

CITY COUNCIL / LRA BOARD

Mayor/Chair

Richard D. O'Brien

Vice Mayor/Chair (CM-D3) Cal Campbell

Council/Authority Members:

District 1 Luis Uribe

District 2 Rachel Hernandez

District 4 Darlene Barber-Martinez



**City of Riverbank
Regular City Council and
Local Redevelopment Authority
Board Hybrid Meetings
(Virtual via ZOOM)**

Council Chambers, 6707 Third St., Suite B
Riverbank, CA 95367



REVISED AGENDA

TUESDAY, APRIL 12, 2022 – 6:00 P.M.

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

NOTICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 59453, SUBDIVISION (e) OF THE RALPH M. BROWN ACT (CALIFORNIA GC § 54950, ET SEQ.), THE FEDERAL AMERICANS WITH DISABILITIES ACT). WHILE THIS MEETING WILL BE PHYSICALLY OPEN TO THE PUBLIC, GIVEN THE STATE OF EMERGENCY REGARDING THE THREAT OF COVID-19, MEMBERS OF THE PUBLIC MAY ALSO PARTICIPATE AND COMMENT VIA THE ZOOM VIRTUAL PLATFORM. REFER TO THE LAST PAGE OF THE AGENDA FOR PARTICIPATION INFORMATION.

1. CALL TO ORDER

2. FLAG SALUTE

3. INVOCATION

4. ROLL CALL

5. AGENDA CHANGES

6. 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.*

7. 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)** and time cannot be yielded to another person. 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.

8. PRESENTATIONS (Informational only)

Item 8.1 **Proclamation – Golden Valley Health Centers' 50th Year Anniversary**
– Vice Mayor Cal Campbell to present Golden Valley Health Center with a Proclamation Honoring their 50th Anniversary.

9. 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 9.1 Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 9.2 Approval of the March 22, 2022 City Council and Local Redevelopment Authority Board Minutes.

Item 9.3 Second Reading by Title Only and Adoption of Ordinance 2022-001 Adding New Chapter 54: Mandatory Organic Waste Disposal Reduction Ordinance to Title V: Public Works of the Riverbank Municipal Code of Ordinances.

Item 9.4 Adopt a Resolution to Approve and Adopt the Revised 2022 City of Riverbank Measure L Expenditure Plan Project List.

Item 9.5 A Resolution Authorizing the Purchase of the Jackson Ave. Property (APN 075-005-025) and 2531 Stanislaus St. (APN 075-005-013) for \$550,000 and Allocating Funds from the American Rescue Plan Act Fund 136 for said Purchase.

10. PUBLIC HEARINGS

Item 10.1 **Adopt Resolutions accepting and closing the Proposition 218 Public Notification and Protest process and approving the proposed rate increase for solid waste disposal services and authorizing the City Manager to execute an Agreement for the collection of solid waste in the City of Riverbank** - It is recommended that the City Council –

- 1) Open the Proposition 218 Public Hearing and Receive Written Protests to the Proposed Rate Increase for Solid Waste Disposal Services, and
- 2) Adopt a Resolution Accepting and Closing the Proposition 218 Public Notification and Protest Process as it Relates to the Proposed Rate Increase for Solid Waste Disposal Services, and
- 3) Consider Adopting a Resolution Approving the Proposed Solid Waste Rates (this item is contingent upon the Results of the Protest Process), and
- 4) Authorize Mayor Richard D. O'Brien to Execute a Franchise Agreement with Gilton Solid Waste for Solid Waste Disposal Services.

The Public Hearing Notice was published twice in the Riverbank News, once on February 23, 2022 and again on March 2, 2022. The Public Hearing Notice is also posted on the City of Riverbank's website <http://riverbank.org> and notices were mailed via USPS to all rate holders.

Item 10.2 **Adopt a Resolution Authorizing a 13.4% Inflationary Adjustment Increase to the City of Riverbank System Development Fees Based on the Construction Cost Index to be effective May 1, 2022** – It is recommended that the City Council open the public hearing, accept public testimony and adopt a Resolution Authorizing a 13.4% Inflationary

Adjustment Increase to the City of Riverbank System Development Fees Based on the Construction Cost Index to be effective May 1, 2022. ***The Public Hearing Notice was published twice in the Riverbank News, once on February 23, 2022 and again on March 2, 2022.***

- Item 10.3** **First Reading by Title Only and Introduction of a Proposed Ordinance Amending Title XV, Land Usage, by repealing in their entirety Sections §153.215 ZONING PERMITS, §153.216 USE PERMITS, §153.217 VARIANCE, §153.218 APPEALS, and §153.219 MOBILE HOME PERMITS, and substituting them with new Sections and adding new Sections §153.210 through §153.214 –** It is recommended that the City Council open the public hearing, accept public testimony and Introduce and Waive the First Reading of Ordinance 2022-____. ***The Public Hearing Notice was published in the Riverbank News on March 23, 2022.***

11. NEW BUSINESS

- Item 11.1** **Adopt a Resolution of Concurrence and Support for the Approval of the Fiscal Year 2022-2023 Annual Action Plan (AAP) –** It is recommended that the City Council open the Community Meeting, accept Public Comment, and consider adopting a Resolution of Concurrence and support for the approval of the Fiscal Year 2022-2023 Annual Action Plan (AAP).
- Item 11.2** **Adopt a Resolution Approving the Appointment of Marisela H. Garcia as the City Manager and Approving the Related Employment Agreement –** It is recommended that the City Council approve the appointment of Marisela H. Garcia as the City Manager and approve the Employment Agreement between the City of Riverbank and Marisela H. Garcia.
- Item 11.3** **Adopt a Resolution to Award and Authorize the City Manager to Enter into Professional Service Agreements for Retainer On-Call Services for Building Inspection and Plan Checking Services for the City of Riverbank to West Coast Code Consultants, Inc. (WC-3), CSG Consultants, Inc., 4Leaf, Inc., and Bureau Veritas –** It is recommended the City Council adopt a resolution to award and authorize the City Manager to enter into a contract with each of these firms to perform on-call building inspection and plan checking services for the City of Riverbank. In addition, the Resolution authorizes the City to negotiate separate contracts with these firms as needed for specific development projects.
- Item 11.4** **Adopt a Resolution Authorizing the Execution of a Performance Agreement between the City of Riverbank and Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501c3) for the**

Coordination of the 2022 Cheese & Wine Festival – It is recommended the City Council adopt a resolution authorizing the City Manager to execute a Performance Agreement between the City of Riverbank and Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501c3) for the Coordination of the 2022 Cheese & Wine Festival.

Item 11.5 **Adopt a Resolution Authorizing the Mayor to Execute a Lease with Simply Devine Events, LLC for the Area Associated with the Riverbank Cheese and Wine Festival** - It is recommended the City Council adopt a resolution authorizing the Mayor to Execute a Lease with Simply Devine Events, LLC for the Area Associated with the Riverbank Cheese and Wine Festival.

12. 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 12.1 Staff

Item 12.2 Council/Authority Member

Item 12.3 Mayor/Chair

13. CLOSED SESSION

The public will have a limit of **3 minutes** to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing to Closed Session.

Item 13.1 **CONFERENCE WITH LABOR NEGOTIATORS**
(Pursuant to Government Code §54957.6)
Agency representative: Interim City Manager Marisela Garcia Employee
Organizations: Riverbank Miscellaneous Employees

14. RECONVENE – REPORT FROM CLOSED SESSION

Item 14.1 Report from Closed Session on **Item 13.1**
CONFERENCE WITH LABOR NEGOTIATORS
(Pursuant to Government Code §54957.6)
Agency representative: Interim City Manager Marisela Garcia Employee
Organizations: Riverbank Miscellaneous Employees

15. ADJOURNMENT

- The next regular City Council meeting will be on April 26, 2022 at 6 pm.

AFFIDAVIT OF POSTING

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

Posted this 7th day of April, 2022.

/s/ Kathy L. Teixeira, Interim City Clerk



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 cityclerk@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.



**TELECONFERENCE/VIRTUAL PLATFORM PUBLIC PARTICIPATION COMMENT
PROCEDURES FOR THE HYBRID CITY COUNCIL MEETING HELD IN
CONFORMANCE WITH THE BROWN ACT AS AMENDED BY SB 361**

PUBLIC “LIVE” VIEWING

- Government Channels: Charter– 2 and AT&T U-VERSE – 99
- YouTube Live – is no longer available due to technical difficulties, which is being worked on.
- Via ZOOM Platform (See instructions below)

SUBMITTING PUBLIC COMMENTS FOR THE RECORD

Written comments must be received before 4:00 p.m. on the date of the meeting in order for them to be distributed to the Council prior to consideration of the matter. Written comments will not be read aloud at the meeting, but will be reported as received for the record. If you do not receive an acknowledgement of receipt within an hour of submission or by 5:00 pm, please call the City Clerk’s Office at (209) 863-7198 or the Administration Dept. at (209) 863-7122.

ACCEPTABLE METHODS OF SUBMITTING COMMENTS BEFORE THE 4:00 PM DEADLINE

- **Via Mail Service:** Mail comments to City of Riverbank, Attn. City Clerk, 6707 Third Street, Suite A, Riverbank, CA 95367. (Call 209-863-7198 / 209-863-7122 to ensure they were received.)
- **Via Email:** Mail to cityclerk@riverbank.org **(Note: This technology is not a guaranteed method.)**
 - Indicate Agenda Item # in the **subject line**. (Call 209-863-7198 /209-863-7122 to ensure receipt)
- **Oral Comments In-Person:** The Mayor will ask the audience if anyone wishes to comment, at that time you may approach the podium. (A Spanish language interpreter is available for assistance.)
- **Oral Comments Via Zoom:** The Mayor will announce when public comments may be made for a limit of 3 minutes on the agenda item being considered, at which time you will:
(please make sure the volume on your video device or any nearby device is turned down.)
 - **Using a computer** – click on the “raise hand” feature in the webinar controls. This will alert staff that you wish to speak, and you will be unmuted.
 - **Using a Phone** – press ***9** to “raise the hand”. This will alert staff that you wish to speak, and you will be unmuted.

Teleconference Phone Number (This system is a backup for ZOOM technical difficulties only when providing oral comments.) If there are technical difficulties or disconnection with ZOOM while making oral comments, please immediately call the teleconference phone number **(209) 863-7151** so that Council may receive your comments. Council will be waiting for your call. Thank you

<u>JOIN THE MEETING VIA ZOOM PLATFORM</u>
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- Join by this link: <https://us02web.zoom.us/j/84845041536>
- Join by accessing website: <https://zoom.us/join>, enter **Webinar ID: 848 4504 1536**
- Join by telephone: **1 669 900 9128 or 1 346 248 7799, plus Webinar ID**

Learn about using ZOOM - Visit <https://zoom.us/j/94943925973?status=success> for a free account or to download the app.

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 8.1

SECTION 8: PRESENTATIONS

Meeting Date:	April 12, 2022
Subject:	Proclamation – Golden Valley Health Centers’ 50 th Year Anniversary
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Kathy Teixeira, Interim City Clerk

RECOMMENDATION

It is recommended that the City Council read the Proclamation for the 50th Year Anniversary of the Golden Valley Health Centers; and present to Yamilet Valladolid, MPH, Director of Government and Community Affairs.

SUMMARY

In 1972, Golden Valley Health Centers began as a small Migrant Health Services program affiliated with Merced General Hospital. Since that time, they have expanded their operations significantly to meet community needs across Merced, Stanislaus and San Joaquin counties. Golden Valley Health Center now serves roughly 175,000 patients each year through 45 clinical locations in the region.

The ideology that everyone should have access to health care has been central to Golden Valley’s work over the past five decades and remains their guiding principle. From their humble beginnings their mission has been to make quality health care accessible to their patients by providing quality, primary health care services to people in the communities they serve regardless of language, financial or cultural barriers.

Golden Valley Health Centers is a fully accredited FQHC (Federally Qualified Health Center) offering quality medical, dental, behavioral health, vision, urgent care and school-based health centers. Through their partnerships with local government, community-based organizations, education and health plans they ensure top notch services are provided to those in need and allow for continued growth in services for the men, women and children in their care.

FINANCIAL IMPACT

None

ATTACHMENT

1. Proclamation



CITY OF RIVERBANK
HONORING
GOLDEN VALLEY HEALTH CENTERS ON
THEIR 50TH ANNIVERSARY

Whereas, for 50 years, Golden Valley Health Centers has built a business spanning a half a century around the belief that one's health is one's greatest possession.

Whereas, in 1972, Golden Valley Health Centers began as a small Migrant Health Services program affiliated with Merced General Hospital. Since that time, they have expanded greatly to meet community needs across Merced, Stanislaus and San Joaquin counties, now serving roughly 175,000 patients each year through 45 clinical locations in the region.

Whereas, Golden Valley Health Centers can be proud of their 50-year longevity and while that sounds like a long time, in a rapidly changing world, Golden Valley Health Centers' focus has not wavered since 1972.

Whereas, Golden Valley Health Centers was born out of a strong desire to increase access to healthcare in the lives of migrant workers, who toil to sustain our largely agricultural economy.

Whereas, Golden Valley Health Centers has never denied services to a patient in need and continues to improve the health of patients by providing quality, primary health care services to people in the communities they serve regardless of language, financial or cultural barriers.

Whereas, Golden Valley Health Centers is a fully accredited FQHC (Federally Qualified Health Center) offering quality medical, dental, behavioral health, vision and other specialties including urgent care and school-based health centers throughout the Central Valley.

Whereas, the City Council of the City of Riverbank recognizes the incredible work and dedication that Golden Valley Health Centers has shown for the health and well-being of migrant workers throughout the Central Valley over the last 50 years.

NOW, THEREFORE, LET IT BE RESOLVED on the celebration of the organization's 50th Anniversary, I, Cal Campbell, Vice Mayor of Riverbank, California, through this proclamation do hereby honor the work of Golden Valley Health Centers.

Dated this 12th day of April, 2022.

Cal Campbell
Vice Mayor

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.1

SECTION 9: CONSENT CALENDAR

Meeting Date:	April 12, 2022
Subject:	Waiver of Readings
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Kathy L. Teixeira, Interim City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / LRA Board approve the waiver of readings of any proposed ordinances and resolutions for consideration, except by title.

SUMMARY

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

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

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENTS

There are no attachments to this report.

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.2

SECTION 9: CONSENT CALENDAR

Meeting Date:	April 12, 2022
Subject:	Approval of the March 22, 2022 City Council and Local Redevelopment Authority Board Minutes.
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Kathy L. Teixeira, Interim City Clerk

RECOMMENDATION

It is recommended that the City Council / Local Redevelopment Authority Board approve the City Council /LRA Meeting Minutes of March 22, 2022, as presented.

SUMMARY

The Draft Minutes of the City Council and the Local Redevelopment Authority Board meetings have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. The March 22, 2022, City Council and Local Redevelopment Authority Board Minutes.

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 Hybrid Meetings
(Virtual via ZOOM)**

Council Chambers, 6707 Third St., Suite B
Riverbank, CA 95367



MINUTES

TUESDAY, MARCH 22, 2022 – 6:00 P.M.

