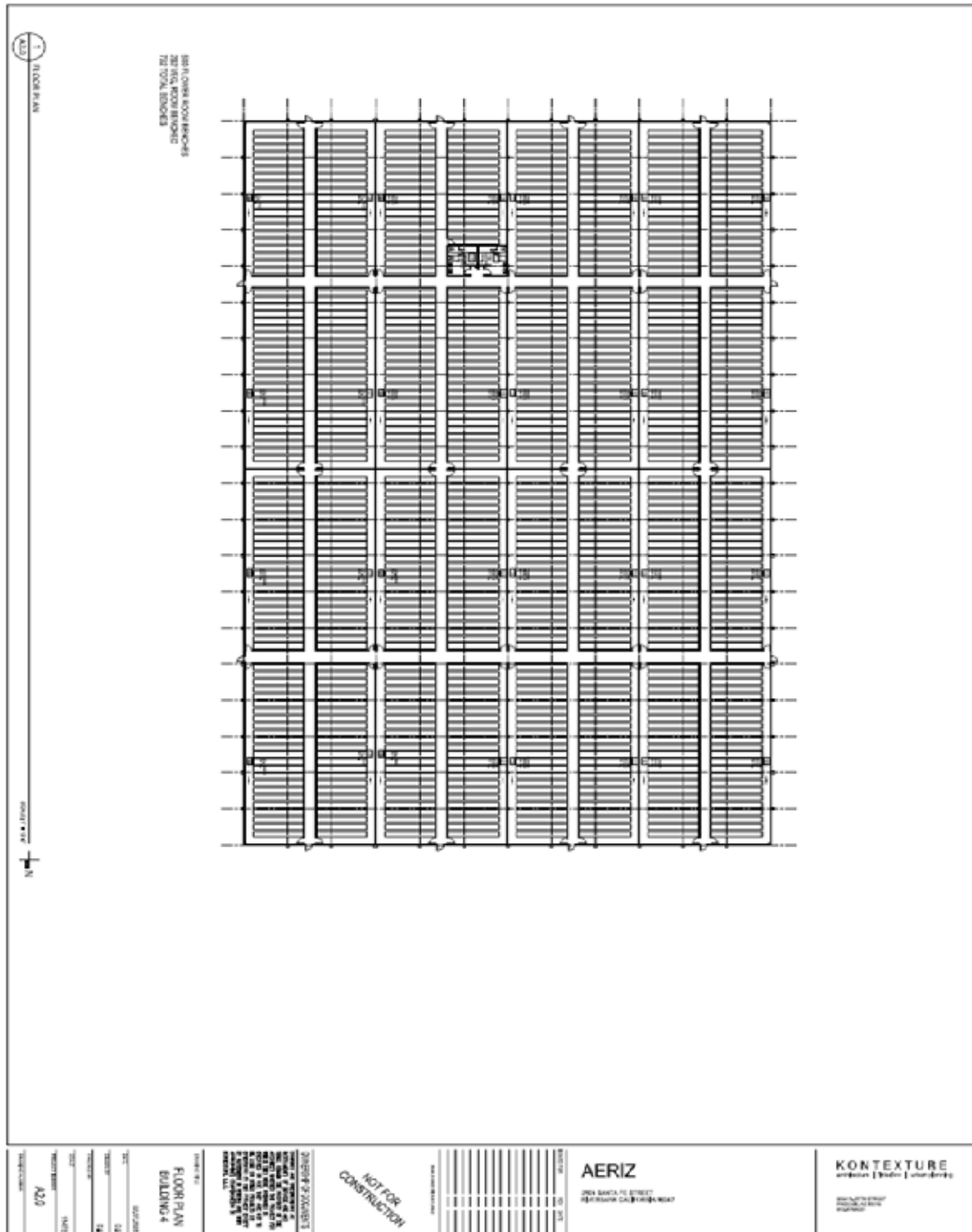
That certain property described as Parcel 1 in the deed dated April 21, 1959 from the Atchison, Topeka, and Santa Fe Railway Company to Hershel California Fruit Products Co., Inc., as Illinois Corporation, recorded January 11, 1960, as Instrument Number 625 in Volume 1588 of Official records, Page 427, Stanislaus County Records, said property lies in the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Riverbank, County of Stanislaus, State of California.

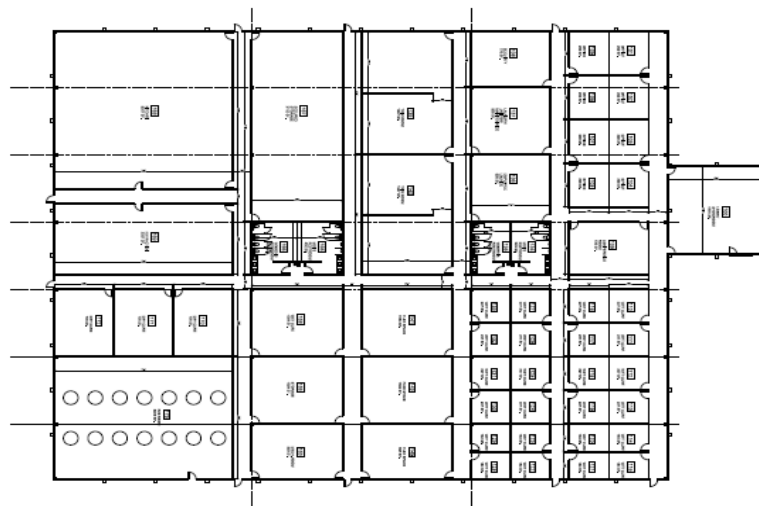
Excepting therefrom all minerals contained therein including, without limiting the generality thereof, oil, gas and other hydrocarbons substances, as well as metallic or other solid minerals, without, however, the right to go upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or otherwise removing any of said minerals, as excepted in the deed from the Atchison, Topeka, and Santa Fe Railway company, recorded November 4, 1964 in Volume 1989 of Official records, at Page 64, as Instrument number 43717, Stanislaus County records.

Parcel Two:

That portion of the property conveyed to Contadina Foods Inc., a California Corporation by the deed recorded October 30, 1969 in Volume 2300 of Official Records, Page 180, Stanislaus County Records lying in the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Riverbank, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the Northeast corner of the property described as Parcel 1 in the deed dated April 21, 1959 from the Atchison, Topeka, and Santa Fe Railway Company to Hershel California Fruit Products Co., Inc. an Illinois corporation, recorded January 11, 1960 as Instrument number 625 in Volume 1588 of Official Records, Page 427, Stanislaus County Records; thence South 74° 15' 22" West along the northerly line of said Hershel California Fruit Products Co. property, a distance of 100.00 feet to the Westerly line of said Contadina Foods property and the beginning of a non-tangent curve concave to the East having a radius of 11409.20 feet to which a radial line bears South 74° 15' 22" West; thence Northerly along said curve through a central angle of 00° 22' 36", a distance of 75.00 feet to a line that lies 75.00 feet northerly of and parallel of said north line of Hershel California Fruit Products Co. property; thence along last said line North 74° 15' 22" East; a distance of 100.00 feet to the Easterly line of said Contadina Foods property and the beginning of a non-tangent curve concave to the East having a radius of 11309.20 feet to which a radial line bears South 74° 34' 10" West; thence Southerly along the arc of said non-tangent curve through a central angle of 00° 22' 48", a distance of 75.00 feet to the point of beginning.





NOT FOR
CONSTRUCTION

2904 SANTA FE STREET
RIVERBANK CAL FORM A 30367

2245 N. 25TH STREET
PHOENIX, AZ 85016
602/975-8221

FLOOR PLAN
BUILDING 5

DATE	02/27/20
TIME	14:00
PROJECT	AI.0

Exhibit D

Notice of Non-Performance Penalty

DATE: _____, 20__

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

DT California, LLC, a Delaware limited liability company
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attn: David Thomas

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

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2020, City recorded a development agreement between City and DT California, LLC ("Developer"), dated _____, 2020 (the "Development Agreement"), relating to the development and operation of a cannabis _____.
- B. Pursuant to Sections 4.2A and 4.2.B of the Development Agreement, Developer agrees to pay to City a Public Benefit during the term of the Development Agreement as specified in those sections.
- C. On _____, 20__, a Public Benefit – Retail or Public Benefit - Other Than Retail was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts ("Penalty"). As of _____, 20__, the past due amount equals \$ _____. The Penalty owed by Developer equals \$ _____ ("Penalty Amount").
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice ("Penalty Due Date").

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

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

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit E

INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING (“Agreement”) is made and entered into on this ____ day of _____ 20__ (“Effective Date”), by and between the City of Riverbank, a California municipal corporation (“City”), and DT California, LLC, a Delaware limited liability company (“Applicant”). City and Applicant may be referred to herein individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. In 1996, the people of the state of California approved Proposition 215, the Compassionate Use Act of 1996 (“CUA”). The CUA enables seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted Senate Bill 420, entitled the Medical Marijuana Program (“MMP”), which authorizes qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.

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

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

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

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

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

G. Applicant has an agreement to purchase that certain real property located in the City, identified as Stanislaus County Assessor’s Parcel Numbers 132-010-027, 132-023-020, 132-034-017, and 132-034-020 (the “Property”), shown on **Exhibit A** attached hereto (“Property Description”).

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

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

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

AGREEMENT

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

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

Section 2. Applicant’s Indemnification Obligations.

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

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

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

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

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

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

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

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

If to City: City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attention: City Clerk

With copy to

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

and

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

If to Applicant:

DT California, LLC
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attention: David Thomas

With copy to:

Aronberg Goldghen
330 N. Wabash Avenue, Suite 1700
Chicago, IL 60611-3596
Attention: Paul A. Gilman

and:

Petrulakis Law & Advocacy, APC
P.O. Box 92
Modesto, CA 95354
Attention: George A. Petrulakis

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

Section 6. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the action and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

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

have read this Agreement and are fully aware of its contents and legal effect.

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

Section 9. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

Section 10. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement, and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

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

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

Section 13. Headings. The headings in this Agreement are included for convenience only, and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

Section 14. Necessary Acts and Further Assurances. The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. The Parties will act in good faith to carry out the intent of this Agreement.

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

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

Section 17. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

Section 18. Waiver. No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

Section 19. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

[SIGNATURE PAGE TO FOLLOW]

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

APPLICANT

DT California, LLC, a Delaware limited liability company

By: DT Management Group, LLC, an Illinois limited liability company

Its: Manager

By: David Thomas

Its: Manager

Date: _____

CITY

City of Riverbank, a California municipal corporation

By: _____
Sean Scully, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Douglas L. White, Deputy City Attorney

Exhibit F

Notice of Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

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

NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT

DATE: _____, 20__

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

DT California, LLC, a Delaware limited liability company
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attn: David Thomas

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

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2020, City recorded a development agreement between City and DT California, LLC ("Developer"), dated _____, 2020 (the "Development Agreement"), relating to the development and operation of a commercial cannabis facility.
- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires _____ years from _____, 2020, on _____, 20__.

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

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

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit G

Assignment and Assumption Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

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

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__, by and between DT California, LLC, a Delaware limited liability company ("Developer"), and _____ ("Assignee"). Developer may be referred to herein as ("Assignor").

RECITALS

A. On _____, 2020, Assignor and the City of Riverbank ("City") entered into that certain agreement entitled "Development Agreement by and between the City of Riverbank, a California municipal corporation, and DT California, LLC a Delaware limited liability company relating to the improvement, development, and use of real property to operate commercial cannabis facilities (the "Development Agreement")", originally recorded upon Stanislaus County Assessor's Parcel Numbers 132-010-027, 132-023-020, 132-034-017, and 132-034-020, (the "Property").

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

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

D. In accordance with the terms of the Development Agreement, Assignor has provided to the City Manager a written request for consent to assignment. The City Manager has received the information he or she deems appropriate and consulted with the City Attorney for the purpose of determining that Assignee is a qualified applicant for purposes of the foregoing terms

of the Development Agreement. This Agreement is intended to meet the requirements Section 10.1 of the Development Agreement for an Assignment and Assumption Agreement, and is executed with the consent of the City Manager, as contemplated in the Development Agreement.

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

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

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

[Signatures on the following page]

ASSIGNOR / DEVELOPER:

DT California, LLC., a Delaware limited liability company

By: DT Management Group, LLC, an Illinois limited liability company
Its: Manager

By: _____
David Thomas
Its: Manager

ASSIGNEE

_____, a
California _____

By: _____

AGREED TO AND ACCEPTED:

CITY OF RIVERBANK
a California municipal corporation

City Manager

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 5.1

SECTION 5: PUBLIC HEARING

Meeting Date:	September 22, 2020
Subject:	First Reading by Title Only and Introduction of a Proposed Ordinance Approving Development Agreement 03-2019 By and Between the City of Riverbank and DT California, LLC, Doing Business as Aeriz
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that Council adopt an Ordinance (Attachment 1) approving a development agreement by and between the City of Riverbank and DT California LLC, a Delaware limited liability company doing business as Aeriz.

SUMMARY

DT California LLC ("The Applicant") has requested a Development Agreement (Attachment 2) and Conditional Use Permit to allow for commercial cannabis cultivation, distribution, manufacturing, and limited retail activities to be located at 2906 Santa Fe Street. The former cannery site is proposed to be developed in three (3) Phases. Phase 1 would consist of cannabis cultivation in existing Building 4 and cannabis extraction, manufacture, distribution, and limited retail in existing Building 5. Phase 2 would consist of cannabis cultivation in existing Buildings 1, 2, and 3. Phase 3, not yet finalized, could consist of new building(s) for cultivation with parking and landscaping improvements.

The project site has a General Plan Land Use Designation of Mixed Use (MU) and is zoned Cannery District (CD) within the Downtown Specific Plan. Any parcel(s) that was purchased by the applicant at the same time as the cannery site and is not zoned Cannery District, is not a part of this project or approvals.

BACKGROUND

Starting in 1996, citizens of the State of California approved Proposition 215, the Compassionate Use Act ("CUA"). The CUA was approved to allow Californians with a

serious illness to legally possess, use, and cultivate cannabis for medical use under state law.

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

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

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

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

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

The Planning Commission at a special meeting on September 1, 2020 with a vote of 4-1(absence) recommended that the City Council approve Development Agreement 03-2019 with Resolution 2020-009 (Attachment 3). They also approved with a vote of 4-1(absence) Conditional Use Permit 01-2020 with Resolution 2020-010 (Attachment 4). Staff received one comment letter right before the Planning Commission meeting of September 1, 2020, which was also resubmitted for this public hearing (Attachment 5).

Light industrial uses are permitted in Cannery District buildings including warehouse buildings existing at the time of the Downtown Specific Plan's adoption. These conditional uses include:

- Warehouse, storage, distribution, cheese manufacturing, auto repair and similar light industrial uses. Concerns related to employee parking and commercial truck traffic must be addressed as part of the review process. It is highly encouraged that manufacturing businesses conduct retail sales out of the operation on the same site.

Staff has no concern with employee parking and commercial traffic in Phases 1 and 2, which will use existing buildings, parking, and truck routes. Commercial truck traffic will be rare and may be limited to construction activities. Caltrans has conditioned the project to prohibit commercial truck traffic on Santa Fe and Topeka Streets at Callander Avenue as there will be a pedestrian crosswalk on Callander Avenue between these two streets. Product will arrive and depart in 8-10 sprinter vans per week.

The City is currently adding a signal and improving the Patterson Road and Railroad/Roselle Avenue intersection, which is adjacent to the south property line of the project site. The applicant has agreed to pay a 10% fair share (\$180,000) of the total cost of these improvements. Frontage dedications to the City have already been made. The south fence of the project is currently within new City right-of-way and will be removed during the City's construction activities on Patterson Road.

In Phase 3, any future building(s) will require additional CEQA analysis, Architecture and Site Plan Review, and possibly an amendment to the Downtown Specific Plan. Parking for Phase 3 will be reviewed during this approval process when the number, sizes, and uses of the future building(s) have been determined.

III. PROJECT INFORMATION

PHASE 1

- **Building 4**

The Applicant is proposing to conduct a cannabis cultivation operation in Building 4, which was constructed in 1959. This building is located at the southern end of the project near Building 5 and Patterson Road. It is 100,000 sf in size. The operation would be regulated by the California Department of Food and Agriculture (CDFA) under the category of: 5,001-10,000 sf small indoor cultivation (Type 2A). Most recently, Building 4 has been used to store empty cans for packing fruits and vegetables. The proposed floor plan for Building 4 is attached to the Development Agreement (Attachment 2).

