CITY COUNCIL / LRA BOARD
Mayor/Chair
Richard D. O'Brien
Vice Mayor/Chair (CM-D1) Luis Uribe
Council/Authority Members
District 2 Rachel Hernandez
District 3 Cal Campbell
District 4 Darlene Barber-Martinez

City of Riverbank
Regular City Council and
Local Redevelopment Authority
Board Meetings
(via Virtual Platform Only)
Council Chambers is located at
6707 Third St., Suite B
Riverbank, CA 95367

choose civility

AGENDA

TUESDAY, MAY 25, 2021– 6:00 P.M.

(THE AGENDA PACKET IS ONLINE AT HTTP://WWW.RIVERBANK.ORG/AGENDACENTER)

***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.**

1. CALL TO ORDER

2. FLAG SALUTE

3. ROLL CALL

4. AGENDA CHANGES

5. 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.*

6. 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 the last page of this agenda for the Public Comment Procedures via ZOOM.

7. 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 7.1. Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 7.2. A **Resolution** of Approving Waste water and Park System Development Fee Credits for McRoy-Wilbur Communities for Countryside 1 and 2 Subdivision.

8. UNFINISHED BUSINESS

Item 8.1. **Second Reading by Title Only and Adoption of Proposed Ordinance No. 2021-002 approving a First Amendment to the Development Agreement By and Between the City of Riverbank and Pacafi Cooperative, Inc., a California Cooperative Corporation Doing Business as Flavors** – The Planning Commission of the City of Riverbank recommended that the City Council adopt an Ordinance to approve the first amendment to the development agreement by and between the City of Riverbank and Pacafi Cooperative, Inc., a California cooperative corporation doing business as Flavors.

9. WORKSHOPS

Information and educational presentation of a subject matter to receive direction and to prepare for its future consideration and decisions by the City Council.

Item 9.1. **Workshop - Fiscal Year 2021-22 Special Revenue & Enterprise Fund Budget** – It is recommended that the City Council receive a presentation on the Fiscal Year 2021-22 Special Revenue and Enterprise Fund Proposed Budgets and provide feedback in anticipation of the adoption of the Final Budget on June 22, 2020.

Item 9.2. **Workshop – American Rescue Plan Act** – It is recommended that the City Council consider the workshop information provided by staff on the American Rescue Act and provide direction to staff as appropriate regarding the preliminary allocation of American Rescue Act funding that will be received by the City of Riverbank in 2021 and 2022.

10. NEW BUSINESS

Item 10.1. **A Resolution of the City Council of The City of Riverbank, California, Approving a Subdivision Improvement Agreement for Bruin Heights with D.R. Horton Ca3 Inc. and Authorize the City Manager to Execute the Agreement** – It is recommended that the City Council consider the proposed resolution approving the Subdivision Improvement Agreement with D.R. Horton CA3 Inc. for Bruin Heights and directing the City Manager to execute the agreement.

Item 10.2. **A Resolution Approving Final Map 02-2021 for D.R. Horton CA3, Inc. for 6272 Central Avenue (APN: 062-021-008) –** Approve the Final Map ("FM") for Bruin Heights based on the required finding that the map is in conformity with the provisions of subdivision law and city code. The project consists of a Final Map to subdivide approximately 9.1 acres into fifty-one (51) buildable residential lots (overall density of 5.6 du/acre), associated street, sewer, water, and storm drainage improvements at 6272 Central Avenue.

Item 10.3. **A Resolution Authorizing the City Manager to Execute a Contract with National Demographics Corporation for Municipal Redistricting Services** – As a preliminary step to Riverbank's redistricting process of its Councilmember election district-based boundaries, it is recommended that the City Council approve the proposed resolution to secure demography and redistricting consultant services from National Demographics Corporation.

11. COMMENTS/REPORTS

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

Item 11.1. Staff

Item 11.2. Council/Authority Member

Item 11.3. Mayor/Chair

12. 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 adjourning to Closed Session.

Item 12.1. **LIABILITY CLAIMS**
Pursuant to Government Code § 54956.95
Claimant: Antonio Garcia
Agency claimed against: City of Riverbank

Item 12.2. **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 12.3. **Threat to Public Services or Facilities**
Pursuant to Government Code § 54957
Consultation with: City of Riverbank Director of Emergency Services

Item 12.4. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Property: 6435 8th Street; APN 132-015-038
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Evelyn A. Mitchell 2013 Rev. Trust, Jan Tlascala
Under Negotiation: Price, terms of payment, or both

Item 12.5. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Property: 2916/2910 Sierra Ave.; APN 132-022-025 & APN 132-022-026
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Evelyn A. Mitchell 2013 Rev. Trust, Jan Tlascala
Under Negotiation: Price, terms of payment, or both

Item 12.6. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Property: 2825 Santa Fe Ave.; APN 132-024-008
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Evelyn A. Mitchell 2013 Rev. Trust, Jan Tlascala
Under Negotiation: Price, terms of payment, or both

13. ADJOURNMENT OF THE PUBLIC PORTION OF THE MEETING

The City Council and the LRA Board will be going into Closed Session.

14. 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 may contact the City Clerk at cityclerk@riverbank.org or call (209) 863-7198

15. ADJOURNMENT OF THE REGULAR MEETING (Immediately after Closed Session)

(The next regular meeting is on Tuesday, June 8, 2021 at 6:00 p.m.)

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 Thursday, May 20, 2021** **/s/*Annabelle H. Aguilar, CMC, City Clerk 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 VIRUAL 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 https://www.youtube.com/channel/UCq2x8QChEcknBq7uuJLcZow
- 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:

- Written comments must be received **by 4:00 p.m.** on the day of the meeting; and
- 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/81781122246
- Join by accessing website: https://zoom.us/join
  - **Webinar ID: 817 8112 2246**
- Join by telephone: **1 669 900 9128** **plus Webinar ID**

HOW DO I COMMENT? The Mayor will announce when public comment may be made for the agenda item being considered, 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.
  - Once you confirm that you want to be unmuted, your 3 minutes will begin for you to make your comments.
- Using a Phone – press ***9** to "raise the hand".
  - Once you confirm that you want to be unmuted, your 3 minutes will begin for you to make your comments.

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

RIVERBANK CITY COUNCIL / LRA AGENDA ITEM NO. 7.1

SECTION 7: CONSENT CALENDAR

Meeting Date:	May 25, 2021
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 AGENDA ITEM NO. 7.2

SECTION 7: CONSENT CALENDAR

Meeting Date:	May 25, 2021
Subject:	A **Resolution** of Approving Waste water and Park System Development Fee Credits for McRoy-Wilbur Communities for Countryside 1 and 2 Subdivision
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council consider McRoy-Wilbur Communities System Development fee credits assessed on the construction of dwelling units in the Countryside 1 and 2 subdivision and approve the Resolution (Attachment 1).

SUMMARY

In April 2020, McRoy-Wilbur Communities submitted a written request to the City to defer System Development Fee payments which are assessed on the construction of homes in the Countryside 1 (45 lots) and 2 (44 lots) subdivision. The request, which was approved by Council, required the fees to be paid at final inspection rather than at permit issuance. This item has been brought forward to the City Council for consideration because McRoy Wilbur Communities is able to receive fee credits for some of the work they have done. These credits affect the amount of fees they need to pay on each building permit.

BACKGROUND

The City currently collects System Development Fees at Building Permit issuance to defray the impact of new development as authorized by Government Code §66000-66025. The City's System Development Fee program is codified in §150.30 titled "System Development Fees" which establishes the authority for imposing and charging the fees. System Development fees are collected in order to:

1) To provide an adequate and constant method for the financing of the unfunded portion of need systems development costs throughout the city, reasonably related to projected community growth.
2) To promote the orderly and efficient expansion of public improvements to adequately meet the domestic and economic needs of the community and to minimize adverse fiscal and environmental impacts of new development

3) To ensure the continuation of necessary services including, but not limited to, police and general administrative services.
4) To establish equitable methods for minimizing public facility and service costs to the city associated with new development.

As defined within Riverbank's municipal code, System Development Fees are ***charged to new construction, including the expansion of and/or the addition to an existing, nonresidential structure, to mitigate the unfunded portion of the determined impact of the development***.

SYSTEM DEVELOPMENT FEES

On April 28, 2020, the City approved a request from McRoy Wilbur Communities to defer their System Development Fees from payment at permit issuance to payment at final inspection. This project, Countryside1 and 2 (89 total lots), is assessed the following fees per dwelling unit at final inspection:

System Development Fee Type	Amount
Streets/Public Works	$3,079.28
Water	$7,251.83
Waste Water	$3,162.08
Storm Drain	$7,146.09
Parks and Recreation	$4,038.88
Police/General Government	$1,462.88
5% Administrative Fee	$1,375.82
Total System Development Fees	$27,516.32*
Plus $100.00 deferral processing fee =	$ 27,616.32
Plus Building Permit fees of $3,775 =	$ 31,391.32 total fees per dwelling unit

*Approximation based on 1,929 sf dwelling unit with garage and front porch, total of 2,523 sf.

McRoy Wilbur Communities is requesting Waste Water fee credits for work completed:

Item	Description	SDF 2021 $	Projected Costs	Notes	Fee Credit Per Lot
A	CA Ave Sewer (100% Reimbursable)	$ 3,170.00			
1	18" sewer		$ 140,526.00		
2	Sewer manhole (60" oversize)		$ 31,900.00		
3	Outside drop sewer manhole (60% oversize)		$ 24,300.00		
4	Inside drop sewer manhole (60" oversize)		$ 24,300.00		
5	18" stub and plug		$ 1,700.00		
6	Connect to existing 18" sewer		$ 3,172.00		
7	3" HMA over 9" AB pavement – west of subdivision		$ 53,592.00		
8	AB shoulder backing – west of subdivision		$ 7,092.00		
	Waste Water Subtotals		**$ 286,585.00**		
	30% P, S, & E		$ 85,975.50	89 lots	$ 4,186.07
	Total Reimbursable Cost		$ 372,560.50		

McRoy-Wilbur Communities is also requesting fee credits for the installation of a park in Countryside 1:

Item	Description	SDF 2021 $	Projected Costs	Notes	Fee Credit Per Lot
8	Park Improvements (100% reimbursable)	$ 4,049.00			
1	1" water service with meter box		$ 2,300.00		
2	2" water service with B.F.P.		$ 10,140.00		
3	4" sewer lateral with clean out		$ 810.00		
4	Street Light (including 1" conduit)		$ 17,700.00		
5	6" vertical curb and gutter		$ 26,196.00		
6	4" thick sidewalks		$ 16,589.40		
7	Handicap ramps (labor only)		$ 1,800.00		
8	2.5" HMA over 7.5" AB pavement		$ 53,068.40		
9	Parks landscaping and irrigation		$ 248,000.00		
10	Park facilities, playground equipment, surfacing		$ 400,000.00		
	Park Subtotals	**$ 306,361.00**	**$ 776,603.80**		
	City allocation of SDF (direct reimbursement)		$ (301,500.00)		
	Final reimbursement to developer		$ 475,103.80	89 lots	$ 5,338.24

ANALYSIS

The City Manager, Assistant City Manager, and City Engineer analyzed the fee credit request received from McRoy Wilbur Communities. Based on the financial analysis performed, staff recommends that the City Council consider and approve the estimated fee credits for the additional work and oversizing performed by McRoy Wilbur Communities.

FINANCIAL IMPACT

The System Development Fee program is designed as a mechanism to collect impact fees to build infrastructure necessary to support new growth City-wide. Careful evaluation of each proposed project is necessary to understand potential funding shortfalls which might be created as a result of granting fee credit requests. In the case presented above, partial fees would be credited against developer obligations.

STRATEGIC PLAN

This item is indirectly related to the City's Strategic Plan through the System Development Fee program update.

ATTACHMENT

Attachment 1: CC Resolution No. 2021-XXX

CITY OF RIVERBANK

RESOLUTION NO. 2021-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING WASTE WATER AND PARK SYSTEM DEVELOPMENT FEE CREDITS FOR MCROY-WILBUR COMMUNITIES FOR COUNTRYSIDE 1 AND 2 SUBDIVISION

WHEREAS, it is necessary as established in the Riverbank Municipal Code for the proper and effective operation of City Government to establish, amend, or authorize fees for services in order to provide for the financial support of City Government; and

WHEREAS, from time to time, the City Council reviews fees and fee credits to ensure that they are adequately supporting the operation of City Government; and

WHEREAS, McRoy-Wilbur Communities has requested the City Council approve Waste Water and Park fee credits assessed on the construction of Countryside 1 and 2 dwelling units at Building Permit final; and

WHEREAS, in accordance with the direction and approval by the City Council made at their regular meeting on May 25, 2021, the following is the estimated Waste Water fee credits for Countryside 1 and 2:

Item	Description	SDF 2021 $	Projected Costs	Notes	Fee Credit Per Lot
A	CA Ave Sewer (100% Reimbursable)	$ 3,170.00			
1	18" sewer		$ 140,526.00		
2	Sewer manhole (60" oversize)		$ 31,900.00		
3	Outside drop sewer manhole (60% oversize)		$ 24,300.00		
4	Inside drop sewer manhole (60" oversize)		$ 24,300.00		
5	18" stub and plug		$ 1,700.00		
6	Connect to existing 18" sewer		$ 3,172.00		
7	3" HMA over 9" AB pavement – west of subdivision		$ 53,592.00		
8	AB shoulder backing – west of subdivision		$ 7,092.00		
	Waste Water Subtotals		**$ 286,585.00**		
	30% P, S, & E		$ 85,975.50	89 lots	$ 4,186.07
	Total Reimbursable Cost		**$ 372,560.50**		

WHEREAS, in accordance with the direction and approval by the City Council made at their regular meeting on May 25, 2021, the following is the estimated Park fee credits for Countryside 1 and 2:

Item	Description	SDF 2021 $	Projected Costs	Notes	Fee Credit Per Lot
8	Park Improvements (100% reimbursable)	$ 4,049.00			
1	1" water service with meter box		$ 2,300.00		
2	2" water service with B.F.P.		$ 10,140.00		
3	4" sewer lateral with clean out		$ 810.00		
4	Street Light (including 1" conduit)		$ 17,700.00		
5	6" vertical curb and gutter		$ 26,196.00		
6	4" thick sidewalks		$ 16,589.40		
7	Handicap ramps (labor only)		$ 1,800.00		
8	2.5" HMA over 7.5" AB pavement		$ 53,068.40		
9	Parks landscaping and irrigation		$ 248,000.00		
10	Park facilities, playground equipment, surfacing		$ 400,000.00		
	Park Subtotals	**$306,361.00**	**$ 776,603.80**		
	City allocation of SDF (direct reimbursement)		$ (301,500.00)		
	Final reimbursement to developer		$ **475,103.80**	89 lots	$ 5,338.24

WHEREAS, the aforementioned fee credits only apply to Riverbank's Waste Water and Park System Development Fees and does not include any permit fees, plan check fees, inspection fees, or fees imposed by any other agency such as the Fire District, School District, or Stanislaus County.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the Countryside 1 and 2 Waste Water and Park fee credits as stated in the above tables for an estimated total of (+/-) $4,186.07 per lot and (+/-) $372,650.23 total fee credits.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 25th day of May 2021; motioned by ____________, seconded by ___________________, and upon roll call was carried by the following vote of _-_:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:

____

Annabelle Aguilar
City Clerk

APPROVED:

____

Richard D. O’Brien
Mayor

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 8.1

SECTION 8: UNFINISHED BUSINESS

Meeting Date:	May 25, 2021
Subject:	Second Reading by Title Only and Adoption of Proposed **Ordinance No. 2021-002** approving a First Amendment to the Development Agreement By and Between the City of Riverbank and Pacafi Cooperative, Inc., a California Cooperative Corporation Doing Business as Flavors
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

The Planning Commission of the City of Riverbank recommended that the City Council adopt an Ordinance to approve the first amendment to the development agreement by and between the City of Riverbank and Pacafi Cooperative, Inc., a California cooperative corporation doing business as Flavors. It is recommended that the City Council conduct the second reading by title only of Ordinance No. 2021-002 and consider its adoption.

BACKGROUND

The City Council adopted Ordinance No. 2017-007 on August 22, 2017, permitting certain types of cannabis businesses in the City and providing zoning restrictions for each type of cannabis use. Ordinance 2017-007 requires each cannabis business applicant execute a development agreement with the City and obtain a conditional use permit prior to conducting commercial cannabis activity.

On January 9, 2018, the City Council adopted Ordinance No. 2018-001 approving a Development Agreement by and between the City of Riverbank ("City") and Pacafi Cooperative, Inc., doing business as Flavors ("Flavors") for the purpose of operating a cannabis dispensary located at 2213 Patterson Road in the City of Riverbank, Assessor's Parcel Number 075-026-044. The term of the Development Agreement expired on February 9, 2021.

Further, on May 11, 2021 the City Council approved the first reading of the first proposed amendment to the Development Agreement ordinance. This staff report supports the second reading of the ordinance.

DISCUSSION

Flavors wishes to enter into a First Amendment to the Development Agreement (Attachment 2) for a term of three (3) years. The First Amendment would retain the same major elements from the previous agreement, and Flavors would continue to operate a cannabis dispensary with a Type 10 Retail license at the Site.

The primary difference would be an adjustment to the current Public Benefit amount. Operating a cannabis dispensary business provides Flavors with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. Cannabis businesses offset these impacts through a monthly payment classified as a "Public Benefit" amount. The Public Benefit is designed and intended to mitigate any potential impacts of the Project on the community. The First Amendment adjusts the Public Benefit to a fixed amount of Thirty Thousand Dollars ($30,000) per month (Exhibit A, redline). The specifics with regard to the amended public benefit amounts were discussed at length by the City Council at their February 9, 2021 regular meeting. During that meeting Council discussed the current state of change with regard to the retail cannabis market compared to when Flavors was originally approved (as one of the first in the County at that time). The Council, after some discussion, directed staff to move forward with the process of negotiating an amendment to the development agreement with Flavors for a new three (3) year term and a fixed public benefit amount of $30,000 per month.

Staff has prepared an ordinance for City Council approval of the First Amendment. At their regular meeting of April 20, 2021, the Planning Commission with a vote of 5-0 recommended that the City Council adopt the First Amendment (Attachment 3).

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."

ENVIRONMENTAL DETERMINATION

Flavors' project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301, applicable to existing facilities involving no expansion of the facility.

RECOMMENDATION

Adopt an Ordinance approving a development agreement by and between the City of Riverbank ("City") and Pacafi Cooperative, Inc., a California cooperative corporation doing business as Flavors.

ATTACHMENTS:

1. Ordinance No. 2021-002
2. DA First Amendment
   Exhibit A – Development Agreement
3. Planning Commission Resolution No. 2021-009

CITY OF RIVERBANK

ORDINANCE NO. 2021-002

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK AND PACAFI COOPERATIVE, INC., A CALIFORNIA COOPERATIVE CORPORATION DOING BUSINESS AS FLAVORS

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, in accordance with City Council Ordinance No. 2018-001, on or about January 9, 2018, City and Developers, entered into a development agreement ("Development Agreement") that allowed Developer to operate a cannabis dispensary business (the "Project"); and

WHEREAS, pursuant to Government Code Section 65868, City and Developer may amend the Development Agreement after notice of the amendment has been provided and the City Planning Commission and City Council hold public hearings regarding the Amendment; and

WHEREAS, City and Developer seek to enter into an amendment to the Development Agreement pursuant to state law and the Riverbank Municipal Code to update Developer's public benefit obligations and extend the term of the Development Agreement ("First Amendment"); and

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

WHEREAS, the Planning Commission held a duly noticed public hearing on April 20, 2021, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, on May 11, 2021, the City Council held a duly noticed public hearing to consider this ordinance for the Development Agreement First Amendment and held a duly noticed public meeting on _________, to consider its adoption; and

WHEREAS, the City and Developer intend to enter into the First Amendment pursuant to State law and the Riverbank Municipal Code; and

WHEREAS, the City Council, based on its independent review and analysis of staff's recommendations, oral and written testimony, and consideration and deliberation of the record as a whole, finds and declares 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 First Amendment:

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 First Amendment to the Development Agreement by and between Pacafi Cooperative, Inc., a California cooperative corporation doing business as Flavors, and the City of Riverbank for the development of the Project, and instructs the City Manager to execute the First Amendment to 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 on April 28, 2021, in the Riverbank News, a newspaper of general circulation; and notices of the public hearing on the proposed Development Agreement were mailed on April 28, 2021, to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

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

SECTION 5. ***Severability.*** 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 (________), 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 by title only and introduced at a regular meeting of the City Council of the City of Riverbank on 05/11/2021. 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 11th day of May, 2021; motioned by Councilmember , seconded by Councilmember ; moved said ordinance by a City Council vote of :

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:

____
Annabelle H. Aguilar, CMC
City Clerk

APPROVED:

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

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

APN: 075-026-044

FIRST AMENDMENT TO

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK

PACAFI COOPERATIVE

(Amendment to Recorded Document No. 2018-0004794-00)

Ordinance No. 2021-xxx, Adopted on _____ __, 2021

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK, PACAFI COOPERATIVE AND GUARANTY HOLDINGS OF CALIFORNIA, INC.

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK AND PACAFI COOPERATIVE ("First Amendment") is made and entered into this ____________ day of __________, 2021, by and between the **CITY OF RIVERBANK**, a municipal corporation of the State of California ("City") and **PACAFI COOPERATIVE** ("Developer"), a California cooperative association doing business as **FLAVORS**. City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties". The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

This First Amendment is entered into with reference to the following facts:

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. 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 the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

E. 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.

F. On November 20, 2017, the Riverbank Planning Commission ("Planning Commission") adopted Resolution No. 2017-025 recommending the Riverbank City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.

G. On December 12, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.

H. On or about January 9, 2018, City and Developers, entered into a development agreement that allowed Developer to operate the Project within the City (the "Agreement"), attached hereto as **Exhibit A**.

I. Pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into the Agreement pursuant to Ordinance No. 2018-001.

J. City recorded the Agreement in the Office of the Stanislaus County Recorder as Document No. 2018-0004794-00.

K. Pursuant to Government Code section 65868, an amendment to a development agreement may be made by mutual consent of the parties after notice of the amendment has been provided and the Planning Commission and City Council hold public hearings regarding the amendment.

L. The City and Developer seek to enter into this First Amendment pursuant to state law and the Riverbank Municipal Code to update Developer's public benefit obligations and extend the term of the Development Agreement.

A. Government Code section 65867.5 and the City Development Agreement Resolution requires the Planning Commission hold a public hearing to review an application for a development agreement.

B. On April 20, 2021, after a properly noticed public hearing, the Planning Commission reviewed this First Amendment and provided its recommendations to the City Council.

C. Pursuant to Government Code sections 65867 and 65868, the City Council of the City held a duly noticed and properly conducted public hearing on May 11, 2021, and __________ ___, 2021, regarding this First Amendment. Pursuant to Government Code section 65867.5, the City Council found the provisions of this First Amendment to be consistent with the City's General Plan, and authorized execution of this First Amendment.

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

1. Recitals and Exhibits. The above recitals and exhibits attached to this First Amendment are incorporated by this reference and hereby made a part of this First Amendment and the Agreement.

2. Effect of Agreement. Except as provided herein, the defined terms used in this First Amendment shall have the same meaning as the terms have in the Agreement. Unless expressly amended by this First Amendment, all other terms and provisions of the Agreement shall remain in full force and effect. If any terms or provisions of this First Amendment conflict with terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control.

3. Entire Agreement. The Agreement, together with this First Amendment, constitute the entire Agreement.

4. Effective Date. The effective date (the "Effective Date") of this First Amendment shall be retroactive to the expiration of the Agreement. This First Amendment shall be recorded by the City in the County of Stanislaus within ten (10) days following the date that all parties have executed this First Amendment.

5. Amendments.

(a) Section 1.7 "Term" of the Agreement is hereby deleted and replaced with a new Section 1.7, as follows:

Section 1.7. Term. The "Term" of this Agreement is three (3) 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) calendar year (the "Tolling Period"). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year to comply with federal or state law.

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

(b) Section 4.2 (a) "Public Benefit" of the Agreement is hereby deleted and replaced with a new Section 4.2 (a), as follows:

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developers 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 Developers (the "Public Benefit"). In consideration of the foregoing, Developers shall remit to the City as follows:

Effective Date	No Public Benefit Due.
First (1st) Business Day of 1st Month following the Effective Date of this Agreement through the end of the Term of this Agreement.	Thirty Thousand Dollars ($30,000) per month

6. Counterparts. This First Amendment may be executed in several counterparts, each which shall be deemed an original, but which together shall constitute one and the same instrument.

7. Exhibits. The following exhibits are expressly incorporated as a part of this Second Amendment:

Exhibit A: The Agreement

8. Authority. The Parties and their signatories below warrant and represent that they have the power and authority to enter into this First Amendment and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purposed 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 First Amendment have been fully complied with. Further, by entering into this First Amendment, each Party represents that this First Amendment has not caused any breach of the terms or conditions of any other contract or agreement to which such Party is obligated.

[SIGNATURES ON FOLLOWING PAGE]

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

"CITY"

Date:___________________, 2021

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:___________________, 2021

PACAFI COOPERATIVE, INC. DBA FLAVORS, a California cooperative corporation

By: ______________________________

Its: ______________________________

{CW099043.3}

<u>California All-Purpose Acknowledgment</u>

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)

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 – Development Agreement

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of ___________, 2021, by and between the **CITY OF RIVERBANK**, a California municipal corporation ("City") and **PACAFI COOPERATIVE, INC.,** a California cooperative corporation doing business as **FLAVORS** ("Developer"). City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

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

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis

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

D. Developer proposes to improve, develop, and use real property to operate a commercial Cannabis Dispensary, in strict accordance with California Cannabis Laws, and the Municipal Code of the City of Riverbank, as each may be amended from time to time (the "Project").

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

F. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 ("City Development Agreement Resolution") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.

G. The City Development Agreement Resolution requires a written application with specified data to be submitted to the City for consideration of any development agreement.

H. Developer submitted an application to the City for consideration of a development agreement for the Project.

I. Developer leases that certain real property located at 2213 Patterson Road in the City of Riverbank, County of Stanislaus, State of California, Assessor's Parcel Number 075-026-044, of which Developer intend to improve approximately seven thousand six hundred and sixty-eight (7,668) square feet of space (the "Site"), more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**.

J. Government Code section 65865 requires that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.

K. Developer has leased the Site for the purpose of operating the Project. A copy of the lease is attached hereto as **Exhibit C**, within satisfaction of the requirement of Riverbank Municipal Code Chapter 120. The legal owner of the Site is aware of, and agrees to, the operation of the Project upon the Site.

L. On 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 requires the Planning Commission hold a public hearing to review an application for a development agreement.

N. On April 20, 2021, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.

O. On April 20, 2021, the Planning Commission recommended the City Council adopt Ordinance No. 2021-____, which would allow Developer to operate the Project at the Site.

P. On May 11, 2021, 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. 2021-_____.

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) create a physical environment that is consistent with and complements City's goals and visions; (iii) protect natural resources from adverse impacts; (iv) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; and (vi) reduce the economic risk of development of the Site to both City and Developer.

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 and have conducted all necessary proceedings in accordance with Riverbank Municipal Code for the approval of this Agreement.

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

AGREEMENT

ARTICLE 1
GENERAL PROVISIONS

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

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

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

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

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

(a) "Additional Insureds" has the meaning set forth in Section 6.1.

(b) "Additional Licenses" has the meaning set forth in Section 2.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) "Developer" means Pacafi Cooperative, Inc. doing business as Flavors. Developer also has the meaning set forth in Section 6.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(zz) "Type 10 license" or "Retail" means a state license issued by the Bureau pursuant to the California Cannabis Laws for the retail sale of cannabis and cannabis products.

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 three (3) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

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

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

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

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

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

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Five Thousand Dollars ($5,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, "Processing Costs"), and the first installment of the Public Benefit. The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

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

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

ARTICLE 2
DEVELOPMENT OF PROPERTY

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

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

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

Type 10	Retailer

Developer shall be permitted to use the Site consistent with the Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, Developer shall immediately cease Commercial Cannabis Activity on the Site. Developer shall also, within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

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

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

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

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

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

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

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

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

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

Section 2.12. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3
ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

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

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

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

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

ARTICLE 4
PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

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

Section 4.2. Public Benefit.

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

Effective Date	No Public Benefit Due.
First (1st) Business Day of each Month until end of Term.	$30,000 flat fee

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

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

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

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

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

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

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

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

ARTICLE 5

PUBLIC FACILITIES, SERVICES, AND UTILITIES

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

ARTICLE 6
INSURANCE AND INDEMNITY

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

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

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

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

(iii) Contain standard separation of insured provisions.

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

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

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

(iii) Contain standard separation of insured provisions.

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

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

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

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

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

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

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

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

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

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

ARTICLE 7
MORTGAGEE PROTECTION

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

ARTICLE 8
DEFAULT

Section 8.1. General Provisions.

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

(b) After expiration of the ten (10) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within ten (10) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Project.

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

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

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

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

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable. The reasonable cost for City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

Section 8.3. Estoppel Certificates.

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

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

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

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

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

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

ARTICLE 9
TERMINATION

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

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

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

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

ARTICLE 10
OTHER GENERAL PROVISIONS

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

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

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

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

Attention: City Manager

and

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

If to Developer: ________________________
____
____
____

If to Developer: ________________________
____
____
____

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

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

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

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

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

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

Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

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

Section 10.11. Standard Terms and Conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

"CITY"

Date: ________________, 2021

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:___________________, 2021

PACAFI COOPERATIVE, INC. DBA FLAVORS, a California cooperative corporation

By: ____________________________

Its: ____________________________

California All-Purpose Acknowledgment

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

State of California)
)
County of___________________)

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

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

Witness my hand and official seal.

____
(Signature)

(Seal)

California All-Purpose Acknowledgment

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

State of California)
)
County of____________________)

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

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

Witness my hand and official seal.

____
(Signature)

(Seal)

EXHIBIT A

The land referred to is situated in the County of Stanislaus, City of Riverbank, State of California, and is described as follows:

Parcel 2 of that certain Parcel Map recorded August 14, 1998, in Book 48 of Parcel Maps, at Page 96 of Official Records.

APN: 075-026-044-000

Exhibit B

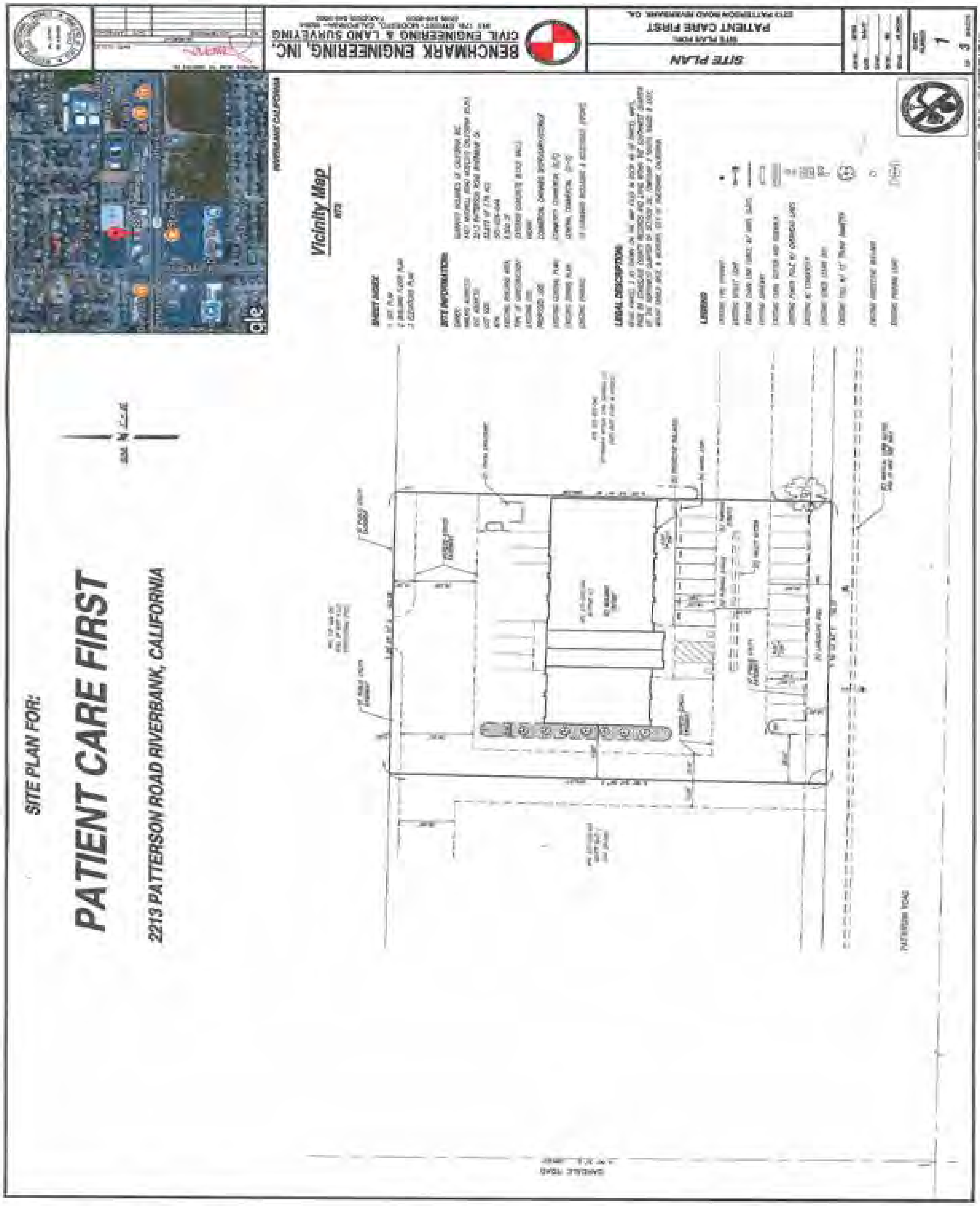

SITE PLAN FOR:
PATIENT CARE FIRST
2213 PATTERSON ROAD RIVERBANK, CALIFORNIA
Vicinity Map
BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
SITE PLAN
PATIENT CARE FIRST

Exhibit C

THREE (3) YEAR LEASE AGREEMENT

TABLE OF CONTENTS

3 YEAR LEASE AGREEMENT

In consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the following described premises upon the following terms and conditions:

Article 1
BASIC LEASE PROVISIONS:

Effective Date: 11/01/2017

Landlord: Guaranty Holdings of California

Tenant: Pacafi Cooperative Inc.