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

1. CALL TO ORDER - Mayor / Chair Richard O'Brien called the meeting to order at 6:00 p.m.

2. FLAG SALUTE - Mayor / Chair Richard O'Brien led the pledge of allegiance.

3. INVOCATION – Reverend Randy Richardson provided the invocation.

4. ROLL CALL

Members of the City Council / Local Redevelopment Authority Board present in the Chamber:

Council Member / Authority Member District 1 Luis Uribe
Council Member / Authority Member District 2 Rachel Hernandez
Vice Mayor / Vice Chair (CM-D03) Cal Campbell
Mayor / Chair Richard D. O'Brien

Members of the City Council / Local Redevelopment Authority Absent and Excused:
Council Member / Authority Member District 4 Darlene Barber-Martinez

5. AGENDA CHANGES – There were no changes to the agenda.

6. CONFLICT OF INTEREST: Any Council/Authority Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.

No conflicts were declared.

7. 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)** and time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon.

Mayor O'Brien opened Public Comment at 6:04 p.m.

Individuals who Spoke in Opposition of the River Walk Project

Jamie Eggers
Dan Whetstone
Bernard Eggers
Karen Carado

There being no further public comments, Mayor O'Brien closed the Public Comment period at 6:06 p.m.

8. PRESENTATIONS (Informational only)

Item 8.1 **Government Code Claim Submitted by Schneider Electric Buildings, Inc. – Verbal Presentation by Deputy City Attorney Doug White**

Deputy City Attorney White provided an overview, providing history on the litigation as well as recent processes related to the cross complaints with Schneider Electric Buildings, Inc.

9. 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 9.1 Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 9.2 Approval of the March 8, 2022 City Council and Local Redevelopment Authority Board Minutes.

Item 9.3 **Resolution (2022-024)** Authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361 Allowing the City to Continue a Hybrid Virtual Meeting Environment.

Item 9.4 **Resolution (2022-025)** Providing the Interim City Manager, or their designee, Signature Authority for the Submittal of an Application for Funding to the State Water Board Water and Wastewater Arrearage COVID Relief Program.

Item 9.5 **Resolution (2022-026)** Authorizing the Interim City Manager to Submit an Emergency Solutions Grant (ESG) and a California Emergency Solutions Grant (CA-ESG) Applications for Funding for Homeless Outreach and Shelter Services and, if Awarded, Execute an Agreement and Any Amendments thereto with Stanislaus County.

ACTION: *By motion moved and seconded (Hernandez / Uribe / passed 4/0) to approve Consent Calendar Items 9.1 through 9.5., as presented.
Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Hernandez, Uribe, Campbell, and Mayor / Chair O'Brien*

10. PUBLIC HEARINGS

Item 10.1 **4th Public Hearing – Redistricting Process for Riverbank’s Four (4) Councilmember District Boundaries** - It is recommended that the City Council 1) conduct a public hearing to receive public input on the City Council district boundaries in response to data received in the 2020 census; and 2) adopt a resolution of the City Council of the City of Riverbank, California, adjusting City Council district boundaries in accordance with California Elections Code section 21600 et seq. and Riverbank Municipal Code section 30.03, subdivision (B)(3).

Mayor O’Brien introduced Aurora Dewhirst, tonight’s public hearing interpreter.

The time being 6:20 p.m., Mayor / Chair Richard O’Brien opened the public hearing requesting staff’s report.

City Attorney Hallinan, with interpretation provided by Ms. Dewhirst, presented the staff report, recommending the City Council 1) conduct a public hearing to receive public input on the City Council district boundaries in response to data received in the 2020 census; and, 2) adopt a resolution of the City Council of the City of Riverbank, California, adjusting City Council district boundaries in accordance with California Elections Code section 21600 et seq. and Riverbank Municipal Code section 30.03, subdivision (B)(3).

The time being 6:24 p.m., Mayor / Chair Richard O’Brien asked for public comments.

There being no public comment, Mayor / Chair Richard O’Brien closed the public hearing at 6:25 p.m.

ACTION: *By motion moved and seconded (Uribe / Campbell / passed 4-0) to adopt **City Council Resolution 2022-027** adjusting City Council district boundaries in accordance with California Elections Code section 21600 et seq. and Riverbank Municipal Code section 30.03, subdivision (B)(3). Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Uribe, Campbell, Hernandez, and Mayor / Chair O’Brien
NAYS: None / ABSENT: Barber-Martinez / ABSTAINED: None*

10.2 **First Reading by Title Only and Introduction of a Proposed Ordinance**
Adding New Chapter 54: Mandatory Organic Waste Disposal Reduction Ordinance to Title V: Public Works of the Riverbank Municipal Code of Ordinances – It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on April 12, 2022, for consideration of its adoption.

The time being 6:30 p.m., Mayor / Chair Richard O’Brien opened the public hearing requesting staff’s report.

Development Services Administration Manager Cleek presented a comprehensive staff report with PowerPoint Presentation on the proposed Ordinance adding a new Chapter 54 : Mandatory Organic Waste Disposal Reduction Ordinance to Title V: Public Works of the Riverbank Municipal Code related to the SB 1383 which was approved in September 2016 to establish Statewide methane emissions reduction, established by SB 1383 (September 20 in an effort to reduce emissions of short-lived climate pollutants in various sectors of California's economy. She concluded staff's report recommending the City Council conduct the public hearing and approve the proposed ordinance for its adoption at the next regular City Council meeting on April 12, 2022, for consideration of its adoption.

The City Council discussed the ordinance with staff.

The time being 6:36 p.m., Mayor / Chair Richard O'Brien asked for public comments.

In Opposition

Evelyn Halbert questioned how garbage service providers would meet these requirements for those areas exempt from complying with SB 1383.

There being no further public comment, Mayor / Chair Richard O'Brien closed the public hearing at 6:41 p.m.

Mayor O'Brien advised Ms. Halbert that Gilton are required by law to reduce organic waste in the landfills by 75% and if Gilton is receiving refuse from exempt areas they will be processing it the same way, there is no difference in the processing; the only difference is there are very few households within those areas exempted from SB 1383. Regarding the questions related to what to do with the waste, food and compostable waste versus non compostable, the food and compostable waste would go into one bin and the non-compostable waste would go into another bin. The process for separating the different waste types has been developed by Gilton and should be in operation within a year.

ACTION: By motion moved and seconded (Uribe / Hernandez / passed 4-0) to approve the first reading and introduction of the proposed Ordinance [No. 2022-001] Adding New Chapter 54: Mandatory Organic Waste Disposal Reduction Ordinance to Title V: Public Works of the Riverbank Municipal Code of Ordinances, to initiate a second reading by title and consider its adoption on April 12, 2022, as presented.

Motion carried by unanimous City Council roll call vote.

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

NAYS: None / ABSENT: Barber-Martinez / ABSTAINED: None

11. NEW BUSINESS

Item 11.1 **Presentation and Introduction to Harm Reduction** – It is recommended that the City Council receive the presentation by Donna Kenney, Planning & Building Manager with Diego Capistrano, Community Health Worker III, Stanislaus County Health Services Agency and provide direction to staff.

Donna Kenney, Planning & Building Manager with Diego Capistrano, Community Health Worker III, Stanislaus County Health Services Agency, utilizing a PowerPoint Presentation provided a compressive overview and introduction to Harm Reduction advising The Stanislaus County Health Services Agency and St. Francis of Rome Church would like to establish a Harm Reduction program in Riverbank. To permit and allow the Stanislaus County Health Services Agency and St. Francis of Rome Church to undertake the least lengthy path towards a CDPH approved program they will need a show of support and that they have approval of the local jurisdiction which can be achieved by either an email from the Mayor, or a copy of the City Council meeting minutes.

Mayor O'Brien asked whether there was any public comment.

Public Testimony

Evelyn Halbert had questions related to the hours of operation, needle exchange program and asked for the Police Chief's thoughts on the program.

Mayor O'Brien responded to Ms. Halbert's question related to the hours of operation and as to the Police Chief's thoughts on the program.

Diego Capistrano, Community Health Worker III, Stanislaus County Health Services Agency responded to Ms. Halbert's questions operation and needle exchange program.

ACTION: *The City Council stated their unanimous concurrence of support to permit and allow the Stanislaus County Health Services Agency and St. Francis of Rome Church to undertake the less lengthy path towards a CDPH approved Harm Reduction Program with the City of Riverbank.*

Item 11.2 **A Resolution Adopting the 2021 General Plan and Housing Element Annual Progress Reports (APRs)** - It is recommended that the City Council adopt a resolution approving the 2021 General Plan and Housing Element Annual Progress Reports (APRs) and authorize staff to submit said Reports to the California Office of Planning and Research and California Department of Housing and Community Development.

Associate Planner Salazar presented the staff report recommending the City Council approve the City's 2021 General Plan and Housing Element Annual Progress Reports (APR) and authorize Staff to submit said reports to the California Office of Planning and Research (OPR) and the California Department of Housing and Community Development (HCD).

Staff and the City Council discussed aspects of the report.

Mayor O'Brien asked whether there was any public comment, there being none, Mayor O'Brien brought the item back to the City Council for action.

ACTION: By motion moved and seconded (Campbell / Hernandez / passed 4/0) to adopt **City Council Resolution 2022-028** to adopt a resolution approving the 2021 General Plan and Housing Element Annual Progress Reports (APRs) and authorize staff to submit said Reports to the California Office of Planning and Research and California Department of Housing and Community Development.
Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Campbell, Uribe, Hernandez, and Mayor / Chair O'Brien
NAYS: None / ABSENT: Barber-Martinez / ABSTAINED: None

Item 11.3 **A Resolution to (1) Rescind Resolution 2021-104; (2) Declare APN 132-012-024 Located at the Northeast Corner of 3rd Street & Stanislaus Street as Exempt Surplus Land under the Surplus Land Act; and, (3) Approve the Sale of Said Property to the Stanislaus Regional Housing Authority Pursuant to a Purchase and Sale Agreement** - It is recommended that the City Council adopt a resolution to (1) Rescind Resolution 2021-104; (2) Declare APN 132-012-024 Located at the Northeast Corner of 3rd Street & Stanislaus Street as Exempt Surplus Land under the Surplus Land Act; and, (3) Approve the Sale of Said Property to the Stanislaus Regional Housing Authority Pursuant to a Purchase and Sale Agreement.

Interim City Manager Garcia presented a comprehensive staff report advising on October 26, 2021, the City Council adopted Resolution 2021-104 which declared the city-owned parcel located at the Northeast corner of 3rd & Stanislaus as Surplus Land. At that time the City's intent was to declare the property exempt under the Surplus Land Act and proceed with a 60-day required Notice of Availability. However, after further legal review, it was determined that the City can declare this property as Exempt Surplus Land thereby avoiding the 60-day notification period. Tonight's action will rescind the prior Resolution and declare the property exempt. Staff recommends that the City Council adopt the Resolution which will rescind Resolution 2021-104; declare APN 132-012-024 located at the northeast corner of 3rd Street and Stanislaus Street as exempt surplus land under the Surplus Land Act; and, approve the sale of the property to the Stanislaus County Housing Authority pursuant to a Purchase and Sale Agreement.

Mayor O'Brien asked whether there was any public comment, there being none, Mayor O'Brien brought the item back to the City Council for action.

ACTION: By motion moved and seconded (Uribe / Hernandez / passed 4/0) to adopt **City Council Resolution 2022-029** to adopt a (1) Rescind Resolution 2021-104; (2) Declare APN 132-012-024 Located at the Northeast Corner of 3rd Street & Stanislaus Street as Exempt Surplus Land under the Surplus Land Act; and, (3) Approve the Sale of Said Property to the Stanislaus Regional Housing Authority Pursuant to a Purchase and Sale Agreement.
Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Uribe, Hernandez Campbell, and Mayor / Chair O'Brien
NAYS: None / ABSENT: Barber-Martinez / ABSTAINED: None

12. 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 12.1 Staff

Interim City Manager Garcia stated thanks to Associate Planner Gabriel Salazar who will be leaving employment with the City of Riverbank at the end of the month. Interim City Manager Garcia advised earlier this evening the City Council adopted a Resolution allowing the City to apply for funding to assist residents having difficulty with paying their utility bills. Last year the City applied for and received funds to assist customers with their water debt of approximately \$78,000; tonight's approval will allow for the City to apply for funding to assist those behind in payments for wastewater. The funds for water arrearages will be applied to residents' bills in April and they will also receive notification through the mail that a credit has been applied to their billing and staff is also looking to sign up for the low-income household water assistance program that will allow qualified residents to continue to receive assistance with their utility bills for a period of time. Residents who have questions related to the household water assistance program can contact the City's Finance Department for assistance.

Item 12.2 Council/Authority Member

Councilmember Hernandez reported on the following:

- *Participated on a Grant Review Panel with Stanislaus County.*
- *Attended State of City Address.*

Councilmember Uribe reported on the following:

- *Toured the Stanislaus County District Attorney's office and got to meet outgoing District Attorney Birgit Fladager and incoming District Attorney, Jeff Laugero and*
- *Toured the Family Justice Center.*
- *Meet with new outreach and engagement leader Dina Fernandez (Ms. Fernandez was present and invited to the podium to introduce herself.)*

Outreach and Engagement Leader Dina Fernandez expressed her excitement at engaging and working towards outreach with the City's homeless. An event is scheduled for March 30 from 1 to 4 p.m. at the Community Park to assist individuals in getting documentation and needed services.

Vice Mayor Campbell reported on the following:

- *Meet with the City of Oakdale's City Manager related to reestablishment of the Lower Stanislaus Committee and Mr. Whitemyer has indicated he is on board and will present it to the Oakdale City Council for approval.*
- *Contacted the City of Ripon and the Corp of Engineers related to the reestablishment of the Lower Stanislaus Committee and is waiting to hear back.*
- *Heard a Presentation on Environmental Justice Program at Church over the weekend and advised them he would be willing to participate on their committee.*

Item 12.3 Mayor/Chair

Mayor/Chair O'Brien requested an update on Sierra House, as well as discuss the possibility of day use outreach, temporary showers, etc., doing what can be done as a City before the County is ready to operate Sierra House at the next City Council meeting. He thanked Gaby Hernandez, Norma Manriquez, and Interim City Manager Garcia for their assistance during State of the City Address. Mayor O'Brien concluded his comments requesting a timeline for the General Plan Technical Review.

13. CLOSED SESSION

The public will have a limit of 3 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing to Closed Session.

Item 13.1 **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

(Pursuant to Government Code §54956.9)

Name of Case: City of Riverbank v. Schneider Electric Buildings America, Inc.

Item 13.2 **CONFERENCE WITH LABOR NEGOTIATORS**

(Pursuant to Government Code §54957.6)

Agency Representative: Interim City Manager Marisela Garcia

Employee Organizations: Riverbank Miscellaneous Employees

Item 13.3 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

(Pursuant to Government Code § 54956.8)

Property: Jackson Avenue, Riverbank (APN 075-005-025 & APN 075-005-013)

Agency Negotiator: Interim City Manager Marisela H. Garcia

Property Negotiator: Jon R. & Suki H. Gonzalez

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

Item 13.4 **PUBLIC EMPLOYEE APPOINTMENT**

(Pursuant to Government Code § 54957 [b][1])

Position Title: City Manager

Mayor O'Brien asked whether there was anyone wishing to speak on the items listed on the Closed Session Agenda there being none, Mayor O'Brien adjourned the City Council to closed session at 7:41 p.m.

14. RECONVENE – REPORT FROM CLOSED SESSION

Mayor O'Brien reconvened the meeting at 9:04 p.m.