- **Building 5**

The Applicant is proposing the extraction, manufacture, distribution, and limited retail sales of commercial cannabis in Building 5. Built in 1960, Building 5 is 50,000 sf in size and has been dry, cold storage in the past. This building is the closest to Patterson Road at the south end of the project site. The BHO and CO2 cannabis extraction process proposed, as well as a manufacturing operation, requires a Type 7 (volatile) license from the Manufactured Cannabis Safety Branch (MCSB) of the State. Regulated by the Bureau of Cannabis Control (BCC), the distribution of cannabis requires a Type 11 license and is defined as the transporting of cannabis, the arranging for the testing of cannabis, and for conducting a quality assurance review of the cannabis products to ensure they comply with all packaging and labeling required by the State. A cannabis retail use requires a general Type 10 license from the State like a dispensary does. Retail sales will be limited to the business owners who will tour the facility and purchase product to sample at home

prior to ordering items for their businesses. The proposed floor plan for Building 5 is attached to the Development Agreement (Attachment 2).

Access to Buildings 4 and 5 by employees and shippers will be through a controlled-access gate on Sierra Street by an existing weigh station. Employees and shippers exiting the facility will follow Sierra Street east to Railroad Avenue, then south on Railroad Avenue to the Roselle Avenue/Patterson Road intersection. These roads are all existing truck routes. Building 5 is expected to generate 8 -10 sprinter vans per week.

PHASE 2

- **Buildings 1, 2, and 3**

In Phase 2, the Applicant is proposing to conduct a cannabis cultivation operation in Buildings 1, 2, and 3. Again, cultivation is regulated by the California Department of Food and Agriculture (CDFA). These buildings are existing and located at the northern end of the project near the Highway 108 viaduct. Building 1 is 49,200 sf in size and was built in 1956. Built in 1952, Building 2 is 25,000 sf in size and adjacent to Building 1. Building 3, constructed in 1969 is 109,500 sf in size and across Topeka Street from Buildings 1 and 2.

PHASE 3

- **New Building(s)**

In Phase 3, new building(s) could be constructed as well as parking improvements and landscaping. Any additional building would house cultivation operations and require architectural review and environmental analysis. An amendment to the Downtown Specific Plan may be required.

The parking lot, which covers almost half of the site, will be reconstructed or resurfaced and restriped. ADA parking spaces and safe paths of travel will be added to meet 2019 California Building Code requirements. Trees and irrigation will be added to provide shade and aesthetic interest to the parking lots and perimeter while keeping the focus on security for the site. A site plan with conceptual landscaping is attached to the Development Agreement (Attachment 2). Any landscaping in the attached plans is purely conceptual. The Conditional Use Permit requires that landscape and irrigation plans be submitted under separate permit after project approval.

IV. ANALYSIS

DEVELOPMENT AGREEMENT (DA)

The applicant seeks to enter a development agreement (Attachment 2) with the City for the purpose of operating a commercial cultivation, manufacturing, distribution, and limited retail facility at the former cannery site.

The major elements of the development agreement are summarized below:

- The term of the agreement is twenty (20) years.

- The first two phases of the plan are to operate a cannabis cultivation facility in Buildings 1, 2, 3, and 4. Building 5 will house manufacturing, distribution, and limited retail uses. Phase 3 is to be determined under additional analysis with public hearings.
- The project would provide the applicant with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. The applicant seeks to offset these impacts through a monthly payment classified as a “Public Benefit” amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the project on the community.
- The applicant will be applying for the following license types:

All Indoor Types	Cultivation
Type 6,7	Manufacturer
Type 10	Limited Retailer
Type 11	Distribution

- All Indoor Types - Cultivation.** For cultivation in Buildings 1, 2, 3, and 4, Aeriz agrees to pay to the City the following Public Benefit:

Years 1-4	\$2.50 per square foot
Years 5-8	\$2.75 per square foot
Years 9-12	\$3.25 per square foot
Years 13-16	\$3.50 per square foot
Years 17-20	\$4.00 per square foot
- Type 6, 7 - Manufacturer.** For manufacturing within Building 5, Aeriz will pay to the City a Public Benefit of:

Years 1-4	1% of gross receipts
Years 5-8	1.25% of gross receipts
Years 9-12	1.75% of gross receipts
Years 13-16	2% of gross receipts
Years 17-20	2.5% of gross receipts
- Type 10 - Limited Retailer.** Developer’s retail activity at the Site will be limited to commercial cannabis industry operators and will not be open to the general public. Developer shall maintain visitor logs and sale records of retail activity at the site which shall be subject to periodic inspection by City upon 24-hour notice to ensure compliance with this Section. Developer may seek authorization from City to open retail activity to the general public. Any such request shall be processed as a Major Amendment to the Development Agreement. Approximately 1,600 square feet of Building 5 is proposed for future limited retail with a Public Benefit as described below:

Years 1-20	The greater of \$7,000 or 5% gross receipts	Monthly when operations begin
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- d. **Type 11 - Distribution.** Concerning a distribution Public Benefit, zero (\$0) is due for “wholesale” distribution from this facility to retailers. If the facility begins to distribute for other third party (non Aeriz affiliated product):

Year 1	4% gross receipts	Every quarter following the 2 nd quarter after issuance of the conditional use permit
Years 2-20	5% gross receipts	Every quarter following the 5 th quarter after issuance of the conditional use permit to end of term

- **Fair Share Improvements** - The City is currently adding a signal and improving the Patterson Road and Railroad/Roselle Avenue intersection, which is adjacent to the south property line of the project site. The applicant agrees to pay a 10% fair share (\$180,000) of the total cost of the improvements. Frontage dedications to the City have already been made.

It should be noted that the term for this development agreement is proposed to be substantially longer than previous cannabis related development agreements agreed to by the City of Riverbank. The primary reason for this is related to substantial difference in scale between this project and any other cannabis related projects considered prior to this point. Not only is the size of the property an order of magnitude larger than almost any other industrial property in Riverbank the investment required to acquire and bring the older buildings up to code is significant. This means that the initial investment will take a number of years to repay itself and therefore the developer requested a lengthy term to protect that initial investment. Additionally, this project will be relatively rare in the sense that it will have three (3) industrial type cannabis uses all part of the same business (cultivation, manufacturing, and distribution).

The negotiation of public benefit amounts were developed through a collaborative process between staff and the developer which included reviewing actual comparable examples in other jurisdictions throughout the state and considering the overall scale of the operation. Based on this process staff believes that the proposed public benefit provisions previously stated will be generally competitive for the City while at the same time giving the developer to remain competitive in the marketplace.

In accordance with Government Code section 65864 *et seq*, the City Council must find that the Development Agreement:

- o Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan.

The Project has been found to be consistent with the General Plan policies listed below:

- *Policy LAND-4.1: The City will encourage, through incentives, streamlining, flexible standards, and other means, development of employment-generating uses.*
 - *Policy LAND 4.5: The City will review industrial development applications and apply appropriate conditions to ensure compatibility with nearby existing and planned land uses.*
 - *Policy ED-2.5: The City of Riverbank will take a targeted approach to business attraction that focuses on industry sectors that help the City address the following priorities:*
 - *Attract business that tie into regional growth opportunities*
 - *Attract businesses that address local-serving and regional retail market opportunities*
 - *Attract uses that contribute towards a vibrant and revitalized downtown district.*
- o Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole.

As with other cannabis businesses in the City, safety is paramount. A sound security plan with cameras, alarms, and guards will ensure the safety of Aeriz employees, contractors, and the neighborhood.

- o Will not adversely affect the orderly development of property or the preservation of property values.

The cannery site is currently an eyesore that sits vacant, surrounded by commercial and industrial businesses and neighborhood housing. Property around it is already developed. Rehabilitating the cannery with a prosperous and growing business should raise surrounding property values.

- o Is consistent with the provisions of Government Code sections 65864 through 65869.5.

The project is consistent with the provisions of Government Code sections 65864 through 65869.5 in that a Development Agreement will provide assurance to the applicant that upon approval of the project, the applicant may proceed with the project under existing codes and policies and that the project is not located in an area with a local coastal program.

- o Contains a legal description of the property.

The Development Agreement contains Exhibit A, a legal description of the property.

CONDITIONAL USE PERMIT (CUP)

Prior to commencing operation of any commercial cannabis activity on the site, the developer shall obtain a Conditional Use Permit and any subsequent City approvals. The developer shall be required to comply with all provisions of the Riverbank Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. A public notice for this requirement was posted at the City's usual locations for the special Planning Commission meeting of September 1, 2020 on August 19, 2020. Conditions of Approval can be found attached to Resolution 2020-010 (Attachment 4).

ARCHITECTURE AND SITE PLAN REVIEW (ASPR)

The potential development of new building(s) in Phase 3 will require Architecture and Site Plan Review and CEQA analysis to ensure the proposal is in conformance with the Downtown Specific Plan EIR, adopted in 2015. An amendment to the Downtown Specific Plan may be required.

IV. STRATEGIC GOALS

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

V. ENVIRONMENTAL DETERMINATION

Phases 1 and 2, existing Buildings 1, 2, 3, 4, and 5 of the proposed project qualify for a Class 1 categorical exemption pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment.

Phase 3, potential new building(s) for cultivation with parking and landscape improvements, will require additional CEQA analysis and may tier off the Downtown Specific Plan EIR at time of development.

VI. RECOMMENDATION

Adopt Ordinance No. 2020-XXX approving a development agreement by and between the City of Riverbank ("City") and DT California, LLC., a Delaware limited liability company doing business as Aeriz.

VII. ATTACHMENTS

Attachment 1 - Ordinance No. 2020-XXX Aeriz DA

Attachment 2 – Aeriz Development Agreement with Exhibits

Attachment 3 – PC Resolution 2020-009

Attachment 4 – PC Resolution 2020-010, no exhibits

Attachment 5 - Public Comment Letter

COPY

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.2

SECTION 4: UNFINISHED BUSINESS

Meeting Date:	October 13, 2020
Subject:	Second Reading by Title Only a Proposed Ordinance No. 2020-012 Approving Development Agreement No. 02-2020 for the Ward Villas Affordable Housing Project to Extend the Life of the Approved Ward Villas Tentative Map 01-2015 to Real Property at 2912 Ward Avenue (APN 132-036-003)
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council approve Ordinance No. 2020-012 for a Development Agreement which extends the life of approved Ward Villas Tentative Map 01-2015 relating to real property located at 2912 Ward Avenue (APN 132-036-003).

SUMMARY

The proposed project consists of a Development Agreement (“DA”), which extends the life of TM 01-2015, an approved twenty-eight (28) lot single-family residential subdivision. The project site currently has a General Plan Land Use designation of Medium Density Residential (MDR) and is currently zoned Planned Development (R-1). The Planning Commission, with a vote of 4-1(absence) at their regular meeting of August 18, 2020, recommended that the City Council approve the Development Agreement.

The project site is located in Riverbank and bound by Ward Avenue to the north; Roselle Avenue to the east; Fern Court to the south; and Don Ramon Avenue to the west. The formal address of the project site is 2912 Ward Avenue. The project site is vacant land except for an older residence to be removed. The site is surrounded by developed subdivisions.

ATTACHMENTS

Attachment 1 – Draft Ordinance No. 2020-012
Attachment 2 – Ward Villas DA with Exhibits

ATTACHMENT 1

CITY OF RIVERBANK ORDINANCE NO. 2020-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING DEVELOPMENT AGREEMENT NO. 02-2020 FOR the WARD VILLAS AFFORDABLE HOUSING PROJECT TO EXTEND THE LIFE OF THE APPROVED WARD VILLAS TENTATIVE MAP 01-2015 TO REAL PROPERTY AT 2912 WARD AVENUE (APN 132-036-003)

WHEREAS, Cary Pope, who proposes to develop 28 residential lots in the City of Riverbank ("City") and related public improvements, is requesting to extend by Development Agreement the life of Tentative Map 01-2015, a subdivision known as Ward Villas (the "Project"); and

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

WHEREAS, consistent with the requirements of the Development Agreement Statute, the City has adopted Resolution No. 99-39 establishing rules, regulations, and limitations for Development Agreements; and

WHEREAS, On February 9, 2016, the City Council adopted Resolution No. 2016-008, approving a general plan amendment redesignating 2.4 acres to medium-density residential (MDR) which allows for a net density of eight to sixteen (8-16) dwelling units per net acre; and

WHEREAS, On February 9, 2016, the City Council adopted Resolution No. 2016-009, approving Tentative Map 01-2015 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 28 residential lots on 2.4 acres; and

WHEREAS, On February 9, 2016, the City Council adopted Ordinance No. 2016-010, approving a rezone of 2.4 acres to Planned Development and allowing for a net density of eight to sixteen (8-16) dwelling units per acre; and

WHEREAS, the City of Riverbank Planning Commission held a duly noticed public hearing on Tuesday, August 18, 2020 to consider the Ward Villas Development

ATTACHMENT 1

Agreement and provide their recommendation of approval to the City Council with a vote of 4-1(absence); and

WHEREAS, the City and Cary Pope intend to enter into a Development Agreement concerning the Project pursuant to California Government Code section 65864 and Resolution No. 99-39; and

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on September 22, 2020 to consider the introduction of the Ward Villas Development Agreement for first reading; and

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on September 22, 2020 to consider the approval of the Ward Villas Development Agreement; and

WHEREAS, the City Council for City of Riverbank, based on its independent review and analysis, the staff analysis, oral and written testimony, and the record as a whole, finds, after due study, deliberation and public hearing, and based on its independent judgment, the following:

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank; and
2. The City Council finds that the Ward Villas Development Agreement:
 1. Is consistent with the objectives, policies, and programs and residential land uses established by the 2005 Riverbank General Plan; and
 2. Is consistent with the provisions of Government Code Section 65864 through 65869.5; and
 3. Is in conformity with the public convenience and general welfare and good land use practices because the terms of the Development Agreement establish appropriate and adequate mechanisms to fund and install infrastructure needed to support public services relating to the Project and General Plan planning area; and
 4. Will provide funding and infrastructure to support the Project, and will not adversely affect the orderly development of property or the preservation of property values; and
 5. Will provide funding and infrastructure to ensure that adequate public services are available to serve the Project without being detrimental to the health, safety, and general welfare of the City of Riverbank; and

ATTACHMENT 1

6. Provides sufficient benefit to the City to justify entering into the Development Agreement.

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

Section 1: The City Council of the City of Riverbank approves a Development Agreement by and between Cary Pope and the City of Riverbank relating to the development known as “Ward Villas” located on the following APN: 132-036-003.

Section 2: The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement.

Section 3: Notice of the City Council public hearing on the proposed Development Agreement Ordinance was published in the Riverbank News, a newspaper of general circulation, on September 9, 2020; and Notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor’s roll, on September 10, 2020.

Section 4: Pursuant to the California Environmental Quality Act (CEQA) environmental impacts relating to the Project were evaluated and Tentative Map 01-2015 was exempt pursuant to Section 15332 (Class 32, In-Fill Development Projects) of the State CEQA Guidelines. The adopted tentative map meets the conditions prescribed by CEQA Section 15332 (a-e). Pursuant to CEQA Guidelines Section 15378, the Development Agreement is within the purview of the Ward Villas Project, for which environmental impacts have already been reviewed. Thus, approval of the Development Agreement does not require further environmental review.

Section 5: If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City Council of the City of Riverbank hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

Section 6: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date or a summary of the Ordinance is published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

ATTACHMENT 1

The foregoing was introduced at a regular meeting of the City Council of the City of Riverbank held on the 22th day of September, 2020; motioned by Council Member _____, seconded by Council Member _____, and upon roll call was carried by the following vote ____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Annabelle Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

EXHIBIT A

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

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

Recording fees exempt (Gov. Code §§ 6103, 27383)

(Space above line for recorder's use only)

APN: 132-036-003

DEVELOPMENT AGREEMENT BY AND BETWEEN THE

CITY OF RIVERBANK

AND

CARY POPE

RELATING TO THE DEVELOPMENT KNOWN AS THE
“WARD VILLAS”

Adopted by City Council Ordinance No. 2020-0____
on _____, 2020

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF RIVERBANK, a California municipal corporation ("City") and CARY POPE ("Developer"). Developer and City may hereinafter be referred to individually as a "Party" and collectively as the "Parties". There are no other parties to this Agreement.

This Agreement is made with reference to the following facts:

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any persons and entities having a legal or equitable interest in real property, to provide for the development of such property and establish certain development rights therein.