Tenant's Trade Name & Use: Commerical Cannibis dispensary only (Article 7)
Space to be used solely for retail sales of cannibis and as a Cannibis dispensary

Lease Term: 3 years (Article 4)

Minimum Monthly Rental: $9020.00 per month for first year (Article 5A)

To Landlord: 2908 E. Whitmore Avenue, H-216
Ceres, California 95307

To Tenant: To the Premises at 2213 Patterson Rd. Riverbank CA (Article 26)

Security Deposit: $ 9020.00 (Article 28)

Improvements: Tenant is responsible for all interior improvements and fixtures. Any expense concerning said improvements are the tenant's responsibility.

References in this Article 1 to other Articles are for convenience and designate some of the other Articles where references to the particular Fundamental Lease Provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided under each such Fundamental Lease Provision. In the event of any conflict between any Fundamental Lease Provision and the balance of the Lease, the latter shall control.

Article 2
OPTION

Tenant is not given the option to extend the term as of this time.

Article 3
PREMISES

The Landlord hereby leases and demises unto the Tenant and the Tenant hereby leases and takes from the Landlord, as of the Effective Date set forth in Article 1 ("Effective Date") for the term, at the rental and upon the covenants and conditions hereinafter set forth, the commercial space located at 2213 Patterson Rd. Riverbank, CA., which is referred to herein as the "premises".

Article 4
TERM

The Lease shall commence on November 1, 2017, and shall continue thereafter during the Lease Term specified in Article 1 hereof, unless sooner terminated, as hereinafter provided in this Lease.

Article 5
MONTHLY RENTAL AMOUNT

The Tenant agrees to pay as rental for the use and occupancy of the premises, at the time and in the manner hereinafter provided, the following sums of money:

A. MONTHLY RENTAL. $9020.00 as set forth in Article 1 hereof shall be payable each month in advance, on the first day of each month, without setoff or deduction, commencing November 1, 2017.

B. The rental amount shall increase to $10,020.00 the second year as of November 1, 2018 and continue at that rate through November 1, 2020.

Article 6
LATE CHARGES

Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any mortgage or trust deed covering the premises. Should any installment of rent of any of the character described in Article 5 above, due from Tenant be not received by Landlord by the fifth (5th) day after such rent is due, Tenant shall pay to Landlord such unpaid amounts and a late charge equal to 6% of the payment amount plus any attorneys fees incurred by Landlord by reason of Tenant's failure to pay such amounts when due, including but not limited to a charge for a 3 day notice if served. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by the Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the over due amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

All rental and other payments shall be paid by the Tenant to the Landlord at 2908 E. Whitmore Avenue H-216, Ceres, California 95307, or at such other place as may from time to time be designated by landlord in writing at least ten (10) days prior to the next ensuing payment date.

Article 7
POSSESSION AND USE

Possession of the premises shall be delivered to the Tenant free and clear of all tenants and occupants and the rights of either, except those as may be specified herein.

The Tenant shall use the premises solely for the purposes and under the trade name specified in Article 1 herein. The Tenant shall not use or permit the premises to be used for any other purpose or purposes or under any other trade name whatsoever without the written consent of the Landlord first had and obtained.

The Tenant further covenants and agrees that it will not use or suffer or permit any person or persons to use the premises or any part thereof for conducting therein a secondhand store, auction, distress or fire sale, or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State, County and City where the premises are situated, or of other lawful authorities, and that during said term the premises, and every part thereof, shall be kept by the Tenant in a clean and wholesome condition, and Tenant shall not cause any unclean or unwholesome condition, objectionable noises odors or nuisances in the premises and Tenant shall immediately correct, at Tenant's expense, any such condition.

Tenant is responsible to comply with all laws regarding their product. If at any time any part of tenant's business or use of the premises becomes illegal or violates and law or ordinance, Tenant must take every action necessary to comply with the law and failure to do so constitutes a material violation of this lease and is grounds for immediate termination of this lease.

Tenant shall not cook on the premises.

No aerial or antenna shall be erected on the roof or exterior walls of the premises without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time.

Article 8
UTILITIES

Tenant agrees, at its own expense, to pay for all utilities used by tenant on the premises from and after the delivery of possession thereof by Landlord. If a separate meter is provided for Tenant for any utilities, it shall be at tenant's expense. Garbage is agreed to be considered a utility expense.

Tenant must have current utilities supplied to the premises at all times. If electricity, water, or gas is disconnected from the premises due to tenants instructions or non-payment or any other tenant caused reason then the failure to pay by the tenant or the disconnection shall be a substantial and material breach and shall be good cause for eviction.

Tenant agrees not to disturb, terminate, interrupt, tamper with, adjust, or disconnect any utility service or meter, or submetering system or device. Violation of this section is a material and substantial breach of this Agreement and shall entitle Landlord to all available remedies under this Agreement including eviction.

In addition to the minimum annual rental specified in Article 1, Tenant shall pay, monthly, in advance, a utility charge to reimburse Landlord for any utilities furnished by Landlord, if any, to the premises.

Landlord shall not be liable in damage or otherwise for any failure or interruption of any utility service being furnished to the premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

Article 9

INDEMNITY - INSURANCE - WAIVER OR SUBROGATION

This obligation to indemnify shall include attorney's fees and investigation costs and all other reasonable costs, expenses and liabilities from first notice that any claim or demand is to be made or may be made.

The Tenant hereby waives any rights tenant may have against the Landlord on account of any loss or damage occasioned by the Tenant, the tenant's respective property, the premises, tenants, invitees, or other third parties, or its contents or to other portions of the premises, arising from any risk generally covered by fire and extended coverage insurance; and the tenant, on behalf of tenant's insurance companies insuring the property of the Tenant against such loss, waive any right of subrogation that tenant may have against the Landlord. The foregoing waiver of subrogation shall be operative only so long as available in the State where the premises are situated and do not invalidate any such policy.

Tenant further covenants and agrees that from and after the Effective Date, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified in the form hereinafter provided for:

**** (i) PUBLIC LIABILITY AND PROPERTY DAMAGE. Bodily injury liability insurance with limits of not less than Three Million Dollars ($3,000,000.00) combined each occurrence and in the aggregate insuring against any and all liability of the insured with respect to said premises or arising out of the maintenance, use or occupancy thereof. All such bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persona and injury or damage to property in this Article 9 contained.

(ii) PLATE GLASS. The Tenant shall be responsible for the maintenance of the plate glass on the premises but shall have the option either to insure the risk or self-insure.

(iii) TENANT IMPROVEMENTS. Insurance covering Tenant's leasehold improvements alterations, additions or improvements permitted under Article 11, trade fixtures, equipment (including air conditioning equipment and systems serving the premises), merchandise and personal property from time to time in, on or upon the premises, in an amount not less than eighty percent (80%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against vandalism and malicious mischief. Any policy proceeds shall by used for the repair or replacement of the property damaged or destroyed.

(iv) POLICY FORM. All policies of insurance provided for herein shall be issued by insurance companies with general policy holder's rating of not less than A and a financial rating of not less than Class X as rated in the most current available "Best's" Insurance Reports, qualified to do business in the State where the premises is situated.

All such policies shall be issued in the names of Landlord and Tenant, and if requested by Landlord, Landlord's mortgagee or beneficiary, which policies shall be for the mutual and joint benefit and protection of the Landlord, Tenant and Landlord's mortgagee or beneficiary, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after the Effective Date and thereafter, executed copies of renewal policies or certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each such policy.

All public liability and property damage policies shall contain a provision that the Landlord, although named an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of the Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by the Tenant in like manner and to like extent. All policies or insurance delivered to the Landlord must contain a provision that the company writing said policy will give to the Landlord twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with or in excess of coverage which the Landlord may carry.

D. Notwithstanding anything to the contrary contained within this Article 9, the Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by the Tenant; provided, however, that the insured thereunder as their interests may appear and that the coverage afforded the Landlord will not be reduced or diminished by reason of the used of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. The Tenant agrees to permit the Landlord at all reasonable times to inspect the policies of insurance of the Tenant covering risks upon the premises for which policies or copies thereof are not required to be delivered to the Landlord.

**** E. Landlord shall at all times from and after the Effective Date, maintain in effect a policy or policies of insurance covering the building of which the premises are a part, in an amount not less than eighty percent (80%) of full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the term of this Lease (or the amount of such insurance Landlord's mortgage lender requires Landlord to maintain, whichever is the greater), providing protection against any peril generally included within the classification "Fire and Extended Coverage", together with insurance against rental interruption, sprinkler damage, vandalism and malicious mischief, earthquake, flood or such other protective insurance. Landlord's obligation to carry the insurance provided for herein may be brought within the coverage of any so-called blanket policy or policies of insurance carried and maintained by Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance.

F. Landlord shall be named as an additional insured under said policy.

Article 10
TENANT'S CONDUCT

Tenant agrees that it will not at any time during the term of this Lease carry any stock of goods or do anything in or about the premises which will in any way tend to increase the insurance rates upon the building of which the premises are a part. Tenant agrees to pay the landlord forthwith upon demand the amount of any increase in premiums for insurance against loss by fire that may be charged during the term of this Lease on the amount of insurance to be carried by Landlord on the building of which the premises are a part resulting from the foregoing or from Tenant doing any act in or about said premises which does so increase the insurance rates, whether or not the Landlord shall have consented to such act on the part of Tenant.

If Tenant installs upon the premises any electrical equipment which constitutes an overload of the electrical lines of the premises, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and any governmental authority having jurisdiction thereover, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading. Tenant shall, at its own expense, comply with all requirements, including the installation of fire extinguishers or automatic dry chemical extinguishing system, of the insurance underwriters, Insurance Services Office, or any governmental authority having jurisdiction thereover, necessary for the maintenance of reasonable fire and extended coverage insurance of the premises.

Article 11
TENANT'S RIGHT TO MAKE ALTERATIONS

The Tenant accepts the premises in "as is" condition. The Landlord agrees that the Tenant may, at its own expense and after giving Landlord notice in writing of its intention to do so, from time to time during the term hereof, make alterations, additions and changes in and to the interior of the premises (except those of a structural nature) as it may find necessary or convenient for its purposes, provided that the value of the premises is not thereby diminished, and provided, however, that no alterations, additions or changes costing in excess of One Thousand Dollars ($1,000.00) may be made without first procuring the approval in writing of the Landlord. In addition, no alterations, additions or changes shall be made to any store front, the exterior walls or roof of the premises, nor shall Tenant erect any mezzanine, unless and until the written consent and approval of the Landlord shall first have been obtained.

In no event shall Tenant make or cause to be made any penetration through the roof of the premises without the prior written approval of Landlord. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article.

All alterations, additions or changes to be made to the premises which require the approval of the Landlord shall be under the supervision of a competent licensed architect or competent licensed structural engineer and made in accordance with plans and specifications with respect thereto, approved in writing by the Landlord, before the commencement of work. All work with respect to any alterations, additions and changes must be done in a good and workmanlike manner, with all proper permits, and in compliance with all applicable governmental codes, ordinances, regulations and diligently prosecuted to completion to the end that the premises shall at all times be a complete unit except during the period of work. Landlord shall not be required to perform or pay for any work. Upon completion of such work, Tenant shall file for record in the office of the County Recorder where the building is located a Notice of Completion as required or permitted by law. Upon termination of the Tenant's leasehold estate such alterations, additions or changes shall be considered as improvements and shall not be removed by the Tenant but shall become a part of the premises. Any such changes, alterations and improvements shall be performed and done strictly in accordance with the laws and ordinance relating thereto. In performing the work of any such alterations, additions or changes, the Tenant shall have the work performed in such a manner as not to obstruct the access to the premises of any other tenant in the Premises.

In the event that Tenant shall make any permitted alterations, additions or improvements to the premises under the terms and provisions of this, Tenant agrees upon its part to carry such insurance as required by Article 9 covering any such alterations, additions or improvements, it being expressly understood and agreed that none of such alterations, additions or improvements shall be insured by Landlord under any insurance it may carry upon the building of which the premises are a part, no shall Landlord be required under any provisions for reconstruction of the premises to reinstall any such alterations, improvements or additions.

Article 12
MECHANICS' LIEN

The Tenant agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the premises, and the Tenant will keep the premises free and clear of all mechanics' liens and other liens on account of work done for the Tenant or persons claiming under it. The Tenant agrees to and shall indemnify, defend and save the Landlord free and harmless against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for the Tenant or persons claiming under it.

If the Tenant shall desire to contest any claim of lien, it shall furnish the Landlord adequate security of the value or in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, the Tenant shall pay and satisfy the same at once.

If the Tenant shall be in default paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given the Landlord security to protect the property and the Landlord against such claim of lien, the Landlord may (but shall not be so required to)pay the said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from the Tenant to the Landlord, and the Tenant shall pay the same to Landlord with interest at the highest rate allowable under the Usury Laws of the State of California from the dates of the Landlord's payments.

Should any claims of lien be filed against the premises of any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

The Landlord or its representatives shall have the right to go upon and inspect the premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which the Landlord may deem to be proper for the protection of the Landlord's interest in the premises. The Tenant shall, before the commencement of any work which might result in any such lien, give to the Landlord written notice of its intention to do son insufficient time to enable the posting of such notices.

Article 13
ADVERTISING SIGNS

The Tenant shall not affix or maintain upon the glass panes and supports of the windows (and within 24 inches of any window), doors and the exterior walls of the premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of the landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the premises.

Tenant shall erect signs in accordance with the provisions of the sign criteria of the City of Riverbank that applies to this location.

Article 14
FIXTURES AND PERSONAL PROPERTY

Any and all attached fixtures or attached equipment which is presently on the premises are and shall remain the property of the landlord.

Any trade fixtures, signs (with the exception of Tenant's exterior sign) and other personal property of the Tenant not affixed to the premises shall remain the property of the Tenant and the Landlord agrees that the Tenant shall have the right, provided the Tenant is not in default under the terms of this Lease, at any time, and from time to time, to remove such trade fixtures that are not attached to the premises, and other personal property which it may have stored in the premises. Nothing in this Article contained shall be deemed or construed to permit or allow the Tenant to remove such personal property without the immediate replacement thereof with similar personal property of comparable or better quality, as to render the premises unsuitable for conducting the type of business specified in Article 1.

The Tenant at its own expense shall immediately repair any damage occasioned to the premises by reason of the removal of such trade fixtures and other personal property, and upon the last day of the Lease Term or a date of earlier termination of this Lease, shall leave the premises in a neat and broom-clean condition, free of debris. All trade fixtures, signs and other personal property installed in or attached to the premises by the Tenant must be in **new or in good condition** when so installed or attached and shall remain with the property when Tenant vacates.

All improvements to the premises by the Tenant, including but not limited to light fixtures, floor coverings, partitions, but excluding trade fixtures, shall become the property of Landlord upon their installation. Landlord, at its sole and exclusive option, may require Tenant to remove Tenant's exterior office sign, which Tenant shall do within five (5) days after such request, at Tenant's sole cost and expense and the building shall be returned to its original condition.

Tenant shall pay, before delinquency, all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon the trade fixtures, leasehold improvements, merchandise and other personal property in, on or upon the premises. In the event any such items of property are assessed with property of the Landlord, then, and in such event, such assessment shall be equitably divided between Landlord and Tenant to the end that Tenant shall pay only its equitable proportion of such assessment. Landlord shall determine the basis of prorating any such assessments and such determination shall be binding upon both Landlord and Tenant. No taxes, assessments, fees or charges referred to in this paragraph shall be considered as taxes under the provisions of Article 5 hereof.

Article 15
ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN CORPORATE OWNERSHIP

The Tenant shall not, and shall not have the power to, transfer, assign, sublet, enter into license or concession agreements, change of ownership, mortgage or hypothecate this Lease or the Tenant's interest in and to the premises. Any attempted or purported transfer, assignment, subletting, license or concession agreement, change of ownership, mortgage or hypothecation without the Landlord's written consent shall be void and confer no rights upon any third person.

Without in any way limiting Landlord's right to refuse to give such consent for any other reason or reasons, Landlord reserves the right to refuse to give such consent if in Landlord's reasonable business judgment the quality of merchandising operation is or may be in any way adversely affected during the term of the Lease and/or the financial worth of the proposed new tenant is less than that of the Tenant executing this Lease or of Tenant and Tenant's Guarantor as the case may be. Nothing herein contained shall relieve Tenant or any Guarantor from its covenants and obligations for the term of this Lease.

Tenant agrees to reimburse Landlord for Landlord's reasonable administration and/or attorneys' fees incurred in conjunction with the processing and documentation of any such requested transfer, assignment, subletting, license or concession agreement, change of ownership, mortgage or hypothecation of this Lease or Tenant's interest in and to the premises.

Each transfer, assignment, subletting, license, concession agreement, mortgage or hypothecation to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, and shall be executed by the transferor, assignor, sublessor, licensor, concessionaire, hypothecator or mortgagor and the transferee, assignee, sublessee, licensee, concessionaire or mortgagee in each instance, as the case may be; and each transferee, assignee, sublessee, licensee, concessionaire or mortgagee shall agree in writing for the benefit of the Landlord herein to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by the Tenant, including the payment of all amounts due to be come due under this Lease directly to the Landlord. One executed copy of such written instrument shall be delivered to the Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this Article shall operate to prevent any such transfer, assignment, subletting, license, concession agreement or hypothecation from becoming effective.

In the event Tenant shall assign its interest in this Lease, or sublet the premises, with the Landlord's prior written consent, then the minimum monthly rental specified in Article 1 shall be increased, effective as of the date of such assignment or subletting, to the highest of (i) the rentals payable by any such assignee or sublessee pursuant to such assignment or sublease, or (ii) the minimum monthly rental specified in Article 1 increased by an rental increases then in effect. In no event shall the minimum monthly rental, after such assignment or subletting, be less than the minimum monthly rental specified in Article 1, or less that the last prior adjustment pursuant to any rent increases.

In addition to the foregoing, Tenant agrees that in the event Tenant shall assign or sublet its interest in this Lease in accordance with the provisions of this Article, Tenant shall pay to Landlord any and all consideration paid directly or indirectly for such assignment or sublease by Tenant from the assignee or sublessee of Tenant' leasehold interest.

If the Tenant hereunder is a corporation which, under the then current laws of the State where the Premises is situated, is not deemed a public corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of twenty-five percent (25%) shall be deemed an assignment within the meaning and provisions of this Article 15.

Article 16
TENANT'S CONDUCT OF BUSINESS

The Tenant covenants and agrees that, continuously and uninterruptedly from and after its initial opening for retail sales of cannibis and as a cannibis dispensary. It will operate and conduct within the premises the retail sales of cannibis and as a cannibis dispensary, which it is permitted to operate and conduct under the provisions hereof, and that it will at all times keep its premises in a neat, clean and orderly condition.

Tenant agrees that all garbage, trash and rubbish of the said Tenant shall only be deposited within receptacles approved by Landlord and that there shall be no other trash receptacles permitted to remain outside of the building. Tenant agrees to cause such receptacles to be emptied and trash removed at Landlord's direction, and at Tenant's cost and expense, except if Landlord shall institute, provide, or cause to be provided such services or facilities for the removal of garbage, trash and rubbish.

Article 17
REPAIRS AND MAINTENANCE

The Tenant agrees at all times and at its own cost and expense, to repair, replace and maintain in good and tenantable condition the premises and every part thereof and including without limitation the utility meters, pipes and conduits, all fixtures, and other equipment therein, the store front or store fronts, all Tenant's signs, locks and closing devices, and all window sash, casement or frames, door and door frames, floor coverings, including carpeting, terrazzo or other special flooring, and air conditioning and heating all such items or repair, maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof.

All glass, both exterior and interior, is at the sole risk of Tenant, and any glass broken shall be promptly replaced by Tenant with glass of the same kind, size and quality.

Anything to the contrary not withstanding contained in this Lease, Landlord shall not in any way be liable to the Tenant for failure to make repairs as herein specifically required of it unless this lease requires the Landlord to make the repairs and the Tenant has previously notified the Landlord, in writing, of the need for such repairs and the Landlord has failed to commence and complete said repairs within a reasonable period of time following receipt of the Tenant's written notification.

If Tenant refuses or neglects to make repairs and/or maintain the premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant, and in the event such repairs are for the premises of two or more tenants, Landlord may, at its discretion, make certain prorations of the cost of said repairs to the tenants. IN such event the cost of such work shall be paid by Tenant as additional rent promptly upon receipt of a bill therefor.

As used in this Article the expression "exterior walls" shall be deemed to include store fronts, plate glass, window cases or window frames, or doors or door frames, security grills or similar enclosures. It is understood and agreed that the Landlord shall be under no obligation to make any repairs, alterations, renewals, replacements or improvements to and upon the premises or the mechanical equipment exclusively serving the premises at any time except as in this Lease expressly provided.

Upon any surrender of the premises, the Tenant shall redeliver the premises to the Landlord in good order, condition (broom-clean) and state of repair, ordinary wear and tear and casualty damages excepted, and excepting such items of repair as may be the Landlord's obligation hereunder. Unless waived by Landlord, in writing, Tenant shall accompany Landlord, or one of Landlord's authorized representatives, on a joint inspection of the Premises prior to such surrender and thereupon, deliver to Landlord the keys to said Premises.

The Tenant agrees to permit the Landlord and its authorized representatives to enter the premises at all times during business hours for the purpose of inspecting the same. The Tenant further covenants and agrees that the Landlord may go upon the premises and make any necessary repairs to the premises and perform any work therein

(i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or of the Insurance Services Office or of any similar body or

(ii) that the Landlord may deem necessary to prevent waste or deterioration in connection with the premises if the Tenant does not make or cause such repairs to be made of performed or cause such work to be performed promptly after receipt of written demand from the Landlord or

(iii) that Landlord may deem necessary to perform construction work incidental to any portion of The premises adjacent to, above or below the premises. Nothing herein contained shall imply any duty on the part of the Landlord to do any such work which under any provision of this Lease the Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. No exercise by the Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of rent from Landlord for any injury or inconvenience occasioned thereby. In the event Landlord makes or causes any such repairs to be made or performed, as provided herein, Tenant shall pay the cost thereof to Landlord, forthwith, as additional rent upon receipt of a bill therefore, except for the work as provided in subparagraph (iii) above which will be at the sole cost and expense of Landlord.

Article 18
BANKRUPTCY--INSOLVENCY

The Tenant agrees that in the event:

(i) all or substantially all of the Tenant's assets are place in the hands of a receiver or trustee, and receivership or trusteeship continues for a period of thirty (30) days, or

(ii) Tenant makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt, or

(iii) Tenant institutes any proceedings under the Bankruptcy Act as the same now exists or under any amendment thereto which may hereafter be enacted, or under any other act relating to the subject of bankruptcy wherein the Tenant seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization, or should any involuntary proceeding be filed against the Tenant under any such bankruptcy laws, then this Lease and any interest of Tenant in and to the premises shall not become an asset in any of such proceedings and, in any such events and in addition to any and all rights or remedies of the Landlord hereunder or by law provided, it shall be lawful for the Landlord to declare the term hereof ended and to reenter the premises and take possession thereof and remove all persons therefrom, and the Tenant shall have no further claim thereon or hereunder. The provisions of this Article 20 shall also apply to any Guarantor of this Lease.

Article 19
DEFAULT BY TENANT

Should the Tenant at any time be in default hereunder with respect to any rental payments or other charges payable by the Tenant hereunder, or should the Tenant be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained; or should the Tenant vacate or abandon the premises; then the Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of the Landlord hereunder and by the law provide, it shall be, at the option of the Landlord, without further notice or demand of any kind to Tenant or any other person:

(a) The right of the Landlord to declare the term hereof ended and to reenter the premises and take possession thereof and remove all persons therefrom, and the Tenant shall have no further claim thereon or hereunder; or

(b) The right of the Landlord without declaring this Lease ended to reenter the premises and occupy the whole or any part thereof for an on account of the Tenant and to collect said rent and any other rent that may thereafter become payable.

(c) The right of the Landlord, even though it may have reentered the premises, to thereafter elect to terminate this Lease and all of the rights of the Tenant in or to the premises.

Should the Landlord have reentered the premises under the provisions of subparagraph (b) above, the Landlord shall not be deemed to have terminated this Lease, or the liability of the Tenant to pay rent thereafter to accrue, or its liability for damages under any of the provisions hereof, by any such reentry or by any action in unlawful detainer, or otherwise, to obtain possession of the premises, unless the Landlord shall have notified the Tenant in writing that it has so elected to terminate this Lease, and the Tenant further covenants that the service by the Landlord of any notice pursuant to the unlawful detainer Statutes of California and the surrender of possession pursuant to such notice shall not (unless the Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to the Tenant) be deemed to be a termination of this Lease.

In the event of any entry or taking possession of the premises as aforesaid, the Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owner or owners thereof.

Should the Landlord elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, the Landlord may recover from the Tenant as damages:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus,

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform his obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in maintaining or preserving the premises after such default, preparing the premises for reletting to a new tenant, any repairs or alterations to the premises for such reletting, leasing commissions, or any other costs necessary or appropriate to relet the premises;

(v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Premises is situated.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the highest rate then allowed, at the time of award, under the Usury Laws of the State of California. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Premises at the time of award plus one percent (1%).

For all purposes of this Article 21, the term "rent" shall be deemed to be the minimum annual rental and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than the minimum annual rental, shall be computed on the basis of the average monthly amount there of accruing during the immediately preceding sixty (60) month period, except that if it becomes necessary to compute such rental before such sixty (60) month period has occurred then such rental shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

In the event of default, all of the Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the premises and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same, rent or charge free, until all defaults are cured, or, at its option, at any time during the term of this Lease, to require Tenant to forthwith remove same.

Notwithstanding any other provisions of this Article, the Landlord agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot by rectified or cured within the period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if the Tenant within such period so notifies Landlord in writing that Tenant has commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

The remedies given to the landlord in this Article shall be in addition and supplemental to all other rights or remedies which the Landlord may have under the laws then in force, or in equity.

The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance or rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, or of any right of the Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord.

Article 20
EMINENT DOMAIN

In the event the entire premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and the Tenant shall thereupon be released from any liability thereafter accruing hereunder.

In the event more than twenty-five percent (25%) of the square footage of Floor Area of the premises is taken under the power of eminent domain by any public or quasi-public authority, or if by reason of any appropriation or taking, regardless of the amount so taken, the remainder of the premises is not one undivided parcel of property, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required vacate a portion of the premises, upon giving notice in writing of such election within thirty (30) days after receipt by the Tenant from the Landlord of written notice that said premises have been so appropriated or taken. In the event of such termination, both Landlord and Tenant shall thereupon be released from any liability thereafter accruing hereunder. The Landlord agrees immediately after learning of any appropriation or taking to give to the Tenant notice in writing thereof.

If this Lease is terminated in either manner hereinabove provided, the Landlord shall be entitled to the entire award or compensation in such proceedings, but the rent and other charges for the last month of the Tenant's occupancy shall be prorated and the Landlord agrees to refund to the Tenant any rent or other charges paid in advance. The Tenant's right to receive compensation or damages for its fixtures and personal property shall not be affected in any manner hereby.

However, Tenant shall be entitled to any condemnation award it is awarded in any action it brings on its own behalf due to a condemnation.

If both Landlord and Tenant elect not to so terminate this Lease, Tenant shall remain in that portion of the premises which shall not have been appropriated or taken as herein provided, or in the event less than twenty-five percent (25%) of the square footage of Floor Area of the premises shall be appropriated under the power of eminent domain by any public or quasi-public authority, and the remainder thereof is an undivided parcel of property, then in either such event the Landlord agrees, at the Landlord's cost and expense, to restore, as soon as reasonably possible, the premises on the land remaining, to a complete unit of like quality and character as existed prior to such appropriation or taking; and thereafter the minimum annual rental provided for in Article 1 hereof shall be reduced on an equitable basis, taking into account the relative value of the portion taken as compared to the portion remaining; and the Landlord shall be entitled to receive the total award or compensation in such proceedings.

For the purposes of this Article 20, a voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, shall be deemed an appropriation or taking under the power of eminent domain.

Article 21
ATTORNEY'S FEES

In the event that at any time during the term of this Lease either the Landlord or the Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses of attorneys' fees and disbursements incurred therein by the successful party. The attorney fees shall be limited to $2,000.00.

Article 22
SALE OF PREMISES BY LANDLORD

In the event of any sale or exchange of the premises by the Landlord, the Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the premises or this Agreement occurring after the consummation of such sale or exchange and assignment.

Article 23
SUBORDINATION - ATTORNMENT

Upon written request of the Landlord, or any mortgagee or beneficiary of Landlord, Tenant will in writing subordinate its rights hereunder to the interest of any ground lessor of the land upon which he premises are situated, as well as the lien of any mortgage or deed of trust, now or hereafter in force against the land and building of which the premises are a part, and upon any building hereafter placed upon the land of which the premises are a part, and to all advances made or hereafter to be made upon the security thereof.

The provisions of this Article to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease, provided that the purchaser shall acquire and accept the premises subject to this Lease.

Within ten (10) days after written request therefore by Landlord, or in the event that upon any sale, assignment or hypothecation of the premises or the land thereunder by the Landlord, an offset statement shall be required from Tenant, Tenant agrees to deliver in recordable form a certificate addressed to any such proposed mortgagee or purchaser or to the Landlord certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto or stating those claimed by Tenant.

Article 24
CAPTIONS AND TERMS

The captions of Articles of this Lease are for convenience only, are not a part of this lease and do not in any way limit or amplify the terms and provisions of this Lease. Except, as otherwise specifically stated in this lease, "the term" shall include the original term and any extension, renewal or holdover thereof.

If more than one person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, then and in such event, the words "Landlord" or "Tenant" wherever used in this Lease are intended to refer to all such persons or corporations, and liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter as the case may be, and the use of the singular shall include the plural.

Article 25
NOTICES

Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by certified or registered mail, addressed to the addresses of the parties specified in Article 1 hereof. Either party may change such address by written notice by certified or registered mail to the other.

Any notices Landlord is required or authorized to deliver to Tenant in order to advise Tenant of alleged violations of Tenant's covenants contained in this lease must be in writing but shall be deemed to have been duly given or served upon Tenant by delivering a copy of such notice to one of Tenant's managing employees at the premises and by mailing a copy of such notice to Tenant by certified mail.

Article 26
OBLIGATIONS OF SUCCESSOR

The parties hereto agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

Article 27
SECURITY DEPOSIT

A. Tenant shall pay to Landlord the sum specified in Article 1 hereof as a "Security Deposit". Said deposit shall be held by Landlord without liability for interest, as a security deposit for the faithful performance by Tenant of all the terms of the Lease by said Tenant.

B. If any of the rents herein reserved or any other sum payable by Tenant to Landlord shall be overdue and unpaid or should Landlord make payments on behalf of the Tenant, or Tenant shall fail to perform any of the terms of this Lease, then Landlord may have on account thereof, appropriate and apply said entire deposit or so much thereof as may be necessary to compensate Landlord toward the payment of rent or additional rent or loss or damage sustained by Landlord due to such breach on the part of Tenant; and Tenant shall forthwith upon demand restore said security to the original sum deposited. Should Tenant comply with all of said terms and promptly pay all of the rentals as they fall due and all other sums payable by Tenant to Landlord, said deposit shall be returned in full to Tenant at the end of the term. If Landlord claims deductions against the security deposit, then Landlord and Tenant agree that the remaining deposit shall be returned to Tenant no later than twenty one (21) days after Landlord receives possession of the premises.

C. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such security deposit shall be deemed to be applied first to the payment of rent and other charges due Landlord for all periods prior to filing of such proceedings.

D. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the premises in the event that such interest be sold and thereupon Landlord shall be discharged from any further liability with respect to such deposit, and this provision shall also apply to any subsequent transferees.

Article 28
MISCELLANEOUS

A. It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

B. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render provision valid, then the provision shall have the meaning which renders it valid.

C. In the event the Tenant hereunder shall be a corporation, the persons executing this Lease on behalf of the Tenant hereby covenant and warrant that the Tenant is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Tenant to do business in the State where the premises is situated; all franchise and corporate taxes have been paid to date; and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due. Further that the person executing this agreement represents that they have specific authority from the corporation to do so.

D. It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. Any amendments or modifications to the Lease must be in writing, executed by both Landlord and Tenant, in order to be effective and binding.

E. Landlord reserves the absolute right to affect such other tenancies in the premises as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the premises. Tenant does not rely on the fact, nor does Landlord represent, that any specific Tenant or number of tenants shall during the term of this Lease occupy any space in the premises. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

F. The laws of California shall govern the validity, performance and enforcement of this Lease. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result. Venue for any legal action shall be in Stanislaus County.

G. Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

H. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other charges to be paid by Tenant pursuant to this Lease.

I. Tenant hereby expressly waives any and all rights or redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

J. The Tenant herein covenants by and for himself his heirs, executors, administrators and assigns and all persons claiming under or through him, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the Tenant himself, or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessee, subtenants or vendees in the premises herein leased.

K. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of rents or other income from such property receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right title and interest in the premises site, and neither Landlord no any of the individuals or entities comprising the Landlord, shall be liable for any deficiency.

Landlord shall not be liable for any damage done or occasioned by or from the electrical system, the heating or air conditioning system, the plumbing and sewer systems in, upon or about the Premises or the building of which the Premises are a part, nor for damages occasioned by water, snow or ice being upon or coming through the roof, trapdoor, walls, windows, doors or otherwise, nor for any damage arising from acts of negligence of Co-Tenants or other occupants of the building or buildings of which the Premises may be a part, or the acts of any owners or occupants of adjoining or contiguous properties; and furthermore, Landlord shall not be liable for any damage occasioned by reason of the construction of the Premises or for failure to keep the Premises in repair, unless Landlord is obligated to make such repairs under the term hereof, and unless notice of the need for repairs has been given to Landlord, a reasonable time has elapsed and Landlord has failed to make such repairs.