Item 14.1 **Report from Closed Session on Item 13.1**

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code §54956.9)

Name of Case: City of Riverbank v. Schneider Electric Buildings America, Inc.

Mayor O'Brien reported The City of Riverbank rejects the Schneider Electric Buildings America, Inc. case pursuant to Government Code §54956.9.

Item 14.2 **Report from Closed Session on Item 13.2**
CONFERENCE WITH LABOR NEGOTIATORS

(Pursuant to Government Code §54957.6)

Agency Representative: Interim City Manager Marisela Garcia

Employee Organizations: Riverbank Miscellaneous Employees

Mayor O'Brien reported direction had been provided to staff on Item 13. CONFERENCE WITH LABOR NEGOTIATORS (Pursuant to Government Code §54957.6).

Item 14.3 **Report from Closed Session on Item 13.3**
CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code § 54956.8)

Property: Jackson Avenue, Riverbank (APN 075-005-025 & APN 075-005-013)

Agency Negotiator: Interim City Manager Marisela H. Garcia

Property Negotiator: Jon R. & Suki H. Gonzalez

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

Mayor O'Brien reported direction had been provided to staff on Item 13.3 CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code § 54956.8)

Item 14.4 **Report from Closed Session on Item 13.4**
PUBLIC EMPLOYEE APPOINTMENT

(Pursuant to Government Code § 54957 [b][1])

Position Title: City Manager

Mayor O'Brien reported direction had been provided to staff on Item 13.4 PUBLIC EMPLOYEE APPOINTMENT (Pursuant to Government Code § 54957 [b][1]).

15. ADJOURNMENT OF THE REGULAR MEETING

There being no further business, Mayor / Chair O'Brien adjourned the regular meeting at 9:09 p.m. to the next regular scheduled City Council / LRA Meeting April 12, 2022.

ATTEST: (Adopted 04/12/2022)

APPROVED:

Kathy L. Teixeira
Interim City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.3

SECTION 9: CONSENT CALENDAR

Meeting Date: April 12, 2022

Subject: Second Reading and Adoption of Ordinance 2022-001

From: Marisela H. Garcia, Interim City Manager

Submitted By: Kathleen Cleek, Development Services Administration Manager

RECOMMENDATION

It is recommended that the City Council waive the second reading and consider adoption of Ordinance 2022-001 amending Chapter 50, Garbage, of Title V, Public Works, of the Riverbank Municipal Code to Regulate the Disposal of Recyclable and Organic Materials.

BACKGROUND/DISCUSSION

At the March 22, 2022, Council meeting, the City Council voted to introduce and waive the first reading of Ordinance 2022-001.

Should the Council choose to waive the second reading and adopt Ordinance 2022-001 at tonight's meeting, the Ordinance would be effective May 12, 2022, thirty days from the second reading.

FISCAL IMPACT

The exact fiscal impact is difficult to quantify. However, increased staff time will be devoted to the Solid Waste program for implementation of new programs, record keeping, outreach, inspections, and enforcement to stay in compliance with this new state mandate.

ATTACHMENTS

1. Ordinance 2022-001

1
2 **CITY OF RIVERBANK**

3
4 **ORDINANCE 2022-001**

5
6 **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK**
7 **AMENDING CHAPTER 50, GARBAGE, OF TITLE V, PUBLIC WORKS, OF THE**
8 **RIVERBANK MUNICIPAL CODE TO REGULATE THE DISPOSAL OF RECYCLABLE**
9 **AND ORGANIC MATERIALS**
10

11 **WHEREAS**, State recycling law, Assembly Bill 939 of 1989, the California
12 Integrated Waste Management Act of 1989 (California Public Resources Code Section
13 40000, et seq., as amended, supplemented, superseded, and replaced from time to time),
14 requires cities and counties to reduce, reuse, and recycle (including composting) Solid
15 Waste generated in their Jurisdictions to the maximum extent feasible before any
16 incineration or landfill disposal of waste, to conserve water, energy, and other natural
17 resources, and to protect the environment; and

18 **WHEREAS**, State recycling law, Assembly Bill 341 of 2011 (approved by the
19 Governor of the State of California on October 5, 2011, which amended Sections 41730,
20 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections
21 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to
22 Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public
23 Resources Code, as amended, supplemented, superseded and replaced from time to
24 time), places requirements on businesses and multi-family property owners that generate
25 a specified threshold amount of Solid Waste to arrange for recycling services and requires
26 the City of Riverbank (the "City") to implement a Mandatory Commercial Recycling
27 program; and

28 **WHEREAS**, State organics recycling law, Assembly Bill 1826 of 2014 (approved
29 by the Governor of the State of California on September 28, 2014, which added Chapter
30 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources
31 Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced
32 from time to time), requires businesses and multi-family property owners that generate a
33 specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to
34 arrange for recycling services for that waste, requires Jurisdictions to implement a
35 recycling program to divert Organic Waste from businesses subject to the law, and
36 requires the city to implement a Mandatory Commercial Organics Recycling program; and

37 **WHEREAS**, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016,
38 requires CalRecycle to develop regulations to reduce organics in landfills as a source of
39 methane. The regulations place requirements on multiple entities including Jurisdictions,
40 residential households, commercial businesses and business owners, commercial edible
41 food generators, haulers, self-haulers, food recovery organizations, and food recovery

{CW112273.3}

services to support achievement of Statewide Organic Waste disposal reduction targets;
and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the city to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance may also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

(f) Requirements in this ordinance are consistent with other adopted goals and policies of the City.

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

SECTION 1. Chapter 50, Garbage, of Title V, Public Works, of the Riverbank Municipal Code shall be repealed in its entirety and amended with a new Chapter 50 that shall read as follows:

CHAPTER 50: GARBAGE

§ 50.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CalRecycle California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Jurisdictions (and others).

California Code of Regulations or CCR The State of California Code of Regulations. CCR references in this Chapter are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

Collector. A refuse collector who has entered into a contract with the city, or who has received a franchise from the city, to collect solid waste within the city.

City Manager. means the City Manager of the City of Riverbank, or his or her designee, which may include City employees.

Collection. To take physical possession of solid waste at, and remove from, the place of generation for transport to a solid waste facility or other recovery activity.

Commercial Business. or **Commercial.** A firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial

75 facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section
76 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units
77 is not a Commercial Business for purposes of implementing this Chapter.

78 **Commercial Edible Food Generator.** A Tier One or a Tier Two Commercial Edible Food
79 Generator as defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes
80 of this definition, Food Recovery Organizations and Food Recovery Services are not
81 Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

82 **Compliance Review.** A review of records by the City of Riverbank to determine
83 compliance with this Chapter.

84 **Community Composting.** Any activity that composts green material, agricultural
85 material, food material, and vegetative food material, alone or in combination, and the
86 total amount of feedstock and compost on-site at any one time does not exceed 100 cubic
87 yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or, as otherwise
88 defined by 14 CCR Section 18982(a)(8).

89 **Compost.** Compost has the same meaning as in 14 CCR Section 17896.2(a)(4), which
90 stated, as of the effective date of this Chapter, that “Compost” means the product resulting
91 from the controlled biological decomposition of organic Solid Wastes that are Source
92 Separated from the municipal Solid Waste stream, or which are separated at a centralized
93 facility.

94 **Compostable Plastics or Compostable Plastic.** Plastic materials that meet the ASTM
95 D6400 standard for composability, or as otherwise described in 14 CCR Section
96 18984.2(a)(1)(C).

97 **Container Contamination or Contaminated Container.** A container, regardless of
98 color, that contains Prohibited Container Contaminants, or as otherwise defined in 14
99 CCR Section 18982(a)(55).

100 **Construction and Demolition Debris or C&D.** Used or discarded materials resulting
101 from construction, renovation, remodeling, repair, demolition, excavation or construction
102 clean-up operations on any pavement or structure.

103 **Container or Collection Container.** Any bin, box or cart used for the purpose of holding
104 solid waste for collection.

105 **Containerized Service.** Service approved by the City Manager, wherein the city or the
106 collector provides a vehicle equipped for mechanical handling of one or two cubic yard
107 containers with casters; such containers shall be furnished by the customer and shall be
108 of a type approved by the City Manager, or rented from the city or the collector.

109 **Designated Source Separated Organic Waste Facility.** As defined in 14 CCR Section
110 18982(14.5), which means a Solid Waste facility that accepts a Source Separated

Organic Waste collection stream as defined in 14 CCR Section 17402(a)(26.6) and complies with one of the following:

(A) The facility is a “transfer/processor,” as defined in 14 CCR Section 18815.2(a)(62), that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d), and meets or exceeds an annual average Source Separated organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024 and 75 percent on and after January 1, 2025 as calculated pursuant to 14 CCR Section 18815.5(f) for Organic Waste received from the Source Separated Organic Waste collection stream.

(1) If a transfer/processor has an annual average Source Separated organic content Recovery rate lower than the rate required in Paragraph 1 of this definition for two (2) consecutive reporting periods, or three (3) reporting periods within three (3) years, the facility shall not qualify as a “Designated Source Separated Organic Waste Facility”.

(B) The facility is a “composting operation” or “composting facility” as defined in 14 CCR Section 18815.2(a)(13), that pursuant to the reports submitted under 14 CCR Section 18815.7 demonstrates that the percent of the material removed for landfill disposal that is Organic Waste is less than the percent specified in 14 CCR Section 17409.5.8(c)(2) or 17409.5.8(c)(3), whichever is applicable, and, if applicable, complies with the digestate handling requirements specified in 14 CCR Section 17896.5.

(1) If the percent of the material removed for landfill disposal that is Organic Waste is more than the percent specified in 14 CCR Section 17409.5.8(c)(2) or 17409.5.8(c)(3), for two (2) consecutive reporting periods, or three (3) reporting periods within three (3) years, the facility shall not qualify as a “Designated Source Separated Organic Waste Facility.” For the purposes of this Chapter, the reporting periods shall be consistent with those defined in 14 CCR Section 18815.2(a)(49).

Designee. An entity that the city contracts with or otherwise arranges to carry out any of the city’s responsibilities of this Chapter as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.

Edible Food. Food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Chapter or as otherwise defined in 14 CCR Section 18982(a)(18), “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this Chapter or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

Enforcement Action An action of the City to address non-compliance with this Chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

Excluded Waste. Hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the city and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the City's, or its Designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through the City's collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by the City or its Designee for collection services.

Food. Food has the same meaning as in Health and Safety Code section 113781.

Food Distributor. A company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

Food Facility. The same meaning as in Section 113789 of the Health and Safety Code.

Food Recovery. Actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

Food Recovery Organization. An entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:

(A) A food bank as defined in Section 113783 of the Health and Safety Code;

(B) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(C) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Chapter.

Food Recovery Service. A person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

Food Scraps. All food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps. Food Scraps does not include Excluded Waste.

Food Service Provider. An entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

Food-Soiled Paper. Compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

Food Waste. Food Scraps, Food-Soiled Paper, and Compostable Plastics.

Black Container. Any bin, can, receptacle, or any other type of receptacle or depository designated by the City or a City-designated waste removal company for the deposit, storage, and collection of solid waste not designated or collection in the Green Container. A container may also be described as an automatic lift container cart, drop box, roll-off, compactor container, standard automated container, drop box container or detachable container or bin.

Green Container. Green Container has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Organic Waste.

Grocery Store. A store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a

224 bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR
225 Section 18982(a)(30).

226 **Hauler.** a person who collects material from a generator and delivers it to a reporting
227 entity, end user, or a destination outside of the state. Hauler includes “contractor.” A
228 person who transports material from reporting entity to another person is a transporter,
229 not a hauler.

230 **Hauler Route.** The designated itinerary or sequence of stops for each segment of the
231 city’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

232 **High Diversion Organic Waste Processing Facility.** A facility that is in compliance with
233 the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an
234 annual average Mixed Waste organic content Recovery rate of 50 percent between
235 January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as
236 calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the
237 “Mixed waste organic collection stream” as defined in 14 CCR Section 17402(a)(11.5);
238 or, as otherwise defined in 14 CCR Section 18982(a)(33).

239 **Inspection.** A site visit where the City reviews records, containers, and an entity’s
240 collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food
241 handling to determine if the entity is complying with requirements set forth in this Chapter,
242 or as otherwise defined in 14 CCR Section 18982(a)(35).

243 **City.** the City of Riverbank, California, or the area within the territorial limits of the City of
244 Riverbank, California, and such territory outside of the City over which the City has
245 jurisdiction or control by virtue of any constitutional or statutory provision.

246 **City Enforcement Official.** The City Manager, or his or her designee. The City Manager,
247 or his or her designee, shall administer, implement and enforce the provisions of this
248 chapter..

249 **Large Event.** An event, including, but not limited to, a sporting event or a flea market,
250 that charges an admission price, or is operated by a local agency, and serves an average
251 of more than 2,000 individuals per day of operation of the event, at a location that
252 includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf
253 course, street system, or other open space when being used for an event. If the definition
254 in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR
255 Section 18982(a)(38) shall apply to this Chapter.

256 **Large Venue.** A permanent venue facility that annually seats or serves an average of
257 more than 2,000 individuals within the grounds of the facility per day of operation of the
258 venue facility. For purposes of this Chapter and implementation of 14 CCR, Division 7,
259 Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately
260 owned or operated stadium, amphitheater, arena, hall, amusement park, conference or
261 civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center,

fairground, museum, theater, or other public attraction facility. For purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Chapter.

Local Education Agency. A school district, charter school, or county office of education that is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

Multi-Family Residential Dwelling. or **Multi-Family.** Of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

MWELO. The Model Water Efficient Landscape Ordinance (MWELO), 23 CCR, Division 2, Chapter 2.7.

Non-Compostable Paper. Non-compostable paper includes but is not limited to paper that is coated in a plastic and/or metallic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

Non-Local Entity. Entities that are not subject to the city's enforcement authority, or as otherwise defined in 14 CCR Section 18982(a)(42), including:

- (A) Special district(s) located within the boundaries of the city, including Riverbank Unified School District, State agencies located within the boundaries of the city, including Caltrans, Cal Fire or Stanislaus County facilities.

Non-Organic Recyclables. non-putrescible and non-hazardous recyclable wastes, including but not limited to bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

Notice of Violation (NOV). A notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

Organic Waste. Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

298 **Organic Waste Generator.** A person or entity that is responsible for the initial creation
299 of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

300 **Paper Products.** Paper Products include, but are not limited to, paper janitorial supplies,
301 cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and
302 toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

303 **Person.** Any person or persons, firm, association, corporation or other entity acting as
304 principal, agent or officer, servant or employee, for themselves or for any other person,
305 firm or corporation.

306 **Premises.** Premises includes a tract or parcel of land with or without habitable buildings
307 or appurtenant structures. For purposes of this Chapter, the word premises includes
308 residential and commercial uses of the land, whether owned, leased, rented or subrented,
309 including every dwelling house, dwelling unit, apartment house or multiple-dwelling
310 building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, office
311 building, department store, manufacturing, processing or assembling shop or plant,
312 warehouse and every other place or premises where any person resides, or any business
313 is carried on or conducted within the city.