B. Pursuant to the Development Agreement Statute, the City Council has adopted rules and regulations for considering and processing development agreements. This Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

C. Developer represents that, as of the recordation of this Agreement, it will have a legal or equitable interest to land consisting of approximately 2.42 acres, as shown on the tentative map attached hereto as **Exhibit A**, and legally described in **Exhibit B** (the "Property").

D. In addition to this Agreement, and the consolidated conditions of approval attached and incorporated hereto as **Exhibit C** ("Conditions of Approval") the Property is subject to the following land use plans and entitlements ("Project Approvals"):

(i) On February 9, 2016, the City Council adopted Resolution No. 2016-008, approving a general plan amendment redesignating 2.42 acres to medium density residential (MDR) which allows for a net density of eight to sixteen (8-16) dwelling units per acre;

(ii) On February 9, 2016, the City Council adopted Resolution No. 2016-009, approving tentative subdivision map 01-2015 (the "Ward Villas Tentative Map") and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 28 residential lots on 2.42 acres;

(iii) On February 9, 2016, the City Council adopted Ordinance No. 2016-010, approving a rezone of 2.42 acres to Planned Development and allowing for a net density of eight to sixteen (8-16) dwelling units per acre;

E. Pursuant to the California Environmental Quality Act, it has been determined that the proposed Tentative Map is exempt pursuant to Section 15332 (Class 32) In-Fill Development

Projects of the State CEQA Guidelines. The proposed Tentative Map meets the conditions prescribed by CEQA Section 15332(a-e).

F. Developer has proposed to develop the Property into 28 residential lots and related public improvements in conformance with the provisions of this Agreement and the Project Approvals (the “Project”).

G. Subsequent to the approval of this Agreement, City and Developer understand that additional land use approvals, entitlements and permits may be necessary to implement the Project (“Subsequent Approvals”). The Subsequent Approvals will include, but may not be limited to, a System Development Fee Reimbursement Agreement, a draft copy of which is attached hereto for reference as **Exhibit D**, and a Subdivision Improvement Agreement, a draft copy of which is attached hereto for reference as **Exhibit F**.

H. Pursuant to Government Code Section 65867.5, the City finds that development of the Project in accordance with this Agreement, the Project Approvals and Subsequent Approvals will provide for orderly growth within the City consistent with the goals, policies, and provisions of the General Plan.

I. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project pursuant to the Project Approvals, Developer seeks assurance that it may proceed with development of the Project in accordance with the terms and conditions of this Agreement.

J. The City shall maintain all documents mentioned in this Agreement and place them in a three-ring binder, to be maintained at all times by the Development Services Department.

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

ARTICLE 1 DEFINITIONS

The following defined terms in this Agreement shall have the meanings set forth below:

1.01. “Agreement” means this Development Agreement entered into by and between the City and Developer relating to the development known as “Diamond Bar East”.

1.02. “City” shall mean the City of Riverbank, a California municipal corporation.

1.03. “City Council” shall mean the City Council of the City of Riverbank.

1.04. “City Code” shall mean the Riverbank Municipal Code.

1.05. “Conditions of Approval” shall mean the consolidated conditions of approval for the Project, attached and incorporated hereto as **Exhibit C**. The Conditions of Approval supersede previous conditions adopted in connection with City Resolution Nos. 2015-017 and 2015-018.

1.06. “Developer” shall mean, Cary Pope, and may include Developer’s assignees where such assignment is validly made pursuant to this Agreement.

1.07. “Effective Date” shall mean the earliest date on which the following have both occurred: (a) the thirtieth (30th) day following the adoption by the City Council of the ordinance approving this Agreement, and (b) execution of this Agreement by both Parties.

1.08. “Facilities Districts” or “CFDs” or “CFD 2016-01” shall mean that Mello-Roos Community Facilities District that Developer shall annex into for the purpose of facilitating the long-term maintenance of public improvements serving the Property.

1.09. “General Plan” shall mean the 2005-2025 Riverbank General Plan, as amended.

1.10. “Growth Control Measure” shall mean any ordinance, resolution, minute order, policy, moratorium, rule, regulation, decision, standard or any other action taken by the City other than pursuant to voter initiative or referendum, which would otherwise be applicable to the Project, and which would (a) limit or restrict the number of building permits issued by the City for the Project; (b) limit or restrict the Project’s ability to connect to the City’s sewer system, water system, storm drainage system or any other City service; (c) alter the Project Approvals without consent of Developer, (d) limit the number of final occupancies issued by the City; or (e) any combination of the foregoing.

1.11. “Improvements” shall mean those water, sewer, storm drainage and traffic improvements identified in the Ward Villas Tentative Map and this Agreement.

1.12. “Landowner” shall mean the record owner of any legal parcel of the Property, whether one or more persons or entities, of fee simple title to any Unit including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; provided, however, that Landowner shall mean and include any person or entity which is a security holder in actual possession of a Unit.

1.13. “Planning Commission” shall mean the Planning Commission of the City of Riverbank.

1.14. “Project” shall mean the land uses, densities, and improvements to the Property as depicted in the Project Approvals.

1.15. “Property” shall mean 2.42 acres of real property located north of Fern Court, east of Don Ramon Avenue, west of Roselle Avenue, and south of Ward Avenue, in the City of Riverbank and the County of Stanislaus, State of California, as shown on the Ward Villas Tentative Map in **Exhibit A**.

1.16. “Ward Villas Tentative Map” shall refer to the Tentative Subdivision Map for the Project, as approved by the City Council on February 9, 2016 by Resolution No. 2016-009, attached and incorporated hereto as **Exhibit A**, which may be amended from time to time in compliance with this Agreement.

1.17. “Subsequent Approvals” shall mean those approvals necessary to implement the Project Approvals that have not been conferred as of the Effective Date of this Agreement.

1.18. “System Development Fees” or “SDF” shall mean the City’s capital facility programs and impact fee schedule adopted pursuant to Government Code section 66000 *et seq.*

1.19. “Unit” shall mean a single family residential detached dwelling to be constructed on the land pursuant to the Project Approvals.

ARTICLE 2 GENERAL PROVISIONS

2.01. Findings. The City hereby finds and determines that entering into this Agreement will further the public health, safety and general welfare of the City and that the provisions of this Agreement are consistent with the City’s General Plan.

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

2.03. Exhibits. The following exhibits, as they may be amended from time to time, are attached hereto and incorporated as part of this Agreement (the “Exhibits”):

- Exhibit A: Resolution 2016-009 and Ward Villas Tentative Map
- Exhibit B: Legal Description of Property
- Exhibit C: Consolidated Conditions of Approval
- Exhibit D: System Development Fee Reimbursement
- Exhibit E: Ward Villas SDF
- Exhibit F: Draft Subdivision Improvement Agreement
- Exhibit G: Draft Assumption and Assignment Agreement

2.04. Property Description and Binding Covenants. Developer represents that they have a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto.

2.05. Term.

(a) Term. This Agreement shall only become effective upon commencement of the Effective Date and shall extend for period of five (5) years thereafter (“Term”), unless said Term is terminated, modified or extended pursuant to this Agreement. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect.

(b) Extension. Developer may request to extend the Term of the Agreement one time for the length of five (5) years. The City Council may approve a one-time extension. If

approved, the extension shall be recorded on the Property in the official records of Stanislaus County.

(c) Termination. This Agreement shall automatically terminate with respect to any residentially zoned parcel of the Property that receives a final inspection in connection with the construction of a residential unit, provided that all improvements required to serve the parcel, as determined by City, have been accepted by City. Although such termination will be automatic, Developer or a then-existing Landowner may request that the City record a written notice of termination with the County Recorder for the applicable parcel. Termination of this Agreement for any such residential parcel shall in no way be construed to terminate or modify any assessment district, CFD, or lien previously recorded against such parcel at the time of termination.

(d) Tolling During Legal Challenge. In the event that this Agreement, or any of the Project Approvals are subjected to legal challenge by a third party, and Developer is unable to or elects not to proceed with the Project due to such litigation, the City may, in its sole discretion, toll the term of and timing for obligations imposed pursuant to this Agreement, provided that Developer must request, and if agreeable the City must provide, in writing, the terms of such tolling and any other timing considerations necessary to facilitate the tolling of this Agreement.

2.06. Amendment. This Agreement may be amended by mutual written consent of the Parties, in accordance with the provisions of Government Code sections 65867 and 65868 and this Agreement.

(a) Major Amendment. Any amendment to this Development Agreement which affects or relates to permitted uses of the Project, the density or intensity of land uses on the Property or neighboring properties or land uses, or any other material change, shall be deemed a “Major Amendment” and shall require noticed public hearings before both the Planning Commission and City Council. The City Manager, in his or her sole discretion, shall determine whether a proposed amendment constitutes a material change necessitating a Major Amendment.

(b) Minor Amendment. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that minor changes to this Agreement may be appropriate with respect to the details and performance of the Parties. The Parties desire to retain flexibility with respect to the details of the Project and with respect to items covered by the general terms of this Agreement. If the City Manager finds that clarifications, minor changes or minor adjustments are necessary or appropriate and do not constitute a Major Amendment, the Parties may effectuate such clarifications, minor changes and adjustments in a “Minor Amendment” approved in writing by Developer and the City Manager. Unless otherwise required by law, a Minor Amendment shall not require noticed public hearings.

2.07. Recordation. Once fully executed, this Agreement and any subsequent amendment or termination shall be recorded in the official records of Stanislaus County within ten (10) days after City executes such agreement, amendment or termination. Any amendment or termination of the Agreement that affects less than all of the Property shall clearly describe the portion thereof that is the subject of such amendment or termination.

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

3.01. Vested Rights of Developer. By developing the Property consistent with the Project during the Term of this Agreement, Developer is assured, and City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, including without limitation, the terms and conditions in the attached Exhibits and the Project Approvals are fully vested in Developer.

3.02. Permitted Uses. The Project's permitted uses, density and intensity of use, maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location of public improvements and utilities, payment of fees, and other terms and conditions of development applicable to the Project shall be those set forth in this Agreement and the Project Approvals. Project Approvals shall not be changed without the approval of the City and Developer, except as provided herein.

3.03. Priority of Enactment. The Parties intend that this Agreement, together with the Project Approvals, shall serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to the development of the Project. In the event of conflict between various documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) the Development Agreement; (2) the Project Approvals; (3) the General Plan; and (4) the ordinances, resolutions, policies and regulations adopted by the City in effect on the Effective Date including the ordinances governing the permitted uses of land, the density and intensity of uses, the timing of development, and the design, improvement, construction standards, policies and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the zoning ordinance and all other ordinances, codes, rules, policies and regulations of the City.

3.04. Character Design. Each home built as part of the Project shall conform to the Community and Character Design elements of the General Plan, specifically the policies of Goal Design-3, 4, and 5. The design of each home shall be subject to architecture and site plan review by the Community Development Director based upon the adopted Ward Villas Design Guidelines Manual incorporated hereto as **Exhibit G**.

3.05. Improvement Standards. The Project shall comply with all improvement standards and specifications of the City, including street cross-sections, storm drainage, water, sewer, and drought tolerant landscape standards, which exist at the time that a site plan application is submitted to the City.

3.06. Storm Water Impact Standards. The Project shall adhere to the Low Impact Development Model Standards and Specifications as adopted by the City in January 2013. The project shall comply with the most current MS4 program elements imposed by the State of California and City Ordinance.

3.07. Subdivision Maps.

(a) Time Period for Tentative Map. As provided in Government Code section 66452.6, the term of the Ward Villas Affordable Project Tentative Map is hereby extended so that it will remain valid through the Term of this Agreement. The Project Approvals shall also remain valid through the Term of this Agreement, notwithstanding any condition of approval or any other provision of the Project Approvals to the contrary.

(b) Dedication of Public Lands. This Agreement shall have no effect on dedication requirements and procedures under the Subdivision Map Act (Gov. Code § 66410 *et seq.*)

3.08. Changes to Existing Land Use Regulations. The Parties acknowledge that the following changes to existing laws, ordinances and regulations shall apply to the development standards of the Project:

(a) No Growth Control Measure. Except as expressly provided in this Section or other provisions of this Agreement, no Growth Control Measure shall be applicable to the Project, any portion or phase of the Project, or this Agreement.

(b) Changes Mandated by Federal or State Law. As provided in section 65869.5 of the Development Agreement Statute, this Agreement shall be modified or suspended as necessary to comply with state or federal laws or regulations enacted after the Effective Date, which prevent or preclude compliance with one or more provisions of this Agreement. Upon discovery of a subsequently enacted and conflicting state or federal law, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of City Law or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law. In such discussions, City agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such state or federal law and that such proposed changes shall be deemed to be consistent with this Agreement without further need for any amendment to this Agreement or the Project Approvals.

(c) Construction and Technical Design Standards. Development of the Project shall be subject to changes occurring from time to time to the California Building Code, California Fire Code and subsequent citywide changes to construction or technical design standards or specifications for public improvements which are reasonably and directly related to durability or longevity of the public improvements.

(d) Other Public Agencies. The Parties acknowledge that other public agencies outside of the control and authority of the City may regulate aspects of the development of the Project. This Agreement does not limit the authority of any such public agency. To the extent Developer requires permits or approvals from other public agencies, however, City agrees to cooperate with Developer to obtain such permits and approvals for the Project.

(e) Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible, to address such emergency in a way that does not have a material adverse impact on the Project in accordance with the Project Approvals and any Subsequent Approvals. If City determines that it is not reasonably possible to address the health and safety emergency in a way that avoids any material adverse impact on the Project, City, after consultation with Developer, shall select an option for addressing the situation that minimizes, so far as reasonably possible, the impact on development of the Project.

(f) Initiatives and Moratoria. Notwithstanding any other provision of this Agreement, the Project shall be subject to any initiative or referendum that specifically overturns City's approval of the Project Approvals, and any growth limitation ordinance, resolution, rule, regulation, policy or moratorium that is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby. By way of example only, an ordinance which would preclude the issuance of a building permit due to a city-wide lack of adequate sewage treatment capacity to meet additional demand would directly concern an imminent public health issue under the terms of this paragraph and would support a denial of a building permit within the Project or anywhere else in the City if approval would require additional sewage treatment capacity. In all other cases,

(g) City Ordinances of General Applicability. The City may apply to the Project any subsequently enacted ordinances, only if all of the following conditions apply: (i) such subsequently enacted ordinances or guidelines have general applicability to all other relevant parcels within the City; (ii) such ordinances are not in direct conflict with the adopted ordinances or guidelines that were in effect on the Effective Date, and (iii) the application of such ordinances or guidelines would not prevent development, or significantly increase the cost of development, of the Project.

3.09. Development Timing. Developer shall be obligated to comply with the terms and conditions at those times specified in either the Project Approvals or this Agreement. The Parties acknowledge that Developer cannot predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of the City and Developer to hereby acknowledge and provide for the right of Developer to develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, City Council Resolution No. 1999-039 and this

Agreement. Developer shall use their best efforts, in accordance with their business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and with the Project Approvals.

3.10. Conflict Resolution. If Developer believes the City has acted in conflict with the Project Approvals, Developer shall provide to the City Manager written notice describing the legal and factual basis for Developer's position. The City Manager will then respond to the allegations within thirty (30) days. If Developer is unhappy with the City Manager's response, such response may be appealed to the City Council.

ARTICLE 4 FEES, COSTS AND REIMBURSEMENTS

4.01. Processing and Inspection Costs. As this is a joint City-Developer project, the City may waive those processing, inspection and plan checking fees and charges normally required by City under the current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developer hereunder.

4.02. City Impact Fees. Except as provided in this Agreement, Developer shall pay all fees subject to the Mitigation Fee Act, Government Code section 66000 *et seq.*, including System Development Fees, impact fees, connection fees, public facilities fees or similar fees adopted by the City, and all other fees imposed as conditions of approval of the Property ("Fees"), as of the Effective Date of this Agreement. City may defer payment by Developer of these fees as determined in a cooperation agreement if approved by the City Council. New Fees enacted after the Effective Date of this Agreement shall not be imposed upon the Project. Notwithstanding the above, Fees adopted prior to the Effective Date of this Agreement applicable to the Project may be increased or reduced, provided that such revised fees (a) must be reasonable, (b) have a direct nexus to development of the Property and Project, (c) apply generally to similar private projects or works within the City, and (d) the application of any such fee to the Property shall not require an amendment to this Agreement or any Project Approvals.