In any event, Landlord shall not be liable for any damage to Tenant's leasehold improvements, fixtures, or merchandise resulting from fire or other insurable hazards, regardless of the cause thereof, and Tenant hereby releases Landlord from all liability for such damage.

L. The submission of this Lease to Tenant shall be examination purposes only and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest by Tenant in, the Premises or any other premises situated in the premises. Execution of this Lease by Tenant and return to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until Landlord has in fact executed and delivered an executed copy of this Lease to the Tenant.

M. Tenant warrants that it has not had any dealings with any realtor, broker, or agent, in connection with the negotiation of this Lease, and agrees to pay and to hold Landlord harmless from any cost, expense or liability for any compensation, commission, or charges claimed by any realtor, broker, or agent, with respect to this lease or the negotiation of this Lease.

N. Landlord and Tenant hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either party on any matter whatsoever arising out of, or in any way connected with, this lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
AS (Tenant to initial) ____ (Landlord to initial)

O. Tenant shall fully release and indemnify Landlord and Landlord's legal representatives, assigns, and agents, partners, and owners, from all liability, rights, claims, interests and causes of action which are brought against Landlord as a result of any actions or conduct of Tenant or that are brought as a result of Tenants business or tenancy. This shall include any attorney fees or other costs incurred which Landlord may incur.

Article 29
EXECUTION

IN WITNESS WHEREOF, the Landlord and Tenant have duly executed this Lease on the day and year first above written. This lease is effective upon the last signature.

Guaranty Holdings of California, Inc.

LANDLORD: Shay Roberts
By:

TENANT: ____

TENANT: ____

TENANT: ____

T:\WPDOCS\RENTAL & LEASE AGREEMENTS\3 YEAR COMMERCIAL LEASE AGREEMENT GUARANTY HOLDINGS.wpd

Exhibit D

Notice of Non-Performance Penalty

DATE: _________________, 20___

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

PACAFI COOPERATIVE, INC DBA FLAVORS, a California cooperative corporation
____
____

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

A. By Instrument No. _____________, which was recorded in the Official Records of Stanislaus County, California on ________________, 20__, City recorded a development agreement between the City and Pacafi Cooperative, Inc. DBA Flavors ("Developer"), dated ___________, 20__ (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.

B. Pursuant to Section 4.2 of the Development Agreement, Developer agrees to pay to City a Public Benefit on the first business day of each month during the term of the Development Agreement.

C. On ________, 20__, the Public Benefit was due to City by Developer. City did not receive payment.

D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts ("Penalty"). As of ____________, 20__, the past due amount equals $_________. The Penalty owed by Developer equals $____________ ("Penalty Amount").

E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice ("Penalty Due Date").

F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then in addition to the Penalty Amount specified in subdivision (E), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum ("Penalty Interest Payment"), computed from the Penalty Due Date specified in subdivision (F). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of ____________, 20__, the Penalty Interest Payment amount equals $_________.

G. Nothing contained herein shall constitute a waiver of City's future claims for the Public Benefit, Penalty, or interest on the Penalty.

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

CITY OF RIVERBANK,
a California municipal corporation

By:________________________________
City Manager

Exhibit E

INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING ("Agreement") is made and entered into on this ___ day of _______ 20__, ("Effective Date") by and between the City of Riverbank, a California municipal corporation ("City") and Pacafi Cooperative, Inc. DBA Flavors ("Applicant"). City and Applicant may be referred to herein individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

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

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

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

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

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

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

G. Applicant has an agreement to lease that certain real property located in the City of Riverbank, identified as Stanislaus County Assessor's Parcel Number 075-026-044 (the "Property"), shown on **Exhibit A** attached hereto ("Property Description").

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

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

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

AGREEMENT

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

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

Section 2. Applicant's Indemnification Obligations.

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

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

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

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

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

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

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

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

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

Section 4. **Notice**. Any notice or communication required hereunder between City and Applicant must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

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

With copy to City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attn: City Manager

sscully@riverbank.org

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

If to Applicant: Pacafi Cooperative, Inc. DBA Flavors
____
____
____

and ________________
____
____
____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

APPLICANT

Pacafi Cooperative, Inc. DBA Flavors, a California cooperative corporation

By: ______________________________

Name: ______________________________

Its: ______________________________

Date: ______________________________

CITY

City of Riverbank, a California municipal corporation

By:______________________________
Sean Scully, City Manager

Date: ______________________________

APPROVED AS TO FORM:

By:______________________________
Douglas L. White, Deputy City Attorney

Exhibit F

Notice of Termination

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City of Riverbank 6707 3rd Street Riverbank, CA 95367 Attention: City Clerk	

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

NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT

DATE: _________________, 20___

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

PACAFI COOPERATIVE, INC DBA FLAVORS, a California cooperative corporation
____
____

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

A. By Instrument No. ______________, which was recorded in the Official Records of Stanislaus County, California on _________________, 20__, City recorded a development agreement between the City and Pacafi Cooperative, Inc. DBA Flavors ("Developer"), dated _______________, 20__ (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.

B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires three (3) years from _______, 20__ 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 _____ (month), 20__, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF RIVERBANK,
a California municipal corporation

By:_________________________________
City Manager

Exhibit G

Assignment and Assumption Agreement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City of Riverbank 6707 3rd Street Riverbank, CA 95367 Attention: City Clerk	

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

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this _____ day of ______________________, 20___, by and between Pacafi Cooperative, Inc. DBA Flavors ("Developer") and __________________________________ ("Assignee"). Developer may be referred to herein as ("Assignor").

RECITALS

A. On ___________, 20__, Assignor and the City of Riverbank (the "City") entered into that certain agreement entitled "Development Agreement by and between the City of Riverbank, a California municipal corporation and Pacafi Cooperative, Inc. DBA Flavors" relating to the improvement, development, and use of real property to operate a cannabis dispensary business (the "Development Agreement"), originally recorded upon Stanislaus County Assessor's Parcel Number 075-026-044 (the "Property").

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

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

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

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

1. The foregoing Recitals are true and incorporated herein by this reference as though set forth in full.

2. Assignor hereby assigns to Assignee all of the Assignable Rights of Assignor under the Development Agreement.

3. Assignee hereby assumes all of the burdens and obligations of Assignor under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Property and Assignable Rights. It is the express intention of Assignor and Assignee that, upon the execution of this Agreement, Assignee shall become substituted for Assignor as the "Developer" under the Development Agreement.

4. This Agreement shall take effect and be binding only upon City Manager's consent to and approval of the Agreement.

5. Assignee represents and warrants that it has reviewed and is familiar with the terms and conditions of the Development Agreement. Assignee acknowledges that the Assignable Rights are as set forth in Section 10.1 of the Development Agreement, and the duties of Assignor thereunder and the duties of Assignee hereunder, as between Assignee and the City, shall be without reference to any underlying agreements or understandings that may exist between Assignee, Assignor, or any other party with respect to the subject matter hereof, and that the City is not party to such other agreements.

6. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

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

[*Signatures on the following page*]

ASSIGNOR / DEVELOPER:

PACAFI COOPERATIVE, INC. DBA FLAVORS, a California cooperative corporation

____

Its: ___________________________

ASSIGNEE

____________________________, a California __________

By: ________________________

AGREED TO AND ACCEPTED:

CITY OF RIVERBANK
a California municipal corporation

____

City Manager

CITY OF RIVERBANK
RESOLUTION NO. 2021-009

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK AND PACAFI COOPERATIVE, INC., A CALIFORNIA COOPERATIVE CORPORATION DOING BUSINESS AS FLAVORS

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

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

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

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

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

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

WHEREAS, On or about January 9, 2018, City and Developers, entered into a development agreement ("Development Agreement") that allowed Developer to operate a cannabis dispensary business (the "Project"); and

WHEREAS, pursuant to Government Code section 65868, City and Developer may amend the Development Agreement after notice of the amendment has been provided and the City Planning Commission and City Council hold public hearings regarding the Amendment; and

WHEREAS, City and Developer seek to enter into an amendment to the Development Agreement pursuant to state law and the Riverbank Municipal Code to update Developer's public benefit obligations and extend the term of the Development Agreement ("First Amendment"); and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 13, 2021, to consider the First Amendment and make recommendations to the City Council; and

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

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

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

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER: that the Planning Commission of the City of Riverbank hereby recommends by this Resolution that the City Council of the City of Riverbank adopt the proposed Ordinance approving the First Amendment to the Development Agreement between the City of Riverbank and Pacafi Cooperative, Inc., a California cooperative corporation doing business as Flavors.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 20th day of April, 2021; motioned by Commissioner Fenrich, seconded by Commissioner Basso, and upon roll call was carried by the following Planning Commission vote of 5-0:

AYES: Commissioners Stewart, Link, Basso, Dinan, Fenrich
NAYS:
ABSENT:
ABSTAIN:

Attest:

Donna M. Kenney

Donna M. Kenney
Secretary to the Planning Commission

Approved:

Joan Stewart

Joan Stewart
Chairperson

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 9.1

SECTION 9: WORKSHOPS

Meeting Date:	May 25, 2021
Subject:	Workshop **–** Fiscal Year 2021-22 Special Revenue & Enterprise Fund Budget
From:	Sean Scully, City Manager
Submitted by:	Marisela H. Garcia, Assistant City Manager/Admin. Services Director

RECOMMENDATION

It is recommended that the City Council receive a presentation on the Fiscal Year 2021-22 Special Revenue and Enterprise Fund Proposed Budgets and provide feedback in anticipation of the adoption of the Final Budget on June 22, 2020.

SUMMARY

An overview of the proposed Fiscal Year 2021-22 Special Revenue and Enterprise Funds budget will be presented to the City Council in anticipation of the adoption of the preliminary budget. Special Revenue and Enterprise Funds include the Gas Tax, Sewer Operating Fund, Water Operating Fund, and Public Benefit.

BACKGROUND

With the assistance of the City's departments, the Fiscal Year 2021-22 Proposed Special Revenue and Enterprise Fund Budgets were developed. Projections for revenue sources were prepared from a combination of information received from the State of California Dept. of Finance, consultants, and historical information on trends and experiences within the City. Department Heads and Managers were tasked with preparing base budget projections for on-going revenues and expenditures.

The COVID-19 pandemic impacted all Special Revenue and Enterprise funds. As expenditures were reduced during the current fiscal year in response to the closure of programs, we have anticipated that these programs are returning in the upcoming fiscal year. This will cause Council to see budget increases across the board as we bring back staff and projects.

GAS TAX

The state of California imposes per-gallon excise taxes on gasoline and diesel fuel, sales taxes on gasoline and diesel fuel and registration taxes on motor vehicles with allocations dedicated to transportation purposes. The local (city and county) portions of these allocations flow through the Highway Users Tax Account (HUTA), the familiar gasoline tax revenues that have been in place for decades, and the Road Maintenance and Rehabilitation Account (RMRA) which allocates much of the revenue from the Road Repair and Accountability Act of 2017 (SB1 Beall).

The State provides annual projections on these revenue sources and has recently updated those as a result of the COVID-19 pandemic. For the current fiscal year, the City will see an approximate increase of 8% in Gas Tax Revenues. These revenues fund streets and roads maintenance and operations and major projects (SB1).

	FY 2020-21 Budget	FY 2021-22 Budget	Difference	% Change
Revenues	$1,300,100	$1,372,200	$72,100	+6%
Expenditures	$1,541,800	$1,899,400	$357,600	+23%

Streets & Roads Projects

Each year the Development Services Administration Division presents the proposed projects that will be funded from SB1 Revenues. For the upcoming fiscal year, the following projects are proposed:

- Valley Gutter Repair: Various Locations $120,200
- Pavement Restoration Project $60,000
- Topeka Street Overlay: 3rd to 5th $550,000
- Topeka Street Overlay: Callander to Jackson $233,700

Gas Tax Maintenance Budget Deficit

Over the past two years, the Gas Tax Fund has been experiencing deficit spending in the Maintenance budget. This has been a result of decreased Gas Tax revenues being received as residents were under the Stay at Home Order, traveling less, and as gas prices decreased during the pandemic. For the current fiscal year, staff is anticipating a shortfall of approximately $117,000. Initially, a shortfall of $143,000 was projected for the 2021-22 fiscal year. This shortfall would require a subsidy from the General Fund in order to provide sufficient maintenance funding. Staff has reviewed all maintenance costs, including staffing and made adjustments to minimize the shortfall. Currently, the General Fund Subsidy required is $89,500.

SEWER FUND

The Sewer Fund receives 97% of its revenue from user fees charged to customers (residential, commercial, and industrial). Overall, the City will see an increase of 12% in revenues as the commercial and industrial rate users are billed for consumption as per the five-year rates adopted. In the past, this revenue was not collected during the water meter upgrade project.

Expenditures will see an overall decrease of 39%. The City has funded all of the Rate Study projects in the prior fiscal years and has reached a point where funds are being allocated towards capital reserves.

	FY 2020-21 Budget	FY 2021-22 Budget	Difference	% Change
Revenues	$4,299,000	$4,814,500	+$515,500	+12%
Expenditures	$5,397,860	$3,270,400	-$2,127,460	-39%

Capital Projects

The Sewer Fund will undergo a series of capital projects that will address delayed maintenance throughout the sewer system. This includes lift station upgrades as well as equipment upgrades. Included in the capital projects are:

- Lift Station Upgrades: Estelle & Jackson
- SCADA System Upgrades
- Vertical Pump Upgrades @ Waste Water Treatment Plant
- Equipment Upgrades: Trailer Mount Jetter & Kubota Tractor

There are two equipment requests that City staff is requesting feedback on from the City Council. Both requests would improve the administration and functionality to the City Public Works Department. These requests are as follows:

1. **Citizen Request Management System**: System will allow residents to log requests online or via a City branded App on their phone. It will notify staff of complaints that are logged and will allow for tracking and reports to ensure that staff timely addresses the issues. **Cost: $13,800 Annually**
2. **Public Works Building:** Last year the City was able to purchase property adjacent to the current Public Works Corporation Yard for the future expansion of the Public Work Offices. Staff is currently working from a modular building that no longer accommodates their needs and does not provide for expansion of staff in the future. The City will explore turn-key options in order to minimize the cost. **Proposed budget for this project is $400,000, with 50% from Sewer Funds and 50% from Water Funds.**

<u>WATER FUND</u>

In March 2020 the City completed its Water Meter Upgrade project and began to bill customers based on consumption. This has allowed for the collection of fees in order to begin addressing the Water Rate Capital Improvement Projects that were adopted as part of the five-year rate increase. For the upcoming fiscal year, the city will experience a 39% increase in revenues as a result of consumption billing.

Overall, expenditures are anticipated to increase by 14% which notable changes in Equipment/Projects to address the Rate Study projects and Transfers Out of Management Fees for the addition of new staff in Public Works. Transfers Out are typically related to the reimbursement to other funds for Administrative charges for employees.

	FY 2020-21 Budget	FY 2021-22 Budget	Difference	% Change
Revenues	$2,253,700	$3,140,800	+$887,100	+39%
Expenditures	$2,703,500	$3,042,300	+$338,800	+13%

Capital Projects

As the City is now billing for the consumption rate we are able to begin programming the budget for the Rate Study Capital Improvements. For the upcoming fiscal year the Water Fund budget will include funds for:

- Water Line Replacement on Sierra from Patterson to SR 108
- Water Line Installation 2800 block to Santa Fe
- Water Line on 8th Street Topeka to SR 108
- Water Line on Claus from SR 108 to Santa Fe

If considered by Council, the Water Fund will provide approximately $200,000 in funding for the construction of the Public Works Building.

PUBLIC BENEFIT FUND

In June 2018, the City Council authorized the creation of the Public Benefit Fund. The intent of the fund was to ensure that all cannabis-related revenues were segregated and easily accounted for in a specific fund. In addition to establishing the fund, the City Council developed an expenditure policy which was focused on allocating the funds received for public safety (including police and code enforcement) and other projects that would provide a public benefit.

Based on the amendment to the Pacafi (Flavors) Development Agreement, the City will experience a 42% decrease in revenues in the upcoming fiscal year.

	FY 2020-21 Budget	FY 2021-22 Budget	Difference	% Change
Revenues	$979,000	$564,000	-$415,000	-42%
Expenditures	$780,600	$421,600	-$359,000	-46%

The current year budget includes one-time funding for the Community Center Kitchen Remodel and the Museum Project. The upcoming fiscal year includes only those on-going expenses of the fund, including offsets for the Sheriff's Law Enforcement Contract and annual lease payments for the City's Camera System.

STRATEGIC PLAN

On February 25, 2019, the City Council established a Strategic Plan Goal to "Ensure the City's Continued Financial Stability". This report addresses this matter.

FINANCIAL IMPACT

There is no financial impact anticipated with this report.

ATTACHMENT

1. Fiscal Year 2021-22 Special Revenue & Enterprise Fund Budget Projections

GAS TAX FUND		2019-20	2020-21	2020-21	2021-22		
		Prior year	Current year	Current year	Dept Request	Increase/	
Account Number	**Account Title**	**Actual**	**Budget**	**Actual**	**Budget**	**Decrease**	**% Change**
REVENUES							
102-000.000-400.140	STATE GAS TAX 2106	77,975.55	78,500.00	58,175.82	77,300.00	-1,200.00	-2%
102-000.000-400.150	STATE GAS TAX 2107	163,075.55	165,300.00	100,427.13	171,200.00	5,900.00	4%
102-000.000-400.160	STATE GAS TAX 2107.5	6,000.00	6,000.00	0.00	6,000.00	0.00	0%
102-000.000-400.170	STATE GAS TAX 2105	129,149.27	125,800.00	63,243.68	127,500.00	1,700.00	1%
102-000.000-400.175	STATE GAS TAX 2103	174,576.95	192,500.00	102,026.18	173,600.00	-18,900.00	-10%
102-000.000-600.020	STREET SWEEPING	4,159.00	4,200.00	2,079.50	4,200.00	0.00	0%
102-000.000-600.050	SB1-RMRA REVENUE	454,161.75	411,600.00	299,536.37	432,800.00	21,200.00	5%
102-000.000-600.200	MEASURE L SALARY REIMBURSEMENT	189.75	0.00	0.00	0.00	0.00	0%
102-000.000-664.000	INTEREST INCOME	3,934.06	800.00	722.64	0.00	-800.00	-100%
102-000.000-675.090	MISCELLANEOUS REVENUES	33,842.99	300.00	294.38	300.00	0.00	0%
102-000.000-699.000	TRANSFERS IN	259,870.61	315,100.00	5,603.69	379,300.00	64,200.00	20%
GAS TAX FUND Revenue Total:		**1,306,935.48**	**1,300,100.00**	**632,109.39**	**1,372,200.00**	**72,100.00**	**6%**
EXPENDITURES							
102-418.000-701.001	PERSONNEL REGULAR	270,093.01	291,400.00	187,815.46	296,700.00	5,300.00	2%
102-418.000-701.002	PERSONNEL PART TIME	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-701.003	PERSONNEL OVERTIME	2,470.70	7,000.00	5,380.25	7,000.00	0.00	0%
102-418.000-701.004	STANDBY PAY	8,926.92	10,000.00	8,036.58	10,000.00	0.00	0%
102-418.000-701.080	SALARY REQUEST	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-702.030	MAINT. OPERATION EQUIP	26,650.79	20,000.00	1,816.97	20,000.00	0.00	0%
102-418.000-702.031	RENTS & LEASES	10,000.00	19,000.00	3,833.31	19,000.00	0.00	0%
102-418.000-702.032	PROFESSIONAL/SPECIAL SERV	23,590.82	27,000.00	29,975.62	35,000.00	8,000.00	30%
102-418.000-702.034	OTHER CONTRACT SERVICES	1,500.00	4,200.00	0.00	4,200.00	0.00	0%
102-418.000-702.035	ENGINEERING	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-702.036	STREET SWEEPING CONTRACT	94,008.84	95,500.00	55,658.75	95,500.00	0.00	0%
102-418.000-702.037	STREET LIGHT REPAIR	0.00	2,000.00	0.00	2,000.00	0.00	0%
102-418.000-703.028	SMALL TOOLS	383.17	1,000.00	234.97	1,000.00	0.00	0%
102-418.000-703.062	STREET SIGNS/STRIPING	62,633.38	62,000.00	2,215.93	62,000.00	0.00	0%
102-418.000-704.021	UTILITIES	103,003.04	110,000.00	60,280.79	110,000.00	0.00	0%
102-418.000-704.022	COMMUNICATIONS	-105.00	1,500.00	665.00	1,500.00	0.00	0%
102-418.000-706.026	MISCELLANEOUS EXPENSE	1,611.80	2,000.00	878.75	2,000.00	0.00	0%
102-418.000-706.027	BOOT & JACKET ALLOWANCE	546.38	1,000.00	388.77	1,000.00	0.00	0%
102-418.000-706.029	MAIN OF BLDG/STRUCTURES/GRDS	18,073.38	21,000.00	1,691.49	21,000.00	0.00	0%
102-418.000-706.036	MEMBERSHIPS,DUES,BOOKS,ETC	188.00	1,500.00	0.00	1,500.00	0.00	0%
102-418.000-706.037	CONFERENCES & MEETINGS	0.00	500.00	0.00	500.00	0.00	0%
102-418.000-706.038	STAFF DEVELOPMENT	262.50	1,800.00	0.00	1,800.00	0.00	0%
102-418.000-706.050	SAFETY EQUIPMENT	1,541.08	1,600.00	436.04	1,600.00	0.00	0%
102-418.000-706.073	UNIFORMS & RAGS	1,899.02	1,800.00	1,195.19	1,800.00	0.00	0%
102-418.000-707.002	CAPITAL EXPENDITURES	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-707.003	EQUIPMENT/PROJECTS	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-707.060	SB1-RMRA EXPENSES	0.00	136,300.00	0.00	410,000.00	273,700.00	201%
102-418.000-707.065	SB1-PAVEMENT RESTORATION	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-707.066	SB1-PAVEMENT RESTORATION 2019	253,310.52	0.00	0.00	0.00	0.00	0%
102-418.000-707.067	SB1-PAVEMENT RESTORATION 2020	10,962.50	394,500.00	227,102.11	0.00	-394,500.00	-100%
102-418.000-707.068	PAVEMENT RESTORATION SPRING 21	0.00	0.00	0.00	0.00	0.00	0%
102-418.000-707.070	SB1-SANTA FE STREET IMPROVEMEN	19,500.00	104,300.00	116,561.75	0.00	-104,300.00	-100%
102-418.000-707.071	SB1-TOPEKA ST OVERLAY 3RD-5TH	0.00	0.00	17,375.00	550,000.00	550,000.00	0%
102-418.000-708.004	MIS EMPLOYEE BENEFITS	8,389.57	0.00	0.00	0.00	0.00	0%
102-418.000-708.005	MEDICARE	3,565.57	4,000.00	2,591.99	4,300.00	300.00	8%
102-418.000-708.006	PERS RETIREMENT	47,328.10	54,700.00	35,626.28	62,300.00	7,600.00	14%
102-418.000-708.007	PAYROLL TAXES	1,994.97	2,000.00	1,680.01	1,700.00	-300.00	-15%
102-418.000-708.008	HEALTH DENTAL VISION INSURANCE	71,438.42	71,100.00	41,763.16	76,100.00	5,000.00	7%
102-418.000-708.009	NATIONAL RETIREMENT	23,300.60	23,600.00	13,853.80	23,600.00	0.00	0%
102-418.000-708.010	SELF INS. PREMIUM	38,335.18	39,700.00	25,427.17	45,300.00	5,600.00	14%
102-418.000-708.012	DEFERRED COMPENSATION	1,950.00	2,000.00	1,275.00	2,000.00	0.00	0%
102-418.000-999.000	TRANSFERS OUT	35,649.66	27,800.00	0.00	29,000.00	1,200.00	4%
Total GAS TAX:		**1,143,002.92**	**1,541,800.00**	**843,760.14**	**1,899,400.00**	**357,600.00**	**23%**

FY 2021-22 Gas Tax (Highway Users Tax) Fund Revenue Projections

The State of California imposes excise taxes on various transportation fuels. California motor vehicle fuel taxes include the gasoline tax, diesel fuel tax, and the use fuel tax. Taxes on aircraft jet fuel are transferred to the state Aeronautics Account. Taxes on fuel for other motor vehicles are transferred to the state Highway Users Tax Account.

For all Gas Tax Revenues, the 2020-21 fiscal year estimate was developed by taking a conservative approach to the State of California's estimates and reduced it by 5%.

Cities receive highway user tax revenue under the following formulas:

Section 2103 – Section 2103 was added beginning with the 2010-11 fiscal year to allocate funds from a new motor vehicle fuel excise tax that replace previous city and county allocations from the Prop 42 sales tax on gasoline. This is known as the "fuel tax swap of 2010." Section 2103 funds are allocated to cities and counties on a per capita basis. For the 2021-22 fiscal year, revenue projections by the State reflect a decrease due to lower consumption.

400.175
Gas Tax 2103

FY	Amount	% Change
09/10	0.00	0.00%
10/11	212,256.90	0.00%
11/12	307,279.71	44.77%
12/13	180,097.02	-41.39%
13/14	319,717.00	77.52%
14/15	239,431.56	-25.11%
15/16	96,374.93	-59.75%
16/17	63,824.95	-33.77%
17/18	95,837.31	50.16%
18/19	84,800.00	-11.52%
19/20	174,576.95	105.87%
20/21	192,500.00	10.27%
21/22	173,594.70	-9.82%

Section 2105 – Section 2105(b) allocates 11.5% of the tax revenues in excess of 9 cents per gallon monthly among cities based on population.

400.170
Gas Tax 2105

FY	Amount	% Change
09/10	119,083.32	1.96%
10/11	114,786.59	-3.61%
11/12	103,961.33	-9.43%
12/13	99,186.06	-4.59%
13/14	156,065.00	57.35%
14/15	137,414.91	-11.95%
15/16	120,340.04	-12.43%
16/17	134,365.23	11.65%
17/18	133,550.37	-0.61%
18/19	129,600.00	-2.96%
19/20	129,149.24	-0.35%
20/21	125,800.00	-2.59%
21/22	127,523.70	1.37%

Section 2106 – Revenues equal to 1.04 cents per gallon are allocated as follows:

a. $7.2 million per year to the State Bicycle Transportation Account.
b. $400 per month to each city.
c. $800 per month to each county.
d. The residual amount to each county and the cities in that county based on registered vehicles. In each county, from this amount, the county receives an allotment based on the share of assessed value of the county which is in the unincorporated area. The remainder is allocated to the cities within the county based on population.

400.140
Gas Tax 2106

FY	Amount	% Change
09/10	77,642.50	-0.06%
10/11	73,643.69	-5.15%
11/12	72,660.72	-1.33%
12/13	73,011.59	0.48%
13/14	74,956.00	2.66%
14/15	86,019.51	14.76%
15/16	73,806.50	-14.20%
16/17	82,373.76	11.61%
17/18	83,595.79	1.48%
18/19	78,000.00	-6.69%
19/20	77,975.55	-0.03%
20/21	78,500.00	0.67%
21/22	77,282.10	-1.55%

Section 2107 – Provides monthly allocations to cities of 1.315 cents per gallon of gasoline, 1.8 cents per gallon of diesel, and 2.59 cents per liquefied petroleum gas, as follows:

a. Each city with removal costs in excess of $5,000 is allocated 50% of the cost exceeding $5,000.
b. The remainder is allocated to cities based on population.

400.150
Gas Tax 2107

FY	Amount	% Change
09/10	158,714.94	2.11%
10/11	153,325.96	-3.40%
11/12	149,200.95	-2.69%
12/13	162,529.95	6.00%
13/14	166,963.00	11.90%
14/15	176,705.86	5.84%
15/16	156,116.08	-11.65%
16/17	170,353.29	9.12%
17/18	173,807.62	2.03%
18/19	160,900.00	-7.43%
19/20	163,075.55	1.35%
20/21	165,300.00	1.36%
21/22	171,195.70	3.57%

Section 2107.5 – A flat amount is allocated to cities based on population. The City of Riverbank receives $6,000 annually for having a population between 25,000 to 49,999.

400.160 Gas Tax 2107.5		
FY	Amount	% Change
09/10	5,000.00	0.00%
10/11	5,000.00	0.00%
11/12	5,000.00	0.00%
12/13	5,000.00	0.00%
13/14	5,000.00	0.00%
14/15	10,000.00	100.00%
15/16	0.00	-100.00%
16/17	5,000.00	0.00%
17/18	5,000.00	0.00%
18/19	6,000.00	20.00%
19/20	6,000.00	0.00%
20/21	6,000.00	0.00%
21/22	6,000.00	0.00%

Road Maintenance and Rehabilitation Account (RMRA) – Senate Bill 1 in 2017 increased per gallon fuel excise taxes, diesel fuel sales taxes, and vehicle registration taxes. Fifty percent of the revenues received are allocated towards the State Highway Operation and Protection Program (SHOP) and fifty percent to cities and counties.

RMRA allocations must be used for projects that include road maintenance & rehabilitation, safety projects, railroad grade separations, traffic control devices and complete street components.

600.050 SB1 - RMRA		
FY	Amount	% Change
09/10	0.00	0.00%
10/11	0.00	0.00%
11/12	0.00	0.00%
12/13	0.00	0.00%
13/14	0.00	0.00%
14/15	0.00	0.00%
15/16	0.00	0.00%
16/17	0.00	0.00%
17/18	92,043.07	0.00%
18/19	370,500.00	302.53%
19/20	454,161.75	22.58%
20/21	411,600.00	-9.37%
21/22	432,750.60	5.14%

DEPARTMENT 102-418: GAS TAX 21 – 22

702.030	**Maintenance of Operations Equipment** Road Maintenance/Repairs Increase due to the cost of material		**$20,000**
702.031	**Rents & Leases**		**$19,000**
702.032	**Professional/Special Services**		**$35,000**
	State Permits/Fees	$10,000	
	Storm Water Testing filters	$ 9,000	
	Pump Repairs	$10,000	
	Dry Well Maintenance	$ 6,000	
702.036	**Street Sweeping Contract**		**$91,000**
702.037	**Street Light Repair**		**$750**
703.028	**Small Tools**		**$1,000**
703.062	**Street Signs/Stripping**		**$62,000**
	Street Signs	$25,411	
		$36,589	
704.021	**Utilities**		**$110,000**
	MID	$600	
	PG&E	$104,400	
	Dept. of Transportation	$5,000	
706.026	**Miscellaneous Expense**		**$2,000**
	Computer/Repairs	$1,800	
	Radio Repairs	$100	
	Tools	$100	
706.027	**Boot & Jackets**		**$1,000**
706.029	**Maintenance/Bldgs./Structures**		**$21,000**
	Asphalt Maintenance/Parts	$12,000	
	Signals Battery System Backups	$3,800	
	Other Maintenance	$5,000	

DEPARTMENT 102-418: GAS TAX 21 – 22

706.036	**Memberships, Dues, Books, Etc.**		**$1,500**
	811	$100	
	CWEA	$50	
	Books for Certification	$1,140	
	APWA	$200	
	Pesticide Regulations	$60	
706.037	**Conference &Meetings**		**$500**
706.038	**Staff Development**		**$1,800**
	Training Classes/Certifications	$950	
	CWEA	$100	
	APWA	$750	
706.050	**Safety Equipment**		**$1,600**
706.073	**Uniform & Rags**		**$1,800**

SEWER FUND		2019-20 Prior year Actual	2020-21 Current year Budget	2020-21 Current year Actual	2021-22 Dept Request Budget	Increase/ Decrease	% Change
Account Number	**Account Title**						
REVENUES							
106-000.000-600.180	SEWER SERVICE CHARGE	4,580,273.15	4,100,000.00	3,126,198.73	4,658,000.00	558,000.00	14%
106-000.000-600.200	MEASURE L SALARY REIMBURSEMENT	-	-	-	-	-	0%
106-000.000-600.225	INSPECTION FEES	1,756.44	2,000.00	250.18	1,000.00	(1,000.00)	-50%
106-000.000-655.000	FINES, FORFEITURES,PENALTIES	57,740.70	20,000.00	(9.90)	60,000.00	40,000.00	200%
106-000.000-664.000	INTEREST INCOME	16,620.26	16,400.00	4,276.30	10,000.00	(6,400.00)	-39%
106-000.000-675.080	DEPOSITS FORFEITED	-	-	-	-	-	0%
106-000.000-675.090	MISCELLANEOUS REVENUES	2,720.20	-	-	-	-	0%
106-000.000-675.160	INDUSTRIAL PERMITS REVENUE	78,576.37	20,000.00	12,208.68	20,000.00	-	0%
106-000.000-699.000	TRANSFERS IN	268,194.94	140,600.00	6,327.22	65,500.00	(75,100.00)	-53%
SEWER FUND Revenue Total:		**5,005,882.06**	**4,299,000.00**	**3,149,251.21**	**4,814,500.00**	**515,500.00**	**12%**