314 **Printing and Writing Papers.** Printing and Writing Papers include, but are not limited to,
315 copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white
316 wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint,
317 and other uncoated writing papers, posters, index cards, calendars, brochures, reports,
318 magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

319 **Prohibited Container Contaminants.:** (i) discarded materials placed in the Green
320 Container that are not identified as acceptable Source Separated Green Container
321 Organic Waste for the City's Green Container; (ii) discarded materials placed in the Black
322 Container that are acceptable Source Separated Green Container Organic Waste for the
323 City's Green Container;(iii) Excluded Waste placed in any container.

324 **Recovered Organic Waste Products.** Products made from California, landfill-diverted
325 recovered Organic Waste processed in a permitted or otherwise authorized facility, or as
326 otherwise defined in 14 CCR Section 18982(a)(60).

327 **Recovery.** Any activity or process described in 14 CCR Section 18983.1(b), or as
328 otherwise defined in 14 CCR Section 18982(a)(49).

329 **Recycled-Content Paper.** Paper products and printing and writing paper that consists of
330 at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14
331 CCR Section 18982(a)(61).

332 **Regional Agency.** Regional agency as defined in Public Resources Code Section 40181.

Remote Monitoring. The use of the internet of things and/or wireless electronic devices to visualize the contents of containers, for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container.

Residential. For the purposes of this chapter, any premise consisting of between one (1) and four (4) dwelling units, and onsite domestic uses accessory to these dwelling units. A multi-family dwelling that consists of fewer than five (5) dwelling units is “Residential”, for the purposes of this Chapter.

Restaurant. An establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

Route Review. A visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

SB 1383. Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

SB 1383 Regulations. For the purposes of this Chapter, the regulations developed by CalRecycle to implement SB 1383.

Self-Hauler. A person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

Single-Family. of, from, or pertaining to any residential premises with fewer than five (5) units.

Solid Waste. Solid Waste has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that solid waste does not include any of the following wastes:

- 370 (A) Hazardous waste, as defined in the Public Resources Code Section 40141.
- 371 (B) Radioactive waste regulated pursuant to the State Radiation Control Law
372 (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of
373 the State Health and Safety Code).
- 374 (C) Medical waste regulated pursuant to the State Medical Waste Management
375 Act (Part 14 (commencing with Section 117600) of Division 104 of the State
376 Health and Safety Code). Untreated medical waste shall not be disposed of
377 in a Solid Waste landfill, as defined in State Public Resources Code Section
378 40195.1. Medical waste that has been treated and deemed to be Solid
379 Waste shall be regulated pursuant to Division 30 of the State Public
380 Resources Code.

381 **SOLID WASTE COLLECTION SERVICE OF THE CITY.** Solid waste collection service
382 provided by the city or such service provided by a collector who has entered into a
383 contract with the city, or who holds a franchise from the city, to collect solid waste within
384 the city, depending on whether the city is providing such service with city personnel or by
385 contract or franchise with a private collector.

386 **Source Separated.** Materials, including commingled recyclable materials, that have been
387 separated or kept separate from the Solid Waste stream, at the point of generation, for
388 the purpose of additional sorting or processing those materials for recycling or reuse in
389 order to return them to the economic mainstream in the form of raw material for new,
390 reused, or reconstituted products, which meet the quality standards necessary to be used
391 in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the
392 purposes of the Chapter, Source Separated shall include separation of materials by the
393 generator, property owner, property owner's employee, property manager, or property
394 manager's employee into different containers for the purpose of collection such that
395 Source Separated materials are separated from Black Container Waste or other Solid
396 Waste for the purposes of collection and processing.

397 **Source Separated Green Container Organic Waste.** Source Separated Organic Waste
398 that can be placed in a Green Container that is specifically intended for the separate
399 collection of Organic Waste by the generator, excluding pet waste, carpets, non-
400 compostable paper, and textiles.

401 **Source Separated Recyclable Materials.** Source Separated Non-Organic Recyclables.

402 **State.** the State of California.

403 **Supermarket.** A full-line, self-service retail store with gross annual sales of two million
404 dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or
405 nonfood items and some perishable items, or as otherwise defined in 14 CCR Section
406 18982(a)(71).

Tier One Commercial Edible Food Generator means a Commercial Edible Food Generator that is one of the following as defined in 14 CCR Section 18982(a)(73):

- (A) Supermarket.
- (B) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- (C) Food Service Provider.
- (D) Food Distributor.
- (E) Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Chapter.

Tier Two Commercial Edible Food Generator. A Commercial Edible Food Generator that is one of the following as defined in 14 CCR Section 18982(a):

- (A) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (B) Hotel with an on-site Food Facility and 200 or more rooms.
- (C) Health facility with an on-site Food Facility and 100 or more beds.
- (D) Large Venue.
- (E) Large Event.
- (F) A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- (G) A Local Education Agency facility with an on-site Food Facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Chapter.

Wholesale Food Vendor. A business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

**§ 50.02 REQUIREMENT TO USE SOLID WASTE COLLECTION SERVICE;
NONCOMPLIANCE.**

- (A) All dwellings, apartment houses and places of business in which refuse accumulates within the city shall be required to use Solid Waste Collection service of the city and to pay the charges therefor. It shall be unlawful for any person, firm or corporation, except as provided in this chapter, to collect or gather Solid Waste within the city.
- (B) The City Council may contract for the collection or disposal, or both, of solid waste under such terms and conditions as the City Council may prescribe by resolution or ordinance, as provided in Cal. Pub. Res. Code § 49300. The contract may be “exclusive or nonexclusive.” The collector shall comply with the terms and conditions of the city code as well as such other terms and conditions as may be prescribed by resolution.
- (C) In the event that trash, garden waste, lawn and tree trimmings, and the like, are piled adjacent to an alley or city street without the benefit of a suitable container, the property owner or responsible tenant shall, upon written notification by the city, promptly deposit the litter in adequate containers for refuse pick-up. Failure to respond after ten days to a written request made by the city shall serve as authorization to the city to remove the litter and subject the property owner or responsible tenant to the charges specified in the nonconforming refuse collection fees.
- (D) Nothing in this Chapter prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

§ 50.03 TRASH ACCUMULATIONS PROHIBITED.

It shall be unlawful for any occupant or owner of any building, lot or premises in the city to allow or permit to collect or remain upon such premises any solid waste in such manner or quantity as is a fire menace or a health hazard to the people of the city.

§ 50.04 OPEN BURNING PROHIBITED.

- (A) *Public places.* It shall be unlawful for any person to cause, allow, aid, suffer or maintain any open burning of any kind upon any public place, street or alley within the city at any time.
- (B) *Private premises.* It shall be unlawful for any person to cause, allow, suffer or maintain any open burning of any kind or the burning of any solid waste in any incinerator, barrel, can, pit, outdoor fireplace or similar container or enclosure upon any private premises within the city.

- 475 (C) *Nonapplicability.* The provisions of this section shall not apply to the following:
- 476 (1) An indoor or outdoor barbecue or similar heating or cooking device while
477 being used for the heating or cooking of food for human consumption, or for
478 recreational purposes, and not being used primarily for the burning of waste
479 materials or solid waste;
- 480 (2) Comfort heating by use of a fireplace inside a residence, which fireplace is
481 not being used primarily for the burning of waste materials or solid waste;
- 482 (3) An approved type incinerator or furnace used by a hospital or similar
483 establishment for the incineration of body parts, bandages or related solid
484 waste;
- 485 (4) Controlled fires for the purpose of training fire fighters;
- 486 (5) A fire set or permission given by an official of the fire district personnel for
487 the purpose of prevention of a fire or health hazard or the disposal of waste
488 materials which cannot be abated or disposed of by other reasonable
489 means; or
- 490 (6) Fires used as safety flares for the combustion of waste gases.

491 **§ 50.05 BURNING, BURYING OR DUMPING GARBAGE.**

- 492 (A) It shall be unlawful for any person to burn, bury or dump, or permit to be burned,
493 buried or dumped, any solid waste in any place within the city.
494
- 495 (B) It is hereby declared to be a nuisance and it shall be unlawful to deposit or allow
496 to remain on any premises, vacant lot, street, alley, or in any excavation, any offal,
497 garbage, dead animals, or any putrid, decaying, or offensive animal or vegetable
498 matter.
499
- 500 (C) It is hereby declared to be a nuisance and it shall be unlawful to deposit or allow
501 to remain in any street, alley, public park or other publicly-owned property, any of
502 the following: scrap building materials, discarded boxes, cartons, earth, concrete,
503 bricks, waste construction materials, tin or metal cans, bottles, glass, rags, paper,
504 lawn trimmings or clippings, garden trimmings, garden refuse, small tree or shrub
505 prunings, any waste materials resulting from gardening, and any and all household
506 items which have been discarded or are no longer desired by the owner thereof.
507

508 **§ 50.06 SOLID COLLECTION SERVICE; RESIDENTIAL**

- 509 (A) Containers.

- 510 (1) Prior to collection, all solid waste shall be stored in approved automated
511 collection containers provided by the city's collector, unless an alternative
512 is approved pursuant to § 50.07.
- 513 (2) The city's collector will not remove or cause to be removed from the
514 premises any refuse which is not so contained, except as otherwise
515 provided in this section.
- 516 (B) Single Family Organic Waste Generators shall subscribe to city's Organic Waste
517 collection services for all Organic Waste generated. The city shall have the right to
518 review the number and size of a generator's containers to evaluate adequacy of
519 capacity provided for each type of collection service for proper separation of
520 materials and containment of materials; and, Single-Family generators shall adjust
521 its service level for its collection services as requested by the city. Generators may
522 additionally manage their Organic Waste by preventing or reducing their Organic
523 Waste, managing Organic Waste on site, and/or using a Community Composting
524 site pursuant to 14 CCR Section 18984.9(c).
- 525 (C) Single Family Organic Waste Generators shall participate in the City's Organic
526 Waste collection service(s) by placing designated materials in designated
527 containers as described below, and shall not place Prohibited Container
528 Contaminants in collection containers.
- 529 (1) A two-container collection service (Green Container and Black Container)
- 530 (a) Generator shall place Source Separated Green Container Organic
531 Waste, including Food Waste, in the Green Container; and Black
532 Container Waste in the Black Container. Generators shall not place
533 materials designated for the Black Container into the Green
534 Container.
- 535 (D) *Frequency of collection.* The city's collector shall collect Solid Waste a minimum of
536 once each week from all dwelling units in the city. The city's collector shall collect
537 recyclables in the city once every week based on a scheduling calendar approved
538 by the City Manager and provided to city residents each year by the city's collector.
- 539 (E) *Types of residential service.*
- 540 (1) *Curb service.* All curb and alley service customers shall place the refuse
541 container at the curb in the street or in the alley not later than 6:00 a.m. on
542 the day of collection and shall remove the refuse containers from the curb
543 or alley on the same day as collection.
- 544 (2) *Alley service.* Where alley service is provided, containers must be placed
545 upon the customer's premises, immediately adjacent to and accessible from
546 the alley without the necessity of entering the premises. Containers shall

547 be placed to provide the necessary clearance from obstructions on either
548 side of the container as well as overhead clearance needed for the
549 collection vehicle to empty the contents of the container without causing
550 damage to public or private property.

551 (3) *Walk-in service.* Walk-in service is available to those customers who have
552 applied to and have been approved by the City Manager. This service shall
553 be limited to only those dwellings where there is no able-bodied resident
554 capable of placing the container in the approved location. If approved by
555 the City Manager, there shall be no additional charge for this service.

556 (4) *Containerized service.* Containerized service may be used for apartments,
557 multiple-dwellings, single-family dwellings, and for places of business.

558 **§ 50.07 REFUSE COLLECTION SERVICE; COMMERCIAL**

559 Commercial Businesses, which includes Multi-Family Residential Dwellings, shall comply
560 with the following:

561 (A) Containers. Prior to collection, all Solid Waste shall be stored in approved locked,
562 front-loaded bins provided by the city's collector, unless an alternative is approved
563 pursuant to this section.

564 (B) Except Commercial Businesses that meet the Self-Hauler requirements in §
565 50.12, be automatically enrolled in the city's two-container Organic Waste
566 collection. As approved by the City Manager, or his or her designee, the City shall
567 have the authority to change the minimum required service levels over time. The
568 Commercial Business' Organic Waste service level must be sufficient for the
569 amount of Source Separated Green Container Organic Waste generated by the
570 Commercial Business. The City The city shall have the right to review the number,
571 size, and location of a generator's containers and frequency of collection to
572 evaluate adequacy of capacity provided for each type of collection service for
573 proper separation of materials and containment of materials; and, Commercial
574 Business shall adjust its service level for its collection services as requested by the
575 City.

576 (C) Except Commercial Businesses that meet the Self-Hauler requirements in §
577 50.12 of this Chapter, participate in and comply with the city's two-container (Green
578 Container and Black Container) collection service by placing designated materials
579 in designated containers. Generator shall place Source Separated Green
580 Container Organic Waste, including Food Waste, in the Green Container; and
581 Black Container Waste in the Black Container. Generators shall not place
582 materials designated for the Black Container into the Green Container.

583 (D) Supply and allow access to adequate number, size, and location of collection
584 containers with sufficient labels or colors (conforming with § 50.12, subdivision

585 (E)(1)and (E)(2) below), for employees, contractors, tenants and customers,
586 consistent with city's Green Container and Black Container collection service.

587 (E) Excluding Multi-Family Residential Dwellings, provide containers for the collection
588 of Source Separated Green Container Organic Waste, and Source Separated
589 Recyclable Materials in all indoor and outdoor areas where disposal containers are
590 provided for customers, for materials generated by that business. Such containers
591 do not need to be provided in restrooms. If a Commercial Business does not
592 generate any of the materials that would be collected in one type of container, then
593 the business does not have to provide that particular container in all areas where
594 disposal containers are provided for customers. Pursuant to 14 CCR Section
595 18984.9(b), the containers provided by the business shall have either:

596 (1) A body or lid that conforms with the container colors provided through the
597 collection service provided by the city with either lids conforming to the color
598 requirements or bodies conforming to the color requirements or both lids
599 and bodies conforming to color requirements. A Commercial Business is
600 not required to replace functional containers, including containers
601 purchased prior to January 1, 2022, that do not comply with the
602 requirements of the subsection prior to the end of the useful life of those
603 containers, or prior to January 1, 2036, whichever comes first.

604 (2) Container labels that include language or graphic images or both indicating
605 the primary material accepted and the primary materials prohibited in that
606 container or containers with imprinted text or graphic images that indicate
607 the primary materials accepted and primary materials prohibited in the
608 container. Pursuant 14 CCR Section 18984.8, the container labels are
609 required on new containers commencing January 1, 2022.

610 (F) Excluding Multi-Family Residential Dwellings, prohibit employees from placing
611 materials in a container not designated for those materials per the City's Organic
612 Waste, and non-Organic Waste collection service to the extent practical through
613 education, training, inspection, and/or other measures.

614 ((G) Excluding Multi-Family Residential Dwellings, periodically inspect Green Container
615 and Black Containers for contamination and inform employees if containers are
616 contaminated and of the requirements to keep contaminants out of those
617 containers pursuant to 14 CCR Section 18984.9(b)(3).

618 (H) Annually provide information to employees, contractors, tenants, and customers
619 about Organic Waste Recovery requirements and about proper sorting of Source
620 Separated Green Container Organic Waste.

621 (I) Provide education information before or within fourteen (14) days of occupation of
622 the premises to new tenants that describes requirements to keep Source
623 Separated Green Container Organic Waste separate from Black Container Waste

(when applicable) and the location of containers and the rules governing their use at each property.