4.03. System Development Fee Credits. City and Developer have agreed in concept to System Development Fee credits or reimbursements attributable to Developer, as provided in the agreement attached as **Exhibit D** (the "System Development Fee Reimbursement Agreement" or "Reimbursement Agreement"). City shall review, consider and remit fee credits and reimbursements attributable to Developer consistent with the City's System Development Fee ("SDF") program. City may update its SDF program to incorporate a sewer capacity fee, to update the traffic fee, and/or to update the community park component of the parks fee. Updates to the City's SDF program fees must occur within two (2) years after the Effective Date of this Agreement to be applicable to the subject Property. In no event, however, shall City adopt or increase the SDF fee for sewer capacity, traffic, or the community park component of the parks fee by more than twenty-five percent (25%) of the current SDF amounts shown on **Exhibit E** ("Eligible Project Specific Reimbursements") attached hereto. In the event the City Manager

reasonably determines that the existing sewer infrastructure is inadequate to serve the Project, the City may increase the SDF fees to cover such improvements, but shall not exceed fifty percent (50%) of the current SDF amounts for sewer shown in **Exhibit E**, or increase any other SDF category within the program, except sewer capacity, traffic and parks. The SDF fee for sewer capacity, traffic and parks may be subject to an annual escalation for inflation commencing five (5) years after the Effective Date, provided that in no event shall escalation exceed three percent (3%) per annum. In addition, no SDF fee increase shall apply to any property for which the Developer has previously paid, requested a credit of such SDF fee(s), or pulled a building permit for such property or building.

4.04. County Fees. Development of the Property is subject to County Development Fees. Developer must provide proof of payment or deferral of County Development Fees prior to the issuance of any building permits by City.

4.05. School District Fees. Developer agrees to pay all impact fees established pursuant to Education Code section 17620 and Government Code section 65996 to the Riverbank Unified School District, Modesto City School District and/or the Sylvan Unified School District (whichever District applies) prior to the issuance of any building permit.

ARTICLE 5 IMPROVEMENTS, SERVICES AND UTILITIES

5.01. Fire Protection. Developer acknowledges that, as of the Effective Date of this Agreement, fire protection for the Property is provided by Stanislaus County Consolidated Fire Protection District. This Agreement does not address special assessments or other fees that may or may not apply to the Property in connection with services provided by Stanislaus Consolidated Fire Protection District.

5.02. Police Services. Developer acknowledges that law enforcement services for the City are performed under contract with the Stanislaus County Sheriff's Department.

5.03. Subdivision Improvement Agreement. Developer is obligated to construct the improvements identified in the Ward Villas Tentative Map and Conditions of Approval. Developer acknowledges that, in order for the City to process any final map in connection with the Property, Developer shall be required to enter into a Subdivision Improvement Agreement as one of the Subsequent Approvals related to the Project, and shall be approved in a form substantially similar to the Subdivision Improvement Agreement attached hereto as **Exhibit F**.

5.04. Storm Drainage Improvements. Developer agrees to construct storm drainage improvements which shall be a condition to recording the final map, or in connection with the City's approval of a Subdivision Improvement Agreement

5.05. Parkland Dedication and Improvement. Developer may offer to dedicate parkland within the storm drainage area, in order to satisfy parkland dedication requirements in accordance with the Quimby Act (Gov. Code § 66477), currently 5 acres of parkland per 1,000

persons (1 acre of park per 58 new dwelling units) and to comply with City Code provisions related to park improvements.

(a) Dedication. To receive reimbursement for dedication of parkland within the storm drainage area, Developer must submit concept landscape drawings to the satisfaction of the Community Development Director and the Parks and Recreation Director in connection with approval of the final subdivision map for the Property. Developer will be obligated to install or bond for the landscaping improvements, which shall comply with City Drought Tolerant Landscape Standards. As the Property is currently subject to CFD 2016-01 to finance ongoing maintenance of public improvements, no additional financial mechanism shall be required for park maintenance, provided that the Property remains in CFD 2016-01.

(b) Parkland Credit. The dedicated parkland will create a dual-use basin, which serves to solve the Project's storm water obligation. Since the dedicated parkland serves as a dual-use basin, the City shall only allow a fee credit of up to fifty-percent (50%) of Developer's park-in-lieu fees, per net acre, in satisfaction of the parkland dedication requirements for the Property.

ARTICLE 6 CITY OBLIGATIONS

6.01. City Cooperation. City agrees to cooperate with Developer in securing all permits that may be required by City and where mutually agreed, submit any grants that may be beneficial to this project, and to the extent applicable, county, state and federal agencies. In the event state or federal laws or regulations enacted after this Agreement have been executed, or action of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

6.02. Applications for Permits and Subsequent Approvals. City agrees that it will accept, in good faith, for processing review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Project Approvals and this Agreement, and shall exercise its best efforts to act upon such applications in an expeditious manner.

ARTICLE 7 DEFAULT, REMEDIES, TERMINATION

7.01. General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. Any Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings. After notice and expiration of the thirty (30) day period, if such default has not been

cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may terminate this Agreement and institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement. In no event shall either Party be liable to the other for consequential damages for any default or breach of this Agreement.

7.02 Developers' Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement, unless such default is cured or this Agreement is terminated. Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

7.03. Default by City. In the event City does not accept, review, approve or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Developer shall provide City with written notice of the default and the City shall have thirty (30) days to notify Developer of City's initial action to cure the default and ninety (90) days from receipt of Developer's notice to cure the default.

7.04. Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Provided, however, that Developer, its successors and assigns hereby waive any and all claims for monetary damages against City arising out of this Agreement at any time. All legal actions shall be initiated in the Superior Court of the County of Stanislaus, State of California.

7.05. Effect of Termination. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all remaining Project Approvals, nor shall it affect any other covenants of Developer which expressly continue after the termination of this Agreement.

7.06. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded to legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

ARTICLE 8 INDEMNIFICATION

8.01. Indemnification. Developer hereby agrees to indemnify the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from Developer or Developer's contractors, subcontractors, agents or employees operations under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's contractors or subcontractors. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action.

8.02. Third Party Legal Challenge. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. If Developer elects to file a validation action in order to confirm validity of this Agreement, City agrees to cooperate with Developer in this litigation and further agrees to refrain from raising any arguments that challenge the validity of this Agreement.

ARTICLE 9 ASSIGNMENT; MORTGAGEE PROTECTION

9.01. Mortgagee Protection. This Agreement, once executed, shall be superior and senior to any lien placed upon the Property or any portion thereof, including the lien of any deed of trust or mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Any such mortgagee or beneficiary shall be entitled to receive any notice of default under this Agreement provided that such mortgagee or beneficiary has submitted a written request to City to give such notice, setting forth the names and addresses of the persons to receive notices on behalf of such mortgagee or beneficiary and the kinds of notices to be sent to such persons. All provisions of this Agreement allowing Developer to cure any and all defaults shall also be available to any mortgagee or beneficiary entitled to notice above, should that mortgagee or beneficiary desire to cure said defaults.

9.02. Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.01 above, no mortgagee shall have any affirmative obligation or duty under this Agreement to construct or complete improvements, or to guarantee such construction or completion. A mortgagee who takes lawful possession of the Property shall, however, assume any or all development rights consistent with any vested rights and this Agreement. Foreclosure under a mortgage, deed of trust, deed in lieu of foreclosure or sale following foreclosure or deed in lieu of foreclosure is permitted without the consent of the City. Following its acquisition of all or a portion of the Project, such holder of

any mortgage or deed of trust, or any successor in interest thereto, shall be entitled to the benefits of this Agreement, shall be bound by its terms and obligations, and shall have standing to enforce the provisions of this Agreement, including the terms and conditions of Project Approvals which pertain to the Project or such portion thereof in which it holds an interest. Any such holder or successor who comes into possession of the Project, or any portion thereof, shall take the Project, or such portion thereof, subject to any claims for payments or charges against the Project or such portion thereof, which accrue under this Agreement or Project Approvals prior to the time such holder or successor comes into possession of the Project or such portion thereof. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder or successor to devote the Project, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by Project Approvals and this Agreement, subject to all of the terms and conditions of this Agreement.

9.03. Assignment of Rights. Subject to compliance with Section 9.04 below, Developer may sell, assign or transfer the Project in whole or in part to any person or entity at any time during the Term of this Agreement. Developer shall seek City's prior written consent to any sale, assignment or transfer, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within forty-five (45) days to any request made by Developer for such consent shall be deemed to be City's approval of the sale, assignment or transfer in question. City may refuse to give its consent only if, in light of the proposed assignee's reputation and financial resources, such assignee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. Such determination shall be made by the City Manager, and may be appealable by Developer to the City Council. To the extent reimbursements or fee credits from City are required pursuant to this Agreement or the Project Approvals, any and all such reimbursements and credits shall be distributed to Developer unless Developer and the subsequent Landowner specifically direct City in writing to distribute such reimbursements, or apply such credits, otherwise.

9.04. Assumption of Rights. Express written assumption of this Agreement by a subsequent Landowner of the obligations and other terms and conditions of this Agreement shall relieve Developer of such obligations so expressly assumed. Any such assumption agreement (**Exhibit H**) shall be in recordable form and shall be approved as to form by the City Attorney, and shall provide for a subsequent Landowner to contractually assume all of the rights of Developer as a Party to this Agreement with respect to the Project site, or portions thereof, which is sold, assigned or transferred by Developer to the subsequent Landowner. The City Clerk shall cause any such assumption agreement received by him or her to be duly recorded in the official records of Stanislaus County within ten (10) days of receipt. Subject to City's approval of such transfer pursuant to Section 9.3 above, upon recordation of said assumption agreement, Developer shall automatically be released from those obligations assumed by the assignee.

ARTICLE 10 GENERAL

10.01. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Developer and City and their successors and assigns, no other person shall have any right of action based upon any provision in this Agreement.

10.02. Project is a Private Undertaking. Both Parties acknowledge that the Project is a private development. No partnership, joint venture or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such private property. However, the City may at its discretion enter into a cooperation agreement with the developer as it relates to facilitation of affordable housing development.

10.03. Covenants Running with the Land. All of the terms and conditions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property, whether by operation of law or in any manner whatsoever, during their ownership of the Property, or any portion thereof. All of the terms and conditions of this Agreement constitute covenants running with land pursuant to California law, including, without limitation, Civil Code section 1468.

10.04. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

10.05. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer with the terms and conditions of this Agreement, pursuant to Government Code section 65865.1. If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

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

10.07. Construction. This Agreement shall be subject to and construed in accordance and harmony with the Riverbank Municipal Code, as it may be amended provided that such amendments do not impair the rights granted to the Parties by this Agreement.

10.09. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. 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 Developer: Cary Pope
3237 Riverside Drive
Riverbank, CA 95367
Email: cpope@pmz.com
Phone: 209-456-6297

DEVELOPMENT AGREEMENT
City of Riverbank and Cary Pope
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10.10. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in the Superior Court of Stanislaus County.

10.11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements whether oral or written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by both Parties.

10.12. Counterparts. This Agreement and any and all amendments and supplements to it may be executed in notarized counterparts, and all counterparts together shall be construed as one document.

10.13. Waiver. No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a Party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or under the law.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date, as defined in Section 1.07 above.

CITY	DEVELOPER
The City of Riverbank, a California municipal corporation	Cary Pope
By: _____ Richard O'Brien, Mayor	_____, President
Date: _____	
APPROVED AS TO FORM:	
By: _____ Tom Hallinan, City Attorney	
ATTEST:	
By: _____ City Clerk	

EXHIBIT A

Ward Villas Tentative Map

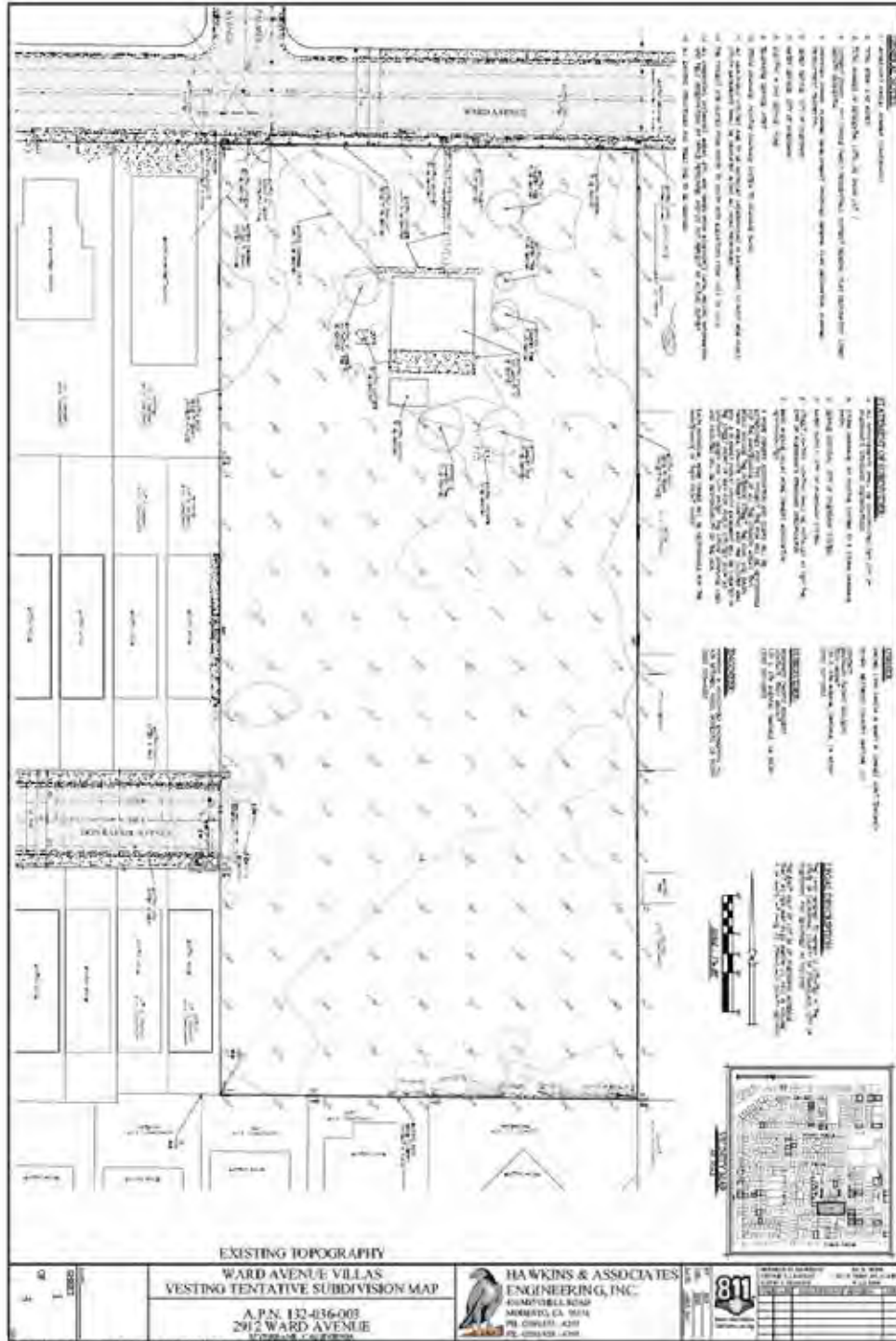


EXHIBIT B

Legal Description of Property

the following described real property in the City of Riverbank, County of Stanislaus, State of California:

The East half of Lot 96 of Riverbank Acreage Tract as per Map filed March 23, 1912 in Vol. 6 of Maps, Page 33, Stanislaus County Records.

EXHIBIT C

Consolidated Conditions of Approval

1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in Planning Commission Resolution 2013-014, including annexing into a Community Facilities District, or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
2. Applicant shall provide a labor, material and warranty bond as a part of his subdivision improvement agreement prior to map recordation; and
3. Fencing along the east, west, and south property lines and separating individual lots shall be six (6) feet tall. If adjacent neighbor fences need replacement during construction, vinyl shall be replaced with vinyl and wood shall be replaced with wood or vinyl. Vinyl fencing shall be installed on the two parcels fronting Ward Avenue to the satisfaction of the Community Development Director; and
4. A Major Tree Conservation Permit including a Tree Removal Permit Application, Tree Survey and Tree Protection Plan is required before a grading permit can be issued; and
5. The private street name, Chavez Street shall be approved by City Council unless a street with that name already exists in Stanislaus County; and
6. CFD 2016-01 shall be responsible for maintenance of the basin and common areas, landscaping (including front yards), and walls and fences (including graffiti removal and re-staining wooden fencing when it fades from sprinklers); and
7. Three (3) sets of landscape and irrigation plans shall be prepared and submitted with fee for review and approval by the City's contract landscape architect; and
8. The developer shall provide functionally opening windows on all elevations to the satisfaction of the Community Development Director; and
9. The developer shall install sidewalks on both sides of the private street; and
10. The developer shall install a concrete pad on Ward Avenue for school children to wait on to the satisfaction of the Community Development Director; and
11. The developer shall record a ten (10) foot water line easement between Lot 10 and Lot 11, from Rocky Lane to the private street to loop the water system; and
12. Pursuant to RMC section 153.162 (E)(3) the developer shall provide seven (7) amenities for the seven (7) deviations from standard ordinance requirements: 1. enhanced landscaping (i.e. larger size plants, more dense plantings); 2. a colored concrete or brick crosswalk across the private street at Ward Avenue; 3. One (1) grill and one (1) table at the storm water basin; 4. upgraded garage (carriage) doors; 5. French doors instead of sliding

doors in the living rooms; 6. outdoor outlets to support electric mowers, trimmers, and Christmas lights; and 7. two (2) benches at the storm water basin.