SEWER COLLECTION		2019-20 Prior year Actual	2020-21 Current year Budget	2020-21 Current year Actual	2021-22 Dept Request Budget	Increase/ Decrease	% Change
Account Number	**Account Title**						
106-423.000-701.001	PERSONNEL REGULAR	92,478.16	98,400.00	66,903.63	104,000.00	5,600.00	6%
106-423.000-701.002	PERSONNEL PART TIME	0.00	0.00	0.00	0.00	0.00	0%
106-423.000-701.003	PERSONNEL OVERTIME	88.92	1,000.00	152.63	1,000.00	0.00	0%
106-423.000-701.004	STANDBY PAY	11,112.79	15,000.00	7,544.25	15,000.00	0.00	0%
106-423.000-701.080	SALARY REQUEST	0.00	0.00	0.00	0.00	0.00	0%
106-423.000-702.030	MAINT. OPERATION EQUIP	15,152.45	15,000.00	5,905.49	15,000.00	0.00	0%
106-423.000-702.031	RENTS & LEASES	39,000.00	39,000.00	5,888.15	40,000.00	1,000.00	3%
106-423.000-702.032	PROFESSIONAL/SPECIAL SERV	29,654.44	35,760.00	29,249.05	38,700.00	2,940.00	8%
106-423.000-702.034	OTHER CONTRACT SERVICES	32,403.61	40,000.00	21,039.11	40,000.00	0.00	0%
106-423.000-703.023	ADVERTISING	149.00	300.00	0.00	300.00	0.00	0%
106-423.000-703.024	POSTAGE	7,159.22	7,200.00	4,774.42	7,200.00	0.00	0%
106-423.000-703.025	OFFICE EXPENSE	1,573.44	2,000.00	813.28	2,000.00	0.00	0%
106-423.000-703.049	CHEMICALS	1,243.80	1,500.00	0.00	1,500.00	0.00	0%
106-423.000-703.068	URAP	0.00	7,500.00	0.00	7,500.00	0.00	0%
106-423.000-704.021	UTILITIES	35,434.91	32,000.00	18,420.09	32,000.00	0.00	0%
106-423.000-704.022	COMMUNICATIONS	2,890.27	4,000.00	1,502.35	4,000.00	0.00	0%
106-423.000-706.026	MISCELLANEOUS EXPENSE	1,312.00	2,000.00	1,118.91	2,000.00	0.00	0%
106-423.000-706.027	BOOT & JACKET ALLOWANCE	383.37	400.00	367.19	400.00	0.00	0%
106-423.000-706.028	SMALL TOOLS	433.22	500.00	808.53	1,000.00	500.00	100%
106-423.000-706.029	MAIN OF BLDG/STRUCTURES/GRDS	15,804.80	21,400.00	1,801.71	21,400.00	0.00	0%
106-423.000-706.036	MEMBERSHIPS,DUES,BOOKS,ETC	795.34	500.00	359.00	500.00	0.00	0%
106-423.000-706.038	STAFF DEVELOPMENT	1,404.92	2,000.00	192.00	2,000.00	0.00	0%
106-423.000-706.050	SAFETY EQUIPMENT	989.18	2,000.00	357.52	2,000.00	0.00	0%
106-423.000-706.056	STATE/COUNTY FEES	67.18	3,900.00	3,853.78	4,000.00	100.00	3%
106-423.000-706.060	DEBT SERVICE	1,820.25	74,000.00	0.00	74,000.00	0.00	0%
106-423.000-706.073	UNIFORMS & RAGS	662.46	800.00	396.24	800.00	0.00	0%
106-423.000-706.999	BAD DEBTS	19,788.24	0.00	6,948.72	0.00	0.00	0%
106-423.000-707.003	EQUIPMENT/PROJECTS	188,908.42	2,550,000.00	22.00	193,000.00	-2,357,000.00	-92%
106-423.000-708.004	MIS EMPLOYEE BENEFITS	2,697.99	0.00	0.00	0.00	0.00	0%
106-423.000-708.005	MEDICARE	1,224.28	1,400.00	888.46	1,500.00	100.00	7%
106-423.000-708.006	PERS RETIREMENT	15,942.18	19,100.00	12,185.15	21,600.00	2,500.00	13%
106-423.000-708.007	PAYROLL TAXES	798.01	800.00	671.96	700.00	-100.00	-13%
106-423.000-708.008	HEALTH DENTAL VISION INSURANCE	27,238.87	28,100.00	16,343.88	30,200.00	2,100.00	7%
106-423.000-708.009	NATIONAL RETIREMENT	9,320.24	9,400.00	5,541.52	9,400.00	0.00	0%
106-423.000-708.010	SELF INS. PREMIUM	13,032.36	14,000.00	8,729.00	15,900.00	1,900.00	14%
106-423.000-999.000	TRANSFERS OUT	1,305,806.75	1,423,800.00	0.00	1,553,500.00	129,700.00	9%
Total SEWER COLLECTION:		**1,876,771.07**	**4,452,760.00**	**222,778.02**	**2,242,100.00**	**-2,210,660.00**	**-50%**

SEWER TREATMENT (WWTP)		2019-20 Prior year Actual	2020-21 Current year Budget	2020-21 Current year Actual	2021-22 Dept Request Budget	Increase/ Decrease	% Change
Account Number	**Account Title**						
106-424.000-701.001	PERSONNEL REGULAR	199,730.62	206,200.00	132,273.13	213,400.00	7,200.00	3%
106-424.000-701.003	PERSONNEL OVERTIME	34,019.46	36,000.00	27,841.94	36,000.00	0.00	0%
106-424.000-701.080	SALARY REQUEST	0.00	0.00	0.00	0.00	0.00	0%
106-424.000-702.030	MAINT. OPERATION EQUIP	64,745.57	65,000.00	41,914.29	65,000.00	0.00	0%
106-424.000-702.031	RENTS & LEASES	25,000.00	34,000.00	9,421.67	35,000.00	1,000.00	3%
106-424.000-702.032	PROFESSIONAL/SPECIAL SERV	164,752.82	172,700.00	88,843.75	172,700.00	0.00	0%
106-424.000-702.056	PIRTS & APPRAISALS,TAXES	2,035.60	2,500.00	2,040.96	2,500.00	0.00	0%
106-424.000-703.025	OFFICE EXPENSE	2,838.82	5,000.00	1,219.74	5,000.00	0.00	0%
106-424.000-703.049	CHEMICALS	2,523.65	5,700.00	1,112.89	5,700.00	0.00	0%
106-424.000-704.021	UTILITIES	235,057.41	220,000.00	109,607.22	220,000.00	0.00	0%
106-424.000-704.022	COMMUNICATIONS	1,554.70	1,700.00	945.00	1,700.00	0.00	0%
106-424.000-706.026	MISCELLANEOUS EXPENSE	0.00	2,800.00	49.81	2,800.00	0.00	0%

106-424.000-706.027	BOOT & JACKET ALLOWANCE	579.47	600.00	391.48	600.00	0.00	0%
106-424.000-706.028	SMALL TOOLS	2,651.95	3,000.00	547.53	3,000.00	0.00	0%
106-424.000-706.029	MAIN OF BLDG/STRUCTURES/GRDS	12,072.55	35,000.00	7,494.46	35,000.00	0.00	0%
106-424.000-706.036	MEMBERSHIPS,DUES,BOOKS,ETC	1,362.33	3,500.00	1,301.50	3,500.00	0.00	0%
106-424.000-706.038	STAFF DEVELOPMENT	2,185.63	4,500.00	393.94	4,500.00	0.00	0%
106-424.000-706.050	SAFETY EQUIPMENT	2,928.28	3,300.00	310.26	3,300.00	0.00	0%
106-424.000-706.053	LEVEE REPAIR AND A.C.	8,634.66	10,000.00	0.00	10,000.00	0.00	0%
106-424.000-706.073	UNIFORMS & RAGS	2,037.51	2,000.00	1,311.40	2,000.00	0.00	0%
106-424.000-706.076	BOND INTEREST EXPENSE	3,840.41	2,200.00	1,103.28	600.00	-1,600.00	-73%
106-424.000-707.002	CAPITAL EXPENDITURES	0.00	0.00	0.00	66,300.00	66,300.00	0%
106-424.000-707.003	EQUIPMENT/PROJECTS	0.00	0.00	0.00	0.00	0.00	0%
106-424.000-708.004	MIS EMPLOYEE BENEFITS	2,311.65	0.00	0.00	0.00	0.00	0%
106-424.000-708.005	MEDICARE	3,113.63	3,000.00	2,077.99	3,100.00	100.00	3%
106-424.000-708.006	PERS RETIREMENT	36,268.31	42,300.00	26,318.39	46,600.00	4,300.00	10%
106-424.000-708.007	PAYROLL TAXES	1,197.01	1,200.00	1,008.01	1,000.00	-200.00	-17%
106-424.000-708.008	HEALTH DENTAL VISION INSURANCE	35,593.30	36,300.00	21,249.59	39,300.00	3,000.00	8%
106-424.000-708.009	NATIONAL RETIREMENT	13,980.36	14,200.00	8,312.28	14,200.00	0.00	0%
106-424.000-708.010	SELF INS. PREMIUM	27,187.34	29,000.00	17,464.04	32,100.00	3,100.00	11%
106-424.000-708.012	DEFERRED COMPENSATION	3,449.94	3,400.00	2,255.73	3,400.00	0.00	0%
106-424.000-999.000	TRANSFERS OUT	192,500.00	0.00	0.00	0.00	0.00	0%
Total SEWER TREATMENT (WWT		**1,084,152.98**	**945,100.00**	**506,810.28**	**1,028,300.00**	**83,200.00**	**9%**
TOTAL SEWER EXPENDITURES		**2,960,924.05**	**5,397,860.00**	**729,588.30**	**3,270,400.00**	**-2,127,460.00**	**-39%**
NET SEWER FUND EFFECT		2,044,958.01	(1,098,860.00)	2,419,662.91	1,544,100.00		

FY 2021-22 Sewer Fund Revenue Source Projections

Sewer Service Charge: 106-000.000-600.180

The City bills residents for sewer service charges every two months. Residential customers are billed $49.48 per month, while commercial customers are billed a base rate of $49.48 per month and an incremental charge based on water usage.

The Finance Department estimates annual revenues based on a rolling six-billing average.

600.180 Sewer Service Charge		
FY	Amount	% Change
08/09	1,815,926.61	2.12%
09/10	1,893,493.99	4.27%
10/11	1,799,804.36	-4.95%
11/12	1,876,337.87	4.25%
12/13	1,872,253.85	-0.22%
13/14	1,874,528.00	0.12%
14/15	1,937,427.31	3.36%
15/16	1,943,561.14	0.32%
16/17	3,026,043.64	55.70%
17/18	3,554,465.92	17.46%
18/19	4,275,230.00	20.28%
19/20	4,580,273.00	7.14%
20/21	4,100,000.00	-10.49%
21/22	**4,658,000.00**	**13.61%**

Fines, Forfeitures, and Penalties: 106-000.000-655.000

Customers who are delinquent on their utility bill are assessed a 10% penalty after the due date. Over the past two fiscal years, the City has seen an increase in the amount of customers who are delinquent. These revenues are used to fund the Utility Rate Assistance Program for Seniors & residents who are permanently disabled.

Due to the COVID-19 Pandemic, penalty fees for delinquent billings were waived. FY 2021-22 anticipates that penalties will resume.

655.000 Fines		
FY	Amount	% Change
08/09	35,519.16	8.69%
09/10	34,196.20	-3.72%
10/11	33,952.28	-0.71%
11/12	34,337.48	1.13%
12/13	35,125.50	2.29%
13/14	34,822.00	-0.86%
14/15	36,615.29	5.15%
15/16	31,553.82	-13.82%
16/17	48,175.36	52.68%
17/18	72,477.54	50.45%
18/19	79,191.08	9.26%
19/20	57,740.70	-27.09%
20/21	0.00	-100.00%
21/22	**60,000.00**	**0.00%**

DEPARTMENT 106.423: SEWER COLLECTIONS 21 – 22

702.030	**Maintenance Operation Equipment**		**$15,000**
702.031	**Rents & Leases**		**$39,000**
702.032	**Professional/Special Services**		**$38,660**
	Monitoring Fees	$3,000	
	Special/Emergency Work	$10,000	
	CVCWA	$1,000	
	Work order Software Maint.	$1,000	
	SWRCB Annual Permit	$8,000	
	SSMP	$2,000	
	Increase due to Du-All Safety	$11,660	
702.034	**Other Contract Services**		**$50,000**
	Banking Fees (Utility Billing Services)		
	Accounting Services		
703.023	**Advertising**		**$300**
703.024	**Postage**		**$7,000**
703.025	**Office Expense**		**$2,000**
703.049	**Chemicals**		**$1,500**
704.021	**Utilities**		**$32,000**
704.022	**Communications**		**$4,000**
	AT&T Mobility		
	AT&T Calnet 2		
706.026	**Miscellaneous**		**$2,000**
706.026	**Boot & Jacket Allowance**		**$400**
706.028	**Small Tools**		**$1,000**
706.029	**Maintenance Bldgs. /Structures**		**$21,400**
	Sewer System Repairs	$15,600	
	Heads for Jetter	$5,800	

DEPARTMENT 106.423: SEWER COLLECTIONS

706.036	**Membership, Dues, Books, Etc.**		**$500**
	Employee Books for Certification	$305	
	CWEA	$195	
706.038	**Staff Development**		**$2,000**
706.050	**Safety Equipment**		**$2,000**
706.073	**Uniforms & Rags**		**$800**

DEPARTMENT 106-424: SEWER TREATMENT 21 – 22

702.030	**Maintenance Operation Equipment**		**$65,000**
702.031	**Rents & Leases**		**$34,000**
702.032	**Professional/Special Services**		**$172,660**
	Lab Analysis	$33,000	
	Regional Reporting	$29,000	
	Lab Testing	$19,000	
	Water Monitoring	$30,000	
	Misc. Professional Services	$30,000	
	WDR Permit	$20,000	
	Increase due to Du-All	$11,660	
702.056	**Taxes**		**$2,500**
703.025	**Office Expense**		**$5,000**
703.049	**Chemicals**		**$5,700**
704.021	**Utilities**		**$220,000**
	PG&E Office	$10,000	
	MID – WWTP	$210,000	
704.022	**Communications**		**$1,200**
	AT&T Mobility		
706.026	**Misc. Expense**		**$2,800**
706.027	**Boot & Jacket Allowance**		**$600**
706.028	**Small Tools**		**$3,000**
706.029	**Maintenance of Bldgs./Structures/Grds**		**$35,000**
	WWTP Maintenance		

DEPARTMENT 106-424: SEWER TREATMENT 21 – 22

706.036	**Memberships, Dues, Books, Etc.**		**$3,500**
	CWEA	$2,000	
	State Water Resources	$300	
	Staff Development Books	$1,200	
706.038	**Staff Development**		**$4,500**
	Employee Training/Education/Certs/Exams		
706.053	**Levee Repair**		**$10,000**
706.073	**Uniforms and Rags**		**$2,000**

WATER FUND		2019-20	2020-21	2020-21	2021-22		
		Prior year	Current year	Current year	Dept Request	Increase/	
Account Number	Account Title	Actual	Budget	Actual	Budget	Decrease	% Change
REVENUES							
114-000.000-600.140	WATER REVENUES	2,632,919.60	2,200,000.00	2,069,682.50	3,073,300.00	873,300.00	40%
114-000.000-600.160	BAD DEBT-UTILITY COLLECTIONS	5,035.90	5,000.00	2,412.85	3,000.00	(2,000.00)	-40%
114-000.000-600.225	INSPECTION FEES	-	-	150.00	5,000.00	5,000.00	0%
114-000.000-600.226	BACKFLOW INSPECTIONS	12,975.00	5,000.00	189.00	5,000.00	-	0%
114-000.000-600.240	LEASE REVENUE	-	-	-	-	-	0%
114-000.000-655.000	FINES, FORFEITURES,PENALTIES	39,402.31	20,000.00	(5.41)	40,000.00	20,000.00	100%
114-000.000-660.000	WATER VIOLATIONS	(0.01)	-	-	-	-	0%
114-000.000-664.000	INTEREST INCOME	27,631.09	18,200.00	6,637.74	10,000.00	(8,200.00)	-45%
114-000.000-675.090	MISCELLANEOUS REVENUES	1,120.00	4,500.00	4,274.18	4,500.00	-	0%
114-000.000-680.035	UNREALIZED GAIN/LOSS ON INVEST	18,882.98	-	(18,612.67)	-	-	0%
114-000.000-699.000	TRANSFERS IN	-	1,000.00	1,012.09	-	(1,000.00)	-100%
WATER FUND Revenue Total:		**2,737,966.87**	**2,253,700.00**	**2,065,740.28**	**3,140,800.00**	**887,100.00**	**39%**

EXPENDITURES		2019-20	2020-21	2020-21	2021-22		
		Prior year	Current year	Current year	Dept Request	Increase/	
Account Number	Account Title	Actual	Budget	Actual	Budget	Decrease	% Change
114-433.000-701.001	PERSONNEL REGULAR	331,359.11	327,000.00	219,483.34	334,100.00	7,100.00	2%
114-433.000-701.003	PERSONNEL OVERTIME	27,407.15	40,000.00	22,589.59	30,000.00	-10,000.00	-25%
114-433.000-701.004	STANDBY PAY	28,412.33	30,000.00	21,049.62	27,000.00	-3,000.00	-10%
114-433.000-701.080	SALARY REQUEST	0.00	0.00	0.00	0.00	0.00	0%
114-433.000-702.030	MAINT. OPERATION EQUIP	58,340.76	68,000.00	53,358.65	68,000.00	0.00	0%
114-433.000-702.031	RENTS & LEASES	31,000.00	31,000.00	542.78	32,000.00	1,000.00	3%
114-433.000-702.032	PROFESSIONAL/SPECIAL SERV	93,616.73	151,700.00	89,091.77	151,700.00	0.00	0%
114-433.000-702.034	OTHER CONTRACT SERVICES	39,899.03	40,000.00	23,242.01	40,000.00	0.00	0%
114-433.000-703.023	ADVERTISING	0.00	300.00	0.00	300.00	0.00	0%
114-433.000-703.024	POSTAGE	8,438.61	7,600.00	5,764.05	7,600.00	0.00	0%
114-433.000-703.025	OFFICE EXPENSE	2,659.37	3,000.00	1,861.33	3,000.00	0.00	0%
114-433.000-703.064	BACKFLOW INSPECTION EXPENSES	1,686.10	6,000.00	807.91	6,000.00	0.00	0%
114-433.000-703.067	WATER CONSERVATION PROGRAM	0.00	10,000.00	0.00	10,000.00	0.00	0%
114-433.000-703.068	URAP	0.00	15,000.00	0.00	15,000.00	0.00	0%
114-433.000-704.021	UTILITIES	343,180.08	400,000.00	227,040.15	400,000.00	0.00	0%
114-433.000-704.022	COMMUNICATIONS	5,476.69	5,300.00	3,195.83	5,300.00	0.00	0%
114-433.000-706.026	MISCELLANEOUS EXPENSE	733.58	2,200.00	838.20	2,200.00	0.00	0%
114-433.000-706.027	BOOT & JACKET ALLOWANCE	794.43	1,000.00	340.88	1,000.00	0.00	0%
114-433.000-706.028	SMALL TOOLS	1,041.03	1,800.00	1,708.39	1,800.00	0.00	0%
114-433.000-706.029	MAIN OF BLDG/STRUCTURES/GRDS	6,630.71	25,000.00	5,865.73	25,000.00	0.00	0%
114-433.000-706.036	MEMBERSHIPS,DUES,BOOKS,ETC	2,034.33	2,200.00	2,181.34	2,200.00	0.00	0%
114-433.000-706.038	STAFF DEVELOPMENT	4,558.64	4,500.00	1,998.27	4,500.00	0.00	0%
114-433.000-706.050	SAFETY EQUIPMENT	1,316.68	2,800.00	549.62	2,800.00	0.00	0%
114-433.000-706.054	DEBT SERVICES	64,622.33	387,000.00	29,645.07	387,000.00	0.00	0%
114-433.000-706.056	STATE/COUNTY FEES	27,868.94	30,000.00	28,086.34	30,000.00	0.00	0%
114-433.000-706.073	UNIFORMS & RAGS	2,027.10	2,500.00	1,467.05	2,500.00	0.00	0%
114-433.000-706.999	BAD DEBTS	12,614.56	5,000.00	4,342.92	0.00	-5,000.00	-100%
114-433.000-707.002	CAPITAL EXPENDITURES	0.00	0.00	0.00	0.00	0.00	0%
114-433.000-707.003	EQUIPMENT/PROJECTS	0.00	100.00	22.00	260,000.00	259,900.00	259900%
114-433.000-708.004	MIS EMPLOYEE BENEFITS	978.72	0.00	0.00	0.00	0.00	0%
114-433.000-708.005	MEDICARE	3,666.73	4,400.00	2,516.28	3,600.00	-800.00	-18%
114-433.000-708.006	PERS RETIREMENT	60,633.00	69,500.00	42,766.63	75,500.00	6,000.00	9%
114-433.000-708.007	PAYROLL TAXES	1,999.36	1,900.00	1,679.97	1,700.00	-200.00	-11%
114-433.000-708.008	HEALTH DENTAL VISION INSURANCE	85,677.21	84,700.00	44,856.96	92,700.00	8,000.00	9%
114-433.000-708.009	NATIONAL RETIREMENT	27,836.65	23,600.00	16,072.33	23,600.00	0.00	0%
114-433.000-708.010	SELF INS. PREMIUM	44,535.03	46,600.00	27,863.57	51,000.00	4,400.00	9%
114-433.000-708.012	DEFERRED COMPENSATION	1,950.00	2,000.00	1,275.00	2,000.00	0.00	0%
114-433.000-999.000	TRANSFERS OUT	806,124.18	871,800.00	0.00	943,200.00	71,400.00	8%
Total WATER COLLECTION:		**2,129,119.17**	**2,703,500.00**	**882,103.58**	**3,042,300.00**	**338,800.00**	**13%**
Net Total WATER FUND:		**608,847.70**	**-449,800.00**	**1,183,636.70**	**98,500.00**		

FY 2021-22 Water Fund Revenue Source Projections

Water Revenues: 114-000.000-600.140

The City bills residents for water service charges every two months. Residential customers are billed a base rate of $27.07 every month for water usage up to 7,480 gallons for a two month period, and an incremental charge for water usage over 7,480 gallons.

The Finance Department estimates annual revenues based on a rolling six-billing average.

600.140 Water Service Charge		
FY	Amount	% Change
08/09	1,669,599.04	0.27%
09/10	1,712,451.27	2.57%
10/11	1,659,892.23	-3.07%
11/12	1,693,796.93	2.04%
12/13	1,746,379.51	3.10%
13/14	1,767,584.00	1.21%
14/15	1,698,972.19	-3.88%
15/16	1,749,647.31	2.98%
16/17	2,050,723.94	17.21%
17/18	2,086,303.83	1.73%
18/19	2,203,387.73	5.61%
19/20	2,632,919.60	19.49%
20/21	2,200,000.00	-16.44%
21/22	**3,073,300.00**	**39.70%**

Fines, Forfeitures, and Penalties: 114-000.000-655.000

Customers who are delinquent on their utility bill are assessed a 10% penalty after the due date. Over the past two fiscal years, the City has seen an increase in the amount of customers who are delinquent. These revenues are used to fund the Utility Rate Assistance Program for Seniors & residents who are permanently disabled.

Due to the COVID-19 Pandemic, penalty fees for delinquent billings were waived. FY 2021-22 anticipates that penalties will resume.

655.000 Fines		
FY	Amount	% Change
08/09	54,202.95	-7.16%
09/10	52,269.87	-3.57%
10/11	44,819.66	-14.25%
11/12	47,715.69	6.46%
12/13	45,733.98	-4.15%
13/14	49,823.00	8.94%
14/15	42,567.64	-14.56%
15/16	48,842.89	14.74%
16/17	37,515.76	-23.19%
17/18	51,950.74	38.48%
18/19	52,425.67	0.91%
19/20	39,402.31	-24.84%
20/21	0.00	-100.00%
21/22	**40,000.00**	0.00%

DEPARTMENT 114-433: WATER 21 – 22

702.030	**Maintenance Operation Equipment**		**$68,000**
702.031	**Rents & Leases**		**$31,000**
702.032	**Professional/Special Services**		**$151,660**
	Software Licenses	$4,358	
	Testing/Sampling	$16,205	
	Backflow Testing	$7,760	
	CRWA	$937	
	American Water Works	$2,000	
	MCC Controls	$920	
	SJVAPCD	$2.020	
	EM Electric & Mach.	$2,000	
	Equarius waterworks	$7,000	
	Other Services	$20,000	
	STRGBA	$67,000	
	Increase due to Du-All	$11,660	
702.034	**Other Contract Services**		**$40,000**
	Banking Fees (Utility Billing Services)		
	Accounting Services		
703.023	**Advertising**		**$300**
703.024	**Postage**		**$7,000**
703.025	**Office Expense**		**$3,000**
703.064	**Backflow Inspection Expense**		**$6,000**
703.067	**Water Conservation Program**		**$25,000**
704.021	**Utilities**		**$400,000**
	PG&E	$272,000	
	MID	$128,000	
704.022	**Communications**		**$4,200**
	AT&T Mobility		
706.026	**Miscellaneous**		**$2,200**

DEPARTMENT 114-433: WATER

706.027	**Boot & Jacket Allowance**		**$1,000**
706.028	**Small Tools**		**$1,500**
706.029	**Maintenance Building/Structures**		**$25,000**
706.036	**Membership, Dues, Books. Etc.**		**$2,200**
706.038	**Staff Development**		**$4,500**
	Training/Education/Certifications	$1,500	
	CWEA Classes	$1,500	
	CRWA Classes	$1,500	
706.050	**Safety Equipment**		**$2,800**
706.056	**State/County Fees**		**$19,000**
706.073	**Uniform & Rags**		**$2,500**

PUBLIC BENEFIT FUND		2019-20	2020-21	2020-21	2021-22		
		Prior year	Current year	Current year	Dept Request	Increase/	
Account Number	**Account Title**	**Actual**	**Budget**	**Actual**	**Budget**	**Decrease**	**% Change**
REVENUES							
230-000.000-450.040	ADMIN CULTIVATION PERMIT	0.00	0.00	0.00	0.00	0.00	0%
230-000.000-600.100	FLAVORS-PUBLIC BENEFIT PAYMENT	612,451.09	775,000.00	828,192.40	360,000.00	-415,000.00	-54%
230-000.000-600.150	RIVERBANK CANNABIS COLLECTIVE	84,000.00	108,000.00	72,000.00	108,000.00	0.00	0%
230-000.000-600.200	CANNA+RISE PUBLIC BENEFIT PYMT	54,479.85	96,000.00	110,811.27	96,000.00	0.00	0%
Total PUBLIC BENEFIT FUND Revenue Total		**750,930.94**	**979,000.00**	**1,011,003.67**	**564,000.00**	**-415,000.00**	**-42%**
EXPENDITURES							
230-411.000-701.002	PERSONNEL PART TIME	0.00	0.00	0.00	0.00	0.00	0%
230-411.000-702.031	RENTS & LEASES	69,821.20	120,700.00	104,385.88	121,600.00	900.00	1%
230-411.000-702.034	OTHER CONTRACT SERVICES	5,402.85	53,500.00	54,129.19	0.00	-53,500.00	-100%
230-411.000-702.060	CONTRACT SHERIFF'S SERVICES	49,990.71	300,000.00	0.00	300,000.00	0.00	0%
230-411.000-707.003	EQUIPMENT/PROJECTS	2,500.00	38,600.00	38,542.35	0.00	-38,600.00	-100%
230-411.000-999.000	TRANSFERS OUT	0.00	0.00	0.00	0.00	0.00	0%
230-441.000-707.004	COMMUNITY CENTER KITCHEN REMOD	0.00	242,800.00	159,537.00	0.00	-242,800.00	-100%
PUBLIC BENEFIT FUND Expenditure Total:		**127,714.76**	**755,600.00**	**356,594.42**	**421,600.00**	**-334,000.00**	**-44%**
Net Total PUBLIC BENEFIT FUND:		**623,216.18**	**223,400.00**	**654,409.25**	**142,400.00**		

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 9.2

SECTION 9: WORKSHOPS

Meeting Date:	May 25, 2021
Subject:	Workshop – American Rescue Plan Act
From:	Sean Scully, City Manager

RECOMMENDATION

It is recommended that the City Council consider the workshop information provided by staff on the American Rescue Act and provide direction to staff as appropriate regarding the preliminary allocation of American Rescue Act funding that will be received by the City of Riverbank in 2021 and 2022.

SUMMARY

On March 11, 2021 President Joe Biden signed into law the American Rescue Plan Act of 2021 (also called the COVID-19 Stimulus Package/American Rescue Plan). The intent of the legislation is to speed up the recovery of the Country as the United States recovers (and continues to struggle) from the effects of the COVID-19 pandemic. The funding package includes approximately $1.9 trillion in anticipated funding. Of that amount, $65 billion is allocated as direct aid to every City, Town, or Village across the country. The City's are split into two categories, entitlement cities (metropolitan – City's over 50,000 in population) and non-entitlement units of local government (the City of Riverbank fits into this category). For non-entitlement jurisdictions American Rescue Plan funds will be distributed by the state governments in which the City is located. The US Treasury has not yet released the guidelines on how the funds will be disbursed from the State but it is anticipated that this will be released in the very near future and presumably the City of Riverbank could draw down funds as early as June of this year.

While the Treasury continues to refine each cities allocation, preliminarily Riverbank has been allocated approximately **$4,683,303** in funding under the legislation. Half of that funding would be available this year (approximately $2.34M) with the other half available next year (12 months after the first disbursement).

Although significant guidance is still needed to clarify all of the qualifying uses for this funding, preliminary information with regard to eligible expenses fall into the following general categories:

- COVID 19 Expenditures / Pandemic Response

- Lost Municipal Revenue
- Costs Related to Workforce/Personnel (Essential Workers)
- Public Infrastructure (Water, Sewer, Stormwater, Cybersecurity, Climate Change, etc).
- Broadband Expansion
- Assistance to nonprofits, small business, impacted industries, and households (may be restricted to eligibility inside qualified census tracks).
- Affordable housing in response to the pandemic (staff is still researching specifics with regard to whether and how these funds can be used in relation to affordable/housing programs).

Within each category there is broad discretion for local communities to determine the best use of the funds to improve and recover from the impacts of the COVID19 pandemic. With that said, the Department of Treasury has stated there are five specific categories of ineligible uses which are:

- Federal Matching Requirements
- Premium Pay
- Pensions (or pension liabilities)
- Infrastructure not directly related to the American Rescue Plan/Act
- Rainy Day Funds, Financial Reserves, and Outstanding Debt

FUNDING OPTIONS

With the broadness in application and amount of funding there are a variety of ways that Council could choose to allocate these funds for the best use in the community. During the workshop presentation staff will present some concepts which could be considered but Council has broad discretion to allocate the funds however it sees fit.

To encourage the brainstorming needed to create a comprehensive plan Council could consider some of the following concepts:

- Affordable Housing / Homelessness Projects
- Downtown and small business economic development projects and/or assistance
- IT Upgrades to the Chamber as well as City IT Cyber Security Infrastructure
- Offsetting of lost revenues (primarily within recreation programs and facility rentals estimated at approximately $143,771). Treasury has determined the specific method in which this calculation should occur, therefore the lost revenues may be more or less than the initial estimate.
- Qualified non-profit assistance.
- Infrastructure (variety of possible projects).

In order to more effectively drill down into a more specific funding strategy staff would recommend that Council provide some direction on the prioritization of the qualified expenditure categories which will allow staff to more specifically develop a plan which divides the Rescue Act funds appropriately. The process may take more than one workshop as this is the most significant amount of Federal funding ever received by the City of Riverbank and having a well thought out and strategic approach will be critical to get the most community value out of the funding as possible. In addition, as further guidance is received from the Department of Treasury, expenditure categories may change.

At the time of the workshop, staff will also outline for Council the significant funds that are being allocated to a variety of Federal and State grant programs which will provided added opportunities for the City of Riverbank.

ATTACHMENTS

None

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 10.1

SECTION 10: NEW BUSINESS

Meeting Date:	May 25, 2021
Subject:	A **Resolution** of the City Council of The City of Riverbank, California, Approving a Subdivision Improvement Agreement for Bruin Heights with D.R. Horton Ca3 Inc. and Authorize the City Manager to Execute the Agreement
From:	Sean Scully, City Manager
Submitted by:	Gabriel R. Salazar, Associate Planner

RECOMMENDATION

It is recommended that the City Council consider the proposed resolution approving the Subdivision Improvement Agreement with D.R. Horton CA3 Inc. for Bruin Heights and directing the City Manager to execute the agreement.

SUMMARY

On December 12, 2017, the City Council approved a Tentative Map, a General Plan Amendment, and a Planned Development (PD) rezone for the River Run project which is now known as Bruin Heights. Since that time, developer D.R. Horton CA3 Inc. (D.R. Horton) has assumed the River Run Development Agreement and has worked with staff on the necessary approvals for the needed infrastructure improvements to serve the subdivision.

One of the primary final steps in the subdivision map process is the approval of a final map which subdivides the parcel into the individual lots planned for homes, streets and utilities, and parkland or other public areas. Commonly, there are two ways to achieve a final map. The first way is for the developer to install all required infrastructure improvements (roads, street lighting, water/sewer lines, etc) in advance of requesting the final map. The second way is to enter into a Subdivision Improvement Agreement ("SIA") and submit bonds, which provide security for the City that the improvements will be completed as required by the tentative map conditions of approval. In the past, the City has used both methods depending on the individual needs and timelines of each project.

D.R. Horton has begun the process of on-site grading and is ready to install infrastructure improvements. They have requested the Council consider approving their final map (also agendized for this Council meeting). As such, the Riverbank Municipal Code ("RMC") requires that a Subdivision Improvement Agreement be approved in advance of the approval of a final map.

Attachment 2 is a standard Subdivision Improvement Agreement that lays out many of the bonding and insurance requirements set forth in the Riverbank Municipal Code. Specific items in the agreement have been tailored to fit the circumstances of Bruin Heights. Approval of this document will allow the developer to request final map consideration by Council.

The estimated cost of the required infrastructure improvements for Bruin Heights are approximately $2,835,631.81. This estimate has been reviewed and approved by the City Engineer. RMC §152.076 requires that two specific improvement securities be filed with the City; the first security shall secure faithful performance of the agreement in an amount equal to 100% of the estimated cost of the improvements and the second security shall secure the obligations set forth in Cal Govt. Code §66499.3(b) of payment of the contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the improvements, and shall be in an amount equal to 50% of the total estimated cost of the improvements. .

The Municipal Code provides a variety of options for developers to provide these securities. In this case, the developer has provided two bonds to the City Clerk. The City Attorney has reviewed these documents to form.

FINANCIAL IMPACT:

There is no direct financial impact as a result of the Subdivision Improvement Agreement. However, approval of the SIA will allow the review and approval of the Final Map and facilitate the development of single-family residential units and associated amenities.