- (J) Provide or arrange access for the city or its agent to their properties during all inspections conducted in accordance with § 50.19 to confirm compliance with the requirements of this Chapter.

- (K) At Commercial Business' option and subject to any approval required from the City, implement a Remote Monitoring program for inspection of the contents of its Green Containers and Black Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Generators may install Remote Monitoring devices on or in the Green Containers and Black Containers subject to written notification to or approval by the City or its Designee.

- (L) If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in § 50.12 of this Chapter.

- (M) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to § 50.09.

- (N) *Frequency of collection.* Collection of refuse shall be made at least once a week from all businesses in the city, but as many times per week as the City Manager may order, from all businesses which generate garbage as defined in this chapter.

§ 50.08 Waivers for Generators.

- (A) De Minimis Waivers: The City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this Chapter if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in § 50.08, subdivision (a)(2). Commercial Businesses requesting a de minimis waiver shall:

- (1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in § 50.08, subdivision (a)(2).

- (2) Provide documentation that either:

- (a) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,

- (b) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to

660 collection in a Green Container comprises less than 10 gallons per
661 week per applicable container of the business' total waste.

662 (3) Notify the City within thirty (30) days if circumstances change such that
663 Commercial Business's Organic Waste exceeds threshold required for
664 waiver, in which case waiver will be rescinded.

665 (4) Provide written verification of eligibility for de minimis waiver every 5 years,
666 if the City has approved de minimis waiver.

667 (B) Physical Space Waivers: The City may waive a Commercial Business' or property
668 owner's obligations (including Multi-Family Residential Dwellings) to comply with
669 some or all of Organic Waste collection service requirements if the City has
670 evidence from its own staff, a hauler, licensed architect, or licensed engineer
671 demonstrating that the premises lacks adequate space for the collection containers
672 required for compliance with the Organic Waste collection requirements of § 50.06
673 and § 50.07.

674 A Commercial Business or property owner may request a physical space waiver
675 through the following process:

676 (1) Submit an application specifying the type(s) of collection services for which
677 they are requesting a compliance waiver.

678 (2) Provide documentation that the premises lacks adequate space for Green
679 Containers including documentation from its hauler, licensed architect,
680 licensed engineer or by verification after a site visit from a city enforcement
681 official.

682 (3) Provide written verification to the City that it is still eligible for physical space
683 waiver every five years, if the City has approved application for a physical
684 space waiver.

685 **§ 50.09 Requirements for Commercial Edible Food Generators.**

686 (A) Tier One Commercial Edible Food Generators must comply with the requirements
687 of this Section commencing January 1, 2022, and Tier Two Commercial Edible
688 Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR
689 Section 18991.3.

690 (B) Large Venue or Large Event operators not providing food services, but allowing
691 for food to be provided by others, shall require Food Facilities operating at the
692 Large Venue or Large Event to comply with the requirements of this Section,
693 commencing January 1, 2024.

694 (C) Commercial Edible Food Generators shall comply with the following requirements:

- 695 (1) Arrange to recover the maximum amount of Edible Food that would
696 otherwise be disposed.
- 697 (2) Contract with or enter into a written agreement with Food Recovery
698 Organizations or Food Recovery Services for: (i) the collection of Edible
699 Food for Food Recovery; or, (ii) acceptance of the Edible Food that the
700 Commercial Edible Food Generator self-hauls to the Food Recovery
701 Organization for Food Recovery.
- 702 (3) Shall not intentionally spoil Edible Food that is capable of being recovered
703 by a Food Recovery Organization or a Food Recovery Service.
- 704 (4) Allow the City's designated enforcement entity or designated third party
705 enforcement entity to access the premises and review records pursuant to
706 14 CCR Section 18991.4.
- 707 (5) Keep records that include the following information, or as otherwise
708 specified in 14 CCR Section 18991.4:
- 709 (a) A list of each Food Recovery Service or organization that collects or
710 receives its Edible Food pursuant to a contract or written agreement
711 established under 14 CCR Section 18991.3(b).
- 712 (b) A copy of all contracts or written agreements established under 14
713 CCR Section 18991.3(b).
- 714 (c) A record of the following information for each of those Food Recovery
715 Services or Food Recovery Organizations:
- 716 (i) The name, address and contact information of the Food
717 Recovery Service or Food Recovery Organization.
- 718 (ii) The types of food that will be collected by or self-hauled to the
719 Food Recovery Service or Food Recovery Organization.
- 720 (iii) The established frequency that food will be collected or self-
721 hauled.
- 722 (iv) The quantity of food, measured in pounds recovered per
723 month, collected or self-hauled to a Food Recovery Service or
724 Food Recovery Organization for Food Recovery.
- 725 (6) No later than April of each year commencing no later than April 2023 for
726 Tier One Commercial Edible Food Generators and April 2025 for Tier Two
727 Commercial Edible Food Generators provide an annual Food Recovery
728 report to the City that includes the information from § 50.09 (C)(5).

- (C) Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

§ 50.10 Requirements for Food Recovery Organizations and Services, and Regional Agencies.

- (A) Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):

(1) The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.

(2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.

(3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.

(4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

- (B) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

(1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.

(2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.

(3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

- (C) Food Recovery Organizations and Food Recovery Services shall inform generators about California and Federal Good Samaritan Food Donation Act

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protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).

- (D) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City it is located in the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) no later than April of each year.

(E) Food Recovery Capacity Planning

- (1) Food Recovery Services and Food Recovery Organizations. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, City, special district that provides solid waste collection services, or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the city.

§ 50.11 Requirements for Haulers and Facility Operators.

(A) Requirements for Haulers

- (1) Exclusive franchise hauler, non-exclusive franchised haulers, permitted haulers, and licensed haulers providing residential, commercial, or industrial Organic Waste collection services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:

(a) Through written notice to the City annually on or before April 1, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials, and Source Separated Green Container Organic Waste.

(b) Transport Source Separated Recyclable Materials, and Source Separated Green Container Organic Waste to a facility, operation,

800 activity, or property that recovers Organic Waste as defined in 14
801 CCR, Division 7, Chapter 12, Article 2.

802 (c) Obtain approval from the City to haul Organic Waste, unless it is
803 transporting Source Separated Organic Waste to a Community
804 Composting site or lawfully transporting C&D in a manner that
805 complies with 14 CCR Section 18989.1 , and the Riverbank
806 Municipal Code.

807 (2) Exclusive franchise hauler, non-exclusive franchised haulers, permitted
808 haulers, and licensed haulers authorization to collect Organic Waste shall
809 comply with education, equipment, signage, container labeling, container
810 color, contamination monitoring, reporting, and other requirements
811 contained within its franchise agreement, permit, license, or other
812 agreement entered into with the City.

813 (B) Requirements for Facility Operators and Community Composting Operations

814 (1) Owners of facilities, operations, and activities that recover Organic Waste,
815 including, but not limited to, compost facilities, in-vessel digestion facilities,
816 and publicly-owned treatment works shall, upon the City's request, provide
817 information regarding available and potential new or expanded capacity at
818 their facilities, operations, and activities, including information about
819 throughput and permitted capacity necessary for planning purposes.
820 Entities contacted by the City shall respond within 60 days.

821 (2) Community Composting operators, upon the City's request, shall provide
822 information to the City to support Organic Waste capacity planning,
823 including, but not limited to, an estimate of the amount of Organic Waste
824 anticipated to be handled at the Community Composting operation. Entities
825 contacted by the City shall respond within 60 days.

826 **§ 50.12 Self-Hauler Requirements.**

827 (A) Self-Haulers shall source separate Organic Waste (materials that the City
828 otherwise requires generators to separate for collection in the City's organics and
829 collection program) generated on-site from Solid Waste in a manner consistent
830 with 14 CCR 18984.2, or shall haul Organic Waste to a High Diversion Organic
831 Waste Processing Facility as specified in 14 CCR Section 18984.3.

832 (B) Self-Haulers shall haul their Source Separated Green Container Organic Waste to
833 a Solid Waste facility, operation, activity, or property that processes or recovers
834 Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic
835 Waste to a High Diversion Organic Waste Processing Facility.

(C) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to Inspection by the city's enforcement official. The records shall include the following information:

(1) Delivery receipts and weight tickets from the entity accepting the waste.

(2) The amount of material in cubic yards or tons transported by the generator to each entity.

(3) If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.

(D) A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in § 50.012, subdivision (c).

§ 50.13 Anti-Scavenging.

It shall be unlawful for anyone other than the authorized refuse collector to remove any recyclable material placed in a container provided and maintained by the authorized solid waste collector.

§ 50.14 City May Designate Location of Disposal; Franchised Collector to Furnish Containers.

(A) The city may, by written notice to the franchised solid waste collector, designate the location, including waste-to-energy facilities, where solid waste from the city shall be delivered for disposal.

(B) The franchised solid waste collector shall furnish and maintain all containers at his sole cost and expense. All bins one yard and greater in size located within the public right-of-way shall have reflective tape a minimum of 24 square inches in area placed on the corners of the bin and three feet from the bottom of the bin.

§ 50.15 Rates to Be Charged.

The rates for Solid Waste collection shall be set by resolution of the City Council.

§ 50.16 Payment.

(A) The rates herein provided for shall be payable monthly in advance from the date of issuance of a temporary occupancy permit for each dwelling or structure or from date of occupancy, whichever first occurs.

(B) However, rendered bills may be cancelled or adjusted to reflect vacancies of units or structures on the following basis:

(1) *Commercial and industrial buildings and single-family residence.* A credit shall be allowed against subsequent billings for each period consisting of not less than a week during which the premises are vacant provided an affidavit is delivered to the City Clerk within 30 days following the end of the month for which the credit is claimed stating the fact of the vacancy and the period for which it existed.

(2) *Multiple dwellings, including duplexes.* A credit shall be allowed against subsequent billings for each period consisting of not less than a week during which all units are vacant, and one-half credit shall be allowed against subsequent billings for each period of not less than a week during which more than half of the units are vacant, provided an affidavit is delivered to the City Clerk within 30 days following the end of the month for which the credit is claimed stating the fact of the vacancy and the period for which it existed.

(3) *Credit converted to refund.* In the event there is no subsequent billing, the credit shall be converted to a refund upon filing of an affidavit by the person entitled to the credit with the City Clerk within 30 days following termination of affiant's liability for subsequent billings stating the fact and amount of the entitlement to credit and the facts terminating affiant's liability for subsequent billings.

§ 50.17 Method of Collection of Rates by City.

The following provisions shall be applicable to and determine the method of collection of such solid waste rates by the city:

(A) The charge for solid waste service shall be added to the charges for water service and/or sewer service and payment of the total amount must be made in accordance with city rules regulating the payment of water service charges.

(B) Delinquent payment of charges for solid waste service shall be treated in the same manner as delinquency for payment of water service charges and/or sewer service charges.

(C) All charges for solid waste collection shall be billed to the following persons:

(1) In the case of any person whose premises are connected with the municipal water system, then to the person who requested such connection to the municipal water system or his successor in interest, to any person requesting that such bill be charged to him.

(2) In the case of any person whose premises are not connected to the municipal water system, then to the person who requested the connection

908 to the sewage system or his successor in interest, or if no such request
909 was made, then to the owner of record of such premises on the date on
910 which such premises are required hereby to commence garbage and trash
911 collection services, or to the successors in interest to such person, or to
912 any person requesting that such bill be charged to him.

913 (D) Each charge for solid waste collection service levied pursuant to this section on
914 any premises within the city is hereby made a lien upon such premises, and any
915 steps authorized by law may be taken by the city to enforce payment of such lien.

916 (E) In each case where a bill for solid waste collection service shall become
917 delinquent, the City Manager shall cause the premises to be disconnected from
918 the municipal water and/or sewage system pursuant to the procedures set forth
919 in [§52.66](#) herein. Whenever premises have been disconnected from either or
920 both the municipal water system and the municipal sewage system for
921 nonpayment of garbage and trash collection charges, such premises shall not be
922 reconnected to either the municipal water system or the municipal sewage
923 system until all delinquent fees, charges and rates have been paid, together with
924 such reasonable charges for reconnection as may be established from time to
925 time by resolution adopted by the City Council.

926 **§ 50.18 Owners; Liability for Payment of Services to Multiple Dwellings.**

927 Owners of multiple dwellings or apartments (two or more families) shall be responsible
928 for the payment of solid waste collection services rendered to premises owned by them,
929 although payments will be accepted from tenants. However, for convenience to the city,
930 persons billed for water service will also be billed for solid waste collection service.

931 **§ 50.19 Inspections and Investigations by City.**

932 (A) The City Manager, or his or her designee, are authorized to conduct Inspections
933 and investigations, at random or otherwise, of any collection container, collection
934 vehicle loads, or transfer, processing, or disposal facility for materials collected
935 from generators, or Source Separated materials to confirm compliance with this
936 Chapter by Organic Waste Generators, Commercial Businesses (including Multi-
937 Family Residential Dwellings), property owners, Commercial Edible Food
938 Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery
939 Organizations, subject to applicable laws. This Section does not allow the City to
940 enter the interior of a private residential property for inspection.

941 (B) A Person shall provide or arrange for access during all inspections (with the
942 exception of residential property interiors) and shall cooperate with the City
943 Manager, or his or designee, during such Inspections and investigations. Such
944 inspections and investigations may include confirmation of proper placement of
945 materials in containers, Edible Food Recovery activities, records, or any other

requirement of this Chapter described herein. Failure to provide or arrange for: (i) access to an entity's premises; or (ii) access to records for any Inspection or investigation is a violation of this Chapter and may result in penalties described.

(C) Any records obtained by the City Manager, or his or designee, during its inspections, and other reviews, shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(D) The City Manager, or his or her designee, are authorized to conduct any inspections, or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.

(E) The City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

§ 50.20 Enforcement.

(A) The City Manager, or his or her designee, shall enforce the provisions of this Chapter, subject to the approval of the City Council, and shall have the power to establish rules and regulations, consistent with the provisions of this Chapter, governing the keeping, collection, removal and disposal of Solid Waste.

(B) Violation of any provision of this Chapter shall constitute an infraction and will be grounds for issuance of a Notice of Violation and assessment of a fine by a City Manager, or his or her designee. . Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the City Manager or designated enforcement agency shall commence an action to impose penalties, pursuant to the City's standard procedures or the standard procedures.

(C) A violation may be punishable by:

(1) A fine of one hundred dollars for a first violation;

(2) A fine of two hundred dollars for a second violation of the same provision of this code within any twelve consecutive month period;

(3) A fine of five hundred dollars for each additional violation of the same provision of this code within any twelve consecutive-month period. Any violation after the third violation of the same provision of this Chapter within any twelve consecutive-month period may be charged so each day that a violation of this Chapter continues shall constitute a separate and distinct offense.

(D) Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor. The City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.

(E) Compliance Deadline Extension Considerations

The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

(1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;

(2) Delays in obtaining discretionary permits or other government agency approvals; or,

(3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the city is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(F) Appeals Process

Persons assessed a a penalty for an uncorrected violation may request a hearing to appeal the citation within thirty (30) days of the assessment of the penalty by filing a notice of appeal with the City Clerk. Evidence may be presented at the hearing. The City will appoint a hearing officer who shall conduct the hearing and issue a final written order. The hearing shall be conducted in accordance with City's procedure.