13. Per the Planning Commission meeting of August 18, 2020, the Developer agrees to help ensure privacy for a pool at the adjacent property to the south by considering one or more of the following options: restrict the adjacent rear lots to single story houses, provide a two-story floor plan without window/sight access to the pool location, plant additional landscaping to screen the south property line, and/or add height to the south property line fence.

EXHIBIT D

Draft System Development Fee Reimbursement

SDF Fee Reimbursements

The following improvements shall be eligible for reimbursement through the City's SDF Fee program:

Category	Fee Credit (per SFR Unit)	Total Reimbursement
PARKLAND* Dedication of a ____ acre Park which includes as a secondary purpose to the abovementioned storm water retention improvements.	Dedication Credit: \$ _____ Park Improvement Credit: \$ _____	Maximum Dedication Credit: \$ _____ Maximum Improvement Credit: \$ _____

*To receive a parkland reimbursement, Developer must comply with provisions in the recorded development agreement for the Property; e.g., prepare landscape and irrigation plan in compliance with City Drought Tolerant Landscape Standards and install open space to the satisfaction of the Community Development Director and the Recreation Director. Potential credit shall be subject to City approval of the Pocket Park plans. Reimbursement will be consistent with the adopted System Development Fees as enacted by the Riverbank City Council and would include the park improvements as well as adjacent curb, gutter, sidewalk and ½ of the adjacent neighborhood streets in the percentages described above.

EXHIBIT E

SDF

Adjusted SDF Fee Schedule

The following is the adjusted SDF Fee schedule applicable to the Project Area:

Facility Type	Single Family Residential (SFR) per unit
Streets	\$ _____
Streets – Signals & Bridges	\$ _____
Sewer Collection	\$ _____
Sewer Treatment	\$ _____
Water Distribution	\$ _____
Water Wells & Storage	\$ _____
Storm Drainage	\$ _____
Storm Drainage (Other)	\$ _____
Police	\$ _____
Fire	\$ _____
Parks & Recreation	\$ _____
General Government	\$ _____
Administration (2%)	\$ _____

EXHIBIT F

Draft Subdivision Improvement Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

Exempt from recording fees
(Gov. Code §§ 6103 and 27383)

(Space above this line for Recorder's use)

SUBDIVISION IMPROVEMENT AGREEMENT FOR THE WARD VILLAS SUBDIVISION

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("Agreement") is made and entered into this ___ day of __ 20__, by and between the City of Riverbank, a California municipal corporation ("City") and Cary Pope, and / or Assignee(s) ("Subdivider"). City and Subdivider may herein be referred to individually as a "Party" and collectively as the "Parties". There are no other parties to this Agreement. This Agreement is made with reference to the following:

RECITALS

A. Subdivider is possessed of a tract of land consisting of approximately 2.42 acres, lying in the City of Riverbank, County of Stanislaus, California, known as "Ward Villas" (the "Subdivision").

B. On January 19, 2016, the Planning Commission approved Tentative Subdivision Map No. 2016-001 for the Subdivision with conditions of approval (the "Tentative Map"). Resolution No. 2016-___ approving the Tentative Map is attached hereto as **Exhibit A** and incorporated herein by this reference (the "Resolution of Approval").

C. The Tentative Map is subject to the Subdivision Map Act (Gov. Code § 66410 *et seq.*) and the City's ordinances and regulations related to the filing, approval, and recordation of subdivision maps (together, the "Subdivision Laws") and the requirements and conditions contained in the Resolution of Approval.

D. Complete improvement plans for the construction, installation, and completion of the improvements ("Improvement Plans") have been prepared by Subdivider and approved by the City of Riverbank City Engineer ("Engineer") and Planning and Building Manager or her designee ("Manager").

E. Subdivider has presented to the City a proposed final map ("Final Map") for the Subdivision, pursuant to the provisions of the Subdivision Laws for approval and recordation.

F. In order for the City to approve and record a Final Map for the Subdivision, the Subdivider must either complete all of the improvements required by the Subdivision Laws, Resolution of Approval, Improvement Plans and Tentative Map ("Improvements"), or execute an agreement with the City to complete the Improvements within a specified period of time.

G. In order for the City to approve and record a Final Map for the Subdivision, Subdivider desires to enter into this Agreement, whereby Subdivider promises to install and complete, at Subdivider's sole cost, expense and risk, all of the Improvements required in connection with the Subdivision, including but not limited to grading work, constructing and installing the Improvements, and all labor that is required to complete these tasks to the satisfaction of the City ("Improvement Work").

H. Subdivider has secured this Agreement by depositing security with the City consisting of a cash deposit, bond, or letter of credit in form acceptable to the City to secure a one-year warranty of workmanship in accordance with the terms provided herein (the "Securities").

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. Recitals. The recitals above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement. In the event of any inconsistency between the Recitals and Sections 1 through 23 of this Agreement, Sections 1 through 23 shall prevail.

2. Effective Date and Term. This Agreement shall only become effective on the date that both Subdivider and the City have executed this Agreement (the "Effective Date"), and shall terminate only after the release of all Securities, unless this Agreement is terminated in writing signed by both Parties.

3. Dedication. Except as otherwise provided in this Agreement or in the action of the City Council approving the Final Map, the City hereby rejects all lands, rights-of-way and easements offered for dedication on the Subdivision Map or by separate instrument. Such offers, however, shall remain open and constitute irrevocable offers of dedication in accordance with Government Code section 66477.2. All such offers of dedication may be accepted by the City in its sole discretion at any later date without any further notice to the Subdivider.

4. Installation of Required Improvements. Subdivider agrees to furnish, construct and install at Subdivider's own expense the Improvements, as shown on the Improvement Plans, which are to be installed to the sole satisfaction of the Manager and will be on file in the Development Services Department. The Improvement Plans may only be modified by the Subdivider subject to prior written approval by the Manager.

- (a) In-lieu of providing a performance bond and payment bond, Subdivider agrees to construct all of the required Improvements prior to the approval and recordation of the final map. As such, the ordinary requirements for providing a performance bond and payment bond has been waived in this Agreement.

5. Subdivider's Obligations. Subdivider shall perform each of the following, at all times, throughout the term of this Agreement:

A. Complete, at Subdivider's sole cost and expense in a good and workmanlike manner, all of the Improvements in conformance with the Resolution of Approval (and any amendments thereto), the Subdivision Laws, and all applicable standards under City codes and ordinances and the City's general plan related to the Improvements (collectively, the "Improvement Standards").

B. Commence construction of the Improvements within three (3) months from the Effective Date of this Agreement. Subdivider shall notify the Manager in writing three days before the commencement of construction of the Improvements.

C. Complete all Improvements within twelve (12) months from the Effective Date of this Agreement, unless otherwise approved or extended in writing by the City Manager for good cause, after written application by Subdivider. Such application shall state fully the grounds and facts showing good cause for such extension to be granted. In granting any extension of time, the City may require a new or amended subdivision improvement agreement to reflect increases in the costs of constructing the Improvements or other conditions related to the extension of time.

D. Furnish and pay for all necessary equipment, labor and materials to complete the Improvements in conformity with the Improvement Standards.

E. Replace or repair all public improvements, private property, public utility facilities, and surveying or subdivision monuments that are destroyed or damaged in the performance of any work related to this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or private property damaged or destroyed in the performance of any work related to this Agreement. Any repair or replacement work shall be to the satisfaction, and subject to the approval, of the Manager.

F. Provide safe access for inspection by the City to the Improvements.

G. Give good and adequate warning to the public of each and every dangerous condition existing on or near the Improvements, and take reasonable action to protect the public from any such dangerous condition.

H. Perform all construction work related to installing the Improvements between 6:00 a.m. and 6:30 p.m. on weekdays and between 8:00 a.m. and 5:00 p.m. on weekends and legal holidays, unless otherwise approved in writing by the City Manager.

I. Require each contractor and subcontractor to have a competent foreman on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing any work related to the Improvements. Subdivider shall maintain an office with a

telephone and Subdivider or a person authorized to make decisions and act for Subdivider in Subdivider's absence shall be available at the site of any Improvements within three (3) hours of being called at such office by the City at any time when construction work is being performed on the Improvements.

J. Assume all costs for utility and cable television undergrounding or relocation which is not the responsibility of the cable television, gas, electric, telephone or other utility company under the terms of any franchises with the City or otherwise imposed upon the utility companies by law.

K. Obtain and comply with all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

6. Estimated Cost of Improvements. The total estimated cost of the Improvements, as provided by Subdivider and reviewed and confirmed by the City Engineer and City Manager, is _____ (\$_____).

7. Title to Improvements. The City shall not accept any property to be dedicated or the Improvements unless they are constructed in conformity with the Improvement Plans and Improvement Standards, to the satisfaction of the Engineer and Manager. Subdivider shall retain title to, shall be responsible for, and shall bear the risk of loss to, any of the Improvements constructed or installed, until such time as the Improvements are accepted by the City. Title to and ownership of the Improvements and any real property to be dedicated shall vest absolutely in the City upon completion and acceptance of such Improvements by the City Council. The City shall not accept the Improvements unless title to the Improvements is entirely free from all liens. Prior to acceptance, at City's request, Subdivider shall supply the City with appropriate lien releases, at no cost to and in a form acceptable to the City.

8. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Improvements are to be constructed or installed on land not within the Subdivision or an already existing public right-of-way, no construction or installation shall commence before:

A. The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Improvements; or

B. The issuance of an order of possession by a court of competent jurisdiction pursuant to the State Eminent Domain Law (Cal. Code Civ. Proc. § 1230.010 *et seq.*). Subdivider shall comply in all respects with any such order of possession.

9. Final Acceptance of Work. Acceptance of the Improvement Work on behalf of the City shall be made by the City Council upon recommendation of the Engineer and Manager, after satisfactory completion and inspection of all Improvements. Such acceptance shall not constitute a waiver by the City of any defects or deficiencies in the Improvements.

10. Repair of Defective Work. If, however, within a period of one (1) year after final acceptance by the City Council of the Improvements, any portion of the Improvements or any

work done under this Agreement fails to fulfill any of the requirements of this Agreement, the Improvement Plans or the Improvement Standards, Subdivider shall without delay and without any cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements or work. If the Subdivider fails to act promptly in accordance with this requirement, or if the exigencies of the situation require repairs or replacements to be made before Subdivider can be notified or correct the situation, then the City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Subdivider shall pay to City the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by City.

11. Securities. Concurrently with or before the Effective Date of this Agreement, Subdivider shall furnish to the City:

A. *Faithful Performance Security.* [omitted; see Section 4 above]

B. *Payment Security.* [omitted; see Section 4 above]

C. *Guarantee and Warranty Security.* Securities to guarantee workmanship shall be in the amount of ten percent (10%) of the estimated cost of the Improvements, as stated in Section 6 above, to guarantee and warrant the Improvements for a period of one (1) year following their completion and acceptance against any defective work or labor done, or defective materials.

D. *Bonds.* Any bonds submitted as Securities shall be executed by a surety company authorized to conduct a surety business in California and shall be in a form as specified by the Subdivision Laws and approved by the City. All Securities deposited as bonds under this Agreement shall be irrevocable, shall not be limited as to time (except as to the guarantee and warranty period), and shall provide that they may be released, in whole or part, only upon the written approval of the Director, as provided under the Subdivision Laws and in Section 12 below. All Securities shall expressly obligate the surety for any extension of time authorized by the City for Subdivider's completion of the Improvements, whether or not the surety is given notice of such an extension by the City. No change, alteration or addition to the terms of this Agreement or the plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as required by the Subdivision Laws.

E. *Records.* Evidence of the Securities required by this Agreement shall be kept on file with the City Clerk. If the City Council gives specific, written approval to replace the Securities by another approved security, such replacement Securities shall be filed with the City Clerk and, upon filing, shall be deemed to be incorporated into this Agreement. Upon filing of replacement Securities with the City Clerk, the replaced Securities may be released.

12. Release of Securities. The Securities required by this Agreement shall be released in accordance with the Subdivision Laws and the following provisions:

A. *Faithful Performance Securities.* [omitted]

B. *Payment Security.* [omitted]

C. *Guarantee and Warranty Securities.* The Securities provided for guarantee and warranty of workmanship shall be released after one (1) year following the completion and acceptance of the Improvements, and inspection thereof by the City's Construction Inspector and approved by the Engineer. If, however, the Engineer and Manager determine there are defects in the Improvements that require correction pursuant to Section 10 above, the Manager shall utilize the Securities to make all necessary corrections, including payment of reasonable expenses and fees and attorney's fees.

13. Inspections.

A. The City reserves the right to inspect all Improvements at any time. Subdivider shall at all times maintain safe access for inspection of the Improvements.

B. Upon completion of the Improvements the Subdivider may request a final inspection by the City's Construction Inspector. If the Construction Inspector determines that the Improvements have been completed in accordance with all Improvement Standards and Subdivision Laws, then the Manager shall certify the completion of the Improvements to the City Council, to accept or reject in their sole discretion. The City bears no liability for any costs or expenses resulting from delays in inspections.

C. Subdivider shall bear all costs of inspection and certification, including but not limited to the direct costs of all third-party inspection agencies and City inspection consultants.

14. Default of Subdivider.

A. *Default of Subdivider.* Events of default by ("Default") by Subdivider may include, but shall not be limited to, any of the following:

i. Subdivider's failure to timely complete construction of the Improvements;

ii. Subdivider's failure to timely cure any defect in the Improvements to the satisfaction of the Manager;

iii. Subdivider's failure to timely deposit additional Securities as may be required by this Agreement;

iv. Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days;

v. the commencement of a foreclosure action against the Subdivision or a portion thereof, or any conveyance in-lieu or in avoidance of foreclosure; or

vi. Subdivider's failure to perform any material obligation under this Agreement.

B. *Notice of Default.* In the event of Subdivider's default, Subdivider shall be deemed to be in breach of this Agreement and the City may serve written notice upon Subdivider and Subdivider's surety, if any, of the breach of this Agreement. Subdivider shall have fifteen (15) days from receipt of written notice by City to cure any default.

C. *Remedies; Performance by City.*

i. In the event of Subdivider's default under this Agreement, and the applicable cure period set forth in this Paragraph has expired without such default having been cured, the City may thereafter deliver a notice of breach to Subdivider and Subdivider's surety, if any. If the default remains uncured within fifteen (15) days from receipt of the written notice of breach, Subdivider authorizes the City to complete all work on the Improvements at the sole expense of Subdivider, and Subdivider authorizes to utilize the Securities to complete all work on the Improvements and to pay all labor costs of contractors, subcontractors and workers related to the Improvements. The City may take over the Improvements and prosecute the same to completion, by contract or by any other method the City may deem advisable, for the account and at the expense of Subdivider, and Subdivider shall be liable to City for any excess cost or damages incurred by the City thereby. In the event the City takes over the Improvements or prosecutes the same to completion, the City, without liability for so doing, may take possession of, and utilize such materials, appliances, equipment, plant and other property belonging to Subdivider as may be necessary for completion of the Improvements.

ii. The City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The right of the City to draw upon or utilize the Securities is additional to and not in lieu of any other remedy available to the City.

iii. Failure of Subdivider to comply with the terms of this Agreement shall constitute consent to the filing by the City of a notice of violation against all the lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this Subsection is in addition to and not in lieu of other remedies available to the City, and is not required to implement other available remedies. Subdivider agrees that the choice of remedy or remedies for Subdivider's default shall be at the discretion of the City.

iv. In the event that Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by the City in securing performance of such obligations, including but not limited to costs of suit and attorney's fees, costs of Improvements in the event of failure of performance, and all administrative costs. Such costs and fees shall be a proper charge against the Securities of Subdivider.

v. The failure of the City to take an enforcement action with respect to a default or breach, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

D. *Lien.* In accordance with the Subdivision Laws (Gov. Code § 66499), the recordation of this Agreement creates a lien attached to the property underlying the Subdivision and has the priority of a judgment lien in the amount necessary to complete the Improvements.