ATTACHMENTS

1. Proposed Resolution No. 2021-___
2. Subdivision Improvement Agreement between the City of Riverbank and D.R. Horton, CA3 Inc. for Bruin Heights

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT FOR BRUIN HEIGHTS WITH D.R. HORTON CA3 INC. AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, D.R. Horton CA3 Inc. is the property owner of Bruin Heights, formerly River Run, a proposed 51 lot subdivision on approximately 9.11 acres; and

WHEREAS, the City Council, on December 12, 2017, approved the Tentative Map, the General Plan Amendment, and the Planned Development rezone for River Run (now Bruin Heights); and

WHEREAS, significant infrastructure improvements are needed in order to serve the newly annexed area for future growth; and

WHEREAS, D.R. Horton CA3 Inc. will be the builder for Bruin Heights; and

WHEREAS, D.R. Horton CA3 Inc. will be requesting Council consider approval of a final map for Bruin Heights at tonight's City Council meeting; and

WHEREAS, the Riverbank Municipal Code requires that if improvements are not complete when final map is considered for approval that a subdivision improvement agreement be entered into to; and

WHEREAS, the subdivision improvement agreement has been developed in cooperation with D.R. Horton CA3 Inc. and City of Riverbank staff.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby declares the following:

1. The City Council approved the subdivision improvement agreement as presented (attachment A).

2. The City Council directs the City Manager to execute the attached subdivision improvement agreement subject to verification and receipt of the securities required within the agreement and any other requirements as set forth by the agreement.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 25th day of May, 2021; motioned by Councilmember ______, seconded by Councilmember ______, and upon roll call was carried by the following vote of ___:

AYES:
NAYS:
ABSENT:
ABSTAIN:

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

Attachment: Exhibit A – Subdivision Improvement Agreement Copy

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 BRUIN HEIGHTS SUBDIVISION

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("Agreement") is made and entered into this __ day of ________ 2021, by and between the City of Riverbank, a California municipal corporation ("City") and D.R. Horton CA 3, Inc., a California corporation ("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 9.1 acres, lying in the City of Riverbank, County of Stanislaus, California, known as "Bruin Heights" (the "Subdivision"), formerly known as River Run.

B. On November 21, 2017, the Planning Commission approved Tentative Subdivision Map No. 02-2016 for the Subdivision with conditions of approval (the "Tentative Map"). Council Resolution No. 2017-079 approving the Tentative Map with the Planning Commission's recommended conditions, is attached hereto as **Exhibit A** and incorporated herein by this reference (the "Resolution of Approval").

B. 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.

C. Complete improvement plans for the construction, installation, and completion of the improvements ("Improvement Plans" and "Improvements") have been prepared by Subdivider and approved by the City of Riverbank City Engineer ("Engineer") and Planning and Building Manager or her designee ("Manager"). Improvement Plans refers to the Improvement Plans dated February 9, 2021, prepared by NorthStar Engineering, Inc, approved by the City on __________, 2021 and attached hereto as **Exhibit B** and on file with the Development Services Department.

D. 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.

E. 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, or execute an agreement with the City to complete the Improvements within a specified period of time.

F. 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 and as described in the Improvement Plans

G. 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 "<u>Securities</u>").

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

AGREEMENT

1. Recitals. The recitals above ("<u>Recitals</u>") 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 "<u>Effective Date</u>"), 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 shown on the Improvement Plans. The Improvement Plans may only be modified by the Subdivider subject to prior written approval by the Manager.

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 grated. 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 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 Engineer and Manager, is Two Million, Eight Hundred Thirty-five Thousand, Six Hundred Thirty-One dollars and Eighty One cents ($2,835,631.81), including a 10% contingency, as set forth in **Exhibit D** ("Cost Estimate")

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.** Prior to approval by City of the Final Map, Subdivider shall furnish to City the following improvement Securities in the amounts set forth in **Exhibit C**. Improvement security shall be of the type as provided for in Government Code Section 66499. Bonds shall be by one or more duly authorized corporate sureties licensed to do business in California.

A. **Performance Security.** The total amount of performance security ("Performance Security") shall equal 100% of the final Cost Estimate. The Performance Security shall be in the form of a bond naming the City as oblige, or a certificate of deposit made payable only to the City, or cash.

B. **Payment Security.** The total amount of payment security ("Payment Security") shall equal 50% of the final Cost Estimate to secure payment to all contractors and subcontractors performing work on said Improvements and all persons furnishing labor, materials or equipment to them for said Improvements. Payment Security shall be in the form of a bond naming the City as oblige, or a certificate of deposit made payable only to the City, or cash.

C. **Partial Acceptance and Reduction of Performance Security**. Performance Security may be reduced as work progresses only for the work satisfactorily completed and accepted by the City Engineer. Upon written request from the Subdivider, the City Engineer with the concurrence of the Director of Public Works shall determine the value of work completed satisfactorily and may authorize release of a portion of the security. In no event shall such security be reduced by more than 90 percent of the value of the work completed. Upon final completion and acceptance of the work as determined by the City Engineer and Director of Public Works, a notice of acceptance shall be filed with the Stanislaus County Recorder. 10% of such security shall be retained for 35 days after the filing of such notice or longer period if required by law.

D. **Guarantee and Warranty Security.** Security to guarantee workmanship shall be in the amount of 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.

E. **Bonds.** Any bonds submitted as a Security 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.

F. **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**. Performance Security may be reduced as work progresses only for the work satisfactorily completed and accepted by the City Engineer. Upon written request from the Subdivider, the City Engineer with the concurrence of the Director of Public Works shall determine the value of work completed satisfactorily and may authorize release of a portion of the security. In no event shall such security be reduced by more than 90% of the value of the work completed. Upon final completion and acceptance of the work as determined by the City Engineer and Director of Public Works, a notice of acceptance shall be filed with the Stanislaus County Recorder.

B. **Payment Security**. Payment Security shall be released upon City's final acceptance of the Improvements.

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 ("<u>Default</u>") 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, except for punitive, special, or consequential damages. 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, to the actual knowledge of the Subdivider representative providing such warranty, and without duty of inquiry or investigation, 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.

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 passive 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, except for City's active negligence or willful misconduct. 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, except for claims regarding defect and diversion liability, and claims arising from City or City Agent's active negligence and willful misconduct. 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 Email: dkenney@riverbank.org
With copies to:	City of Riverbank 6707 Third Street Riverbank, CA 95367 Attn: Sean Scully, City Manager Email: sscully@riverbank.org
If to Subdivider:	D.R. Horton CA3, Inc. 419 W. Murray Avenue Visalia, CA 93291 Attn: Matthew Tranah Email: MCTranah@drhorton.com

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 or 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.

T. **Exhibits.** All exhibits attached hereto are incorporated into this Agreement:

[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:	**CITY:**
D.R. HORTON CA3, INC., a California corporation:	CITY OF RIVERBANK, a California municipal corporation:
By: ______________________ Joey Gendron, Vice President	By: ______________________ Sean Scully, City Manager
Date Signed: ________________	Date: ______________________
	ATTEST:
	By: ______________________ 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 ______________________ 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)

City of Riverbank
Planning Commission
Resolution No. 2017-024

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK RECOMMENDING APPROVAL OF THE REQUEST OF R&K LOWE 1997 REVOCABLE TRUST FOR TENTATIVE MAP 02-2016 TO SUBDIVIDE 9.1± ACRES INTO 51 PLANNED DEVELOPMENT SINGLE FAMILY RESIDENTIAL LOTS, LOCATED AT 6272 CENTRAL AVENUE APN: 062-021-008

WHEREAS, an application has been received from R&K Lowe 1997 Revocable Trust, with a proposal to subdivide approximately 9.1± acres into fifty-one (51) single family lots which allows for a net density of zero to eight (0-8) dwelling units per acre; 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 0.44 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 in the staff report: DESIGN-2.5 (streetscapes), DESIGN-2.7 (sidewalks), DESIGN-3.1 (continuity), DESIGN-3.2 (pedestrian-friendly), DESIGN-3.5 (small lot minimization), DESIGN 5.2 (eyes on the street), CONS-4.2 (stormwater), CONS-8.6 (compact development), CONS-8.9 (drought-tolerant landscape), and SAFE 2.2 (fire protection); and

WHEREAS, Tentative Map 02-2016 was reviewed by the Riverbank Planning Commission at a regular meeting held on November 21, 2017 in the manner prescribed by law; and

WHEREAS, The Riverbank Planning Commission recommends approval of the requested Tentative Map dated October 19, 2017 prepared by North Star Engineering Group, 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. The City finds that Pursuant to the California Environmental Quality Act, an Initial Study has been prepared by the Lead Agency (City of Riverbank). This Initial Study (IS) has been circulated to the Governor's Office of Planning and Research for consultation with other Responsible Agencies as SCH# 2017102058. The review period for the Initial Study closed on November 20, 2017 and all comments received and discussed in the November 21, 2017 public hearing will be incorporated into the IS.

Based on the IS it has been determined that although the proposed Project could have a significant effect on the environment, certain modifications to the project have been agreed to by the applicant to reduce these identified impacts to a level which is considered less than significant. A Mitigated Negative Declaration has been prepared for this project, with Mitigation Measures incorporated into the project to lessen the impact on the environment where indicated. The property owners have been given a Mitigation Agreement for execution and this agreement will be recorded against the property as notice to subsequent owners of the mitigation obligations created as a result of this entitlement action.

D. The approval of Tentative Map 01-2016 to divide parcel APN 062-021-008 of 9.1± acres, into 51 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 Community Facilities District 2016-01, or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and

2. The northeasterly and northwesterly intersection of Central Avenue and California Avenue shall be fully improved including curb, gutter, sidewalk, crosswalk, and storm drainage in accordance with the approved tentative map. Completion of this condition of approval will not require the acquisition of additional right-of-way. If it is determined that sufficient right-of-way is unavailable to construct the proposed improvements, the proposed improvements will be modified to fit within the existing available right-of-way; and

3. Central Avenue and California Avenue streets shall be fully improved half streets plus a new twelve (12) foot paved drive lane on the unimproved side. Completion of this condition of approval will not require the acquisition of additional right-of-way. If it is determined that sufficient right-of-way is unavailable to construct the proposed improvements, the proposed

improvements will be modified to fit within the existing available right-of-way; and

4. A fifty (50) foot transition taper and barricade shall be required at the transition of new roadways to existing roadways on all improved travel lanes. Completion of this condition of approval will not require the acquisition of additional right-of-way. If it is determined that sufficient right-of-way is unavailable to construct the proposed improvements, the proposed improvements will be modified to fit within the existing available right-of-way; and

5. The storm drainage on the southerly side of California Avenue shall be managed with a swale, discharging runoff to proposed field drainage inlets discharging directly to the Riverbank Drain in accordance with the approved tentative map; and

6. The storm drainage shall be stubbed to a future regional basin per the Bruinville Master Plan; and

7. Developer shall extend the existing 36" Riverbank Drain to the east end of the project and provide a field drainage inlet along California Avenue per Oakdale Irrigation District standards and specifications and in accordance with the approved tentative map. The developer shall endeavor to obtain an easement from the neighboring property owner to install the proposed field drainage inlet. If the developer has made good faith efforts to obtain the easement which can be shown to the City in writing, and is unable to come to an agreement with the property owner, the City will make a determination on removing this condition and allow the construction of the proposed field drainage inlet along California Avenue within the proposed right-of-way along the project frontage; and

8. The developer is required to provide a final grading and drainage plan as part of the project improvement plans to mitigate potential flooding at the site and at the intersection of Central Avenue and California Avenue per previous discussion with City staff to include the following:
   a. A storm drain basin will be constructed to retain the proposed stormwater from the project site in accordance with current City of Riverbank Standards and specifications.
   b. The existing floodwater overland release path for the project site is to the west along California Avenue. The proposed project site shall be designed to provide overland release of emergency floodwaters to protect the future residential units.
   c. The developer will extend the existing 36" Riverbank Drain to the east end of the project and provide a field drainage inlet in accordance with condition #7.
   d. The proposed building pads on the north and east sides of the project site will be constructed a minimum of 6" above the neighboring properties to mitigate potential irrigation floodwaters.
   e. Additional drainage inlets will be installed and connected directly to the Riverbank Drain at the intersection of California Avenue and Central Avenue in accordance with the approved tentative map; and

9. The project will need to conform to the City's storm drainage ordinance, Post Construction Standards manual, and low impact development requirements. This will require additional storm water mitigation on each lot beyond running the water down the street to the basin; and

10. 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. The storm basin shall be fully landscaped and slope protection provided.; and

11. Applicant shall pay 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 0.44 acres; and

12. A Tree Survey shall be conducted and Tree Protection Plan provided (if required) before a grading permit can be issued and

13. An access ramp shall be designed into the basin for maintenance. The proposed material for the ramp to be concrete, asphalt base, or decomposed granite; and

14. Lots A, B & C shall be maintained by the CFD; and

15. The OID pipeline shall be designed and installed to OID standards; and

16. All wet utilities are to be cleaned, tested, and videotaped prior to acceptance by the City of Riverbank; and

17. All existing and proposed overhead utilities shall be installed underground along California Avenue and Central Avenue; and

18. The storm basin shall have a minimum of five (5) feet of sandy material below the lowest French drain system to insure good percolation; and

19. Private street names shall be approved by City Council; and

20. An automatic fire system shall be provided for all Group R occupancies. **CFC 903.2.8**; and

21. Buildings shall be provided with proper address identification in accordance with the California Fire Code as amended by the Stanislaus Consolidated Fire Protection District. **CFC 505.1**; and

22. Approved fire apparatus access roads shall be provided for every facility, building, or portion of a building hereafter constructed or moved into the jurisdiction. All fire apparatus access roads shall meet the design requirements of the California Fire Code. **CFC 503.1.1**; and

23. During construction, Fire apparatus access roads shall be clearly marked with notices or markings that include the words NO PARKING – FIRE LANE. The markings shall be clean and legible at all times. **CFC 503.3**; and

24. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the site. **CFC 507.1**; and

25. Fire apparatus access roads and a water supply for fire protection shall be installed and made serviceable prior to and during the time of construction. **CFC 501.4**; and

26. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two (2) times per day; and

27. All haul trucks transporting soil, sand, or other loose material off-site shall be covered; and

28. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited; and

29. All vehicle speeds on unpaved roads shall be limited to fifteen (15) miles per hour; and

30. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binding are used; and

31. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes. Clear signage shall be provided for construction workers at all access points; and

32. All construction equipment shall be maintained and properly tuned in accordance with manufacture's specifications. All equipment shall be checked by a certified visible emissions evaluator; and

33. Post a publicly visible sign with the telephone number and person to contact at the Air District regarding dust complaints. The Air District shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations; and

34. Applicant shall comply with San Joaquin Valley Air Pollution Control District's Rule 9510 Indirect Source Review; and

35. Pre-construction surveys for nesting Swainson's hawks within 0.25 of the project site are recommended if construction commences between March 1 and September 15. If active nests are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should utilize criteria set forth by CDFW (CDFG, 1994); and

36. Pre-construction surveys for burrowing owls are recommended if construction commences between February 1 and August 31. If occupied burrows are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should be pursuant to criteria set forth by CDFW (CDFG, 2012); and

37. If vegetation removal and/or construction commences during the general avian nesting season (March 1 through July 31), a pre-construction survey for nesting birds is recommended. If active nests are found, work in the vicinity should be delayed until the young fledge; and

38. On-site trees could be used by nesting raptors and other protected birds. Any trees that need

with both MRP and City of Riverbank requirements. At a minimum, the SCP for the project shall include the following:

a. An inventory and accounting of existing and proposed impervious areas.
b. Low Impact Development (LID) design details incorporated into the project. Specific LID design details may include but are not limited to rain gardens, bio retention areas, pervious pavements, harvesting and reuse of stormwater, dispersal of runoff to landscaped areas, and/or routing of runoff swales and other small-scale facilities distributed throughout the site.
c. Measures to address potential stormwater contaminants. These may include measures to address potential sources of stormwater pollutants at the project site, covering trash collection and parking areas.
d. A Draft Stormwater Facility Operation and Maintenance Plan for the project site, which shall include periodic inspection and maintenance of the storm drainage system. Persons responsible for performing and funding the requirements of this plan shall be identified. This plan shall be finalized prior to the issuance of any building permits for the project; and

43. Construction equipment shall be well maintained to be as quiet as possible. The following measures, when applicable, shall be implemented to reduce noise from construction activities:

a. All internal combustion engine-driven equipment shall be equipped with mufflers that are in good condition and appropriate for the equipment.
b. "Quiet" models of air compressors and other stationary noise sources shall be used, where technology exists.
c. Stationary noise-generating equipment shall be located as far as feasible from sensitive receptors (dwelling and Riverbank High School).
d. Unnecessary idling of internal combustion engines shall be prohibited.
e. Staging areas and construction material storage areas shall be located as far away as possible from adjacent sensitive land uses (dwellings and Riverbank High School).
f. Construction-related traffic shall be routed along major roadways (Claus Road and Patterson Road) and as far as feasible from sensitive receptors.
g. Residences or noise-sensitive land uses adjacent to construction sites shall be notified of the construction schedule in writing. The construction contractor shall designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison shall determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and shall institute reasonable measures to correct the problem. The construction contractor shall conspicuously post a telephone number for the liaison at the construction site.
h. The construction contractor shall hold a pre-construction meeting with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, construction schedule, and construction liaison)

are completed; and

44. The approval of this map VTM 02-2016 will invalidate the prior approval of the underlying Tentative Map approved in 2006 known as TM 06-2005.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission recommends for approval Vesting Tentative Map No. 02-2016 (Exhibit A), subject to these Conditions of Approval established by Resolution No. 2017-024 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 21st of November 2017, by the following vote 3-1:

AYES: Commissioners: McKinney, McRitchie and King

NOES: Commissioner: Tabacco

ABSENT: Commissioner: Stewart

ABSTAIN: None

Attest:	**Approved:**
Donna M. Kenney Planning and Building Manager	Anthony McKinney, Chairperson Planning Commission

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 10.2

SECTION 10: NEW BUSINESS

Meeting Date:	May 25, 2021
Subject/ Title:	A **Resolution** Approving Final Map 02-2021 for D.R. Horton CA3, Inc. for 6272 Central Avenue (APN: 062-021-008)
From:	**Sean Scully,** City Manager
Submitted by:	**Gabriel R. Salazar,** Associate Planner

RECOMMENDATION

Approve the Final Map ("FM") for Bruin Heights based on the required finding that the map is in conformity with the provisions of subdivision law and city code. The project consists of a Final Map to subdivide approximately 9.1 acres into fifty-one (51) buildable residential lots (overall density of 5.6 du/acre), associated street, sewer, water, and storm drainage improvements at 6272 Central Avenue.

BACKGROUND

This item is a request for a Final Map approval for a 51 unit single-family subdivision, a basin lot, and internal streets, located at 6272 Central Avenue (APN: 062-021-008). The project, Bruin Heights was previously known as River Run. On November 21, 2017, the Planning Commission approved three items: (1) the River Run Tentative Map 02-2016, (2) a General Plan Amendment to change the property's designation from medium-density residential (MDR) to low-density residential (LDR), and (3) a rezone to change the zoning to Planned Development to allow 5,000 square foot lots with amenities.

On December 12, 2017, the City Council approved the Tentative Map, the General Plan Amendment, and the Planned Development (PD) rezone. As part of the PD rezone, the applicant must provide three (3) amenities for the deviations from standard ordinance requirements:

1. Enhanced landscaping and signage at the subdivision entrance;
2. Picnic tables, grills, and trash receptacles at the rim of the basin; and
3. Electric vehicle charging units in the garages.

While #3 was an amenity when it was proposed and accepted in 2017, they are now required per the Building Code. #3 will be on building plan sets while #1 and #2 will be shown on their landscape plans. Staff is working the developer to ensure the amenities are provided for the project.

On December 17, 2019, the Planning Commission approved a six (6) month Map Extension request for Tentative Subdivision Map 02-2016. The Planning Commission also recommended to the City Council that they approve a Development Agreement. On April 4, 2020, the City Council approved Development Agreement 02-2019 with the above maps and plan.

More recently, on March 16th, 2021, the Planning Commission approved the Architecture and Site Plan Review of the houses. The architecture and design of the residential community is consistent with the adopted River Run Design Guidelines. The developer has begun grading and working on the on-site improvements.

Pursuant to Riverbank Municipal Code Section §152.074 (C)(2), the City Council shall, at the meeting at which it receives the map or at its next regular meeting after the meeting at which it receives the map, approve the map if it is determined to be in conformity with the provisions of law and of this chapter. The Council shall disprove the map if it is determined not to be in conformity with the provisions of law and of this chapter and shall advise the subdivider of its disapproval, and the reason or reasons thereof.

The City Engineer and Planning and Building Manager have reviewed the final map and have determined that the plans are in substantial compliance with city standards and with the conditions placed upon the tentative map. The Project is compliant with CEQA - a Negative Declaration has been filed with Stanislaus County Recorder's Office.

The City Clerk has been working with the applicant to process and finalize the Assignment and Assumption Agreement on the DA. The property was annexed into CFD 2016-01 when the CFD was created.

FISCAL IMPACT:

None.

ATTACHMENTS:

1. Resolution No. 2021-XXX
   Exhibit A - Final Map
2. River Run Tentative Map

CITY OF RIVERBANK

RESOLUTION N0. 2021-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK APPROVING FINAL MAP 02-2021 FOR D.R. HORTON CA3, INC. FOR 6272 CENTRAL AVENUE (APN 062-021-008)

Whereas, D.R. Horton CA3, Inc. is the property owner and applicant for the Bruin Heights Final Map 02-2021 (approximately 9.11 acres into 51 lots); and

Whereas, on November 21, 2017, the Planning Commission approved Tentative Parcel Map 02-2016 to subdivide an existing 9.1-acre site into fifty-one (51) buildable lots at 6272 Central Avenue at the northeast corner of Central and California Avenue; and

Whereas, on November 21, 2017, the Planning Commission approved a General Plan Amendment to change the property's designation from medium-density residential (MDR) to low-density residential (LDR); and

Whereas, on November 21, 2017, the Planning Commission approved a rezone to the subject property from Single Family Residential (R-1) to Planned Development (PD) to allow 5,000 square foot lots with amenities; and

Whereas, the City has now received a Final Map application to subdivide the approximately 9.11 acre site into fifty-one (51) lots at 6272 Central Avenue; and

Whereas, the City Engineer and Planning and Building Manager have reviewed the final map and have determined that the plans are in substantial compliance with city standards and with the conditions placed upon the tentative parcel map; and

Whereas, pursuant to Riverbank Municipal Code Section §152.074 (C)(2), the City Council shall, at the meeting at which it receives the map or at its next regular meeting after the meeting at which it receives the map, approve the map if it is determined to be in conformity with the provisions of law and of this chapter.

Now, Therefore, Be It Resolved that the City Council of the City of Riverbank hereby authorizes the City Clerk to record Final Map 02-2021 **("Exhibit A")** for Bruin Heights and D.R. Horton CA3, Inc. upon determination by the City Engineer that the map is in conformity with the provisions of state law.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the ___ day of ______, 2021; motioned by Councilmember ___, seconded by Councilmember ___, and upon roll call was carried by the following City Council vote of __:

AYES:
NAYS: **None**
ABSENT: **None**
ABSTAINED: **None**

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

Attachment:

BRUIN HEIGHTS

BEING A SUBDIVISION OF PARCELS A AND B AS FILED IN BOOK 24 OF PARCEL MAPS, PAGE 87, STANISLAUS COUNTY RECORDS AND LYING IN A PORTION OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN CITY OF RIVERBANK, STANISLAUS COUNTY, CALIFORNIA FEBRUARY, 2021

NORTHSTAR ENGINEERING GROUP, INC.
620 12th Street, Modesto, CA 95354
(209) 524-3525

OWNER'S STATEMENT:

I, THE UNDERSIGNED, DO HEREBY STATE THAT I AM THE OWNER OF, OR HAVE SOME RECORD TITLE INTEREST IN THE LAND SHOWN ON THIS MAP, AND I CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP.

I ALSO OFFER FOR DEDICATION TO THE PUBLIC FOR PUBLIC USE, THE PUBLIC UTILITY EASEMENTS, THE 12.00 FOOT WIDTH RIGHT-OF-WAY DEDICATION ALONG CENTRAL AVENUE AND CALIFORNIA AVENUE, AND LOTS A, B AND C ALL AS SHOWN ON THIS MAP.

OWNER: D.R. HORTON CA3, INC., A DELAWARE CORPORATION

______________________ DATE ______________

BY: ______________________

______________________ DATE ______________

BY: ______________________

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.

NOTARY'S ACKNOWLEDGEMENT:

STATE OF CALIFORNIA
COUNTY OF ______________ } S.S.

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: ______________ PRINTED NAME: ______________

PRINCIPAL COUNTY OF BUSINESS: ______________ MY COMMISSION EXPIRES: ______________

COMMISSION NUMBER: ______________

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.

NOTARY'S ACKNOWLEDGEMENT:

STATE OF CALIFORNIA
COUNTY OF ______________ } S.S.

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: ______________ PRINTED NAME: ______________

PRINCIPAL COUNTY OF BUSINESS: ______________ MY COMMISSION EXPIRES: ______________

COMMISSION NUMBER: ______________

K:\J16-1697 Bruinville Subdivision\DWG\Mapping\Subdivision\16-1697 cert.dwg

TAX COLLECTOR'S CERTIFICATE:

ASSESSOR'S PARCEL NO.: ______________.

THIS IS TO CERTIFY THAT THERE ARE NO LIENS FOR ANY UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE AGAINST THE LAND SHOWN ON THIS MAP.

DATED THIS ____ DAY OF ______________, 20___.

______________ BY: ______________, DEPUTY
COUNTY TAX COLLECTOR

______________.
PRINT NAME

CLERK OF THE BOARD OF SUPERVISOR'S STATEMENT:

THIS IS TO STATE THAT THE OWNERS OF THE PROPERTY SHOWN ON THE ACCOMPANYING MAP HAVE FILED WITH THE BOARD OF SUPERVISOR'S: (CHECK ONE)

☐ A) A BOND OR DEPOSIT APPROVED BY SAID BOARD TO SECURE THE PAYMENT OF TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH ARE AT THE TIME OF FILING THIS MAP, A LIEN AGAINST SAID PROPERTY OR ANY PART THEREOF.

☐ B) RECEIPTED TAX BILL OR SUCH OTHER EVIDENCE AS MAY BE REQUIRED BY SAID BOARD SHOWING FULL PAYMENT OF ALL APPLICABLE TAXES.

DATED THIS ___ DAY OF ______________, 20__.

______________ BY: ______________, DEPUTY
CLERK TO THE BOARD
OF SUPERVISORS

______________.
PRINT NAME:

OMITTED SIGNATURES:

PURSUANT TO SECTION 66436 OF THE SUBDIVISION MAP ACT THE SIGNATURES OF THE FOLLOWING INTEREST HOLDERS HAVE BEEN OMITTED:

OAKDALE IRRIGATION DISTRICT FOR AN EASEMENT FOR A 30' WIDE IRRIGATION DITCH/PIPELINE AS RECORDED MARCH 09, 1977 AS INSTRUMENT NO. 1977-48647, STANISLAUS COUNTY RECORDS.

OAKDALE IRRIGATION DISTRICT FOR AN EASEMENT FOR A 30' WIDE TRANSMISSION AND DISTRIBUTION OF WATER AND THE COLLECTION, TRANSMISSION, AND DISPOSAL OF DRAINAGE WATER AS RECORDED OCTOBER 14, 2020 AS INSTRUMENT NO. 2020-0079554, STANISLAUS COUNTY RECORDS.

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF RODNEY LOWE ON JANUARY 22, 2018. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY. I FURTHER STATE THAT ALL MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

DATED THIS ____ DAY OF ______________, 20___.

PROFESSIONAL LAND SURVEYOR
NICOLE CANNELLA
No. 9099
STATE OF CALIFORNIA

______________________.
NICOLE CANNELLA, P.L.S. 9099

CITY ENGINEER'S STATEMENT:

THIS IS TO STATE THAT I HAVE EXAMINED THE ACCOMPANYING FINAL MAP, THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND TITLE 20 OF THE STANISLAUS COUNTY SUBDIVISION CODE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP AND THAT THE MAP IS TECHNICALLY CORRECT.

DATED THIS ____ DAY OF ______________, 20___.

____
WILLIAM F. KULL, CITY ENGINEER, LS 5792

CITY CLERK'S STATEMENT:

THIS IS TO CERTIFY THAT AT ITS REGULAR MEETING HELD ON ____ DAY OF ______________, 20___, THE CITY COUNCIL OF THE CITY OF RIVERBANK, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, APPROVED THIS FINAL MAP AND ACCEPTED ON BEHALF OF THE PUBLIC FOR PUBLIC USE, THE STREETS, AVENUES, ROADS, EASEMENTS AND OTHER PUBLIC PLACES AND DEDICATIONS AS SHOWN ON THIS FINAL MAP. SAID APPROVAL IS NOT TO BE CONSTRUED AS ACCEPTANCE OF THE REMAINING STREETS SHOWN THEREON.

DATED THIS ______ DAY OF ______________, 20 ___.

BY: ______________________, CITY CLERK
ANNABELLE AGUILAR

PLANNING COMMISSION STATEMENT:

THIS IS TO STATE THAT THIS SUBDIVISION MAP SUBSTANTIALLY CONFORMS TO THE TENTATIVE MAP RECOMMENDED BY THE PLANNING COMMISSION AT A DULY AUTHORIZED MEETING HELD ON THE ____ DAY OF ______________, 20___, AND APPROVED BY THE CITY COUNCIL AT A DULY AUTHORIZED MEETING HELD ON ______ DAY OF ______________, 20___, AND THE ZONING ORDINANCE OF THE CITY OF RIVERBANK.

DATED THIS ______ DAY OF ______________, 20___.

BY: ______________________, PLANNING AND BUILDING MANAGER
DONNA M. KENNEY

RECORDER'S STATEMENT:

FILED THIS____ DAY OF______________, 20___, AT_______ O'CLOCK ___.M. IN BOOK
OF PARCEL MAPS, AT PAGE ___, STANISLAUS COUNTY RECORDS, AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.
INSTRUMENT NO. __________.

FEE $________ PAID

LEE LUNDRIGAN
STANISLAUS COUNTY CLERK RECORDER

BY: ______________________, DEPUTY

______________________.
PRINT NAME

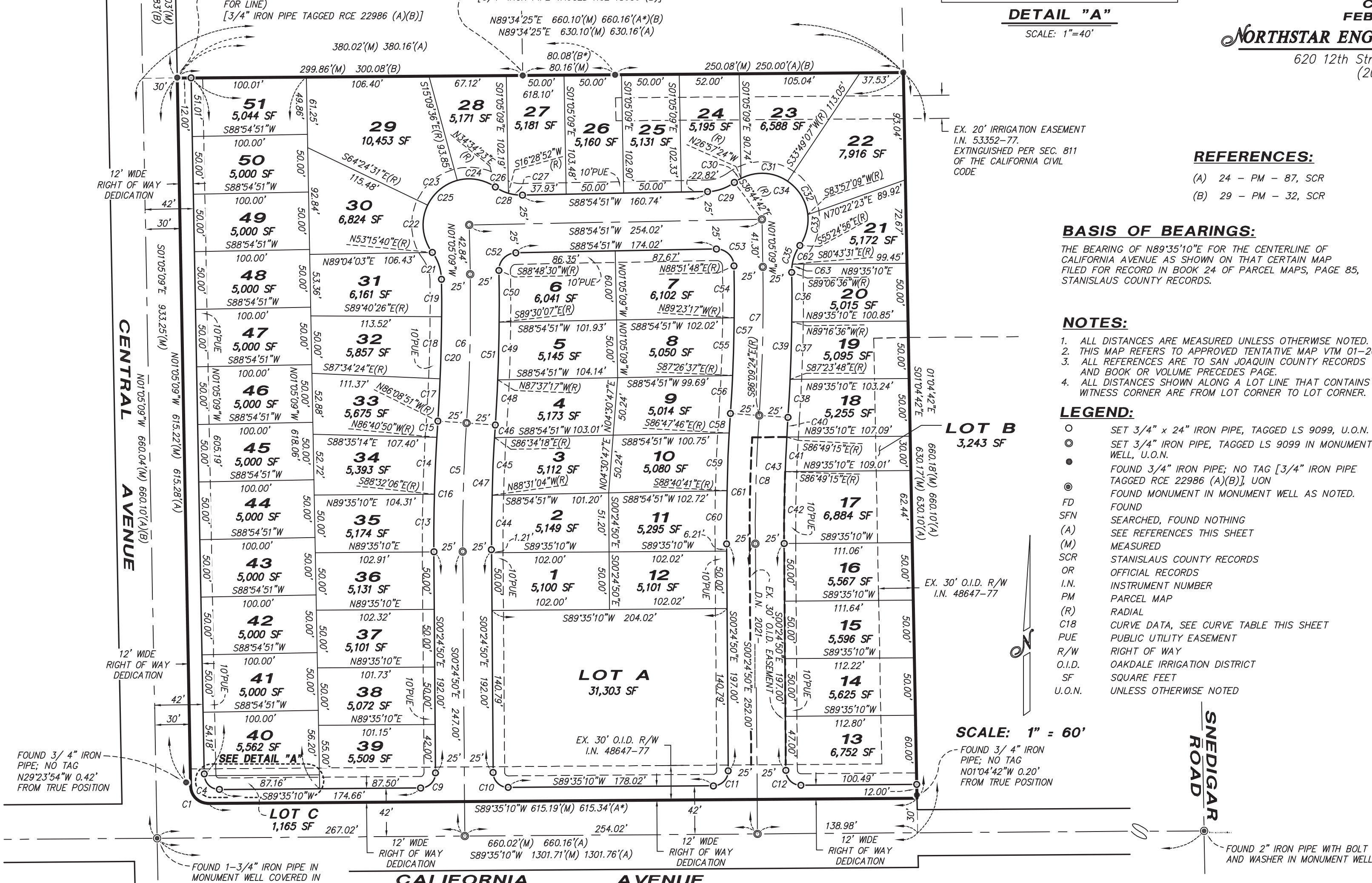
BRUIN HEIGHTS

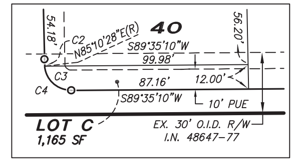
BEING A SUBDIVISION OF PARCELS A AND B AS FILED IN BOOK 24 OF PARCEL MAPS, PAGE 87, STANISLAUS COUNTY RECORDS AND LYING IN A PORTION OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN CITY OF RIVERBANK, STANISLAUS COUNTY, CALIFORNIA FEBRUARY, 2021

NORTHSTAR ENGINEERING GROUP, INC.
620 12th Street, Modesto, CA 95354
(209) 524-3525

SUBDIVISION SUMMARY:

LOTS 51	6.48 ACRES
LOTS A, B & C)	0.82 ACRES
PUBLIC RIGHT-OF-WAY	1.83 ACRES
TOTAL	9.11 ACRES





DETAIL "A"

SCALE: 1"=40'

REFERENCES:

(A) 24 - PM - 87, SCR

(B) 29 - PM - 32, SCR

BASIS OF BEARINGS:

THE BEARING OF N89°35'10"E FOR THE CENTERLINE OF CALIFORNIA AVENUE AS SHOWN ON THAT CERTAIN MAP FILED FOR RECORD IN BOOK 24 OF PARCEL MAPS, PAGE 85, STANISLAUS COUNTY RECORDS.