SECTION 2. 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 3. This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, and publication of the Ordinance shall occur in a newspaper of general circulation at least fifteen (15) days prior to its effective date, or a summary of the Ordinance published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank held on the 22nd day of March, 2022. 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 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, by a City Council roll call vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.4

SECTION 9: CONSENT CALENDAR

Meeting Date: April 12, 2022

Subject: A Resolution to Approve and Adopt the Revised 2022 City of Riverbank Measure L Expenditure Plan Project List

From: Marisela H. Garcia, Interim City Manager

Submitted By: Kathleen Cleek, Development Services Administration Manager

RECOMMENDATION

It is recommended that the City Council consider adopting the proposed changes to the City of Riverbank's Measure L Expenditure Plan Project List for local streets and roads, traffic management, and bike and pedestrian improvement projects.

SUMMARY

On November 8, 2016 the Stanislaus County voters approved a ½ cent sales tax measure to fund local and regional transportation projects and programs. The tax is expected to generate approximately \$39 million dollars a year over a 25-year period for Stanislaus County.

The City of Riverbank entered into a Master Funding Agreement with the Stanislaus Council of Governments (StanCOG) and within that agreement the City agrees to provide StanCOG with a detailed project list for local streets and roads, traffic management and bicycle/pedestrian projects that are scheduled to be constructed with Measure L Funding. The projects identified on the Expenditure Plan Project List detail a comprehensive list of infrastructure improvements that the City has identified as priority projects. The last update to the list was approved by the City Council at the February 9, 2021 meeting. At that meeting it was stated that the project list would be reviewed annually and any changes or adjustments to the List would be brought before the City Council for approval. Also, all improvements or projects on this List will require City Council review and approval prior to construction.

LOCAL STREETS AND ROADS

Recognizing that streets are the backbone of our transportation system, the Plan provides funds to local cities and Stanislaus County, distributed primarily based on 2015 population to support local roads. These funds are used exclusively for repair and maintenance – no new road construction will be funded. These funds must be used to augment current transportation spending and cannot be used to replace a local agency's general fund expenditures.

The City currently has approximately \$1,962,700 in Measure L funding and an additional \$952,000 expected through the end of the year for a total of \$2,914,700.

Projects slated for this year utilizing these funds:

Roselle Avenue Sidewalk Project/Road Improvements (Match Monies)	\$ 100,000
Santa Fe Street Overlay – Fifth to Seventh Street (PE)	\$ 30,000
Santa Fe Street Overlay – Fifth to Seventh Street (CON)	\$ 565,227
Patterson Road Overlay – Eighth Street to Claus Road & First Street Overlay – Atchison to Bridge (PE & CON)	\$ 888,926
Bridge Deck Overlay (PE/Design)	\$ 50,000
Claribel Road Overlay – Squire Wells to West of Roselle (PE & CON)	\$ 404,220
Pavement Restoration 2023 – (PE)	\$ 55,000
TOTAL:	\$2,093,373

This will leave a reserve of approximately \$821,327.

Projects slated for early Spring 2023:

Pavement Restoration 2023 – (CON)	\$ 836,582
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TRAFFIC MANAGEMENT

Traffic management projects can include upgrades to local intersections, road widening, signalization, bridge replacements and/or traffic calming methods.

The City currently has approximately \$521,888 in Measure L funding and an additional \$189,000 expected through the end of the year for a total of \$711,081. The project slated for this year utilizing these funds are as follows:

Callendar Avenue Pedestrian Project (Phase I)	\$ 430,217
Traffic Calming Safety Improvements	\$ 40,000
TOTAL:	\$ 470,217

This will leave a reserve of approximately \$240,864.

BIKE AND PEDESTRIAN IMPROVEMENTS

Bike and pedestrian improvements can include connectivity between communities, local schools, trails and recreation facilities.

The City currently has approximately \$131,694 in Measure L funding and an additional \$89,000 expected through the end of the year for a total of \$220,694. The projects slated for this year utilizing these funds are as follows:

Rapid Flashing Beacons	\$ 30,000
Claus Road Sidewalk Project	\$ 130,778
Roselle Avenue Sidewalk (Westgate to Rosebrook over MID Canal)	\$ 50,000
TOTAL:	\$ 210,778

This will leave a reserve of approximately \$9,916.

FISCAL IMPACT THROUGH THE END OF 2022:

Measure L – Streets & Roads:	\$2,093,373
Measure L – Traffic Management	\$ 470,217
Measure L – Bike & Pedestrian	\$ 210,778

ATTACHMENTS

1. Draft City Council Resolution 2022-
2. City of Riverbank Expenditure Plan Project List Revised 4/12/2022

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING AND ADOPTING THE REVISED 2022
CITY OF RIVERBANK MEASURE L EXPENDITURE PLAN PROJECT LIST**

WHEREAS, the Riverbank City Council has reviewed the revised 2022 Measure L Expenditure Plan Project List presented by staff; and

WHEREAS, the ½ cent sales tax measure approved by the voters to fund local and regional transportation projects and programs is expected to generate approximately \$952,000 for the City of Riverbank's local streets and roads; and

WHEREAS, the ½ cent sales tax measure approved by the voters to fund local and regional transportation projects and programs is expected to generate approximately \$189,000 for the City of Riverbank's traffic management projects; and

WHEREAS, the ½ cent sales tax measure approved by the voters to fund local and regional transportation projects and programs is expected to generate approximately \$89,000 for the City of Riverbank's bicycle/pedestrian projects; and

WHEREAS, each project on the revised 2022 Measure L Expenditure Plan Project List attached, will require City Council review and approval prior to construction; and

WHEREAS, each year a comprehensive review of the proposed Measure L Project List will be conducted and any changes presented to Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby approves the City of Riverbank's revised 2022 Measure L Expenditure Plan Project List.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Exhibit A - City of Riverbank Measure L Expenditure Plan Project List

City of Riverbank Measure L Expenditure Plan Project List (Revised 4/12/2022)

Type	Projects	Description	Shared Cost	Measure L Funds	Planned Start	Planned Completion
Local Streets and Roads (50%)						
Sidewalk & Road Improvements	Roselle Avenue Sidewalk Project/Road Improvements	Roselle Avenue Curb/Gutter/Sidewalk/Road Improvements (Fern Court to Talbot)	Match Money	\$100,000	FY 2021	FY 2022
Overlay (Preliminary Engineering)	Santa Fe Street Overlay	Santa Fe Street Overlay (5th - 7th Streets) Preliminary Engineering	Full Design Cost	\$30,000	FY 2021	FY 2022
Overlay (Construction)	Santa Fe Street Overlay	Santa Fe Street Overlay (5th - 7th Streets) Construction	Shared Cost	\$565,227	FY 2022	FY 2022
Overlay (PE & Construction)	Patterson Road Overlay & First Street Overlay	Patterson Road Overlay (Eighth to Claus) First Street Overlay (Atchison to bridge)	Full Design & Construction Cost	\$888,926	FY 2021	FY 2022
Bridge Deck Overlay (PE & Consultant)	Santa Fe Bridge Deck Overlay	Santa Fe Bridge Deck Overlay	Design & Consultant	\$50,000	FY 2022	FY 2022
Overlay (PE & Construction)	Claribel Road Overlay	Claribel Road Overlay (Squire Wells to West of Roselle Avenue)	Full Design & Construction Cost	\$404,220	FY 2022	FY 2023
Pavement Restoration 2023 (PE)	Micro Slurry Seal Various Streets	Micro Slurry Seal Various Streets	Full Design Cost	\$55,000	FY 2022	FY 2023
Pavement Restoration 2023 (CON)	Micro Slurry Seal Various Streets	Micro Slurry Seal Various Streets	Constructon Cost	\$836,582	FY 2023	FY 2023
Traffic Management (10%)						
Pedestrian & Road Improvements (Matching Funds)	Callander Avenue Pedestrian Project (Phase I)	ROW & Construction - Complete Street Improvements - Calendar Avenue between Topeka & Santa Fe Streets	Shared Cost	\$430,217	FY 2021	FY 2023
Traffic Calming Safety Improvements	Flashing warning lights before Squire Wells Roundabout intersection	Flashing warning lights before Squire Wells Roundabout intersection	Full Project Cost	\$40,000	FY 2022	FY 2022
Bike/Ped (5%)						
Pedestrian Crosswalk Safety Improvements	Rapid Flashing Beacons	Locations to be determined	Full Project Cost	\$30,000	FY 2022	FY 2022
Pedestrian Sidewalk Project	Claus Road Sidewalk Project	Claus Road (RR Tracks to Sierra Street)	Full Design & Construction Cost	\$130,778	FY 2022	FY 2023
Pedestrian Sidewalk Project (PE)	Roselle Avenue between Westgate & Rosebrook over MID Canal	Roselle Avenue between Westgate & Rosebrook over MID Canal	Full Design	\$50,000	FY 2022	FY 2023

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.5

SECTION 9: CONSENT CALENDAR

Meeting Date: April 12, 2022

Subject: A Resolution Authorizing the Purchase of the Jackson Avenue Property (APN 075-005-025) and 2531 Stanislaus Street (APN 075-005-013) for \$550,000 and Allocating Funds from the American Rescue Plan Act Fund 136 for said Purchase

From: Marisela H. Garcia, Interim City Manager

RECOMMENDATION

It is recommended that the City Council consider adopting a Resolution authorizing the purchase of the Jackson Avenue Property (APN 075-005-025) and 2531 Stanislaus Street (APN 075-005-013) for \$550,000 and Allocating Funds from the American Rescue Plan Act Fund 136.

SUMMARY

On March 22, 2022 the City Council provided staff direction to initiate negotiations for the purchase of these properties in order to develop a transitional housing project for the City of Riverbank. Tonight's action formalizes that approval and allows the allocation of funds from the American Rescue Plan Act funding received by the City.

BACKGROUND

In February 2019, the City Council participated in a Strategic Plan update wherein they developed eight Goals that would provide city staff with guidance on the priorities of the City Council. These Goals were developed to assist the City in reaching its Mission "...to provide high quality, professional services and a safe family-oriented community for our diverse residents to thrive." The intent of the City's Mission statement is to provide opportunities for all of our residents to thrive, including our homeless population within the City. To that end, one of the City Council's Goals to achieve this Mission is to "Enhance Quality of Life".

In order to achieve the City's goal, the City Council established a Strategic Plan Objective to "engage the community and non-profit partners in the development of programs and/or solutions for homeless services." To that end, in 2021 the City Council began its efforts to provide services to our homeless residents in the City of Riverbank. American Rescue Plan Act Funds were used in July 2021 to purchase a home on Sierra Street that will

serve as the City's first Emergency Overnight Shelter and Day Use Navigation Center. The intent is to provide a safe, warm environment for our homeless residents to sleep in overnight and be able to have access to necessary services, such as job training, personal development, mental health, and substance abuse rehabilitation services. This is intended to provide our homeless population with an opportunity to move past this moment in life and set them up for the future where they may move on to a rental or homeownership opportunity. The services will be provided via a contract with Cambridge Academies which is currently in effect.

The intent of the purchase of the Jackson and Stanislaus properties is to allow the City to implement Phase II of its Strategic Plan Objective to assist our homeless population. The property will allow the City to develop a tiny home village which will provide transitional housing, at low cost, to our residents as they continue to move through the program with Cambridge Academies. This plan, as well as other potential uses of the property, will be discussed further with the City Council once the purchase is finalized.

After direction was received on March 22, a purchase offer was submitted to the sellers and has been accepted for a purchase price of \$550,000 with a 15-day escrow. Tonight's action will formalize the authorization for the Interim City Manager to proceed with the purchase of the property and allocate American Rescue Plan Act Funds for said purchase.

STRATEGIC PLAN

This item is directly related to the City Council's Strategic Plan Objective to "engage the community and non-profit partners in the development of programs and/or solutions for homeless services."

FINANCIAL IMPACT

Purchase price negotiated at \$550,000 to be allocated from American Rescue Plan Act Fund 136.

ATTACHMENT

1. Draft City Council Resolution 2022-
2. Vacant Land Purchase Agreement

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE PURCHASE OF THE JACKSON AVENUE
PROPERTY (APN 075-005-025) AND 2531 STANISLAUS STREET
(APN 075-005-013) FOR \$550,000 AND ALLOCATING FUNDS FROM THE
AMERICAN RESCUE PLAN ACT FUND 136 FOR SAID PURCHASE**

WHEREAS, in February 2019 the City Council established a Strategic Plan Goal to “*Enhance Quality of Life*”; and

WHEREAS, in order to achieve this Goal the City Council established an Objective to “*engage the community and non-profit partners in the development of programs and/or solutions for homeless services*”; and

WHEREAS, over the course of the past year the City Council has begun to implement its plan to provide services to our homeless residents via the purchase of property for an overnight shelter/day use facility and a contract for services with Cambridge Academies; and

WHEREAS, the purchase of these properties will allow the City to continue implementing its plan by providing a space for a transitional housing development; and

WHEREAS, on March 22, 2022 the City Council provided the Interim City Manager with direction to proceed with the negotiation for the purchase of these properties; and

WHEREAS, the City Council desires to allocate \$550,000 in American Rescue Plan Act Funds in order to complete this purchase.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby authorizes the purchase of the Jackson Avenue property (APN 075-005-025) and 2531 Stanislaus Street (APN 075-005-013) and allocates \$550,000 from American Rescue Plan Act funds for this purchase.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Exhibit A



VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

Exhibit A

(C.A.R. FORM VLPA, Revised 12/21)

Date Prepared: April 4, 2022**1. OFFER:**

- A. **THIS IS AN OFFER FROM** City of Riverbank ("Buyer").
☐ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☐ An LLP, or ☒ Other City of Riverbank.
- B. **THE PROPERTY** to be acquired is Jackson Ave, 2531 Stanislaus St, situated in Riverbank (City), Stanislaus (County), California, 95367 (Zip Code), Assessor's Parcel No(s). 075-005-025 and 075-005-013 ("Property").
Further Described As Jackson Avenue/Stanislaus St
 (Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. **THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are not Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are here confirmed for this transaction.
- Seller's Brokerage Firm** Century 21 Select Real Estate License Number 01912741
 Is the broker of (check one): ☒ the Seller; or ☐ both the Buyer and Seller (Dual Agent).
Seller's Agent Frank L Dutra License Number 01269511
 Is (check one): ☒ the Seller's Agent (Salesperson or broker associate); or ☐ both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm** PMZ Real Estate, Inc. License Number 00405158
 Is the broker of (check one): ☒ the Buyer; or ☐ both the Buyer and Seller (Dual Agent).
Buyer's Agent Maribeth Reece License Number 01214253
 Is (check one): ☒ the Buyer's Agent (Salesperson or broker associate); or ☐ both the Buyer's and Seller's Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. **TERMS OF PURCHASE AND ALLOCATION OF COSTS:** The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 16 pages. The Parties are advised to read all 16 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B	Purchase Price	\$ <u>550,000.00</u>	☒ All Cash
B		Close of Escrow (COE)	☒ <u>15</u> Days after Acceptance OR on ☐ (date) (mm/dd/yyyy)	
C	39A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or (date) at 5PM or ☐ AM/ ☐ PM	
D(1)	5A(1)	Initial Deposit Amount	\$ <u>5,500.00</u> (<u>1.0</u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or <u> </u>) business days after Acceptance by wire transfer OR ☐
D(2)	5A(2)	☐ Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ <u> </u> (<u> </u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR ☐ (date) OR ☐
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points	\$ <u> </u> (<u> </u> % of purchase price) Fixed rate or ☐ Initial adjustable rate, not to exceed <u> </u> % Buyer to pay zero points or up to <u> </u> % of the loan amount	Conventional or, if checked, ☐ FHA ☐ VA (CAR Forms FVAC, HID attached) ☐ Seller Financing ☐ Assumed Financing ☐ Subject To Financing ☐ Other: <u> </u>
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	\$ <u> </u> (<u> </u> % of purchase price) Fixed rate or ☐ Initial adjustable rate, not to exceed <u> </u> % Buyer to pay zero points or up to <u> </u> % of the loan amount	Conventional or, if checked, ☐ Seller Financing ☐ Assumed Financing ☐ Subject To Financing ☐ Other: <u> </u>
E(3)	7A	Occupancy Type	Investment, or if checked, ☐ Primary ☐ Secondary	
F	5D	Balance of Down Payment	\$ <u>544,500.00</u>	
		PURCHASE PRICE TOTAL	\$ <u>550,000.00</u>	