15. Environmental Warranty.

A. For purposes of this Agreement, the terms below have the following meanings:

i. “Environmental Laws” shall mean any federal, state, or local law, rule, regulation administrative or court order, ordinance, regulatory guidance document, standard, or requirements of any government authority regulating, relating to, or imposing liability standards of conduct concerning Hazardous Substances, or that pertains to the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Conservation and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 *et seq.*); the Clean Water Act (33 U.S.C. §§1251 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*); the Hazardous Materials Transportation Act (29049 U.S.C. §§ 1801 *et seq.*); the Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*); the Superfund Amendments and Reauthorization Act (42 U.S.C. §§ 6901 *et seq.*); the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*); the Safe Drinking Water Act (42 U.S.C. §§ 300f *et seq.*); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 *et seq.*); the Surface Mining Control and Reclamation Act (30 U.S.C. §§ 1201 *et seq.*); the Occupational Safety and Health Act (29 U.S.C. §§ 655, 657); the California Underground Storage of Hazardous Substances Act (Health and Safety Code §§ 25280 *et seq.*); the California Hazardous Waste Control Act (Health and Safety Code §§ 25100 *et seq.*); the California Safe Drinking Water and Toxic Enforcement Act (Health and Safety Code §§ 24249.5 *et seq.*); and the Porter-Cologne Water Quality Control Act (Water Code §§ 13000 *et seq.*); together with any amendments of or regulations promulgated under the statutes cited above.

ii. “Hazardous Substances” or “Hazardous Substance” shall include any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as so defined under any Environmental Laws or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), radon gas, urea formaldehyde, asbestos, lead, or electromagnetic waves. Hazardous Substances include any hazardous or toxic substance, material or waste which is regulated by the State of California, the United States government, or any other governmental authority with jurisdiction over the Property. Hazardous Materials include asbestos and any other hazardous waste or substance which has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any instrumentality authorized to regulate substances in the environment which has jurisdiction over the Property which substance causes the Property (or any part thereof) to be in material violation of Environmental Laws.

B. Prior to acceptance of any Improvements by the City, Subdivider shall provide the City with a written warranty that:

i. Subdivider and the property being dedicated are in compliance with all Environmental Laws and are not subject to any existing, pending or threatened investigation by a federal, state, or local governmental authority regarding violations of Environmental Laws.

ii. Subdivider and its third-party agents, contractors and subcontractors have not used, generated, manufactured, produced, discharged, or released on, under, or about the property to be dedicated, any Hazardous Substance except in accordance with all applicable Environmental Laws.

(b)

iii. Subdivider has not caused or permitted the release or discharge of, and has no knowledge of the release, discharge, or presence of Hazardous Substances on the property to be dedicated or the migration of any Hazardous Substances from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

C. Throughout the term of this Agreement, Subdivider shall give written notice within fifteen (15) days to the City of:

i. Any proceeding or investigation by any federal, California, or local governmental authority regarding the presence of Hazardous Substances on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

ii. Any claims made or threatened by any third party against the City or property to be dedicated regarding any loss or injury resulting from any Hazardous Substances; and

iii. Subdivider's discovery of any occurrence or condition on any property to be dedicated or any property adjacent to, or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability, or suit under any Environmental Law.

16. Design or Construction Defect.

A. After acceptance of the Improvements, the Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by a latent design or construction defect.

B. Provisions of this section shall remain in full force and effect for ten (10) years following the acceptance of the Improvements by the City.

C. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the Improvements and that the City shall not be liable for any negligence, nonfeasance, misfeasance, or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any Improvement Work. The Securities shall not be required to cover the provisions of this paragraph.

17. No Agency Relationship. Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of the City in connection with the performance of Subdivider's obligations under this Agreement. City elected and appointed councils, commissions, officers, agents, employees and representatives ("City Agents") shall not, be liable or responsible for any accident, loss or damage, regardless of the cause, happening or occurring to

the Improvement Work or Improvements specified in this Agreement prior to the completion and acceptance of the Improvement Work or Improvements. All such risks shall be the responsibility of and are hereby expressly assumed by Subdivider.

18. Other Agreements. Nothing contained in this Agreement shall preclude the City from expending monies pursuant to agreements concurrently or previously executed between the Parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinances providing therefore, nor shall anything in this Agreement commit the City to any such apportionment.

19. Indemnity/Hold Harmless.

A. The City and City Agents shall not be liable and Developer agrees to indemnify, hold harmless and defend the City and City Agents from any and all claims, costs, and liability for claims of damage, for any property damage or personal injury, including death, which may arise as a result of any negligent acts or omissions by Developer or Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, or operation, of the Improvements, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the Improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of the Subdivision and the Improvements as provided herein, and in addition, to injuries to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other Improvements.

B. Acceptance by the City of the Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section.

C. Provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by the City of the Improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or Improvement Work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance, or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any Improvement Work. The Security shall not be required to cover the provisions of this section.

D. City shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any Improvement Work. Nothing contained in this section is intended to, or shall be deemed to, limit or waive any protections or immunities afforded by law to the City or City Agents for the approval of the plan or design of the Improvements, including but not limited to the protections and immunities afforded by Government Code section 830.6. Subdivider shall defend, indemnify, and hold harmless the City and City's Agents from any claim, action, or proceeding against City or City Agents to attack, set aside, void, or annul an approval of the City or City Agents concerning the Subdivision.

20. Insurance. Without limiting Subdivider's duty to indemnify the City, Subdivider shall maintain in effect throughout this Agreement a policy or policies of insurance with the specifications and limits of liability specified herein.

A. Proof of Insurance.

i. Subdivider shall provide to the City a properly executed certificate of insurance, in a form satisfactory to the City Attorney for commercial general liability coverage; automobile liability, worker's compensation insurance, professional liability insurance, and course of construction coverage from an insurance provider approved by the City and licensed by the California Department of Insurance ("Certificates").

ii. Each Certificate shall provide that such insurance will not be cancelled, reduced in coverage, or allowed to expire without thirty (30) days' prior written notice to the City.

B. Minimum insurance limits. Contractor shall maintain limits no less than:

i. General Liability. Subdivider shall maintain such commercial general liability insurance with an insurance company admitted in California with an AM Best Rating of not less than A+, as shall protect the City, the City's Agents, Subdivider, contractors, and subcontractors from claims for damages for personal injury, including death, as well as from claims of property damage which may arise from acts or omissions from Subdivider, contractors, or subcontractors for in relation to this Agreement. The amount of such insurance shall not be less than two million dollars (\$2,000,000.00) per occurrence with umbrella liability coverage of not less than two million dollars (\$2,000,000.00). Such insurance shall also:

1. Name the City and the City Agents as insured by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitation on the scope of its protection afforded to the above-listed additional insured; and

2. Be primary with respect to any insurance or self-insurance programs covering the City and City Agents.

ii. Automotive Liability Insurance. Subdivider shall maintain automotive liability insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services or performing work under this Agreement for bodily injury and property damage with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence. Such insurance shall also:

1. Name City and City Agents as insured by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitation on the scope of its protection afforded to the above-listed additional insured; and

2. Be primary with respect to any insurance or self-insurance programs covering the City and City Agents.

iii. Worker's Compensation Insurance.

1. Subdivider shall maintain worker's compensation insurance in accordance with California Labor Code Section 3700, and with a limit of not less than one million dollars (\$1,000,000.00) per occurrence for employer's liability.

2. In the event any work is sublet, Subdivider shall require any contractor or subcontractor to provide worker's compensation insurance for all contractor's employees or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider.

C. *Course of Construction.* Subdivider shall maintain course of construction insurance for a value of not less than the completed value of the Subdivision and the Improvements.

D. *Professional Liability Insurance.* Subdivider shall maintain professional liability insurance, as applicable, in the amount of not less than two million dollars (\$2,000,000.00) per claim and three million dollars (\$3,000,000.00) in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services.

21. No Vesting of Rights. Performance of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

22. Notices. Any notice or communication required hereunder between City and Subdivider must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. 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 may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Riverbank 6707 Third Street Riverbank, CA 95367 Attn: Donna M. Kenney, Planning and Building Manager
-------------	---

With copies to:	City of Riverbank 6707 Third Street Riverbank, CA 95367 Attn: Sean Scully, City Manager
-----------------	--

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

If to Subdivider: Cary Pope
3237 Riverside Drive
Riverbank, CA 95367
209-456-6297
cpope@pmz.com

and _____

23. General Provisions:

A. *Governing Law.* The validity, interpretation and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

B. *Compliance with Laws.* Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the work required by this Agreement, including but not limited to all Improvement Standards or any other applicable land use approvals. Subdivider shall be responsible for obtaining all applicable licenses and permits.

C. *Venue.* Venue for any legal proceedings initiated in connection with this Agreement shall be in the Superior Court for the County of Stanislaus.

D. *Severability.* The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of competent jurisdiction, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

E. *Waiver.* The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

F. *Approvals by the City.* Any approval or consent that is to be given by the City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on the City.

G. *Integration.* This Agreement, together with its specific references, attachments and Exhibits, constitute all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the Parties with respect to the subject

matter of this Agreement. Neither Party shall be liable for any representations made, express or implied, not specifically set forth herein. It is the intention of the Parties that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

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

I. *Mandatory and Permissive.* “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

J. *Successors and Assigns – Covenant Running With the Land.* Subdivider shall not assign any of its obligations under this Agreement without the prior written consent of the City. Notwithstanding the above, all representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of or for the benefit of any or all of the Parties, shall be binding upon and inure to the benefit of such Party, its successors and assigns. This Agreement, however, shall not be binding on any lot that has been conveyed to an individual homebuyer and for which a Certificate of Occupancy has been issued by the City.

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

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

M. *Time is of the Essence.* Time is of the essence in this Agreement in each covenant and term and condition herein.

N. *Authority.* The Parties warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement have been fully complied with.

O. *Construction and Interpretation.* It is agreed and acknowledged by Subdivider that the provisions of this Agreement have been arrived at through negotiation, and that Subdivider has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

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

Q. *Attorney Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorney 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.

R. *No Monetary Damages Against the City.* In the event of the City's default under this Agreement, Subdivider agrees that Subdivider may not seek, and shall forever waive any right to, monetary damages against the City.

S. *Modification.* This Agreement may be amended only by a written instrument signed by the Parties. Subdivider shall bear all costs of amendments to this Agreement that are requested by Subdivider.

(c)

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Subdivider and City as of the day and year first above written.

SUBDIVIDER:

Cary Pope, President

By: _____
Name: Cary Pope
Title: President
Date Signed: _____

CITY:

CITY OF RIVERBANK, a California
municipal corporation:

By: _____
Sean Scully, City Manager

Date: _____

ATTEST:

By: _____
Annabelle Aguilar, City Clerk

APPROVED AS TO FORM:

By: _____
Tom Hallinan, City Attorney

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California)
)
County of Stanislaus)

On _____, before me _____, a Notary Public, personally appeared Cary Pope who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California)
)
County of Stanislaus)

On _____, before me _____, a Notary Public, personally appeared Sean Scully who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

EXHIBIT A

Tentative Map Resolution of Approval

City of Riverbank
Planning Commission
Resolution No. 2016-006

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
RIVERBANK RECOMMENDING APPROVAL OF THE REQUEST OF
TROY WRIGHT FOR A VESTING TENTATIVE MAP 01-2015 TO
SUBDIVIDE 2.42 ACRES INTO 28 PLANNED DEVELOPMENT SINGLE
FAMILY RESIDENTIAL LOTS, LOCATED AT
2912 WARD AVENUE APN: 132-036-003**

WHEREAS, a vesting tentative map application has been received from Troy Wright/ Applicant and Rachel Garcia and Mary Chavez/Owners, to divide a parcel (APN 132-036-003) of 2.42 acres, into 28 Planned Development single family residential lots, a private street and a basin/emergency vehicle access; and

WHEREAS, the City Subdivision Ordinance, Section 152.037 states that as a condition of approval of a tentative map, the subdivider shall dedicate and develop parkland, pay a fee in lieu thereof, or both, at the option of the City. In this case the City has chosen to accept the payment of an in-lieu fee for parkland dedication based on values of land at the time the Final Map is recorded. The obligation for this project is the value of .24 acres; and

WHEREAS, public facilities represent the public's investment in the development of the complex, urban infrastructure that is necessary to support the physical operation of the city; and

WHEREAS, the proposed tentative map is consistent with the following General Plan policies discussed at length in the staff report: CONS 4.2 (storm water), CONS 8.6 (compact development), CONS 8.9 (drought-tolerant landscaping) and SAFE 2.2 (fire protection); and

WHEREAS, with modification by adopted Conditions of Approval, the proposed tentative map will become consistent with the following General Plan policies discussed at length in the staff report: DESIGN 1.3 (connectivity), DESIGN 1.6 (connectivity), DESIGN 2.5 (sidewalks), DESIGN 2.7 (sidewalks), DESIGN 2.8 (transit amenity), DESIGN 3.1 (connectivity), DESIGN 3.2 (porches), DESIGN 3.5 (driveway and garage widths), and DESIGN 5.2 (porches); and

WHEREAS, Vesting Tentative Map 01-2015 was reviewed by the Riverbank Planning Commission at a regular meeting held on January 19, 2016 in the manner prescribed by law; and

WHEREAS, The Planning Commission did consider a proposed Exemption pursuant to the California Environmental Quality Act and considers this to be the appropriate level of environmental review in this case. The Planning Commission finds that the proposed project meets the conditions prescribed in Section 15332 (a-e) (Class 32, In-Fill Development Projects) of the State CEQA Guidelines; and

WHEREAS, The Riverbank Planning Commission recommends approval of the requested Vesting Tentative Map date-stamped January 13, 2016 prepared by Hawkins and Associates Engineering, Inc. and modified by adopted Conditions of Approval, and incorporated herein as a part

of this Planning Commission Resolution; and

WHEREAS, The Planning Commission of the City of Riverbank hereby finds and adopts the following findings:

- A. The project is consistent with the General Plan with modification by the adopted conditions of approval.
- B. Notice to the general public and adjoining neighbors in the time and in the manner required by State Law and City Code was provided.
- C. Pursuant to the California Environmental Quality Act, the proposed project is exempt pursuant to Section 15332 (Class 32, In-Fill Development Projects) of the State CEQA Guidelines. The proposed Project meets conditions prescribed by CEQA Section 15332 (a-e).
- D. The approval of Vesting Tentative Map 01-2015 to divide parcel APN 132-036-003 of 2.42 acres, into 28 single family lots will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood in that the project is similar to, and compatible with, neighboring uses in the area.

WHEREAS, The request for the Vesting Tentative Map is hereby recommended for conditional approval by the Planning Commission of the City of Riverbank, subject to and modified by the following conditions:

- 1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in Planning Commission Resolution 2013-014, including annexing into a Community Facilities District, or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
- 2. All frontage improvements (curb, gutter, and sidewalk) along Ward Avenue and the private street shall be designed, completed, and inspected by the City prior to Final Map Recordation.
- 3. Fencing along the east, west, and south property lines and separating individual lots shall be six (6) feet tall. If adjacent neighbor fences need replacement during construction, vinyl shall be replaced with vinyl and wood shall be replaced with wood or vinyl. A decorative wall meeting city standards shall be installed on the two parcels fronting Ward Avenue to the satisfaction of the Community Development Director.
- 4. A Major Tree Conservation Permit including a Tree Removal Permit Application, Tree Survey and Tree Protection Plan is required before a grading permit can be issued.
- 5. The private street name, Chavez Street shall be approved by City Council unless a street with that name already exists in Stanislaus County.
- 6. The required Home Owner's Association shall be responsible for maintenance of the basin and common areas, landscaping (including front yards), and walls and fences (including graffiti removal and re-staining wooden fencing when it fades from sprinklers).