NOTES:

1. ALL DISTANCES ARE MEASURED UNLESS OTHERWISE NOTED.
2. THIS MAP REFERS TO APPROVED TENTATIVE MAP VTM 01-2016.
3. ALL REFERENCES ARE TO SAN JOAQUIN COUNTY RECORDS AND BOOK OR VOLUME PRECEDES PAGE.
4. ALL DISTANCES SHOWN ALONG A LOT LINE THAT CONTAINS A WITNESS CORNER ARE FROM LOT CORNER TO LOT CORNER.

LEGEND:

○	SET 3/4" x 24" IRON PIPE, TAGGED LS 9099, U.O.N.
◎	SET 3/4" IRON PIPE, TAGGED LS 9099 IN MONUMENT WELL, U.O.N.
●	FOUND 3/4" IRON PIPE; NO TAG [3/4" IRON PIPE TAGGED RCE 22986 (A)(B)], UON
◉	FOUND MONUMENT IN MONUMENT WELL AS NOTED.
FD	FOUND
SFN	SEARCHED, FOUND NOTHING
(A)	SEE REFERENCES THIS SHEET
(M)	MEASURED
SCR	STANISLAUS COUNTY RECORDS
OR	OFFICIAL RECORDS
I.N.	INSTRUMENT NUMBER
PM	PARCEL MAP
(R)	RADIAL
C18	CURVE DATA, SEE CURVE TABLE THIS SHEET
PUE	PUBLIC UTILITY EASEMENT
R/W	RIGHT OF WAY
O.I.D.	OAKDALE IRRIGATION DISTRICT
SF	SQUARE FEET
U.O.N.	UNLESS OTHERWISE NOTED

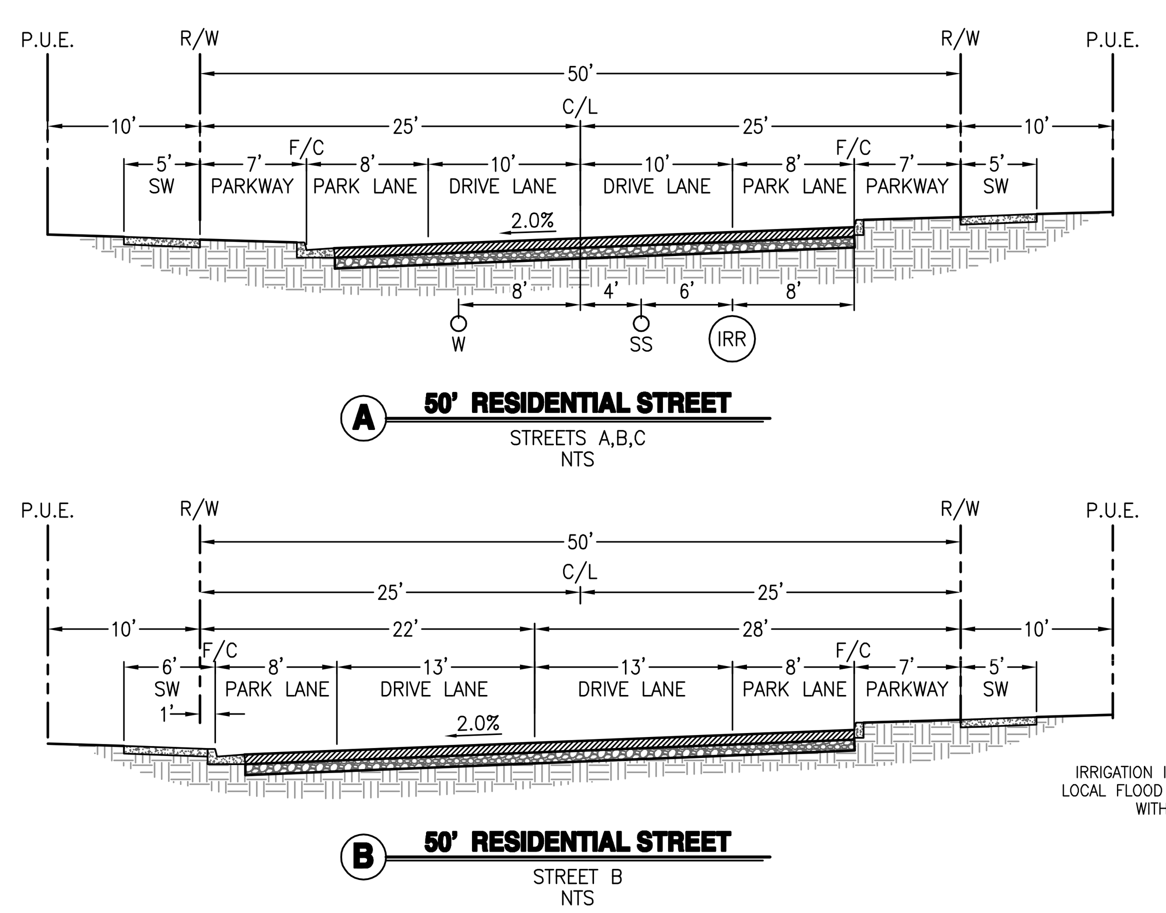
CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	89°19'41"	15.00'	23.39'
C2	3°44'23"	13.00'	0.85'
C3	85°35'18"	13.00'	19.42'
C4	89°19'41"	13.00'	20.27'
C5	4°15'59"	1500.00'	111.69'
C6	4°56'18"	1500.00'	129.28'
C7	4°55'45"	1500.00'	129.05'
C8	4°15'26"	1500.00'	111.45'
C9	90°00'00"	13.00'	20.42'
C10	90°00'00"	13.00'	20.42'
C11	90°00'00"	13.00'	20.42'
C12	90°00'00"	13.00'	20.42'
C13	1°52'44"	1525.00'	50.01'
C14	1°51'16"	1525.00'	49.36'
C15	0°31'59"	1525.00'	14.18'
C16	4°15'59"	1525.00'	113.55'
C17	1°25'33"	1475.00'	36.70'
C18	2°06'02"	1475.00'	54.08'
C19	1°15'39"	1475.00'	32.46'
C20	4°47'14"	1475.00'	123.24'
C21	35°48'15"	40.00'	25.00'
C22	62°19'49"	40.00'	43.51'
C23	49°14'55"	40.00'	34.38'
C24	49°43'59"	40.00'	34.73'
C25	161°18'43"	40.00'	112.62'
C26	18°05'31"	40.00'	12.63'
C27	17°34'01"	40.00'	12.26'
C28	35°39'32"	40.00'	24.89'
C29	35°39'33"	40.00'	24.89'
C30	9°47'18"	40.00'	6.83'
C31	60°46'31"	40.00'	42.43'
C32	50°08'02"	40.00'	35.00'
C33	40°37'55"	40.00'	28.37'
C34	161°19'46"	40.00'	112.63'
C35	35°28'28"	40.00'	24.77'
C36	1°36'48"	1525.00'	42.94'
C37	1°52'48"	1525.00'	50.04'
C38	1°14'24"	1525.00'	33.01'
C39	4°44'00"	1525.00'	125.98'
C40	0°39'51"	1475.00'	17.10'
C41	1°10'01"	1475.00'	30.04'
C42	2°25'34"	1475.00'	62.45'
C43	4°15'26"	1475.00'	109.60'
C44	1°53'46"	1475.00'	48.81'
C45	1°56'46"	1475.00'	50.10'
C46	0°25'27"	1475.00'	10.92'
C47	4°15'59"	1475.00'	109.83'
C48	1°28'26"	1525.00'	39.24'
C49	1°52'50"	1525.00'	50.05'
C50	1°41'23"	1525.00'	44.98'
C51	5°02'39"	1525.00'	134.25'
C52	90°06'21"	15.00'	23.59'
C53	89°56'57"	15.00'	23.55'
C54	1°44'55"	1475.00'	45.01'
C55	1°56'40"	1475.00'	50.06'
C56	1°17'13"	1475.00'	33.13'
C57	4°58'48"	1475.00'	128.20'
C58	0°38'22"	1525.00'	17.02'
C59	1°52'55"	1525.00'	50.09'
C60	1°44'09"	1525.00'	46.20'
C61	4°15'26"	1525.00'	113.31'
C62	25°18'35"	40.00'	17.67'
C63	10°09'53"	40.00'	7.10'

RIVER RUN TENTATIVE MAP
RIVERBANK, CALIFORNIA

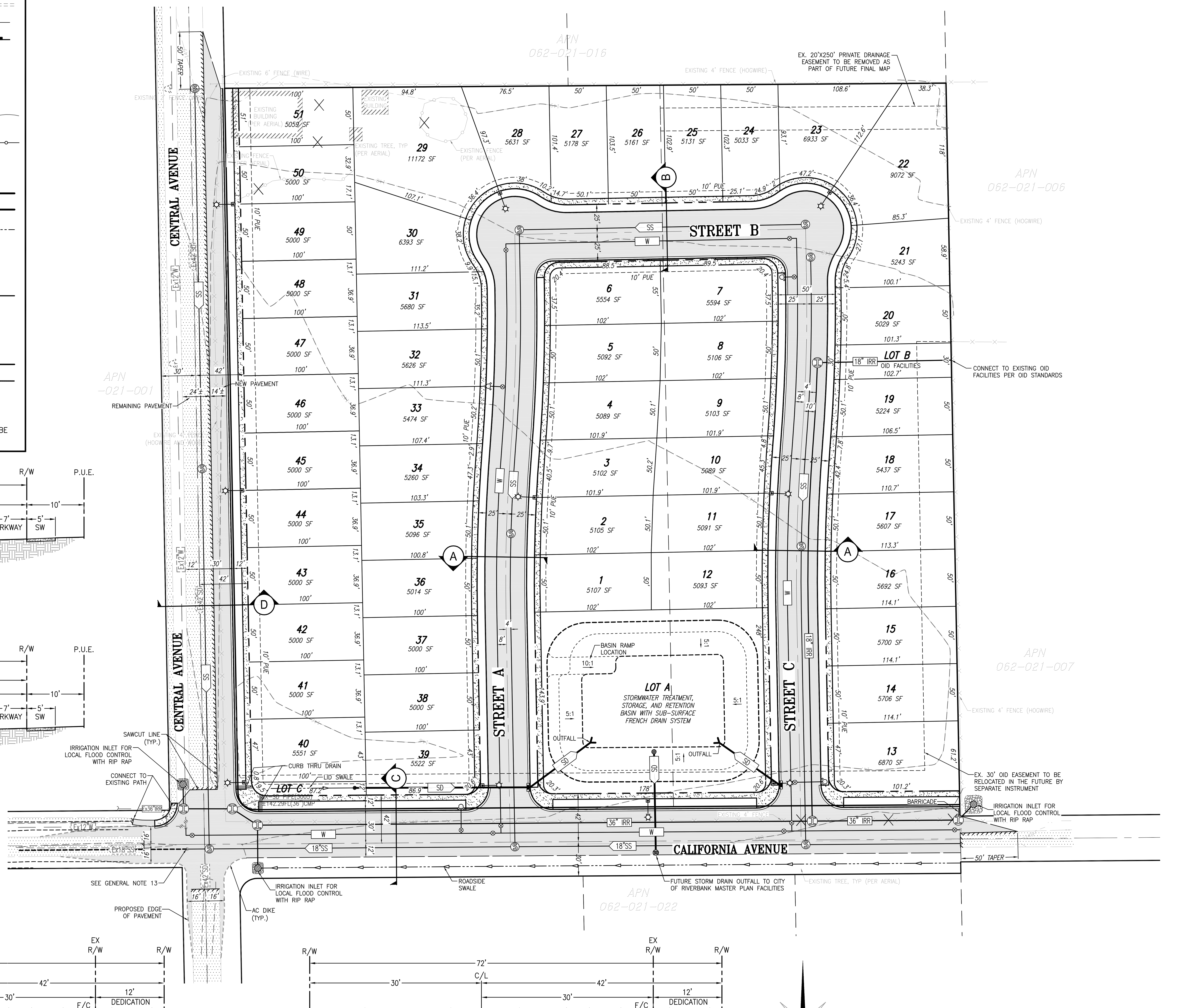
LEGEND

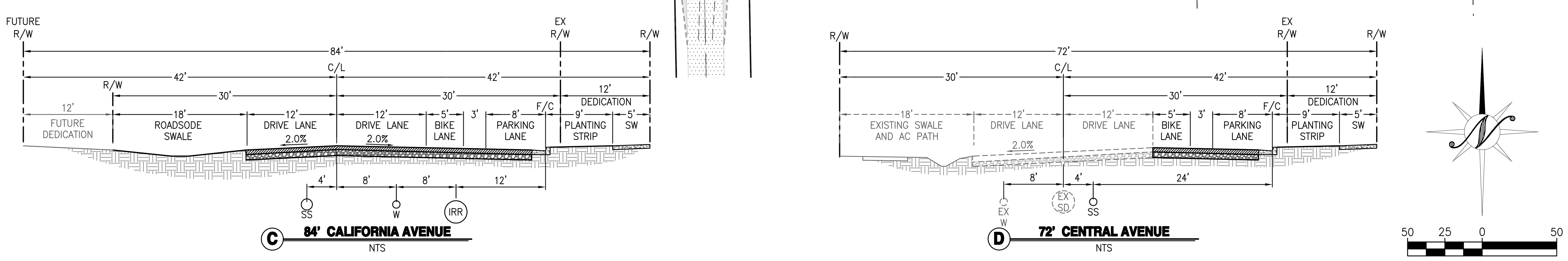
	EXISTING	PROPOSED
BOUNDARY LINE		
CENTERLINE		
RIGHT-OF-WAY		
PARCEL LINE		
CURB, GUTTER AND SIDEWALK		
AC DIKE	N/A	
EDGE OF PAVEMENT		
MASONRY WALL	N/A	
OVER HEAD ELECTRICAL	OHE	N/A
ELECTROLIER (PUBLIC)		
GAS LINE	G	N/A
DIRECTION OF FLOW	.003	.003
CONTOURS	32	32
FENCE (CHAINLINK OR VINYL)		
SIGN		
SERVICE POLE		N/A
STORM DRAIN (MAIN)	SD Ex12"SD SD	12"SD
FORCE MAIN	SD 8"FM SD	8"FM
DRAINAGE SWALE		
STORM DRAIN MAINTENANCE HOLE		
CURB INLET		
STORM DRAINAGE FILTER	N/A	
WATER (MAIN)	W Ex8"W	8"W
WATER VALVE	WV	WV
FIRE HYDRANT		
SEWER MAINTENANCE HOLE		
SEWER (MAIN)	SS Ex12"SS	12"SS
IRRIGATION LINE	Ex48"IRR	48"IRR
IRRIGATION VALVE	IV	N/A
IRRIGATION STRUCTURE		
TREE		TREE TO BE REMOVED



A 50' RESIDENTIAL STREET
STREETS A,B,C
NTS

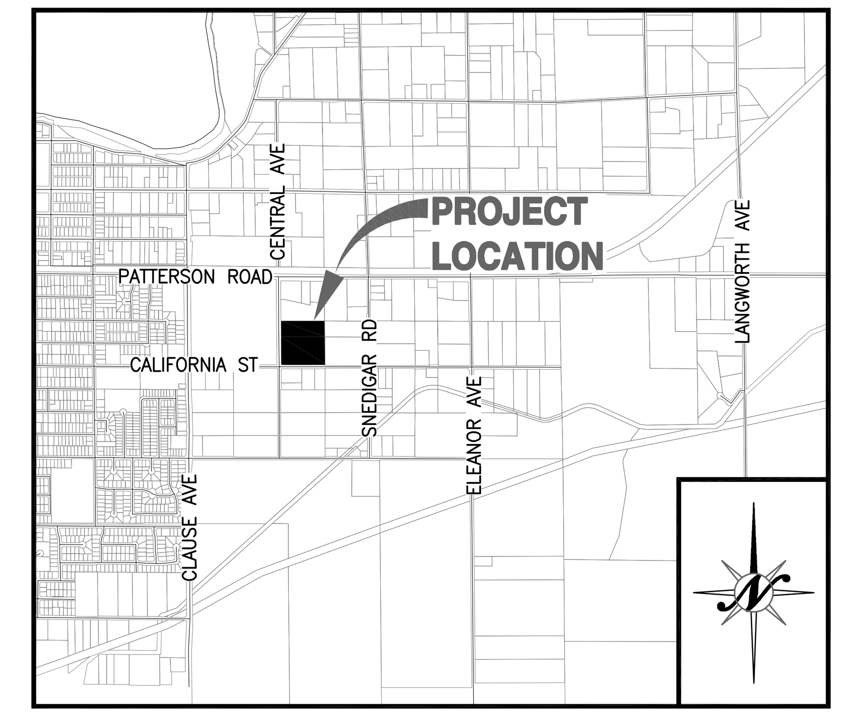
B 50' RESIDENTIAL STREET
STREET B
NTS





C 84' CALIFORNIA AVENUE
NTS

D 72' CENTRAL AVENUE
NTS



VICINITY MAP
NOT TO SCALE

PROJECT INFORMATION

A. REGULATORY AGENCY:	CITY OF RIVERBANK 6617 THIRD STREET RIVERBANK, CA 95367 T: (209) 869-7128 CONTACT: PLANNING DEPARTMENT	
B. APPLICANT:	R & K ROD LOWE 1997 REVOCABLE TRUST 3112 BUCKINGHAM COURT MODESTO, CA 95350 T: (209) 523-4223 CONTACT: ROD LOWE	
C. OWNER :	WHITE POPERY MANAGEMENT, LLC 3501 ATCHISON STREET. RIVERBANK, CA 95367 CONTACT: DAVE WHITE	
D. ENGINEER:	NORTHSTAR ENGINEERING GROUP, INC 620 12th STREET MODESTO CA 95354 T: (209) 524-3525 CONTACT: TONY DE MELO, P.E.	
E. EXISTING LAND USE:	AGRICULTURE	
F. EXISTING GP LAND USE:	MEDIUM DENSITY RESIDENTIAL	
G. PROPOSED GP LAND USE:	LOW DENSITY RESIDENTIAL	
H. EXISTING ZONING:	SINGLE FAMILY RESIDENTIAL (LDR)	
I. PROPOSED ZONING:	PLANNED DEVELOPMENT (PD)	
J. TOTAL PROJECT SIZE:	9.1± ACRES	
K. TOTAL NUMBER OF LOTS:	51	
L. GROSS DENSITY:	5.6 UPA	
M. CONTOURS:	1.0-FOOT INTERVALS	
N. RETURNS:	PER CITY OF RIVERBANK STANDARDS	
O. UTILITIES:	WATER SYSTEM –	CITY OF RIVERBANK
	SANITARY SEWER –	CITY OF RIVERBANK
	STORM DRAINAGE –	CITY OF RIVERBANK
	GAS –	PG&E
	ELECTRIC –	PG&E
	TELEPHONE –	SBC
	SCHOOL DISTRICT –	RIVERBANK ELEMENTARY

GENERAL NOTES

1. ALL IMPROVEMENTS SHALL BE CONSTRUCTED AS PER THE CITY OF RIVERBANK STANDARD PLANS AND SPECIFICATIONS EXCEPT AS NOTED.
2. STORM DRAINAGE TO BE CONVEYED TO AN ON-SITE STORM DRAINAGE RETENTION BASIN WHICH WILL UTILIZED FOR STORMWATER TREATMENT. ALL IMPROVEMENTS TO BE CONSTRUCTED TO THE CITY OF RIVERBANK STANDARDS AND THE STORM DRAINAGE MASTER PLAN.
3. ALL STORM DRAINAGE IMPROVEMENTS AS PART OF FUTURE IMPROVEMENTS PLANS AND STUDIES SHALL CONFORM TO THE REQUIREMENTS SET FORTH IN NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT 2013-0001-DWQ AND THE MULTI-AGENCY POST-CONSTRUCTION STORMWATER STANDARDS MANUAL APPROVED OR ADOPTED PRIOR TO THE TIME OF THIS TENTATIVE MAP APPLICATION BEING DEEMED COMPLETE.
4. SANITARY SEWER TO BE CONSTRUCTED TO THE CITY OF RIVERBANK STANDARDS.
5. WATER SYSTEM TO BE CONSTRUCTED TO THE CITY OF RIVERBANK STANDARDS.
6. STREET LIGHTING SHALL BE INSTALLED PER CITY OF RIVERBANK STANDARD SPECIFICATIONS.
7. PUBLIC UTILITIES ARE TO BE INSTALLED UNDERGROUND IN EASEMENTS.
8. THE SUBDIVIDER HEREBY RESERVES THE RIGHT TO FILE "MULTIPLE SUBDIVISION MAPS" AS SET FORTH BY THE SUBDIVISION MAP ACT, ARTICLE 4, SECTION 66456.1., AND FILE PARCEL MAPS FOR REASON OF SALE. ALL PARCEL LINES SHALL CONFORM TO THIS TENTATIVE MAP.
9. PUBLIC UTILITY EASEMENTS WILL BE PROVIDED ALONG ALL STREET FRONTAGES.
10. ALL EXISTING STRUCTURES ARE TO BE REMOVED. SEPTIC TANKS, LEACH FIELDS, AND WELLS ON SITE WILL BE REMOVED OR ABANDONED AS PER CITY OF RIVERBANK REQUIREMENTS. BUILDING DEMOLITION, WELL ABANDONMENT, AND SEPTIC ABANDONMENT ALL REQUIRE PERMITS THROUGH THE CITY.
11. APPLICANT SHALL PROVIDE ACCESS AGREEMENT IN PERPETUITY FOR CITY TO INSPECT ALL POST-CONSTUCTION BMP'S INSTALLED ON PRIVATE PROPERTY.
12. ALL LOT SETBACK REQUIREMENTS ARE TO BE IN ACCORDANCE WITH THE PROJECT DESIGN GUIDELINES PACKAGE.
13. THE PROPOSED PROJECT IS TO CONNECT TO THE EXISTING 18" SANITARY SEWER EXTENSION IN CALIFORNIA AVENUE. IF THE 18" SANITARY SEWER EXTENSION HAS NOT BEEN COMPLETED AT THE TIME OF CONSTRUCTION, THE RIVER RUN PROJECT WILL CONSTRUCT THE EXTENSION AND COORDINATE FEE CREDITS AND/OR REIMBURSEMENT WITH THE CITY OF RIVERBANK.
14. ALL EXISTING TREES ARE TO BE REMOVED PER CITY OF RIVERBANK STANDARDS AND SPECIFICATIONS. IF ANY OF THE TREES ARE OAK, AN ASSESSMENT BY A LICENSED ARBORIST SHALL BE SUBMITTED, LISTING AND DISCUSSING EACH TREE TO ENSURE CONFORMANCE WITH RMC 156.12 (D)(1) OAK AND LANDMARK TREE CONSERVATION, MAJOR TREE CONSERVATION PERMIT.
15. DRIVEWAY ACCESS TO CALIFORNIA AVENUE IS RESTRICTED TO LOTS 13, 39, AND 40.
16. LOT B TO BE CONVEYED TO OID. THERE WILL BE DROUGHT RESISTANT LANDSCAPING BETWEEN THE FENCE AND STREET. LOTS A AND C TO BE DEDICATED TO THE CITY OF RIVERBANK. ALL LOTS A-C TO BE MAINTAINED BY CFD.

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF RIVERBANK COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCELS A AND B AS SHOWN ON PARCEL MAP FILED FOR RECORD MARCH 30, 1977 IN BOOK 24 OF PARCEL MAPS, AT PAGE 87, STANISLAUS COUNTY RECORDS.

APN: 062-021-008

CALL BEFORE YOU DIG 800-227-2600

PRELIMINARY NOT FOR CONSTRUCTION

NO.	DESCRIPTIONS	DATE	APPROVED
	REVISIONS		

TENTATIVE MAP
RIVER RUN
RIVERBANK, CALIFORNIA

NorthStar Engineering Group, Inc.
• CIVIL ENGINEERING • SURVEYING • PLANNING •
620 12th Street Modesto, CA 95354
(209) 524-3525 Phone (209) 524-3526 Fax

JOB #:	erver\n
DATE:	10/19/2017
SCALE:	AS SHOWN
DRAWN:	CRV
DESIGN:	APD
CHK'D:	APD

SHEET NUMBER
TM1.1

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 10.3

SECTION 10: NEW BUSINESS

Meeting Date:	May 25, 2021
Subject:	A **Resolution** Authorizing the City Manager to Execute a Contract with National Demographics Corporation for Municipal Redistricting Services
From:	Sean Scully, City Manager
Submitted by:	Annabelle H. Aguilar, City Clerk/Elections Official

RECOMMENDATION

As a preliminary step to Riverbank's redistricting process of its Councilmember election district-based boundaries, it is recommended that the City Council approve the proposed resolution to secure demography and redistricting consultant services from National Demographics Corporation.

SUMMARY

The 2020 Federal decennial census initiates the updating (redistricting) of the City's four (4) established Councilmember district-based boundaries. The redistricting process entails extensive demographic analysis, the completion of many legal requirements, and the conduct of procedures within various required timelines. To begin the process, it is vital that the City secure expert demography and redistricting services to assist the City with its redistricting process.

Numerous local jurisdictions throughout California will be seeking redistricting consultant services and as a result the limited handful of companies in California that offer this expertise are in high demand. In consideration of this potential obstacle, it is in the best interest of the City Council to consider obtaining the familiar demography and redistricting consultant services of National Demographics Corporation ("NDC"). Their expertise successfully guided City staff in 2014 – 2015 with the public process of transitioning its Councilmember elections from an "at-large" system to a "by-district" system, and established the four (4) current district boundaries.

Redistricting is an extensive process of various laws, analysis, tasks, and schedule of events. A comprehensive report on the redistricting process will be presented at the next regular Council meeting in June to familiarize City Council of any matters of consideration, discussion, action, or direction that will be needed to successfully accomplish the City's redistricting.

BACKGROUND

Beginning in 2013, concerns were brought before the City Council of the possibility of the City's at-large electoral system depriving citizens meaningful participation in the democratic process in connection with the California Voting Rights Act (CVRA). Council then authorized to have a demographic study conducted by NDC to fully investigate the concerns that were raised. As a result of the study's findings, the City began the transition from an at-large electoral system to a by-district system for the election if its four (4) Councilmembers under the guidance of NDC. By the end of 2015 the City had conducted the state's procedural requirements through a staff-led public process and on December 8, 2015, City Council adopted Ordinance No. 2015-019 to officially transition the City from "at-large" municipal elections to "by-district" based elections; with the Mayor's seat remaining at-large.

Expert Consultant Services

National Demographics Corporation was the company that conducted the City's demographic study in 2014, and provided guidance and assistance with the successful transition and establishment of the City's by-district based Councilmember boundaries. Due to the very limited number of companies that offer distinct demographic expertise for redistricting, and the City's positive experience working with NDC, staff is recommending that the City Council authorize the City Manager to enter into an agreement with NDC for demographic and redistricting consultant services offered in their attached proposal to begin the City's redistricting process.

FINANCIAL IMPACT

It is estimated that the cost for demographic and redistricting consultant services will be an amount not to exceed $55,000, however, depending on the field research, analysis, and demographic changes this amount could potentially be less.

ATTACHMENT

1. Proposed Resolution
2. NDC Proposal

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH NATIONAL DEMOGRAPHICS CORPORATION FOR MUNICIPAL REDISTRICTING SERVICES

WHEREAS, on April 22nd 2013, the City Council adopted a resolution directing the City Attorney to commission a demographic study analyzing its at-large electoral system in order to better evaluate whether a transition to a district based election system is necessary to prevent potential violations of the California Voting Rights Act of 2001 ("CVRA") and the Federal Voting Rights Act ("FVRA") by the City; and

WHEREAS, on February 10, 2014, the City and National Demographics Corporation ("NDC") (the sole responsive proposal to an RFP) entered into a performance agreement to provide a demographic study and associated services to transition the City's elections system from an "at-large" system to "by-district" based system.

WHEREAS, from 2014 to 2015, the City conducted the state's procedural requirements through a staff-led public process under the guidance of NCD, which resulted in the development and consideration of eight potential district based maps; and

WHEREAS, on December 8, 2015, City Council adopted Ordinance No. 2015-019 officially transitioning the City of Riverbank to "by-district" Councilmember elections, and in accordance with adopted Map "G" established District 1, District 2, District 3, and District 4 for the election of Councilmembers; the Mayor's seat remaining at-large; and

WHEREAS, once established, district-based election boundaries are required by state law to be updated (redistrict) ever ten (10) years following the receipt of the Federal decennial census population data; and

WHEREAS, the 2020 census data was due to be released March 31, 2021, however due to many factors, its release to the States is delayed until September 30, 2021; and

WHEREAS, the City may begin the preliminary processes of redistricting by first securing expert demography and redistricting consultant services; and

WHEREAS, there are numerous local jurisdictions throughout State that will be seeking specialized demographic and redistricting services, and the number of available companies providing those services may be limited to as few as five companies; and

WHEREAS, the City Council finds that securing the expert services of National Demographic Corporation provided in the proposal attached hereto as **Exhibit A** is in the best interest of the City to meet the state requirements and comply with any state and federal voting rights laws; and

WHEREAS, the City Council finds that the National Demographic Corporation proposal is responsive, complete and adequately demonstrates:

1. Understanding of the assignment as evidenced by information submitted in the proposal.
2. Proposer's plan to conduct all legal requirements to meet the State laws.
3. Ability to deliver information in a timely manner.
4. Experience in conducting this type of Project.
5. Demonstrated successful services previously provided to the City of Riverbank in accomplishing the goals of the project.
6. Extensive demography expertise, knowledge of the redistricting processes, and legal requirements to accurately accomplish all necessary steps to successfully complete the City's redistricting process.

WHEREAS, under the proposal, National Demographic Corporation allows the City to select what services it wishes National Demographic Corporation to perform at a fixed compensation schedule.

WHEREAS, under the proposal, the compensation to National Demographic Corporation for the various offered services is estimated to be an amount not to exceed $55,000; and

WHEREAS, an agreement, accepted as to form by the City Attorney, willl be executed to secure the redistricting municipal services needed to successfully accomplish the City's redistricting process.

NOW, THEREFORE, BE IT RESOLVED, that the City Council for the City of Riverbank does hereby accept the proposal submitted by National Demographic Corporation for the demographic and redistricting consultant services, and authorizes the City Manager to execute an agreement with National Demographic Corporation to provide said services to the City.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 25th day of May, 2021; motioned by Councilmember ______, seconded by Councilmember ______, and upon roll call was carried by the following vote of ___:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:	**APPROVED:**
_____________________________	_____________________________
Annabelle Aguilar, CMC **City Clerk**	**Richard O'Brien** **Mayor**

Attachments: Exhibit A: Proposal
Copy of Executed Agreement

A Proposal to
Riverbank
for Demographic Services

By National Demographics Corporation
Douglas Johnson, President

April 25, 2021

Phone: (818) 254-1221
FAX (818) 254-1221
P.O. Box 5271
Glendale, CA 91221
info@NDCresearch.com
www.NDCresearch.com

National Demographics Corporation

April 25, 2021

Nubia Goldstein
Riverbank
c/o WhiteBrenner
1414 K Street, 3rd Floor
Sacramento, CA 95814

Dear Ms. Golstein,

Thank you for the opportunity to provide this proposal to Riverbank. NDC has more than 40 years of experience districting and redistricting hundreds of cities, school districts and other local jurisdictions across California, including the jurisdiction's initial move to by-district elections and similar work for virtually all the cities and school districts in the region (a full client list is available at www.ndcresearch.com/clients/). We welcome the opportunity to bring the firm's expertise and skills to assist the City.

For each project, there are certain required basic elements, and there are several options that the City can include or leave out at its option. NDC carefully tailors each project to the needs and goals of the individual client partner. NDC also welcomes the opportunity to work with our clients to encourage public participation in this process, as we offer several tools developed specifically for public engagement in districting and redistricting.

The attached proposal consists of a brief introduction; specific proposed project elements and options; timeline and cost information; conclusion; and signature section. NDC looks forward to working with you on this effort. Please call or email anytime if you have any questions, concerns, or requests regarding this proposal.

Sincerely,

Douglas Johnson
President

Table of Contents



Brief History of National Demographics Corporation

NDC has served hundreds of local governments since our founding in 1979. While most of NDC's work is in California and Arizona, the firm has performed projects in all regions of the country, serving clients as varied as the States of Mississippi, Arizona, Florida and Illinois; Clark County (Nevada); the California counties of Merced, San Bernardino, and San Diego; the San Diego Unified School District; the City of Oakland; Yuma County (Arizona); the Arizona cities of Glendale, Mesa, Peoria, Phoenix, and Surprise; and relatively smaller jurisdictions such as the City of Bradbury and Clay Elementary School District.

The company is especially well known for its districting and redistricting work with local governments. NDC has established a reputation as the leading demographic expert on the California Voting Rights Act (CVRA), having performed demographic assessments of potential CVRA liability and/or moves to by-district elections for over 350 jurisdictions. No company has been responsible for addressing the electoral demographic needs of more local governments, as NDC has districted and/or redistricted more than 250 counties, school districts, cities, water districts, and other local jurisdictions.

Nationally recognized as a pioneer in good government districting and redistricting, NDC has unmatched expertise in the issues, questions, and decisions jurisdictions face in any discussion regarding districting, redistricting, the California and Federal Voting Rights Act and related election system choices.