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Buyer's Initials Seller's Initials / 

VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (VLPA PAGE 1 OF 16)

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	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	☐ \$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR ☐ Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or ☒ 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or ☐ 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or ☐ 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	19	Final Verification of Condition	5 (or <u>3</u>) Days prior to COE	
K	26	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	☒ No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or ☐ \$ _____	17 (or _____) Days after Acceptance	☒ No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C	☐ Purchase of Manufactured Home Buyer has (or ☐ has not) entered into contract to purchase a personal property manufactured home	17 (or _____) Days after Acceptance ☐ Shall remain in effect until the Close of Escrow of the Property	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8J. ☐ CR attached
L(4)	8D	☐ Construction Loan Financing A draw from the construction loan will not (or will) be used to finance the Property	17 (or _____) Days after Acceptance	
L(5)	8E, 15	Investigation of Property	17 (or <u>5</u>) Days after Acceptance	
		Informational Access to Property Buyer's right to access the Property for informational purposes only is NOT a contingency and does NOT create additional cancellation rights for Buyer.	17 (or <u>5</u>) Days after Acceptance	
L(6)	8F, 17A	Review of Seller Documents	17 (or <u>7</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 16A	Preliminary ("Title") Report	17 (or <u>7</u>) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8H, 11D	Common Interest Disclosures required by Civil Code § 4525 or this Agreement		
L(9)	8I, 9B(2)	Review of leased or lien items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(10)	8L	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: ☐ C.A.R. Form COP attached		
M		Possession	Time for Performance	
M		Vacant Lot Delivery Property to be delivered subject to tenant rights, if any, except _____.	Upon notice of recordation On COE Date	
N		Documents/Fees/Compliance	Time for Performance	
N(1)	17A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	22B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or _____) Days after receipt	
N(3)	11D(2)	Time to pay fees for ordering HOA Documents	3 (or _____) Days after Acceptance	
N(4)	35	Evidence of representative authority	3 Days after Acceptance	



O	Intentionally Left Blank			
P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: ☐ _____; ☐ _____; ☐ _____.		
P(2)		Excluded Items: ☐ _____; ☐ _____; ☐ _____.		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	11E	Natural Hazard Zone Disclosure Report, including tax information	☐ Buyer ☒ Seller ☐ Both _____ ☒ Provided by: <u>Sellers' choice</u>	☒ Environmental ☐ Other _____
Q(2)	15B(1)(D)	Environmental Survey	☐ Buyer ☐ Seller ☐ Both _____	Escrow Holder: <u>Chicago Title</u>
Q(3)		_____ Report	☐ Buyer ☐ Seller ☐ Both _____	
Q(4)	22B	Escrow Fees	☐ Buyer ☐ Seller ☐ Both _____ ☒ Each to pay their own fees	
Q(5)	16	Owner's title insurance policy	☐ Buyer ☒ Seller ☐ Both _____	
Q(6)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(7)		County transfer tax, fees	☐ Buyer ☒ Seller ☐ Both _____	
Q(8)		City transfer tax, fees	☐ Buyer ☐ Seller ☐ Both _____	
Q(9)	11D(2)	OA fee for preparing disclosures	Seller	
Q(10)		OA certification fee	Buyer	
Q(11)		OA transfer fees	☐ Buyer ☐ Seller ☐ Both _____	Unless Otherwise Agreed, Seller shall pay for separate HOA move-out fee and Buyer shall pay for separate move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(12)		Private transfer fees	Seller, or if checked, ☐ Buyer ☐ Both _____	
Q(13)		_____ fees or costs	☐ Buyer ☐ Seller ☐ Both _____	
Q(14)		_____ fees or costs	☐ Buyer ☐ Seller ☐ Both _____	
R	Additional Tenancy Documents ☐ Income and Expense Statements ☐ Tenant Estoppel Certificate			
S	OTHER TERMS: _____ _____ _____			

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # _____ (C.A.R. Form ADM) ☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Assumed Financing Addendum (C.A.R. Form AFA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____ ☐ Other _____

C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)

- ☒ Buyer's Vacant Land Additional Inspection Advisory (C.A.R. Form BVLIA)
☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)
☒ Wire Fraud Advisory (C.A.R. Form WFA) ☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)
 (Parties may also receive a privacy disclosure from their own Agent.)
☐ Wildfire Disaster Advisory (C.A.R. Form WFDA) ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Trust Advisory (C.A.R. Form TA) ☐ Short Sale Information and Advisory (C.A.R. Form SSIA)
☐ REO Advisory (C.A.R. Form REO) ☐ Probate Advisory (C.A.R. Form PA)
☐ Other _____ ☐ Other _____



5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.**A. DEPOSIT:**

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in paragraph 3D(1) and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
- (2) **INCREASED DEPOSIT:** Increased deposit to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
- (3) **RETENTION OF DEPOSIT:** Paragraph 36, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. ALL CASH OFFER: If an all cash offer is specified in paragraph 3A, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in paragraph 3H(1), Deliver written verification of funds sufficient for the purchase price and closing costs.

C. LOAN(S):

- (1) **FIRST LOAN:** This loan will provide for conventional financing UNLESS FHA, VA, Seller Financing (C.A.R. Form SFA), Assumed Financing, Subject To Financing, or Other is checked in paragraph 3E(1).
- (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in paragraph 3E(2), that amount will provide for conventional financing UNLESS Seller Financing (C.A.R. Form SFA), Assumed Financing, Subject To Financing, or Other is checked in paragraph 3E(2).
- (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in paragraph 3E, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of paragraph 6B, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
- (4) **ASSUMED OR SUBJECT TO FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

E. LIMITS ON CREDITS TO BUYER: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

6. ADDITIONAL FINANCING TERMS:

A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to paragraph 6B.

B. VERIFICATION OF LOAN APPLICATIONS: Buyer shall Deliver to Seller, within the time specified in paragraph 3H(3) a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3E. If any loan specified in paragraph 3E is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

C. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (paragraph 3B) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. CLOSING AND POSSESSION:

A. OCCUPANCY: Buyer intends to occupy the Property as indicated in paragraph 3E(3). Occupancy may impact available financing.

B. CONDITION OF PROPERTY ON CLOSING:

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "As-Is" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within 3 Days, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

C. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, and all items included in either paragraph 3P or paragraph 9. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.



8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:

A. LOAN(S):

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.

C. **MANUFACTURED HOME PURCHASE:** If checked in **paragraph 3L(3)**, this Agreement is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow.

D. **CONSTRUCTION LOAN FINANCING:** If checked in **paragraph 3L(4)**, this Agreement is contingent upon Buyer obtaining a construction loan.

E. **INVESTIGATION OF PROPERTY:** This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

F. **REVIEW OF SELLER DOCUMENTS:** This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Seller's documents required in **paragraph 17A**.

G. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(7)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 16G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

H. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE):** This Agreement is, as specified in **paragraph 3L(8)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11D** ("CI Disclosures").

I. **BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(2)**, is, as specified in **paragraph 3L(9)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(9)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller-disclosed leased or lien items.

J. **REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. **If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.**

K. REMOVAL OF CONTINGENCY OR CANCELLATION:

- (1) For any contingency specified in **paragraph 3L or 8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
- (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L or 5 Days** after receipt of the applicable Seller Documents, Preliminary Report, or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
- (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.

L. **SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(10)**.

9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or paragraph 3P or as Otherwise Agreed. Any items included herein are components of the Property and are not intended to affect the price. All items are transferred without Seller warranty.

B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in paragraph 3N(1), shall (i) disclose to Buyer if any item or system specified in paragraph 3P or 9B or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
- (3) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to paragraph 9B(2), and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
- (4) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 3N(1).
- (5) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
- (6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.

C. ITEMS EXCLUDED FROM SALE: Unless Otherwise Agreed, all items specified in paragraph 3P(2) are excluded from the sale.

10. ALLOCATION OF COSTS FOR INSPECTIONS, REPORTS AND CERTIFICATES: Paragraphs 3Q(1-3) and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3S, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**11. SELLER DISCLOSURES:**

A. WITHHOLDING TAXES: Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); OR (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; OR (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.

B. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to § 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

C. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

D. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

- (1) Seller shall, within the time specified in paragraph 3N(1), disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).
- (2) If the Property is a condominium or is located in a planned development or other common interest development with a OA, Seller shall, within the time specified in paragraph 3N(3), order from, and pay any required fee for the following items to the OA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; (v) the names and contact information of all OAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to OA or management company to pay for any of the above.

E. NATURAL AND ENVIRONMENTAL HAZARDS: Seller shall, within the time specified in paragraph 3N(1), if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

- F. ADDITIONAL DISCLOSURES:** Within the time specified in **paragraph 3N(1)**, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:
- (1) **LEGAL PROCEEDINGS:** Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.
 - (2) **AGRICULTURAL USE:** Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§ 51200-51295).
 - (3) **DEED RESTRICTIONS:** Any deed restrictions or obligations.
 - (4) **FARM USE:** Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code § 3482.5 and § 3482.6).
 - (5) **ENDANGERED SPECIES:** Presence of endangered, threatened, "candidate" species, or wetlands on the Property.
 - (6) **ENVIRONMENTAL HAZARDS:** Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.
 - (7) **COMMON WALLS:** Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.
 - (8) **LANDLOCKED:** The absence of legal or physical access to the Property.
 - (9) **EASEMENTS/ENCROACHMENTS:** Any encroachments, easements, or similar matters that may affect the Property.
 - (10) **SOIL FILL:** Any fill (compacted or otherwise), or abandoned mining operations on the Property.
 - (11) **SOIL PROBLEMS:** Any slippage, sliding, flooding, drainage, grading, or other soil problems.
 - (12) **EARTHQUAKE DAMAGE:** Major damage to the Property of any of the structures from fire, earthquake, floods, or landslides.
 - (13) **ZONING ISSUES:** Any zoning violations, non-conforming uses, or violations of "setback" requirements.
 - (14) **NEIGHBORHOOD PROBLEMS:** Any neighborhood noise problems, or other nuisances.
 - (15) **SURVEY, PLANS, PERMITS AND ENGINEERING DOCUMENTS:** If in Seller's possession, Copies of surveys, plans, specifications, permits and approvals, development plans, licenses, and engineering documents, if any, prepared on Seller's behalf on in Seller's possession.
 - (16) **VIOLATION NOTICES:** Seller shall disclose any notice of violations of any Law filed or issued against the Property.
- G. MELLO-ROOS TAX; 1915 BOND ACT:** Within the time specified in **paragraph 3N(1)**, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly Deliver to Buyer any such notice obtained.
- H. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- I. SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in **paragraph 3N(1)**, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VLQ).
- J. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information, or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.
- 12. TENANCY RELATED DISCLOSURES:** Within the time specified in **paragraph 3N(1)**, and subject to Buyer's right of review, Seller shall disclose, make available or Deliver, as applicable, to Buyer, the following information:
- A. RENTAL/SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; (ii) A rental statement including names of tenants, rental rates, period or rental, date of last rent increase, security deposits, rental concessions, rebates or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any rebate, concession, or other benefit, except as set forth in these documents. Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business.
- B. INCOME AND EXPENSE STATEMENTS:** If checked in **paragraph 3R**, the books and records for the Property, if any, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business and used by Seller in the computation of federal and state income tax returns.
- C. TENANT ESTOPPEL CERTIFICATES:** If checked in **paragraph 3R**, Tenant Estoppel Certificates (C.A.R. Form TEC). Tenant Estoppel Certificates shall be completed by Seller or Seller's agent and delivered to tenant(s) for tenant(s) to sign and acknowledge: (i) that tenant(s)' rental or lease agreements are unmodified and in full force and effect, (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit. Seller shall exercise good faith to obtain tenant(s)' signature(s), but Seller cannot guarantee tenant(s)' cooperation. In the event Seller cannot obtain signed Tenant Estoppel Certificates within the time specified above, Seller shall notify Buyer and provide the unsigned one that was provided to tenant(s). If, after the time specified for Seller to Deliver the TEC to Buyer, any tenant(s) sign and return a TEC to Seller, Seller shall Deliver that TEC to Buyer.
- D. SELLER REPRESENTATIONS:** Unless otherwise disclosed under **paragraph 11**, **paragraph 12**, or under any disclosure Delivered to Buyer:
- (1) Seller represents that Seller has no actual knowledge that any tenant(s): (i) has any current pending lawsuit(s), investigation(s), Inquiry(ies), action(s), or other proceeding(s) affecting the Property of the right to use and occupy it; (ii) has any unsatisfied mechanics or materialman lien(s) affecting the Property; and (iii) is the subject of a bankruptcy. If Seller receives any such notice, prior to Close Of Escrow, Seller shall immediately notify Buyer.
 - (2) Seller represents that no tenant is entitled to any rebate, concessions, or other benefit, except as set forth in the rental service agreements.
 - (3) Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business and the income and expense statements are and used by Seller in the computation of federal and state income tax returns.
- 13. CHANGES DURING ESCROW:**
- A.** Prior to Close Of Escrow, Seller may engage in the following acts ("Proposed Changes"), subject to Buyer's rights in **paragraph 13B**: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify, or extend any service contract(s); or (iv) change the status of the condition of the Property.



- B. (1) At least **7 Days** prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of such Proposed Change
(2) Within **5 Days** after receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
14. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the California Civil Code.
15. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A. Buyer shall, within the time specified in **paragraph 3L(5)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) A phase one environmental survey, paid for and obtained by the party indicated in **paragraph 3Q(2)**. If Buyer is responsible for obtaining and paying for the survey, Buyer shall act diligently and in good faith to obtain such survey within the time specified in **paragraph 3L(5)**. Buyer has **5 Days** after receiving the survey to remove this portion of the Buyer's Investigation contingency.
 - (E) Any other specific inspections of the physical condition of the land and improvements.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Vacant Land Additional Inspection Advisory (C.A.R. Form BVLIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 11, 12, 13, 16A, and 17A**.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(5)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(5)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
- F. **BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN PARAGRAPH 15, UNLESS OTHERWISE AGREED IN WRITING.**
- G. **SIZE, LINES, ACCESS, AND BOUNDARIES:** Lot size, property lines, legal or physical access, and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements, or similar matters that may affect the Property. (Fences, hedges, walls, and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
- H. **ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications, and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)
- I. **UTILITIES AND SERVICES:** Availability, costs, restrictions, and location of utilities and services, including but not limited to, sewerage, sanitation, septic and leach lines, water, electricity, gas, telephone, cable TV, and drainage.
- J. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic, or otherwise), fungus or similar contaminant, materials, products, or conditions.