7. The Park-in-lieu fee obligation for this project is .24 acres to be paid based on values of land at the time the Final Map is recorded.
8. Three (3) sets of landscape and irrigation plans shall be prepared and submitted with fee for review and approval by the City's contract landscape architect.
9. The developer shall provide functionally opening windows on all elevations to the satisfaction of the Community Development Director.
10. The developer shall install sidewalks on both sides of the private street.
11. The developer shall install a concrete pad on Ward Avenue for school children to wait on to the satisfaction of the Community Development Director.
12. The developer shall record a ten (10) foot water line easement between Lot 10 and Lot 11, from Rocky Lane to the private street to loop the water system
13. Pursuant to RMC section 153.162 (E)(3) the developer shall provide seven (7) amenities for the seven (7) deviations from standard ordinance requirements: 1. enhanced landscaping (i.e. larger size plants, more dense plantings); 2. a colored concrete or brick crosswalk across the private street at Ward Avenue; 3. A decorative block wall and vinyl fencing instead of wooden fencing where fencing is visible from the streets; 4. upgraded garage (carriage) doors; 5. French doors instead of sliding doors in the living rooms; 6. outdoor outlets to support electric mowers, trimmers, and Christmas lights; and 7. two (2) benches at the storm water basin.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission recommends for approval Vesting Tentative Map No. 01-2015, subject to those Conditions of Approval established by Resolution No. 2016-006 and to be recorded as modified.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 19th day of January, 2016; motioned by Commissioner McKinney, seconded by Commissioner Stewart, and upon roll call was carried by the following vote of 4-0:

AYES: Commissioner's: Hughes, Stewart, Villapudua and McKinney

NOES: None

ABSENT: None

ABSTAIN: None

Attest:


Donna M. Kenney
Planning and Building Manager

Approved:

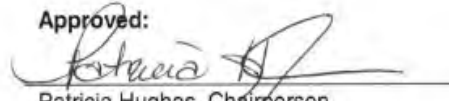

Patricia Hughes, Chairperson
Planning Commission

Exhibit G
Assumption and Assignment Agreement

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

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

Recording fees exempt (Gov. Code §§ 6103, 27383) (Space above line for recorder's use only)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") shall be deemed effective as of _____, 20__ ("Effective Date"), by and between _____, a _____ ("Assignor") and _____, a _____ ("Subsequent Landowner").

R E C I T A L S

A. Assignor has entered into a Development Agreement with the City of Riverbank, dated _____, 20__, which was recorded on _____, 20__ as Document No. _____ in Book ____, Page ____ of the Official Records of Stanislaus County, California (the "Development Agreement").

B. Assignor has agreed to develop property pursuant to the Development Agreement, which is now proposed for assignment pursuant to this Agreement, and is more particularly described as _____, as set forth in more detail in the Legal Description attached and incorporated hereto as **Exhibit A** (the "Assigned Parcels").

C. Subsequent Landowner desires to assume [all of Assignor's rights, duties and obligations under the Agreement] [a portion of Assignor's rights, duties and obligations as set forth in this Agreement] with respect to the Assigned Parcels and Assignor seeks to be relieved of said assigned rights, duties and obligations in reference to the Assigned Parcels.

NOW, THEREFORE, Assignor and Subsequent Landowner hereby agree as follows:

A G R E E M E N T

1. Assignor hereby assigns, effective as of [the Effective Date or Assignor's conveyance of the Assigned Parcels to Subsequent Landowner], [all of] or [if only a portion of, describe] the rights, interests, burdens and obligations of Assignor under the Agreement with respect to the Assigned Parcels. Assignor retains all of the rights, interests, burdens and obligations under this Agreement with respect to all property other than the Assigned Parcels within the Subject Property owned by Assignor.

2. Subsequent Landowner hereby assumes all of the rights, interests, burdens and obligations of Assignor under this Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcels. It is the express intention of both Assignor and Subsequent Landowner that, upon the Effective Date, Subsequent Landowner shall become substituted for Assignor as a "Developer" under the Development Agreement with respect to the Assigned Parcels. Assignor acknowledges that Assignor shall remain subject to the duties and obligations of the Development Agreement if Assignor retains any portion of the Subject Property subject to the Development Agreement.

3. All of the covenants, terms, and conditions of this Agreement and set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. Subsequent Landowner's address for all notices, as described in Section ____ of the Development Agreement, shall be as follows:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the above-referenced Effective Date.

ASSIGNOR:

SUBSEQUENT LANDOWNER:

_____, a _____

_____, a _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED:

City Manager

EXHIBIT A

Assigned Parcels

[Provide legal description of assigned parcels]

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	October 13, 2020
Subject:	A Resolution Approving Applications For Per Capita Funds
From:	Sean Scully, City Manager
Submitted by:	Sue Fitzpatrick, Parks and Recreation Director

RECOMMENDATION

It is recommended that the City Council consider approving the Resolution for submittals of applications for per Capita Funds.

SUMMARY

Proposition 68 has both a Competitive Grant program and a Per Capita Grant program. Under the Per Capita Program, funds are available for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients are encouraged to rehabilitate existing infrastructure and address neighborhood deficiencies. Additional funds are available for Per Capita grants to cities and districts in urbanized counties (with a population of 500,000 or more) who provide recreation services within jurisdictions of 200,000 or less in population.

The City of Riverbank qualifies under both Per Capita programs and the combined funding available is in the amount of \$197,000. The State Department of Parks and Recreation has been delegated the responsibility for the administration of the Per Capita program, and setting up procedures governing applications. The Department requires the grantee's Governing Body to certify by resolution the approval of applications to the State.

BACKGROUND

The Per Capita program originates from the Propositions 68, placed on the ballot via Senate Bill 5 (Deleon, Chapter 852, statutes of 2017) and was approved by voters on June 5th, 2018.

Eligible projects must be capital outlay for recreational purposes, either acquisition or development. Multiple projects can be completed under one contract but each require a separate application packet. Projects not serving a "severely disadvantaged community"

(median household income of less than 60% of the statewide average) require a 20% match. There can be no supplanting. Grantees must use per capita funds to supplement existing funding, rather than replace them.

Once the resolution is approved, the Parks and Recreation Department is ready to begin submitting project applications and implementing the improvements. The attached exhibits identifies a number of capital projects that are needed which staff believes would qualify for use of the funds. Some of the funding can be supplemented by the City's urban county CDBG allocation but as can be seen substantial additional resources are needed to complete the entire project list. Council may discuss prioritization of projects if desired.

STRATEGIC PLAN

This item is relevant to the City Strategic Plan by ***Enhancing the Quality of Life*** for the residents of Riverbank by ***maintaining and refreshing our parks, trails and facilities***.

FINANCIAL IMPACT

There is no financial impact with the approval of the application submittals for the per capita funding unless the projects selected do not meet the criteria regarding the median household income. If a project is selected that does not meet the criteria, there would be a 20% match per project. It is staffs intention to ensure that the funding is used in areas of Riverbank that meet the eligibility criteria related to median household income.

ATTACHMENT

1. Exhibit A: Project List

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING APPLICATIONS FOR PER CAPITA FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing applications; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantees Governing Body to certify by resolution the approval of project applications before submission of said applications to the State; and

WHEREAS, the grantee will enter into a contract(s) with the State of California to complete project(s);

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

1. Approve the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the City of Riverbank general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January

12, 2017, the City of Riverbank will consider a range of actions that include, but are not limited to, the following:

- (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
 - (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
 - (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
 - (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.
 - (E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
 - (F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
 - (G) Identifying possible staff liaisons to diverse populations.
8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
 9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).
 10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
 11. Delegates the authority to the City Manager, or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and

12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 13th day of October, 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: Project List

Parks and Recreation Department

Project	Cost	Justification
Community Center Kitchen renovation	\$250,000	Original kitchen, no grease interceptor, non-compliant venting system, internal work necessary to bring up to code both operationally and aesthetically.
Cardozo Tennis Court Resurfacing	\$28,000 split cost with School District, our portion \$14,000	Courts are past due. Cracking of courts are becoming worse.
Pool Replastering	\$15,000	Pool plaster is over 20 years old and is showing signs of cracks and chips. If we obtain the prop. 68 grant, this is included.
Castleberg Park Basketball Court Resurfacing	\$103,000	The courts are in poor condition. Cost includes erosion control, seeding and new benches.
*Sports Complex Booster Pump	\$15,000	This item has been in the CIP for years and is necessary to solve irrigation issues to bring fields up to standard.
Castleberg Park Trail Improvement	\$261,300	We have set aside \$135,000 in CDBG funds but it is not enough to complete the project. Trail is in very poor condition. Cost includes irrigation work, erosion control and seeding.
Castleberg Park ADA to Ballfields	\$110,660	The ballfields are not ADA compliant. This would provide access.
Total Cost of Improvements	\$768,960	

*The Sports Complex does not meet the criteria for the Per Capita Program Funding due to location not meeting the "Severely Disadvantaged Community". All other projects do meet the criteria.

Total Funding available from Per Capita Funding: \$197,000

Total Funding available from CDBG: \$135,000

Funds Available: \$332,000 Deficit: \$436,960

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.2

SECTION 6: NEW BUSINESS

Meeting Date:	October 13, 2020
Subject:	A Resolution Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds
From:	Sean Scully, City Manager
Submitted by:	Sue Fitzpatrick, Parks and Recreation Director

RECOMMENDATION

It is recommended that the City Council consider approving the Resolution Approving the Application for Statewide Park Development and Community Revitalization Program Grant Funds (Prop. 68).

SUMMARY

The Statewide Park Development and Community Development Revitalization Program is the largest park related grant program in California's history and possibly U.S. history, with over 1 billion in funding between the 2018 Prop. 68 and 2006 Prop. 84 Bond Acts. This is a highly competitive grant program where the project site must meet one of two key criteria to be eligible for grant funds. One criterion is the project site must be in a location that has less than one acre per 1,000 residents within a mile radius. The other criteria is that the project location must have a median household income of less than \$56,982. Only one of these criteria need to be met in order to compete for the grant. This will be the last round for this grant opportunity.

BACKGROUND

The City of Riverbank submitted a grant proposal last year for the Community Center Park Renovation, which includes major renovation to the pool area, the addition of a smaller pool with a water feature, a new inclusive playground with shade, irrigation and landscape improvements, a half basketball court and public art. This project site meets both the lack of park acreage and the median household income criteria.

Our partners were the Riverbank Federated Women's Club, Golden Valley Health Center, and Central Valley Community Resources. Community meetings were held and a conceptual design was developed.

The grant was submitted but was not awarded. There were 47 projects awarded out of 400 applications. The state project officer informed City Staff that there were many excellent grants submitted but those most in need were awarded. The City received a few suggestions, such as including public art that has been added into our new application that is due on December 14, 2020. Since the project site and overall grant is a re-submittal, we are not required to perform all the requirements of the grant again. Certain aspects need to be included in the new grant application as the format is somewhat different with all online submittals.

An additional community meeting is scheduled for Saturday, October 10th to review with any interested residents the status of the grant and to receive public art ideas. The meeting will be held with all necessary social distancing and safety protocols in place. One more evaluation of the conceptual design is available for review (see attached conceptual design).

STRATEGIC PLAN

This item is relevant to the City Strategic Plan by ***Enhancing the Quality of Life*** for the residents of Riverbank by ***maintaining and refreshing our parks, trails and facilities***.

FINANCIAL IMPACT

There is no financial impact to this grant application as there is no match required.

ATTACHMENT

- 1) Conceptual Design (Still in progress).

CITY OF RIVERBANK

RESOLUTION

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

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

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

WHEREAS, one of the City's goals for the plan was to research existing parks and facilities and map out the amenities that will be needed in the future; and

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

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

1. Certify that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project if the grant is awarded; and
2. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project, and
3. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Delegates the authority to the City Manager to conduct all negotiations, sign and submit all documents, including, but not limited to applications,

agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope; and

5. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines; and
6. Will consider promoting inclusion per Public Resources Code §80001(b) (8 A-G).

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 13th day of October, 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:

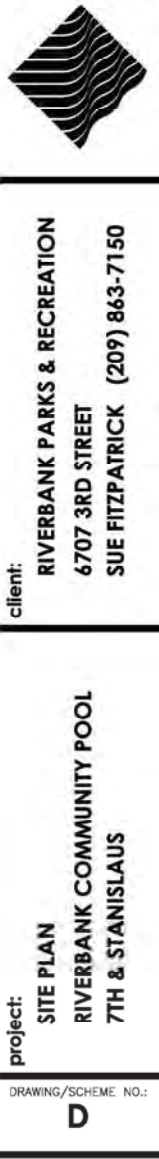
APPROVED:

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

Attachment:

ARCH • PAC, AQUATICS
architects, landscape architects & planners
1341 Distribution Way, Studio #11
Victor, CA 92081
ph: 760 734-1400



RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.3

SECTION 6: NEW BUSINESS

Meeting Date:	October 13, 2020
Subject:	Youth Commission Discussion and Direction
From:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the City Council provide direction to staff on the framework, scope and concept of the creation of a Youth Commission for the City of Riverbank.

SUMMARY

One of the final remaining strategic plan items that has not been substantively discussed, progressed or completed is item 4.5 “Consider the appointment of a Youth Council”. The City of Riverbank has a number of informal and formal advisory commissions, in addition, there are a variety of nonprofits (run by local volunteer boards) who contribute to the improvement and well-being of Riverbank. The City Council discussed a variety of ways to improve both internal and external communication for the organization during strategic planning. One idea (among many) was to consider appointment of a Youth Council to more directly connect with the youth of the community.

Although the item was not discussed at length, the general concept was to find innovative ways to get the community more involved in our local government. Staff has researched various concepts that could be instituted but in order to move forward staff would like to solicit feedback from the Council on the desired scope, structure and breadth of a possible Youth Commission. Additionally, Council should consider what resources should be expended to establish a commission effectively. At a broad level the following criteria should be discussed by Council:

1. Structure: How should the Commission be structured? There are models for very formal commissions (akin to a Planning or Finance Commission). These more formalized commissions will likely require more resources as the proceedings would be setup in a more formal manner. There are also less formal concepts which would allow for more flexibility with membership and process but would still solicit feedback from youth of the community.
2. Scope: What should the scope of the Commission be? Specifically, what types of matters should they discuss and provide feedback to Council on? Staff’s general

advice on commissions in general is that they must have a very specific purpose or charge. This helps focus discussions and also gives the opportunity for Council to receive meaningful feedback. Additionally, youth commissions will be more prone to member turnover due to the youth aging out, moving on to college/work, or generally becoming interested in other pursuits.

3. Concept/Purpose: What is the overarching purpose of the Commission? In other words, what is the goal in having a Youth Commission? This could be a very simple concept (such as “to foster youth engagement in local government”) or alternatively a slightly more complicated concept (such as direction on a specific youth centered project or advising on youth related matters in Riverbank etc).
4. Allocation of Resources: Staff time and effort will be needed at least in some minor capacity in order to facilitate this activity. Council should discuss what priority this project should take within the overall scope of the City budget. The allocated amount of resources will vary depending on Council direction of the three items previously discussed in this staff report.

Some general direction to these four (4) questions will help shape a proposal/program that staff can submit to Council for consideration. Council can also discuss any other hybrid type concepts that may accomplish additional youth engagement. Staff has reached out to the Superintendents of schools in Districts serving Riverbank to solicit feedback on effective models or partnership opportunities that may improve youth engagement in local government. Staff will provide a couple concepts derived from other communities for Council to review at the time of the meeting.

FINANCIAL IMPACT

The financial impact will depend on the makeup and scope of the Youth Commission. Once that direction is established staff will be able to forecast potential financial impact. The financial impact will likely be a general fund expense as no enterprise fund has mechanisms to fund these types of expenditures.

ATTACHMENTS

None

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.4

SECTION 6: NEW BUSINESS

Meeting Date:	October 13, 2020
Subject:	Public Benefit Fund – Policy Review and Direction on Desired Amendments to Policy
From:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the City Council provide direction on any desired amendments to the Public Benefit Expenditure Policy.

SUMMARY

On August 22, 2017, the City Council adopted Ordinance No. 2017-007 to revise the Riverbank Municipal Code to establish a Cannabis Business Pilot Program to regulate all Cannabis businesses within the City. Prior to the adoption of this ordinance, the City Council held multiple public hearings regarding the various types of cannabis-related businesses (i.e. manufacturing, distribution, dispensaries, etc.).

Since that time a number of successful cannabis related businesses have chosen to make Riverbank their home. These include dispensaries and a distribution facility. Additionally (if approved), the former cannery site will be a large scale industrial cannabis cultivation, manufacturing and distribution operation. Each of these businesses have development agreements which lay out the terms of operation as well as the specific amount of public benefit fees to be paid to the City.