Company Philosophy

Professionalism

NDC's personnel are nationally recognized as leaders in the districting field and are responsible for numerous books and articles on the subject. NDC possesses all the hardware and software necessary to meet the districting and redistricting needs of any jurisdiction, and its personnel have unmatched experience in the line-drawing side of this work, as well as in developing the databases used for these purposes. But more important are the firm's interpersonal skills and the team's understanding of the perspective of all parties in this process.

Partnership

In recognition of the vital role these groups play in informing and assisting their members, NDC is a sponsor of the California League of Cities, the California Special Districts Association, and we are currently finalizing our sponsorship of the California School Boards Association and the California Association of Counties.

For years, NDC has frequently appeared on panels organized by these organizations to share information with their members about the California Voting Rights Act, the Census, and the districting and redistricting rules and process.

NDC also assists the League of Cities and CSBA with negotiations and suggested language for legislation on districting/redistricting and the California Voting Rights Act.

Local Leadership and NDC's Non-Partisan Approach

NDC is an advisor and technical resource. The firm's role is to assist our clients in implementing our clients' goals and directions within the complicated demographic and legal constraints of the project. NDC shares its experience and expertise, but the final plan is selected by the jurisdiction's elected leaders, not NDC. The firm is sometimes criticized, usually by people from outside of the client jurisdiction, for not acting as an advocate or proselytizer for what these outsiders think is "right" for the client. But NDC team members are expert advisors, not proselytizers. NDC guides our clients through the process to a map that meets all legal requirements and the goals of our client – not the goals of outside critics. NDC welcomes the chance to assist each client through this process following the direction of the jurisdiction's elected leadership, key staff members, and the entire community.

A common question in many redistricting projects is whether there is any influence of any improper political bias on the process. NDC's four decades of success working for jurisdictions with all-Democratic leadership, jurisdictions with all-Republican leadership, and every possible combination in between, reflects our steadfast dedication to non-partisan service. At work, each of us puts our personal political feelings aside and focuses on implementing the policy goals and directions of our clients using NDC's non-partisan, professional and expert guidance regarding the requirements and options facing each client. We believe most of our clients would be hard-pressed to guess which NDC team members are registered as independents or with any political party, and we are proud to have satisfied customers and clients whose partisan leanings (even in their non-partisan local government offices) similarly cross the entire partisan spectrum.

Openness

Any change in election systems can have momentous implications for the distribution of political power in a jurisdiction and for access by groups and individuals to the governance process. Not surprisingly, such changes often attract considerable public attention, sometimes generate intense controversy, and may draw charges of manipulation and abuse of power. It is crucial, therefore, that the jurisdiction establish, at the beginning, a process that is not only fair, but that is seen to be fair, to all contending groups and individuals.

Public Engagement

NDC pioneered the "transparent districting" approach that involves the public at every stage of the process and the company invented the "public participation kit" back in 1990. But NDC's most valuable service is the firm's experience transforming often contentious and passionate debates into thoughtful, constructive discussions focused on the options and outcomes rather than individual personalities. NDC also has considerable experience working with translators in public forums and providing materials in English and Spanish.

NDC's approach has been widely praised in the media, and NDC has worked extensively with all types of press including radio, television, newspaper, and new media.

Project Software

NDC uses Caliper Corporation's Maptitude for Redistricting software for processing public map submissions and drawing NDC's draft maps and Board-directed revisions. Maptitude for Redistricting can open and use the standard "Shapefile" and "File Geodatabase" GIS data formats, and Maptitude for Redistricting can export all files to "Shapefile" and "File Geodatabase" formats.

NDC uses ESRI's ArcGIS Online to present those maps for Board, Staff and Public review in an easy-to-use, interactive format. NDC also uses ArcGIS Pro for some specialized Geographic Information System (GIS) analysis; for opening and reviewing data received from clients or from other jurisdictions; and when needed for final map post-adoption processing for delivery to the jurisdiction and to the County Registrar. Microsoft PowerPoint is also used for many presentations, though NDC is currently experimenting with a possible move to ESRI's "Story Maps" for some presentations.

NDC Approach to Public Engagement

The Three E's of Public Participation: Engage, Educate, and Empower

NDC's "Three E's" approach recognizes the complex and daunting nature of districting and redistricting projects, while emphasizing the importance of public participation in such projects.

Given the complexity of the issue, the public cannot be expected to jump in with constructive ideas and input without encouragement. So NDC's approach begins with the first "E": **Engage**. NDC works with our clients to get the word out about why the project matters – and how input from residents can be a decisive element of the project.

Once their interest is engaged, the second "E" is **Educate**. Most media coverage of this topic focuses on congressional gerrymandering, giving the entire field a tainted and hopeless feel. NDC works with our clients to explain how local districting and redistricting is based on neighborhoods and communities – not national politics. We educate the public on the data, requirements and goals of redistricting, and on the many options residents have to formulate and share their own maps or other constructive input.

The third "E" is **Empower**. For those projects where the level of public interest and engagement justify the expense, NDC offers an unmatched array of paper, Excel-based, and online mapping tools that residents can use to draw detailed, population-balanced maps for consideration by the jurisdiction.

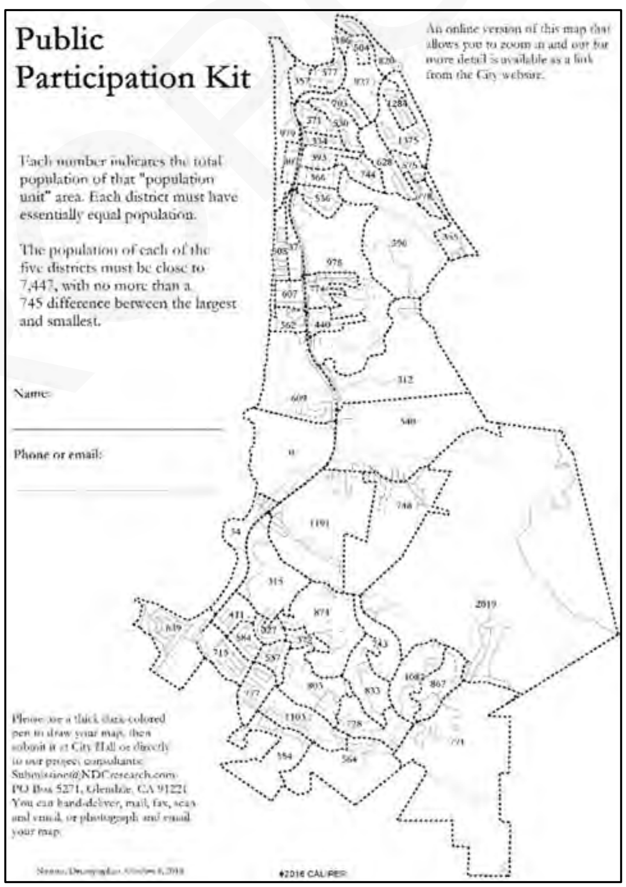
When included in a project, NDC has seen considerable public interest in these optional public participation tools. Often five, ten or even twenty or thirty draft maps are proposed by community residents. And NDC developed a highly refined and proven methodology for efficiently guiding our clients through selecting and refining a map, even when starting from 10, 20, 30 or more initial draft maps.

For those jurisdictions where the expense of the optional mapping tools is too high, NDC always welcomes any letters, comments, or hand-drawn maps that residents wish to submit during the districting or redistricting process.

For every project, at no extra expense, NDC includes an online "interactive review map" that allows residents to analyze draft maps zooming in and out, searching for specific addresses, and by changing between street maps, satellite images, and other underlying base maps.

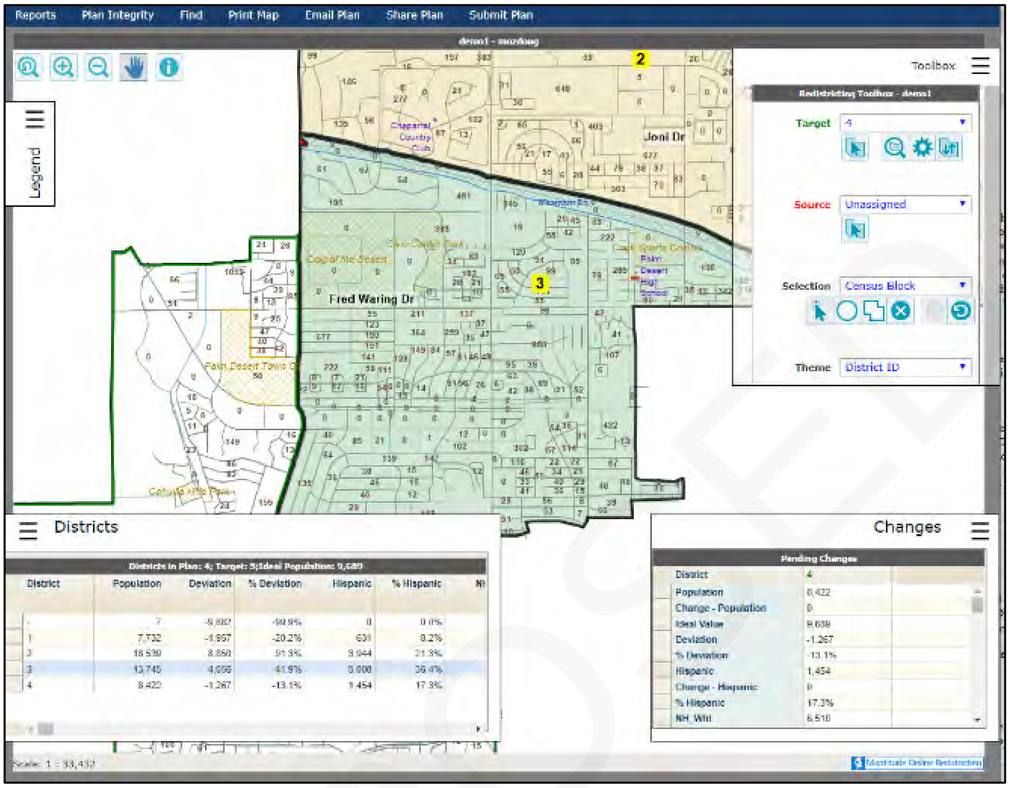
Samples of these tools are shown on the following pages, and additional details on each of them appears later in this proposal.

Sample Public Participation Mapping Tool



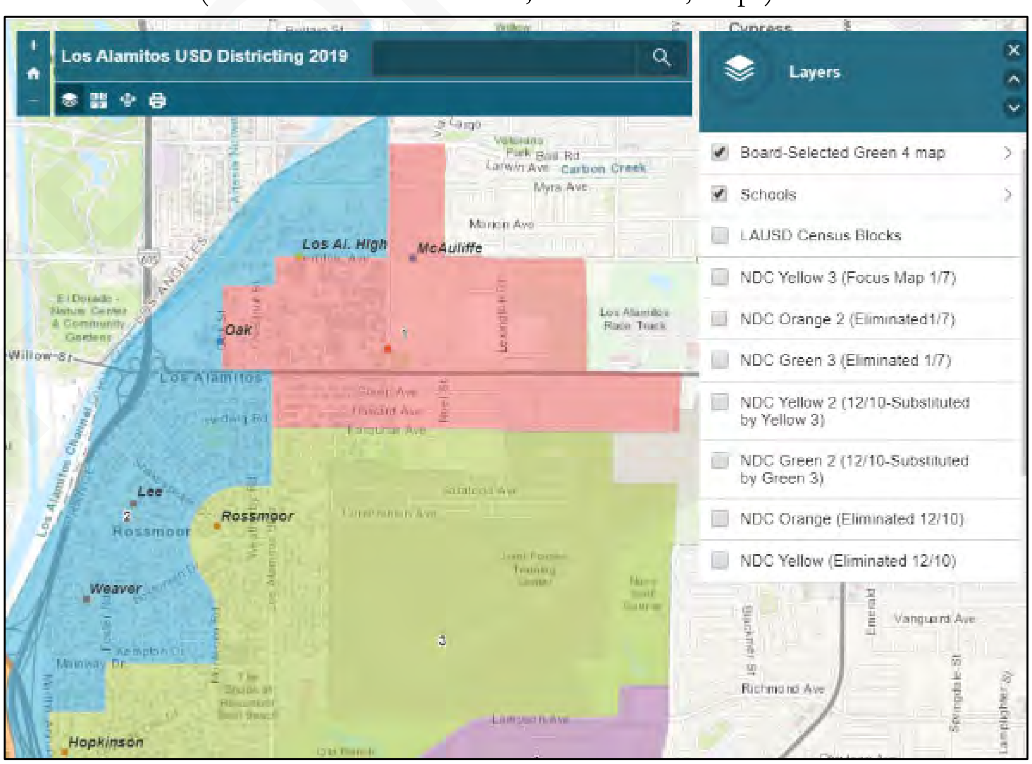
National Demographics Corporation

Sample Online Mapping Tool



Sample NDC "Interactive Review Map"

(used to view and evaluate, not to draw, maps)



The NDC Team

NDC's 40 years of service to local governments is grounded in our academic founding and decades of professional relationships with all forms of local governments. Each NDC team member has been extensively trained in the legal requirements, demographic details, and complicated personal and community interests involved in every districting and redistricting project. And every NDC team member has been briefed on the wide range of unusual and bizarre challenges NDC has encountered over our more than 250 successfully completed local government projects. Whatever question or situation arises, your NDC team can handle it.

NDC President Dr. Douglas Johnson leads all team training and closely monitors the progress of every client project. NDC President Dr. Johnson and Vice President Dr. Levitt are always available to all clients, and typically are personally involved whenever particularly unusual or complex situations arise. And each NDC project has an NDC Consultant or Senior Consultant as a primary point of contact to ensure seamless information flows and continuity. All NDC project leaders are a fully trained Consultants or Senior Consultants with years of experience working with local government elected leadership and top staff members. Each NDC team leader brings their personal expertise in demographics, city governance, school district governance and/or special district management to every project. And each team leader has particular expertise and focus in specific geographic areas. All team members resumes are available on www.ndcresearch.com/about-us/.

NDC Current Organization Chart

NDC President	Douglas Johnson, Ph.D.
NDC Vice President	Justin Levitt, Ph.D.
Senior Consultants	Shalice Tilton Robert McEntire, Ed.D. Jeff Tilton, Ed.D.
Consultants	Kristen Parks Daniel Phillips, Ph.D. Shannon Kelly Jeff Simonetti Todd Tatum Ivy Beller Sakansky Douglas Yoakam
Records Manager	Michele Lewis

Recognition of NDC's Expertise

Both national and local organizations have recognized NDC's unmatched experience and expertise in the Census, districting, and redistricting.

National Recognition

Nationally, the National Conference of State Legislatures hosted NDC as a panelist at five different forums held for state legislators and legislative staff from across the country. NDC President Douglas Johnson addressed these forums on the following topics:

1. *Citizen Voting Age Data from a line-drawer's viewpoint*
2. *Communities of Interest in Redistricting: A key to drawing 2011 plans (and for their defense)*
3. *The Key to Successful Redistricting*
4. *Communities of Interest In Redistricting: A Practical Guide*
5. *The Arizona Independent Redistricting Commissions' experiences with the first-ever independent redistricting*

In addition:

- The National League of Women Voters hosted NDC President Douglas Johnson at a 2006 conference on "Building a National Redistricting Reform Movement,"
- Texas Tech University hosted Dr. Johnson as a panelist at its "Symposium on Redistricting;"
- The Arizona League of Cities and Towns hosted Dr. Johnson as a panelist on "Redistricting Law and the Voting Rights Act: What It Means for Your City or Town in 2011" and
- The Arizona Bar Association hosted Dr. Johnson as a panelist on "Communities of interest and technology in redistricting."

California League of Cities Recognition

The California League of Cities hosted NDC as panelists over a dozen times to date:

General Meeting panel: 2006 and 2015
Executive Forum panel: 2018 and 2020
City Clerk Department panel: 2014, 2017, 2018, twice in 2019, and 2020
City Manager Department panel: 2015 and 2019
City Attorney Department panel: 2018

Inland Empire Chapter presentation: 2016
South Bay Chapter presentation: 2020 and 2021

Recognition by Additional California Organizations

Other California organizations and conferences since 2011 recognizing NDC's expertise in this field include:

2020	California County Counsel Assoc.	2021 Redistricting - What Local Government Attorneys Need to Know
2020	"Voice of San Diego" Politifest	Redistricting--What it means for our community
2020	County Committee Secretaries Annual Summit	The California Voting Rights Act
2020	Rose Institute of State and Local Government	2021 Redistricting: New Rules for California Local Governments
2020	California Special Districts Association	California Voting Rights Act Challenge Factors
2020	Associated Cities of California – Orange County	2021 Redistricting: The Rules have Changed
2020	California Municipal Law Conference	Municipal Redistricting in 2021: New Rules of the Road
2019	California Association of School Business Officials	Transitioning to By-Trustee-Areas Elections
2019	USC City/County Fellowship Program	The Challenges of Municipal Election Districts
2019	California Special Districts Association	District Elections and the California Voting Rights Act
2018	California Special Districts Association	Converting From At-Large to By-District Elections Under the California Voting Rights Act
2018	Riverside County Bar Assoc.	Redistricting and the California Voting Rights Act
2018	California School Board Assoc.	Voter Districts: The Link Between Strong Community Engagement and a Successful Process

2017	California School Board Assoc.	15 Years with the California Voting Rights Act: Lessons Learned and Challenges Ahead
2017	UC's National Public Service Law Conference	Moderator, "Voting Rights 101"
2016	Los Angeles County School Business Officials	CVRA: What CBO's Need to Know
2016	Los Angeles County School Trustees Assoc.	The CVRA: What School Board Members Need to Know
2015	Associated Cities of California – Orange County	The California Voting Rights Act
2015	California School Board Assoc.	The California Voting Rights Act: What Board Members Must Know
2015	Los Angeles County School Boards Assoc.	CVRA & Districting: The Demographer's Perspective
2011	Channel Cities Club	Lunch Keynote: "California's next experiment: independent, public redistricting"

Advisor to Charter Review Commissions on Redistricting Provisions

NDC advised the following groups on the redistricting and voting rights provisions of their charter revisions and ordinances:

2016	City of El Cajon charter revision and public education outreach
2015/16	Castaic Lake Water Agency and Newhall County Water District merger
2015/16	City of Corona Charter Revision
2011/12	Pasadena Unified advisor to Charter Revision Commission creating a redistricting commission and moving District to by-district elections
2009/10	City of Menifee advisor to by-district-elections ordinance language committee
2006-08	City of Modesto advisor to Charter Revision Commission creating an independent redistricting commission and public education outreach
2003	City of Goleta ordinance writing and public education outreach

Expert Witness and Litigation Consultant

NDC President Douglas Johnson served as an expert witness in the following election and redistricting law cases:

2020	Chestnut v Merrill (Alabama)
2019	City of Redondo Beach vs State of California
2019	Ruiz-Lozito vs West Contra Costa Unified School District
2019	Common Cause v Lewis (North Carolina)
2018	Phillip Randolph Institute v Smith (Ohio)
2018	League et al. v. Johnson (Michigan)
2017	Luna v County of Kern
2018	Covington v State of North Carolina
2016	Garrett v City of Highland
2015	Jamarillo v City of Fullerton
2015	Harris vs Arizona Independent Redistricting Commission
2015	Solis v Santa Clarita Community College District
2015	Jauregui et al vs City of Palmdale
2014	Diego v City of Whittier

NDC Staff also served as litigation consultants for jurisdictions in the following California Voting Rights Act cases:

1. Anaheim
2. Carson
3. Compton
4. Escondido
5. Modesto
6. Poway
7. Santa Clarita
8. Whittier
9. Santa Clarita Community College District
10. Tulare Health Care District

Trusted Advisor to Local Government and Redistricting Reform Groups

NDC acted as an informal advisor to the California League of Cities and the California School Board Association during the debate over the AB849 "FAIR MAPS Act" in 2019.

NDC acted as an informal advisor to the California League of Cities during the debate over AB1276 (revising the FAIR MAPS Act provisions) in 2020.

NDC provided ideas, advice, maps and research to the 2008 Common Cause-led coalition that drafted and successfully advocated for Proposition 11, which created California's State-level Independent Redistricting Commission.

NDC President Douglas Johnson at Governor Schwarzenegger's press conference in support of redistricting reform.

(Left to right: Assembly Democratic Legislator John Laird, USC Senior Fellow Dan Schnur, Greenlining Institute representative (name unknown), AARP President Jeannine English, NDC President Douglas Johnson, Governor Arnold Schwarzenegger, League of Women Voters Senior Director Trudy Schafer, State Senate Republican Bill Leonard, League of Women Voters President Jacqueline Jacobberger, and three unidentified men).

NDC Testimonials

Here is a sampling of what people have to say about NDC:

"Our decision to work with National Demographics came out of our extraordinary city-wide success in 2015 with their work designing the original districts. I think anyone who participated in that process realized that the technical solutions they created opened access to literally dozens of people creating their own maps and it created a vibrant process."

Santa Barbara City Attorney Ariel Calonne

"Here's a great expert. . . . today you bring him in for what sounds like good information, very smart man up here."

United States Fourth District Court Judge James A Wynn, Covington v North Carolina, United States District Court for the Middle District of North Carolina, Case No. 1:15CV399

"I have worked on Congressional, Legislative, Los Angeles County and Los Angeles City redistricting maps on behalf of the Latino Caucus and grassroots Latino organizations for over 30 years. Douglas Johnson is one of the top redistricting experts in California, and he is who I would pick to draw a map for me anywhere in the state."

Alan Clayton, retired Executive Director of the Los Angeles County Chicano Employees Association

"The excel spreadsheet is a fantastic tool. Just plug in the letter by district and on the tab see a running total of population by assigned district. It's cool."

Modesto resident's comment, June 16, 2008

"One of the first, and in retrospect one of the best, decisions made by our commission was to hire Douglas Johnson and his colleagues at National Demographics Corporation as our primary consultants. I have never had the opportunity to work with a more highly qualified, hard-working, dedicated, professional and classy individual or group than Mr. Johnson and his associates at NDC."

Jim Huntwork, Arizona Independent Redistricting Commissioner (Republican)

"In addition to his technical expertise, Doug had a keen sense of how to help us navigate the complexities of the process. He understands redistricting better than any person I know. He has a unique ability to synthesize that which is very complicated and make it very understandable for the public. He frequently would present various options, without representing any position, clearly delineating differences and challenges of each option in a clear and succinct manner."

Josh Hall, Arizona Independent Redistricting Commissioner (Democrat)

"It was a great pleasure to work with Doug Johnson and NDC during the first Independent redistricting effort in Arizona. Doug and his staff were professional, efficient, responsive, and even-handed. They listened very carefully to the instructions given by the commission and performed each mapping task without bias of any kind. I would highly recommend NDC to any jurisdiction, or commission, wishing to have a successful redistricting process."

Steven W. Lynn, Chair, Arizona Independent Redistricting Commission (Independent)

"Thank you for all of your hard work, assistance, and patience with me during this year of CVRA conversion to by-area trustee elections. Your continual reassurance and support in dealing with all of the details was sincerely appreciated. We all have jobs to do, but when working with all of you I felt that you always went the extra mile to support our District with excellent customer service. The multiple revisions, extra conference calls, and follow up suggestions made a difference to Scott, Linda, and me. I personally enjoyed joking around with each of you while remaining professional in all presentations. It was a pleasure working with all of you. "

Jennifer Williams, Ed. D., Fullerton Joint Union High School District, Executive Director Administrative Services

"Thank you for taking time out of your busy schedule to participate in the City Official Roundtable I hosted on the 2020 U.S. Census at the Redondo Beach Performing Arts Center. I appreciate that you shared your expertise on the Census to the government officials who were present. It is critical that we work together to ensure that everyone is counted in the upcoming Census."

Ted W. Lieu, Member of Congress, California 33rd District.

Impeccable References

All of NDC's former clients – without exception – can be contacted for references. The following is only a sample of references:

Mr. Graham Mitchell. City Manager. City of El Cajon. 200 Civic Center Way. El Cajon. CA 92020. (619) 441-1716. GMitchell@cityofelcajon.us.

Mr. Jason Stilwell. City Manager. City of Santa Maria. 110 E. Cook Street. Santa Maria. CA 93454-5190. (805) 925-0951 ext. 2200. jstilwell@cityofsantamaria.org.

Mr. Marcus Walton. Communications Director. West Contra Costa Unified. 1108 Bissell Ave., Room 211-215. Richmond, CA 94801. 510-205-3092. mwalton@wccusd.net.

Mr. Jonathan Vasquez. Superintendent. Los Nietos School District. 8324 S. Westman Ave., Whittier, CA 90606. (562) 692-0271 Ext. 3212 jonathan_vasquez@lnsd.net.

Ms. Jennifer Fitzgerald, Mayor, City of Fullerton. 303 W. Commonwealth Avenue. Fullerton, CA 92832. (714) 402-3106. jennifer@curtpringle.com.

Mr. James Atencio. Assistant City Attorney. City of Richmond. 450 Civic Center Plaza. Richmond, CA 94804. 510-620-6509. James_Atencio@ci.richmond.ca.us.

Ms. Isabel Montenegro. Administrative Assistant. Inglewood Unified. 401 South Inglewood Avenue, Inglewood, CA 90301. 310-419-2799. imontenegro@inglewood.k12.ca.us.

Ms. Pam Abel. Superintendent. Modesto City Schools. 426 Locust Street. Modesto. CA 95351-2631. (209) 574-1616. able.p@mcs4kids.com.

Mr. Darrell Talbert. City Manager. City of Corona. 400 S Vicentia Avenue. Corona. CA 92882-2187. 951.279.3670. Darrell.Talbert@ci.corona.ca.us.

Mr. David Silberman. Deputy County Counsel. San Mateo County. 400 County Center. 6th Floor. Redwood City. CA 94063. 650-363-4749 dsilberman@smcgov.org.

Judge Hugh Rose (retired). Chairman. City of Modesto Districting Commission. 508 King Richard Lane. Modesto. CA 95350. Phone (209) 522-0719. Email: hhrose@hotmail.com.

Ms. Lucinda Aja. City Clerk, City of Buckeye, Arizona. 100 N Apache Rd, Suite A, Buckeye, AZ 85326. Phone (623) 349-6007. Email: laja@buckeyeaz.gov.

Summary Scope of Work

NDC tailors each project to the needs and goals of each jurisdictions. Below is a typical NDC-suggested timeline and description of project elements.

The dates provided below are general guidelines and will vary according to the goals, project choices, and deadlines of each jurisdiction.

This timeline is subject to change based on ongoing changes in the date when official population data will be available and possible changes in state deadlines.

April – May	Project Planning and decisions on public mapping tools, whether to use a commission, and other project options. Begin project communications and outreach.
May – September	Any mapping tools prepared with preliminary population data; initial pre-draft-map hearing(s) held.
October – January	Census data received and processed; draft maps prepared, considered, and revised (in hearings and, if desired, less formal public workshops)
January – April	Final plan revisions made and plan adopted and implemented.

Detailed Project Scope of Work

April – May, 2021: Project Planning and Initial Outreach

a. NDC works with the jurisdiction to prepare a detailed project timeline of expected outreach efforts, public forums, formal hearings, draft map dates, and final map adoption dates.

b. NDC works with the jurisdiction staff (or contract specialized outreach staff – see notes below about that option if interested) to prepare a project outreach plan for all steps of the process covering target audiences, contact lists, social media efforts, any potential postcard mailings, utility bill inserts, flyers for distribution at schools, media briefings, and community group contacts.

c. Decide what public mapping tool(s) to provide, if any.

d. Decide whether to use a commission.

e. Create the project website: NDC will provide advice and text for the jurisdiction's website, or as an optional project element NDC will build a project website that the jurisdiction can simply link to from the jurisdiction site.

f. NDC will work with jurisdiction and County Registrar staff to confirm GIS boundaries and to identify and include in our redistricting database any available GIS data that NDC and the jurisdiction identify are likely to be useful as mapping references for NDC, the public, and for the jurisdiction.

g. Project outreach begins with initial alerts and 'invitations to participate' sent out to the general public, to overlapping jurisdictions, and to community organizations.

May – September, 2021: Initial Data Analysis and Initial Hearings / Forums

h. NDC prepares total population estimates for use in initial hearings and any public mapping tools.

i. NDC adds socio-economic data from the Census Bureau's American Community Survey to the state demographic data.

j. NDC matches the demographic database to the existing election areas.

k. NDC prepares a report regarding the demographics and compliance with state and federal criteria of the existing election areas, including maps of "protected class" population concentrations and other socio-economic data often referenced in redistricting (such as income, education levels, children at home, language spoken at home, renters / homeowners, and single-family / multi-family residences).

l. NDC report is circulated to the jurisdiction and into the project outreach messaging.

m. Hearings / Forums: NDC presents an overview of the redistricting laws and criteria, jurisdiction demographics, and the population balance of the existing election areas and their compliance (or possible lack thereof) with state and federal requirements.

n. The project timeline and outreach plan are presented to the public for comments and feedback, along with a request to the public to provide guidance on what residents consider key neighborhoods, communities of interest, and other project-related regions in the jurisdiction.

o. If the optional public mapping tools and/or Public Participation Kit are included in the project, their use is demonstrated to the public.

p. If the optional public mapping tools and/or Public Participation Kit are included in the project, NDC provides email and phone support for any residents with questions regarding their use.

q. If the optional public mapping tools and/or Public Participation Kit are included in the project, at the jurisdiction's option additional public forums on the use of those tools can be provided.

r. Outreach efforts continue with messaging to the public, with special focus on community groups with an interest in the redistricting.

October – January, 2021: Draft Mapping Time

s. 2020 Census total population counts released and California Statewide Database completes "prison adjustments" of the data. Total population counts in outreach materials and mapping tools are updated with the official Census data.

t. If the existing election areas are in compliance with state and federal rules and balanced, the jurisdiction decides whether to stop at this "Still Balanced" point or to continue with a standard redistricting.

u. Outreach efforts continue with messaging reminding the public of the opportunity to provide written or mapped input on how the maps should be drawn and welcoming any maps residents with to submit.

v. The public deadline for submitting any initial draft maps will be approximately seven days prior to the official deadline to post all draft maps online (to provide NDC time to process any draft maps received, and for NDC to develop our own two to four initial draft maps).

w. All outreach channels are used to inform the public about the opportunity to submit draft maps and to encourage participation in the review of the upcoming draft maps.

x. NDC processes all public draft map submissions, drafts NDC's draft maps, summarizes all of the draft maps. The maps, related demographics, and summaries are provided by NDC in web-friendly formats. These process maps are posted on the project website and on the NDC-provided interactive review map.

y. At the jurisdiction's option, one or more informal workshops or public forums are held to gather residents' reactions to and preferences among the draft maps.

z. The jurisdiction holds a hearing to review the draft maps, narrow down the list of initial draft maps, and provide direction on any desired new or revised maps.

aa. Time provided for the public to submit any new maps and for NDC to provide maps based on the direction at the hearing. During this time, additional outreach is conducted to inform interested residents and community groups of the selected 'focus maps' and the remaining opportunities to participate in the process.

January – April, 2022: Map Adoption

bb. Any new or revised maps, related demographics, and summaries are posted on the project website.

cc. At the jurisdiction's option, one or more informal workshops or public forums are held to gather residents' reactions to and preferences among the remaining maps.

dd. One or more hearings are held to continue the review and refinement of the focus maps and, ultimately, adopt the final map.

ee. Outreach continues to inform residents and community groups of the progress of the project, opportunities for future participation, and, ultimately, which map is adopted.

ff. Following map adoption, NDC coordinates map implementation with the County Registrar, informing the jurisdiction staff of the progress, any issues, and ultimate completion of that work.

gg. NDC works with the jurisdiction staff to ensure preservation of all project data and records, including GIS-format versions of the adopted map.

Details of Optional Project Elements

Advisory or Independent Redistricting Commissions

NDC anticipates that many California jurisdictions will create advisory or independent commissions to manage the redistricting process. NDC welcomes the use of such commissions, and our pricing does not change for jurisdictions creating commissions. But the creation, training, operation and reporting of such commissions often leads to more meetings (and a resulting increase in the "per meeting" project expenses) than a traditional redistricting process conducted primarily by the jurisdiction's elected leadership.

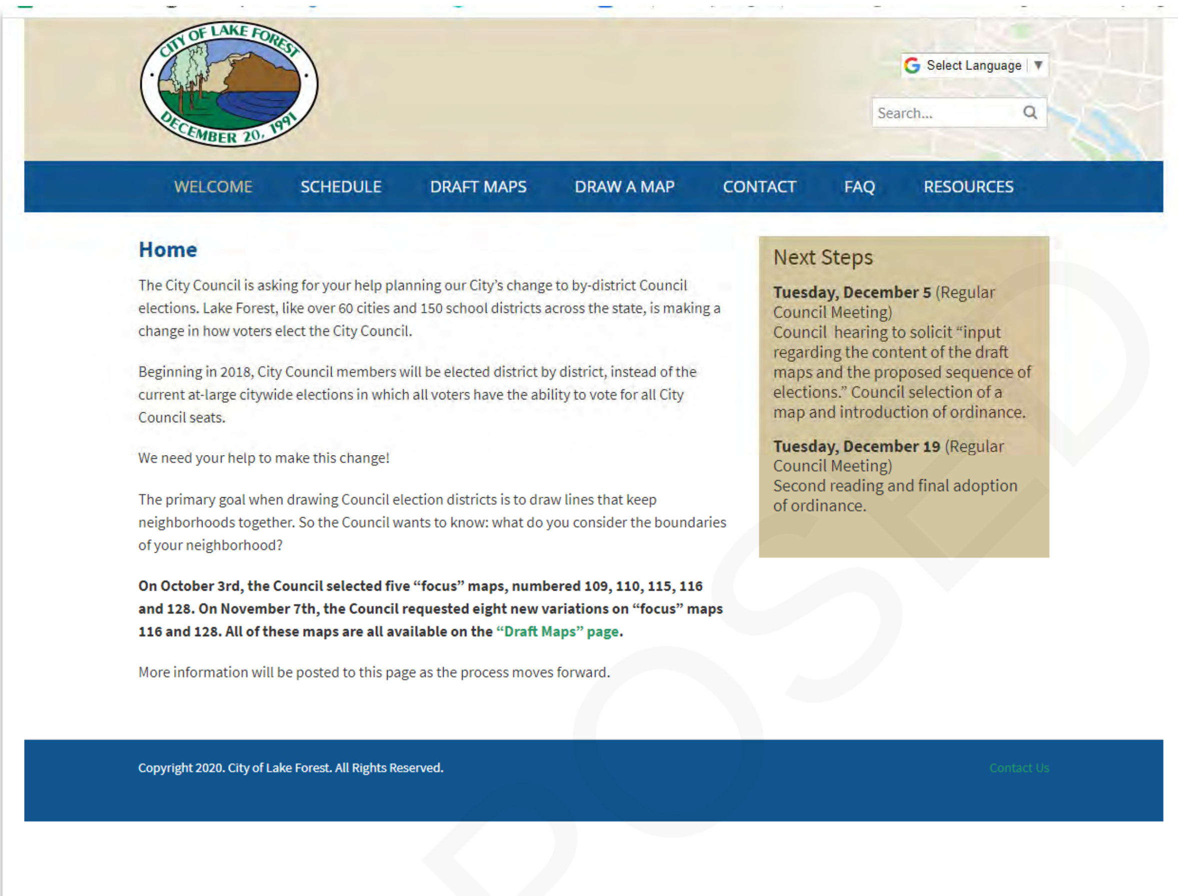
Outreach Assistance

NDC brings topical expertise to your jurisdiction's outreach efforts, and NDC makes available to all clients our library of sample outreach materials including op-ed articles, postcards, utility bill inserts, flyers, and social media messages. NDC provides all of these materials along with our advice and input on outreach strategy and materials to any interested jurisdiction, but we do not have graphic artists to customize or design such materials in-house.