In June of 2018 the City Council approved a public benefit policy which details specifically how public benefit revenues could be spent. Specifically the approved policy stated the following:

1. Public Safety – i.e. Additional Deputy Sheriff's or enhancements to our Law Enforcement Contract.
2. Code Enforcement – i.e. Additional Code Enforcement Officers to monitor the activities under the Administrative Cultivation Permits.
3. Service Enhancements – i.e. Provide grant opportunities to our residents for Recreation Programs.
4. Offsets to other city departments for the administration of the fund (i.e. Finance).

Thus far, the fund has committed to funding additional deputy positions (including the upcoming community resource officer position), a part time code enforcement position, the citywide security camera system, additional infrastructure improvement for public safety, and minor offsets to the Finance Department for processing payments and accounting of the public benefit fund.

Since the adoption of the policy, Council has commented on various other uses that the public benefit fund could be used for. Specifically there has been concepts regarding funding for homeless services and separately recreation/parks/capital one time projects. Given that additional cannabis businesses are on the horizon it is conceivable that the fund will have additional revenues. The current policy does not allow for these types of expenditures however Council has the discretion to change and amend the policy from time to time as Council sees fit.

This item is intended to provide Council the opportunity to discuss what specific amendments to the policy should be made. When that direction is given, staff will amend the policy and place it on a future agenda for adoption. The discussion on amendments should be as specific as possible. There are two important reasons for this, first there are reoccurring costs (staffing, camera lease, etc.) that are currently charged to the public benefit account which means that they do not have backup funding elsewhere in our budget. In the event that our public benefit revenues decrease it is critical to have a sufficient fund balance to sustain the ongoing expenses for 1-2 fiscal years minimally.

With that said, if the Council is interested in expanding the policy to allow for other expenditures such as financial support for homeless service projects or one time capital projects (for example the community center kitchen project) staff would strongly recommend that the policy be amended so that those types of new expenditures that exceed \$25,000 are **only** authorized with Council approval on a project by project basis. This would ensure that Council is making an informed decision with regard to the Public Benefit fund balance and future anticipated expenditures within that account.

Alternatively Council could choose to keep the policy as is. This would ensure that funding is only used on the previously authorized uses.

FINANCIAL IMPACT

Any potential expansion of the policy may reduce the fund balance of the Public Benefit Fee, however new cannabis related businesses will likely increase the overall fund balance in the Public Benefit fund in future years.

ATTACHMENTS

None

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.5

SECTION 6: NEW BUSINESS

Meeting Date: October 13, 2020

Subject: Consideration of a **Resolution** of Support on Proposition 20 – The Reducing Crime and Keeping California Safe Act

From: Sean Scully, City Manager

RECOMMENDATION

It is recommended that the City Council consider whether or not to approve the attached resolution provided by the League of California Cities supporting Proposition 20.

SUMMARY:

The League of California Cities has requested that the City of Riverbank consider support for upcoming ballot measure Proposition 20 “The Reducing Crime and Keeping California Safe Act”. The league background information provided states the following:

“Under current law, many violent crimes in California that impact our communities such as domestic violence, date rape, the sex trafficking of children, and assault with a deadly weapon, are considered “nonviolent” offenses. This means that thousands of offenders who have been convicted of these violent crimes are eligible for early prison release, without serving their full sentences and without warning to their victims. In addition, habitual retail theft is affecting the small businesses in our communities. Theft has increased by 12 to 25 percent, with losses of more than \$10 billion dollars and counting, since the passage of Proposition 47 four years ago. This puts a strain on the already decreased local sales tax revenues related to COVID-19. In 2016, Proposition 47 reduced theft under \$950 to a simple misdemeanor, allowing offenders to steal repeatedly with virtually no consequence, provided each theft is below the \$950 threshold.

WHAT WILL PROPOSITION 20 DO?

Proposition 20 addresses two urgent and costly issues facing California cities - rising violent crime, and an increase in retail theft. Proposition 20 appropriately reclassifies as “violent” some heinous crimes currently categorized as “nonviolent” to ensure those convicted of these crimes serve their full sentences. Proposition 20 will protect our communities from violent offenders by preventing early release of those who have committed these serious crimes. Proposition 20 creates two additional categories of punishable crimes with increased penalties to address “serial” theft and “organized retail” theft, crimes that deeply affect our already struggling small businesses and residents.”

Staff has attached additional supplemental materials provided by the League of CA Cities. Additionally, the League of California Cities as an organization has endorsed Proposition 20 for the November ballot.

Opponents of Proposition 20 argue that the proposition seeks to roll back effective criminal justice reforms that have been past in recent years. Additionally, opponents of Proposition 20 note that the passage of this proposition would amount to significant increased incarceration and associated prison costs as a result of changes to the early release eligibility. Opponents also note that funding that would be used for ongoing prison costs as a result of Proposition 20 could be put to better use on rehabilitation, schools, mental health, homeless services etc. Finally, opponents have noted that drops in incarceration have not necessarily lead to a large increase in crime and that overall crime continues to stabilize at 1960's levels. (Attached is no on prop 20 fact sheets for Council review).

It should be noted that due to the last minute timing of this request for Council consideration staff has not analyzed or fact checked the arguments for and against Proposition 20. The consideration of adopting the resolution of support is a discretionary decision for the City Council to consider and decide upon.

FINANCIAL IMPACT

Due to the number of variables inherent within this Proposition it is very difficult to forecast the local financial impact to the City of Riverbank. Arguments could be made for increased costs regardless of the decision on Proposition 20. Actual support (or lack thereof) of the attached resolution has no immediate financial impact.

ATTACHMENTS

1. Resolution of Support
2. Supporting information on Prop 20 provided by the League.
3. Opposition Fact sheet on Prop 20

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, SUPPORTING PROPOSITION 20: THE REDUCING CRIME AND KEEPING CALIFORNIA SAFE ACT

WHEREAS, protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters, and other violent criminals should not be released early from prison; and

WHEREAS, recent changes to parole laws allowed the early release of dangerous criminals by the law's failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "nonviolent offenders"; and

WHEREAS, as a result, these so-called "non-violent" offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge; and

WHEREAS, a total of 33 of the state's 58 counties saw increases in their violent crime rates in 2017; and

WHEREAS, this measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations; and

WHEREAS, nothing in this act is intended to create additional "strike" offenses which would increase the state prison population, nor is it intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits; and

WHEREAS, recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal; and

WHEREAS, grocery store operators around the state have seen unprecedented increases in the amount of losses associated with shoplifting in their stores, with some reporting up to 150% increases in these losses; and

WHEREAS, shoplifting incidents have started to escalate in such a manner that have endangered innocent customers and employees; and

WHEREAS, since 2014, the total value of stolen property has increased every year. In 2018, the total value of stolen property in California was 32% higher than the total in 2014; and

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 13th day of October, 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

ACTION ALERT!!

Proposition 20 Reducing Crime and Keeping California Safe Act

Request for City Resolutions

BACKGROUND:

Under current law, many violent crimes in California that impact our communities such as domestic violence, date rape, the sex trafficking of children, and assault with a deadly weapon, are considered “nonviolent” offenses.

This means that thousands of offenders who have been convicted of these violent crimes are eligible for early prison release, without serving their full sentences and without warning to their victims.

In addition, habitual retail theft is affecting the small businesses in our communities. Theft has increased by 12 to 25 percent, with losses of more than \$10 billion dollars and counting, since the passage of Proposition 47 four years ago. This puts a strain on the already decreased local sales tax revenues related to COVID-19.

In 2016, Proposition 47 reduced theft under \$950 to a simple misdemeanor, allowing offenders to steal repeatedly with virtually no consequence, provided each theft is below the \$950 threshold.

WHAT WILL PROPOSITION 20 DO?

Proposition 20 addresses two urgent and costly issues facing California cities — rising violent crime, and an increase in retail theft.

Proposition 20 appropriately reclassifies as “violent” some heinous crimes currently categorized as “nonviolent” to ensure those convicted of these crimes serve their full sentences. Proposition 20 will protect our communities from violent offenders by preventing early release of those who have committed these serious crimes.

Proposition 20 creates two additional categories of punishable crimes with increased penalties to address “serial” theft and “organized retail” theft, crimes that deeply affect our already struggling small businesses and residents.

ACTION

The League of California Cities has endorsed Proposition 20 on the November ballot.

We ask that your city consider adopting a city resolution in favor of Proposition 20 as soon as possible. Please send a copy of your adopted city resolution (*sample attached*) to:

Keep California Safe Campaign, kelli.reid@mcnallytemple.com
League of California Cities, CityLetters@cacities.org
Your League Regional Public Affairs Manager



GOT QUESTIONS? WE'VE GOT ANSWERS!

Q1: Does this initiative repeal Propositions 47 and 57 or AB 109?

A1: No. This initiative fixes very specific flaws contained in Props 47 and 57 and AB 109 but does not repeal them. Specifically, it corrects four components of these initiatives and legislation that are adversely impacting public safety and victims:

- Reclassifies currently “nonviolent” crimes like rape of an unconscious person, sex trafficking of a child and felony domestic violence as “violent” — to prevent the early release of inmates convicted of these crimes
- Restores “teeth” to theft laws for serial thieves and organized theft gangs, which were removed under Prop. 47 leading to rampant and blatant abuse
- Reinstates DNA collection for those convicted of theft, domestic violence, drug and other crimes that are directly connected to more violent crimes and will help to solve rape, murder and other violent crimes — and to exonerate those wrongly accused
- Provides increased information and communication for courts, public defenders, DAs, sheriffs and victims; requires hearing for serial parole violators; adds factors for the Board of Parole Hearings consideration

Q2: The Attorney General’s Office estimates the initiative will cost anywhere from a couple million to tens of millions of dollars annually. Isn’t that too expensive?

A2: An estimated \$78 worth of property is stolen **every second** in California.¹ What's more, illegal drug use costs California **\$44 billion** annually through early death, impaired driving and violence² — yet Prop. 47 removed a judge's ability to impose court ordered drug rehabilitation programs to help those serial offenders to turn their lives around. Today, the courts can still provide the incentive to addicts by the promise of clearing their misdemeanor records but it's **purely voluntary**, and since there's no threat of jail time or a felony record, their incentive is very low.

So, dedicating a few million dollars to re-incentivize drug court, crack down on serial theft, and help prevent truly violent predators from re-offending is certainly an investment worth making — saving property, lives and even tax dollars over time.

Q3: Doesn't this put thousands more people in prison?

A3: No. This claim is either a misunderstanding or misrepresentation of the initiative. The initiative doesn't put **any** additional people in prison. It is specifically written to ensure that truly violent criminals are not released early; to help law enforcement solve more violent crimes; and to restore "teeth" to serial theft laws allowing the courts to sentence repeat offenders to county jail, thereby protecting property and once again making California's successful drug courts an integral part of our criminal justice system.

Q4: Some opponents allege that the initiative is racially biased claiming that most drug offenders who are arrested are Black and Latino. Is this true?

A4: The changes made within the initiative are to California government codes which, by law, must be applied equally to all. As to the demographic makeup of drug offenders, we defer to the California Dept. of Justice, which states that there were just over 28,000 felony drug arrests in 2018³, and of those 35.6% were White, 42.2% were Hispanic, 15.3% were Black and 6.8% were other ethnicities. During that same year there were just under 188,000 non-marijuana misdemeanor drug arrests, of which 44.4% were White, 39.8% Hispanic, 10.8% Black and 5% Other. When compared to the state's census breakdown — which is 36.8% White, 39.3% Hispanic, 6.5% Black and 21.3% Other — it would appear that Whites and Blacks are somewhat overrepresented in arrests, while "other" ethnicities are quite underrepresented. It is important to also remember that the initiative does not change Prop. 47 with regard to drug possession, which remains a misdemeanor.

However, since the initiative restores the incentive for drug addicts (who repeatedly steal to support their addiction) to complete rehabilitation programs through our successful drug court system, turn their lives around and **expunge** their criminal records through deferred entry of judgment (DEJ) — a benefit that Prop. 47 deprived them of — an argument could be made that the initiative offers a unique **benefit** to those whose addiction is a significant contributing factor to their criminal behavior.

Q5: The legislature passed AB 1065 to deal with serial theft, so hasn't that problem already been solved?

A5: Sadly, no. As we pointed out to the Legislature at the time, this law does little to solve serial theft since it requires law enforcement to establish probable cause at the point of arrest and for prosecution to prove conspiracy with the intent to resell and requires multiple convictions within a short period of time — which is extremely difficult, time intensive and not a cost-effective use of taxpayer monies.

On the other hand, Proposition 20 practically, effectively and fairly addresses the state's serial and organized theft crisis, created by Prop. 47, which increased the threshold for theft to be considered a felony from \$450 to \$950. Theft has increased by 12-25 percent, with losses of more than \$10 billion and counting since its passage.⁴

The initiative revises the theft threshold by giving the courts the authority to charge a misdemeanor or a felony for serial theft when a person has been convicted twice and arrested a third time for stealing at a value of at least \$250 (value threshold lowered from \$950 to \$250 for the third time only). Unlike AB 1065, the initiative does not require a conspiracy conviction and defines "organized theft" as just two or more persons working in concert to steal. The initiative also addresses the rampant theft problem of credit/debit and identity theft. Given that these crimes are so intrusive into the lives of their victims, the initiative returned the authority to the courts providing them the flexibility to address each criminal act on its own merit.

¹<https://www.zdnet.com/article/california-abandons-2-billion-court-management-system/>

²<https://www.sciencedaily.com/releases/2017/02/170217012901.htm>

³Crime in California, 2018, California Department of Justice

⁴openjustice.doj.ca.gov



Ad paid for by Yes on 20 – Keep California Safe, a Project of the
California Public Safety Partnership Issues Committee
Committee major funding from
Devin Nunes Campaign Committee
San Bernardino County Sheriff's Employees' Benefit Association
Funding details at www.fppc.ca.gov

Proposition 20

FIXING PROP. 47 — NOT REPEALING IT

Prop. 47

Raised the theft limit from \$450 to \$950

Made drug possession a misdemeanor

Made petty theft a misdemeanor

Made drug possession and theft a misdemeanor, weakening DNA collection on “indicator crimes,” which a report issued by Jerry Brown scientifically connected to serial rape and homicide

Made drug possession and theft a misdemeanor, reducing the use and effectiveness of court-imposed drug addiction programs

Proposition 20

Prop. 20 doesn't change that

Prop. 20 doesn't change that

Prop. 20 changes that **ONLY** when the theft is from a repeat/serial offender

Prop. 20 changes that by setting a higher standard for DNA collection on misdemeanor drug possession, theft and domestic violence convictions, helping law enforcement solve more violent crimes and/or exonerate those wrongly accused

Prop. 20 once again makes California's successful drug courts an integral part of our criminal justice system

yes20
Protect Victims of Violent Crime

Ad paid for by Yes on 20 – Keep California Safe, a Project of the
California Public Safety Partnership Issues Committee
Committee major funding from
Devin Nunes Campaign Committee
San Bernardino County Sheriff's Employees' Benefit Association
Funding details at www.fppc.ca.gov



NO ON 20 THE STOP PRISON SPENDING SCAM

Proposition 20 is a **SCAM** funded by special interests that want to spend tens of millions of your taxpayer dollars on prisons while rolling back effective criminal justice reforms overwhelmingly supported by California voters.

X WASTES YOUR MONEY

The non-partisan Legislative Analyst says Prop 20 will cost, “tens of millions of dollars” every year which could force **DRACONIAN CUTS** to:

- Rehabilitation in prison for people getting out
- Mental health programs proven to reduce repeat crime
- Schools, healthcare, housing, and homelessness
- Fire protection and public safety programs
- Support for victims

X IS EXTREME

Prop 20 means petty theft – stealing a bike – could be charged as a serious felony. That’s extreme, **OUT OF LINE** with other states, and means more teenagers and people of color could be locked up for years for low-level, non-violent crimes.

X ROLLS BACK PROGRESS

Californians are demanding change to the criminal justice system and have overwhelmingly voted to reduce wasteful prison spending. Prop 20 **REVERSES** that progress. Rehabilitating people before prison release is the most effective way to improve public safety. Prop 20 could eliminate funding for what we know works, and waste money on more prisons we don’t need.

X OPPOSED BY

Chief Probation Officers of California • California Partnership to End Domestic Violence • The National Center for Victims of Crime • The California Democratic Party • ACLU of California • Public Safety Leaders • Governor Jerry Brown • Crime Survivors for Safety and Justice • SEIU California • California Teachers Association • Californians for Safety and Justice

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