For larger-scale outreach efforts, especially where jurisdictions wish to send representatives out to regular meetings of existing community organizations, NDC typically works together with a jurisdiction's in-house communications staff and/or with one or more outreach organizations. We often work with, and highly recommend, Tripepi-Smith, and some information on the services they offer is included at the end of this proposal. And we would be happy to work with any in-house team at the jurisdiction or with any firm or organization the jurisdiction selects. Many projects can be handled by a jurisdiction's in-house or regular outreach and communications teams (with samples and topic expertise provided by NDC), but a number of jurisdictions seek supplemental outside communications assistance.

Project Website

NDC provides all project materials in website-friendly formats for posting on the jurisdiction's website. At no cost, NDC will provide project website samples and website language for use on the jurisdiction's project website. But for jurisdictions that prefer not to take on the challenge of creating and managing a rapidly-changing project website, NDC will create, host, and update project website (visit to see one such site – though note that site was created prior to passage of the new AB849 requirements).



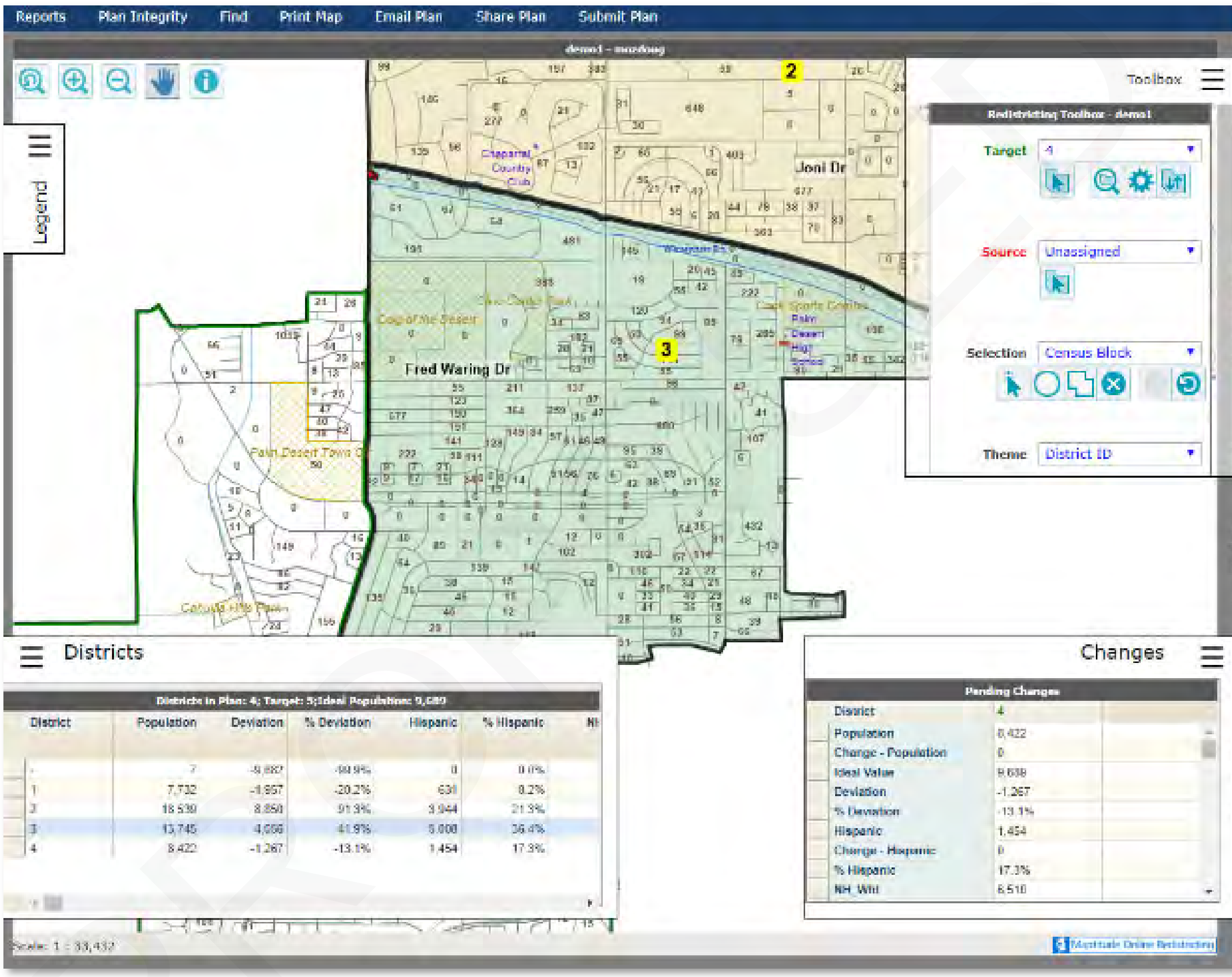
Background on Online Mapping Tool Options

NDC is the unmatched leader in redistricting tools that empower residents to review draft maps and to develop and submit their own map proposals. NDC is the only firm that has used the online mapping solutions from both ESRI and Caliper Corporation in major redistricting projects.

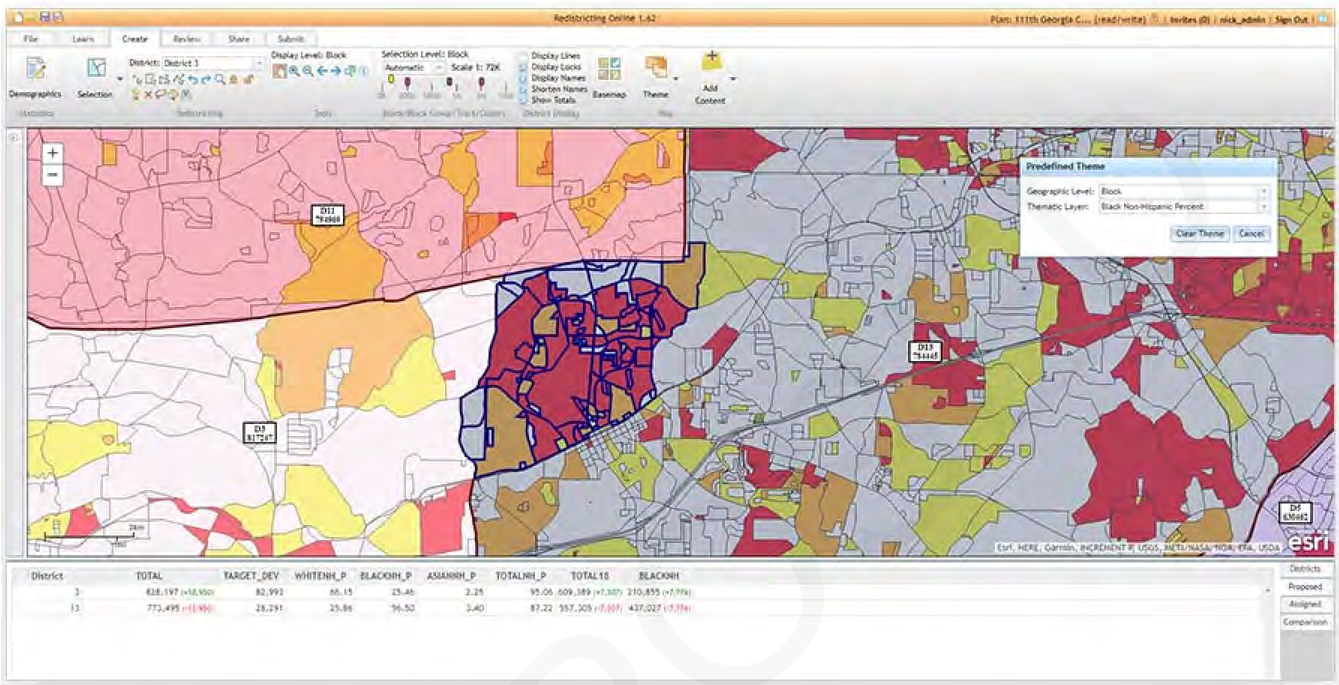
Only NDC has repeatedly trained members of the public, processed public map submissions, and presented the public map proposals to public hearings and commission meetings. NDC's online mapping tool options provide user support, hosting, managing, and processing submitted plans for an online interactive system that allows public to draw and submit proposed maps through a standard web browser.

National Demographics Corporation

In the more than 200 California local districting projects between 2012 and 2020, NDC is the only consultant providing clients access to Caliper Corporation's "Maptitude Online Redistricting" tool. Even with the technical challenges arising from such tools' power and flexibility, NDC's training and encouragement frequently results in 10, 20, 30 or more different maps drawn by residents of the school district or city providing that tool to its residents.

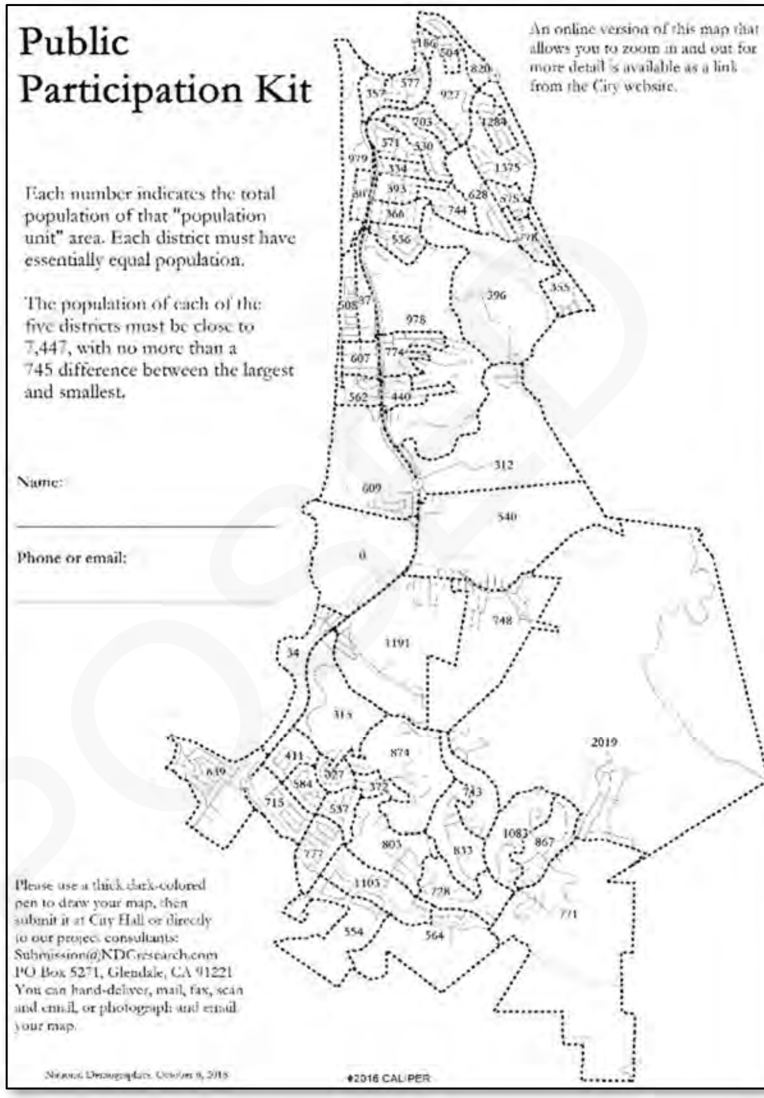


The other primary public mapping tool currently on the market is ESRI's online districting tool. While easy to use, the ESRI product costs significantly more. As a result, traditionally only the largest jurisdictions have been able to afford it.



When it is time to start the project, NDC will work with each interested client to determine which, if any, online mapping tool best meets the goals and budget of the jurisdiction.

Paper- and Excel-based Public Mapping Tools



While online mapping tools are very popular, NDC never forgets those residents who do not have internet access or who simply prefer to not drawing maps online.

At no cost with every online mapping tool, and as a separate option for jurisdictions that for budget or other reasons do not include an online mapping tool, NDC offers our "Public Participation Kit." Each "Kit" includes two formats.

The first, and most simple, Kit is a one-page map showing streets, city borders, and population counts for NDC-created "Population Unit" geographic areas. Residents draw the map they wish to propose and add up the population counts by hand until they get the right population count in each district. All of the directions needed are right on the single-page form. Examples of these tools, from our work for the City of Lake Forest, are available here: https://drawlf.org/draw-a-map/.

The second form of offline mapping tool is for those residents who do not want to deal with an online mapping tool, but who are already comfortable with Microsoft Excel. NDC provides a similar simple one-page map of those same "Population Units," but this time the map shows the Unit ID number rather than the population count in that Unit. Residents then enter their preferred district assignment for each Population Unit into the pre-formatted Excel spreadsheet (also available on the Lake Forest website), and Excel calculates the total population and demographics of each District. When the resident has the map the way they like it, they simple email in the Excel file.

Project Pricing

1. **Basic Project Elements** (covers everything except for per-meeting and optional expenses): .... $ 10,500

2. **Per-Meeting expense:**

- In-person attendance, per meeting .... $ 2,750
- Virtual (telephonic, Zoom, etc.) attendance, per meeting .... $ 1,250

For each meeting, NDC will prepare meeting materials, including presentation materials and maps; present and explain key concepts, including mandatory and traditional redistricting criteria and "communities of interest"; facilitate conversations; answer questions; and gather feedback on existing and proposed boundaries. Per-meeting prices include all travel and other anticipated meeting-related expenses. Telephone calls to answer questions, discuss project status, and other standard project management tasks do not count as meetings and do not result in any charge.

3. **Optional Project Elements:**

   a) Project website .... $ 3,500

   b) Public mapping tool options:
      - ESRI Redistricting .... *
      - Caliper-centered system including all elements below .... $ 10,000
        - "Maptitude Online Redistricting" (MOR)
        - Tuft University's "DistrictR" (a simple neighborhood mapping tool)
        - Public Participation Kit paper- and Excel-based mapping tool

   c) DistrictR without MOR or ESRI .... $ 4,000

   d) Public Participation Kit mapping tool without MOR or ESRI .... $ 2,000

   e) Working with independent or advisory redistricting commission .... no additional charge

   f) Additional outreach assistance .... separately contracted

* ESRI prices its software on a jurisdiction-by-jurisdiction basis. The lowest prices we have seen are $80,000 and up. If that is an option the jurisdiction would like to pursue, NDC will request a specific price for your jurisdiction from ESRI.

Other Potential Project-Related Expenses:

The most common additional project expenses would be any site or staff costs for conducting the community forums and the cost of printing or copying paper copies of the "Public Participation Kit." In NDC's experience, most participants will download and print the Kits in their own homes or offices.

Additional Analysis

NDC is happy to assist with any additional analysis that the client requests at our standard hourly rates:

Principal (Dr. Douglas Johnson)................$300 per hour
Vice President (Justin Levitt)......................$250 per hour
Senior Consultant..$200 per hour
Consultant..$150 per hour
Analyst / Clerical..$50 per hour

Dr. Johnson is also available for deposition and/or testimony work if needed, at $350 per hour.

Requested Payment terms:

NDC requests that the "Still Balanced" project fee be paid at the start of the project; that the difference between the "Still Balanced" fee and half of the "Basic Project Elements" be paid once the decision to update the district lines is made; and the balance of the project costs be paid at the conclusion of the project.

Exception: "Still Balanced" Jurisdictions

For a few jurisdictions, the existing election areas will still meet the equal population and voting rights act requirements using new 2020 Census data and the requirements of California's new "Fair Maps" law. These jurisdictions have the option simply retain the existing map without drawing and holding hearings on alternative maps. For jurisdictions electing this approach, the project would conclude with that decision.

Includes all the services listed below:.. $ 3,500

- Compile total population and Citizen Voting Age Population data.
- Import existing election area lines.
- Compile population data by election area and calculate population deviations, prepare memo summarizing findings.

"Still Balanced" optional project elements and per-meeting expenses

Meeting attendance and optional project elements are not included in the "minimal change" project base fee. If requested, NDC team members participate in "minimal change" project hearings or forums at the same "per meeting" expenses, and optional project elements are provided at the same prices listed for a standard project in the previous section of this proposal.

Conclusion

Since its founding NDC has been the nation's preeminent company devoted to local election systems. To summarize:

- NDC has more experience in the field of municipal political election systems than any other company.
- NDC's experience and expertise has been recognized by our hundreds of clients, the California League of Cities, the California School Board Association, the California Special District Association, and the National Conference of State Legislatures.
- NDC, founded in 1979, has a demonstrated record of financial solvency.
- NDC's hardware and software resources were specially designed and acquired for districting and redistricting purposes.
- NDC's highly respected personnel have impeccable credentials in each aspect of the districting and redistricting processes.
- NDC's suggested approach has been tested in many jurisdictions.
- Any NDC client can be contacted for testimonials and reference.
- NDC has demonstrated experience over many years in working with the press and media on local election system issues.
- Neither the Justice Department nor any Court has ever rejected any of over 350 local government maps adopted through NDC-managed districting and redistricting projects.

NDC takes pride in tailoring each project to the needs and goals of each individual client. NDC is open to any feedback, concerns, requests, or changes regarding this proposal.

NDC looks forward to the opportunity to work with you on this project.

Proposal Acceptance

The terms of this proposal are available for 90 calendar days from its delivery to you. In most situations, NDC is open to extending that period of time to meet any particular needs of your jurisdiction.

If your jurisdiction has specific contract and/or letter of agreement language you prefer to use, please provide it and ignore the signature block below. If you prefer, simply sign two copies of this proposal in the signature block below and return them to NDC. Once signed by NDC, one copy will be returned to you.

Thank you.

For National Demographics Corporation

____

Douglas Johnson, President

____

Date

For Riverbank

____

____

Date

Appendix

Resumes of NDC President Dr. Douglas Johnson,
Vice President Dr. Justin Levitt and Senior Consultant
Dr. Jeff Tilton are attached.

A client list and resumes of all NDC team members are
available at www.ndcresearch.com/about-us/.

Douglas Mark Johnson

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Employment

President, National Demographics Corporation, 2006 – present.
Senior Analyst, National Demographics Corporation, 2001 – 2006.
Fellow, Rose Institute of State and Local Government, 2001 – present.
Project Manager and Senior Manager at three internet startup companies, 1999 - 2001.
U.S. Representative Stephen Horn, Legislative Director and System Manager. 1993 – 1997.
Coro Foundation, Fellowship in Public Affairs. 1992 – 1993.
Rose Institute for State and Local Government, Student Manager. 1989 – 1992.

Education

Claremont Graduate University, Ph.D. in Political Science, 2015. Dissertation: "Independent Redistricting Commissions: Hopes and Lessons Learned."
UCLA Anderson Graduate School of Management, MBA, 1999.
Claremont McKenna College, BA in Government (Political Science), 1992.

Academic Honors

Graduated Cum Laude from Claremont McKenna College.
Phi Beta Kappa. Philip Roland Prize for Excellence in Public Policy.

Publications and Articles

Christian Science Monitor "Let the public help draw voting districts," October 25, 2013.
New York Times, "The Case for Open Primaries," February 19, 2009.
Los Angeles Times Opinion Articles:
- "A neighbor's help on redistricting" June 24, 2007.
- "A Trojan horse primary for the GOP" February 25, 2007.
- "Where a porn palace stood" (article on redevelopment), July 30, 2006.

Fresno Bee Opinion Article: "The Poison Handshake" June 15, 2004.
Redistricting in America. Rose Institute of State and Local Government, 2010.
Restoring the Competitive Edge: California's Need for Redistricting Reform and the Likely Impact of Proposition 77. Rose Institute of State and Local Government, 2005.
"Competitive Districts in California" Rose Institute of State and Local Government, 2005.
Latinos and Redistricting: "Californios For Fair Representation" and California Redistricting in the 1980s. Rose Institute of State and Local Government, 1991.

Speaker or Panelist

California School Board Association Annual Education Conference panelist: "The California Voting Rights Act: What Board Members Must Know." December 4, 2015.
Associated Cities of California – Orange County, Keynote Speaker, Newly Elected Officials' Reception and Dinner, "The California Voting Rights Act," January 29, 2015.
California League of Cities, City Manager Department, 2015 Department Meeting: "Opportunity to Engage Residents: The California Voting Rights Act." January 29, 2015.
California League of Cities, City Clerk Department, 2014 Annual Meeting: "Whose Line Is It Anyway: Making the transition from at-large to by-district elections." September 3, 2014.
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2007 Spring Forum, "The Arizona Independent Redistricting Commissions' experiences with the first-ever independent redistricting."
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2008 Spring Forum, "Communities of Interest In Redistricting: A Practical Guide."

National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2009 Fall Forum, "The Key to Successful Redistricting."

National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2010 Spring Forum, "Communities of Interest in Redistricting: A key to drawing 2011 plans (and for their defense)."

National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2011 Winter Forum, "Citizen Voting Age Data from a line-drawer's viewpoint."

Luncheon Keynote Speaker, Santa Barbara's Channel Cities Club, "California's next experiment: independent, public redistricting," January 18, 2011.

Annual Conference, Arizona League of Cities and Towns, Presenter at "Redistricting Law and the Voting Rights Act: What It Means for Your City or Town in 2011," August 25, 2010.

Redistricting, The 2010 Census, and Your Budget, Sponsored by the Rose Institute of State and Local Government, California League of Cities, October 15, 2009.

Arizona Election Law 2010 Continuing Legal Education Conference, "Communities of interest and technology in redistricting," sponsored by the Arizona State Bar Association, March 2010

California's New Independent Redistricting Commission, sponsored by the Irvine Foundation and the California Redistricting Collaborative, December 15, 2009

Tribal Association of Sovereign Indian Nations (TASIN) Legislative Day 2009, "The 2010 Census and 2011 Redistricting in California," December 2, 2009.

California School Board Association, "Litigation Issues and the California Voting Rights Act," December 4, 2009.

California Latino School Boards Association, "Introduction to the California Voting Rights Act," August 20, 2009.

Building a National Reform Movement, Salt Lake City, Utah, 2006, conference on redistricting reform hosted by the League of Women Voters, Campaign Legal Center, and The Council for Excellence in Government

Texas Tech University, “A Symposium on Redistricting,” May, 2006

California League of Cities, "Introduction to the California Voting Rights Act."

Voices of Reform, a project of the Commonwealth Club of San Francisco: multiple forums on redistricting and / or term limits, 2006 – 2007

Classroom speaker at Pepperdine University, the University of La Verne, Pomona College and Claremont McKenna College

Justin Mark Levitt

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Employment

Vice-President, National Demographics Corporation, 2012 – present.
Senior Analyst, National Demographics Corporation, 2003 – 2011.
Instructor in Political Science, University of California, San Diego, 2012 – present.
Graduate Research Fellow, Center for US-Mexico Studies, 2010 – present.
Graduate Research Fellow, University of California, San Diego, 2008 – 2010 and 2013 – 2014.
Jesse M. Unruh California Assembly Fellow. 2006 – 2007.
Rose Institute for State and Local Government, Student Manager. 2005 – 2006.

Education

University of California, San Diego, Ph.D. Political Science, 2016. Dissertation title: "The Impact of Geographic Patterns on Tradeoffs in Redistricting."
Claremont McKenna College, BA in Philosophy, Politics and Economics (PPE), 2006.

Academic Honors

California Studies Fellow, University of California, San Diego, 2007 – 2009
Graduated Cum Laude from Claremont McKenna College.

Publications and Conference Presentations

Settle, Jamie, Robert Bond, and Justin Levitt. 2011. "The Social Origins of Adult Political Behavior." *American Politics Research*: 39 (2). 239-263

Miller, Kenneth and Justin Levitt. 2007. "The San Joaquin Valley." In The New Political Geography of California. Eds. Frederick Douzet, Thad Kousser, and Kenneth Miller. Berkeley: Institute of Government Studies.

"The Political Geography of Tradeoffs in Redistricting" Paper presented at the State Politics and Policy Conference, Iowa City, IA, 2013

Getting What You Want: A Bargaining Approach to Fair Division in Redistricting. Paper presented at the "Challenging Urban Borders : the geopolitics of immigration and segregation" workshop, Berkeley, CA, 2013 and the State Politics and Policy Conference, Houston, TX, 2012

"An Atlas of Public Health in Mexico" (with Alberto Diaz Cayeros). Paper presented at the Hewlett Foundation Conference on Public Health, Mexico City, DF. 2012

"Remoteness and the Territoriality of Public Health" (with Alberto Diaz Cayeros).
Paper presented at the American Political Science Association conference, Seattle, WA. 2011

"Initiatives as revealed preferences"
Paper presented at the American Political Science Association conference, Seattle, WA. 2011

"No Se Puede: Latino Political Incorporation in Phoenix.". Paper Presented at the New Political Geography of California conference, Berkeley, CA., 2009

"Political Change in the Central Valley". Paper Presented at the Western Political Science Association conference, Las Vegas, NV.,2007

Working Papers

Hill, Seth, Thad Kousser, Alex Hughes, and Justin Levitt. ND. "*How Competitiveness Shapes Infrequent Primary Voters Response to Receiving a GOTV Mailer.*"

Diaz-Cayeros, Alberto and Justin Levitt. ND. "*Remoteness and the Territoriality of Public Health.*"

Levitt, Justin. ND. "*Getting What You Want: A Bargaining Approach to Fair Division in Commission-led Redistricting.*"

Teaching Experience

California State University, Long Beach, Department of Political Science

Adjunct Professor—POSC 327 (Urban Politics)	Spring 2016-Present
Adjunct Professor—POSC 229 (Cases in Policy Analysis)	Present
Adjunct Professor—POSC 412 (Law and Social Change)	Spring 2016-Present
Adjunct Professor—POSC 399 (California Politics Short Course)	Present

University of California, San Diego, Department of Political Science

Co-Instructor—UPS 170 (Regional Governance Reconsidered)	Spring 2015
Instructor—Poli 100A (The Presidency)	Fall 2014
Instructor—Poli 160AA (Introduction to Public Policy Analysis)	Fall 2013
Instructor—Poli 10 (Introduction to American Politics)	Summer 2013

NDC
National Demographics Corporation

Jeff S. Tilton Sr., Ed.D.

Employment

Senior Consultant, National Demographic Corporation, 2019 – present
Deputy Superintendent (retired), New Jerusalem Elementary School District, 2012-2019
Director, Educational Programs, Janus Youth Programs, Inc., 2011-2012
Senior Account Executive, Northwest Evaluation Association, 2004-2011 Director II, Stanislaus County Office of Education, 2000-2004
Administrator, Cotati-Rohnert Park Unified School District, 1999-2000
Chief Academic Officer, Delhi Unified School District, 1997-1999
Director I, San Joaquin County Office of Education, 1992-1997
Teacher/Coach, Manteca Unified School District, 1987-1992

Adjunct Faculty Experience

Chapman University
Grand Canyon University
Portland State University
University of San Diego

Education

University of the Pacific, Ed.D., Educational Administration/Curriculum and Instruction 1998.
Dissertation: "A Case Study of the Arizona Boys Ranch Educational Program"

University of LaVerne, M.Ed., Educational Leadership, 1989 California State University, Stanislaus, B.A., English, 1986

Associated Education

Association of California School Administrators' Personnel Administrators Academy, 2017-2018
Association of California School Administrators' Superintendents Academy, 2013-2014
Association of California School Administrators' Personnel Administrators Academy, 1994-1995
California School Leadership Academy, 1990-1992

Speaker or Panelist

Association of California School Administrators Regional Conference, Monterey, California Association of Personalized Learning Schools & Services State Conference, Sacramento, California California Charter School Development Center Leadership Conference, San Diego, California California Charter Schools Organization State Conference, Pasadena, California
California Charter Schools Organization State Conference, Sacramento, California California League of Middle Schools State Conference, San Diego, California
California Network of Educational Charters State Conference, San Francisco, California Escalon Kiwanis Club, Escalon, California
Juvenile Court, Community and Alternative School Administrators of California State Conference, San Francisco, CA Juvenile Court, Community and Alternative School Administrators of California Regional Conference, Visalia, CA Juvenile Court, Community and Alternative School Administrators of California State Conference, San Diego, CA KIPP National Summit, Las Vegas, Nevada
Lathrop Sunrise Rotary Club, Lathrop, California
Latina United Republic Women Federation, Stockton, California Lodi Sunrise Rotary Club, Lodi, California
Manteca Morning Rotary Club, Manteca, California
Missouri Charter Public School Association State Conference, Lake Ozark, Missouri Modesto Kiwanis Club, Modesto, California

Modesto Rotary Club, Modesto, California
National Association of Charter School Authorizers National Conference, Salt Lake City, Utah
National League of Middle Schools Conference, Maui, Hawaii North Modesto Kiwanis Club, Modesto, California
North Stockton Rotary Club, Stockton, California Ripon Rotary Club, Ripon, California
Stockton Pacific Rotary Club, Stockton, California Stockton Republic Women Federation, Stockton, California Stockton Rotary Club, Stockton, California
The Association of Career and College Readiness Organizations State Conference, Palm Desert, California Tracy Rotary Club, Tracy, California
Tracy Tank Town Lions Club, Tracy, California

Redistricting Projects

Coalinga Huron School District
Campbell City
Campbell Union
Campbell Union High
Fallbrook Regional Health
Huntington Beach City Schools
Joshua Basin Water
Lincoln City
Marina City
Moreland School District
Santa Barbara County Citizens' Independent Redistricting Commission
Valley Recreation
Westminster City

Redistricting with Tripepi Smith

By-district elections are becoming increasingly common in local government agencies throughout California. The California Voting Rights Act, passed in 2001, was the impetus for much of this change. Today, more than 300 local government agencies have districts of some form, and the number continues to rise as local government agencies are compelled to settle lawsuits or avoid legal battles.

About Tripepi Smith and Our Redistricting Team

Tripepi Smith is a team of 23 communications experts—robust enough to offer experienced and effective professionals for the job, yet small enough to be nimble and responsive. Tripepi Smith offers a spectrum of skills that allows us to match the appropriate resource to the task at hand, letting us execute faster and reduce engagement costs. These resources vary by both years of experience and core hard skills (public policy versus graphic design versus videography versus writing versus social media, for example).

Tripepi Smith is experienced in helping local governments execute community education and outreach initiatives for district formation and redistricting processes. We have worked extensively with agencies on their district public forums, created districting information portals and organized a conference on local redistricting for nearly 200 local government practitioners.

The combined talent of our policy experts, in-house design team and videographers delivers professional communications that make our clients proud and better inform the public about this complex process. Tripepi Smith has the skills and experience to help local governments implement successful outreach strategies for district formation and redistricting outreach. The team's skills and certifications range from excellent written communication skills to Tableau for data analytics to Google Ads to event planning and project management.

Tripepi Smith Redistricting Services

California State law has identified outreach as a core component of the redistricting process. The Tripepi Smith team can provide jurisdictions with some or all of the following services:

Project Management

Tripepi Smith can facilitate all project calls for this engagement and create a living agenda to manage the efforts and timing between the demographer, legal counsel, City and Tripepi Smith from the beginning of the outreach process to the map adoption.

In-Person Meetings

If possible with COVID-19 limitations, Tripepi Smith can coordinate with City staff to identify venues and dates to host in-person workshops and meetings to seek public feedback on new district lines and provide information on map-drawing tools. Tripepi Smith can devise an agenda, facilitate discussions, document community feedback and promote positive engagement around the process. Additionally, Tripepi Smith can provide graphic design services to create bilingual PowerPoint decks for the presentations and flyers for attendees. We can coordinate simultaneous translation with local partners.

Tripepi Smith can also facilitate recording the meetings and provide videos, with any relevant slides interspersed and closed captions. These videos would likely fulfill the requirement to post a summary of the meeting.

Virtual Meetings

Tripepi Smith can also coordinate and facilitate virtual meetings and workshops to seek public feedback and educate residents on map-drawing tools. Tripepi Smith can also work with City staff to promote the meetings and to leverage our identified outreach and advertising work to promote meeting participation. Our videographers can process recordings of the meetings to fulfill posting requirements.

Press Release/News Article for Website

Tripepi Smith can draft press releases on the jurisdiction's redistricting efforts and manage media relations to promote each step in the redistricting process reaches local and broad-reaching media.

Creation and Updates to Bilingual Redistricting Website

Tripepi Smith can create and maintain a bilingual redistricting website or subpages in coordination with the demographer. The website/pages would include resources for the community, including all required information about meetings and draft maps.

Social Media Support

Tripepi Smith can create bilingual copy and graphics for social media posts about the redistricting process, as well as boost posts (paid advertising) on Facebook and Instagram to help spread the word about meetings and solicit public commentary.

Get in touch with Tripepi Smith President Ryder Todd Smith (626.536.2173 | Ryder@TripepiSmith.com) to start planning.