- K. GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
- L. NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
- M. PROPERTY DAMAGE:** Major damage to the Property of any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides, or other causes.
- N. NEIGHBORHOOD, AREA, AND PROPERTY CONDITIONS:** Neighborhood or are conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§ 51200-51295), Right to Farm Laws (Civil Code § 3482.5 and § 3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy, and cost of any speed-wired, wireless internet connections, or other telecommunications or other technology services and installations, proximity to commercial, industrial, or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Owners' Association requirements, conditions, and influences of significance to certain cultures and/or religions, and personal needs, requirements, and preferences of Buyer.
- O. COMMON INTEREST SUBDIVISIONS; OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC&Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
- P. SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community facilities Act or Improvement Bond Act of 1915.
- Q. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of landlord to terminate a tenancy.
- R. MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.
- 16. TITLE AND VESTING:**
- A.** Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(5)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C.** Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D.** Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E.** If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F.** Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G.** Buyer shall receive a Standard Coverage Owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
- 17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in **paragraphs 9B, 11A, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 12A, 12B, 12C, 16A, 16D and 35.**
- B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**
- (1) Buyer has the time specified in **paragraph 3** to: (i) perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to **paragraph 9B(2)**, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Other Disclosures Delivered by Seller in accordance with **paragraph 11.**
- (2) Buyer may, within the time specified in **paragraph 3L(5)**, request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.



- (3) Buyer shall, by the end of the times specified in **paragraph 3L** (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, is not Delivered within the time specified in **paragraph 3N(1)**, then Buyer has **5 Days** after Delivery of any such items, or the times specified in **paragraph 3L**, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency.
- (4) **Continuation of Contingency:** Even after the end of the time specified in **paragraph 3L** and before Seller cancels, if at all, pursuant to **paragraph 17C**, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to **paragraph 17C(1)**.
- C. SELLER RIGHT TO CANCEL:**
- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by **paragraph 3D(1)** or **3D(2)** or if the funds deposited pursuant to **paragraph 3D(1)** or **3D(2)** are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by **paragraph 5C(3)**; (iii) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by **paragraph 5B** or **6A**; (iv) Deliver a letter as required by **paragraph 6B**; (v) In writing assume or accept leases or liens specified in **paragraph 8I**; (vi) Cooperate with the title company's effort to comply with the GTO as required by **paragraph 16E**; (vii) Sign or initial a separate liquidated damages form for an increased deposit as required by **paragraph 5A(2)** and **36**; (viii) Provide evidence of authority to Sign in a representative capacity as specified in **paragraph 35**; or (ix) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
- (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.
- D. BUYER RIGHT TO CANCEL:**
- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.
- (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in **paragraph 3N(1)** or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
- (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in **paragraph 8**, or Otherwise Agreed, so long as that contingency has not already been removed in writing.
- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 17**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.
- F. EFFECT OF REMOVAL OF CONTINGENCIES:**
- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.
- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.

- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 18. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 19. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J**, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 20. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, OA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any OA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and OA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 21. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
- 22. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3S, 4A, 4B, 5A(1-2) 5D, 5E, 11A, 11D(2), 16 (except 16D), 17H, 20, 21A, 22, 26, 32, 34, 35, 39, 40, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 21A or paragraph 3 of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.**
- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or OA or OA management company or others any fee required by **paragraphs 3, 8, 11, or elsewhere in this Agreement.****



- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance**. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11A**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11A**.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 21A and paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 21A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraph 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.
23. **SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
24. **MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
25. **ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 37A**.
26. **ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOAA).
27. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
28. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Agent(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Agent(s) has/have made no representation concerning the existence, testing, discovery, location, and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, in any, located on or potentially affecting the Property.
29. **AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that building be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker or agent does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact a qualified California real estate attorney, contractor, architect, engineer, or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
30. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.



31. **COPIES:** Seller and buyer each represent that Copies of all reports, certificates, approvals, and other documents that are furnished to the other are true, correct, and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
32. **DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. **"Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
 - B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
 - C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
 - D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
 - E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
 - F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
 - G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
 - H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
 - I. **"Counting Days"** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
 - J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
 - K. **"Deliver"**, **"Delivered"** or **"Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an Electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
 - L. **"Electronic Copy"** or **"Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 39** or **paragraph 40**.
 - O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
 - P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - Q. **"Sign"** or **"Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.
33. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
34. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

35. LEGALLY AUTHORIZED SIGNER: Wherever the signature or initials of the Legally Authorized Signer identified in paragraph 39 and 40 appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer (i) represents that the entity for which that person is acting already exists and is in good standing to do business in California and (ii) shall Deliver to the other Party and Escrow Holder, as specified in paragraph 3N(4), evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

36. LIQUIDATED DAMAGES:

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).

Buyer's Initials _____

Seller's Initials _____ / _____

37. MEDIATION:

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 38B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 38C; and (iii) Agent's rights and obligations are further specified in paragraph 38D.

38. ARBITRATION OF DISPUTES:

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ . The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____

Seller's Initials _____ / _____



39. OFFER

- A. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**
- B. ☒ ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
 - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
 - (3) The name(s) of the Legally Authorized Signer(s) is/are: Marisela H Garcia.
 - (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____.

- C.** The VLPA has 16 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By, _____ Date: 04-04-2022

Printed name of BUYER: City of Riverbank

☒ Printed Name of Legally Authorized Signer: Marisela H Garcia Title, if applicable, City Manager

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

40. ACCEPTANCE

- A. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMC0)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

- B. ☐ Entity Sellers:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 35** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: _____.
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____.

- C.** The VLPA has 16 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ Date: _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials



1. **Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
2. **Agency relationships are confirmed as stated in paragraph 2.**
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 10.1

SECTION 10: PUBLIC HEARINGS

Meeting Date: April 12, 2022

Subject: Public Hearing for Proposed Solid Waste Rate Increase

(1) Open the Proposition 218 Public Hearing and Receive Written Protests to the Proposed Rate Increase for Solid Waste Disposal Services, and

(2) Adopt a Resolution Accepting and Closing the Proposition 218 Public Notification and Protest Process as it Relates to the Proposed Rate Increase for Solid Waste Disposal Services, and

(3) Consider Adopting a Resolution Approving the Proposed Solid Waste Rates (this item is contingent upon the Results of the Protest Process), and

(4) Authorize Mayor Richard D. O'Brien to Execute a Franchise Agreement with Gilton Solid Waste for Solid Waste Disposal Services.

From: Marisela H. Garcia, Interim City Manager

RECOMMENDATION

It is recommended that the City Council consider the following requests related to the publicly noticed Public Hearing regarding the proposed Solid Waste Rate increase:

1. Open the Proposition 218 public hearing and receive written protests to the proposed rate increase for Solid Waste Disposal Services, and
2. Adopt a Resolution accepting and closing the Proposition 218 Public Notification and Protest Process as it relates to the proposed rate increase for solid waste disposal services, and
3. Adopt a Resolution approving the proposed Solid Waste Rates contingent upon the results of the protest process, and
4. Authorize the City Manager to execute a Franchise Agreement with Gilton Solid Waste for Solid Waste Disposal Services.

SUMMARY

At the December 14, 2021 meeting the City Council authorized city staff to proceed with the Proposition 218 process. The Public Hearing had originally been scheduled for February 22, 2022 but due to noticing requirements the Hearing was extended to tonight which will conclude the Prop 218 process.

BACKGROUND

Over the past number of years, the California legislature has passed a variety of new laws that have had significant impact on the way that solid waste and recycling is managed in California. The most recent and significant new legislation SB 1383 (Short-Lived Climate Pollutants: Organic Waste Reduction) will place new requirements on each jurisdiction with regard to solid waste services. Gilton's January 21, 2021 letter to the City Council notes that "SB 1383 will further support California's efforts to achieve the statewide 75% recycling goal established in AB 341 and strengthen the implementation of mandatory commercial organics recycling established in AB 1826. SB 1383 was finalized on November 10, 2020, and is required to be implemented on January 1, 2022. There are several actions that each jurisdiction in the state will be required to do in order to meet SB 1383 mandates".

SB 1383 is intended to reduce methane emissions at landfills through a process of reducing the disposal of organic waste by 75% below 2014 levels. Organic waste is defined as green materials, wood waste, fiber materials, food scraps, food soiled paper, and landscaping and pruning waste. In order to meet these mandates, changes will be needed to Riverbank's current waste disposal system.

On March 9, 2021 the City Council received a presentation from Gilton regarding options being developed to comply with SB 1383. The options for complying with the legislation result in two basic options. The first options is to add a third can (recycling can) and onboard appropriate staff as code compliance officers to ensure that residents are appropriately following the guidelines for dividing various refuse into the appropriate cans. This option comes with significant costs in terms of additional service infrastructure and staff from Gilton (additional cans, additional trucks, and Gilton staff to provide the service).

Alternatively, Gilton has proposed to its current client municipalities a high diversion Material Recovery Facility (MRF) system. Having this system would negate the need for a third can as the waste streams would be sorted by the MRF system ensuring that organic and materials appropriate to be recycled were diverted from the overall waste stream that could otherwise end up in the landfill. Gilton provided a general explanation of this equipment and system at the March 9, 2021 City Council meeting.

After completing their analysis, Gilton presented to Council the strategy and preliminary associated costs. Gilton estimates that the base increase for the average residential utility account will increase by approximately \$11.57 monthly (approximately a 33% increase). In addition, Gilton will provide additional SB 1383 compliance services for the following:

1. Compost Procurement
2. Contamination Monitoring, Route Reviews & Waste Audits
3. Outreach & Education

These additional services will add \$0.28 to the monthly cost for a **total increase of \$11.85 per month for residential customers.**

At the August 24, 2021 meeting, the City Council provided feedback to staff indicating its desire to move forward with the proposed MRF system and authorized staff to initiate the Proposition 218 process to analyze and consider this, and future, rate increases for solid waste services.

The following proposed rates were presented to the City Council and were the subject of the evaluation by Bartle Wells Associates to ensure that the additional costs as a result of SB 1383 were equitably allocated to the City of Riverbank:

Residential & Small Business (Non-Residential) Rates:

Rate Type	Current Monthly Rates	Proposed Monthly Rates Effective 5/1/2022
Residential - 90 gallon MSW Cart* & Organics Cart**	\$23.40	\$35.25
Residential - 30 gallon MSW Cart & Organics Cart	20.52	32.37
Residential - 90 gallon MSW Cart & Organics Cart - Low Income Senior/Disabled Rate	17.55	29.40
Residential - 30 gallon MSW Cart & Organics Cart - Low Income Senior/Disabled Rate	15.44	27.29
Residential - (2) 90 gallon MSW Carts & Organics Cart	30.85	50.70
Residential - (3) 90 gallon MSW Carts & Organics Cart	38.30	66.15
Residential - (2) 90 gallon MSW Carts & Organics Cart - Low Income Senior/Disabled Rate	24.37	42.82
Non Residential & Small Business - 90 Gallon MSW Cart	23.40	35.25
Non Residential & Small Business - 30 Gallon MSW Cart	20.59	32.44
Non Residential & Small Business - (2) 90 Gallon MSW Carts & Organics Cart	30.85	50.70
Non Residential & Small Business - (3) 90 Gallon MSW Carts & Organics Cart	38.30	66.15
Non Residential & Small Business - (4) 90 Gallon MSW Carts & Organics Cart	45.75	81.60

Commercial Rates:

Rate Type	Current Monthly Rates	Proposed Monthly Rates Effective 5/1/2022
Commercial - 1 yd Bin 1x per week pickup	57.06	69.41
Commercial - 2 yd Bin 1x per week pickup	90.63	115.33
Commercial - 2 yd Bin 2x per week pickup	165.31	214.71
Commercial - 2 yd Bin 3x per week pickup	240.12	314.22
Commercial - 3 yd Bin 1x per week pickup	124.70	161.75
Commercial - 3 yd Bin 2x per week pickup	226.16	300.26
Commercial - 3 yd Bin 3x per week pickup	316.53	427.68
Commercial - 3 yd Bin 4x per week pickup	426.25	574.45
Commercial - 4 yd Bin 1x per week pickup	162.75	212.15
Commercial - 4 yd Bin 2x per week pickup	299.42	398.22
Commercial - 4 yd Bin 3x per week pickup	417.55	565.75
Commercial - 4 yd Bin 4x per week pickup	500.99	698.59
Commercial - 4 yd Bin 5x per week pickup	615.93	862.93
Commercial - 4 yd Bin 6x per week pickup	739.42	1,035.82
Commercial - 6 yd Bin 1x per week pickup	223.11	297.21
Commercial - 6 yd Bin 2x per week pickup	412.35	560.55
Commercial - 6 yd Bin 3x per week pickup	593.84	816.14
Commercial - 6 yd Bin 4x per week pickup	693.32	989.72
Commercial - 6 yd Bin 5x per week pickup	833.35	1,203.85
Commercial - 6 yd Bin 6x per week pickup	\$867.31	\$1,311.91

SOLID WASTE RATE STUDY FINDINGS

On December 14, 2021 the City Council received the Final Solid Waste Study Report, herein attached, wherein the consulting firm of Bartle Wells Associates (BWA) presented the following findings:

“the cost for Gilton to provide service has increased due to new regulation. BWA finds the proposed rates reflect the cost for the City to provide solid waste service.”

PROPOSITION 218 PUBLIC NOTIFICATION AND PROTEST PROCESS

As authorized by the City Council at the December 14, 2021 meeting, staff began the Prop 218 public notification and protest process. This process requires a minimum protest period of 45 days. In order to comply with all the requirements, the following process was followed:

- Public Notification was processed and delivered to the US Postal Services on January 6, 2022, 46 days prior to originally scheduled February 22, 2022 public hearing date. Mailing was sent to both the property address and the mailing address of property owner's (if different). A total of 7,773 public notifications were mailed.
- Public Notification highlighted the date of the Public Hearing.
- Public Notification described the rates to be considered and the services to be provided.
- Public Notification explained to residents the protest process. All protests must be received in writing by the City Clerk and include the property owner's name, address or APN, state that their intent is to protest the rates, and include the property owner's signature.

Under Proposition 218 if written protests against the proposed fee or charge are presented to the City by a majority of owners of the identified parcels prior to the close of the public hearing, the agency shall not impose the fee or charge. As of the writing of this report, 94 protests had been received.

FRANCHISE AGREEMENT

On September 28, 2021 the City Council approved a new Franchise Agreement between the City of Riverbank and Gilton Solid Waste. The intent of the franchise agreement is to continue to engage Gilton in providing refuse collection and disposal services for residential and commercial collection. By entering into this agreement Gilton will assist the City in meeting its SB 1383 requirements. With this agreement, the City grants to Gilton Solid Waste the exclusive franchise, right and privilege to collect all Solid Waste, Green Waste, and Organics Waste within the Franchise Area and to transport the same to a sanitary landfill, transfer station, compost/mulching site, or waste-to-energy facility outside the City. Gilton Solid Waste will furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide residential and commercial refuse collection services for customers within the franchise area of city.

The following terms are included in the agreement:

1. Term – The term is for a 6-year period beginning January 1, 2022. The term automatically extends for an additional year beginning each January unless either the City or Gilton provide notice to terminate the agreement. If such notice is provided (by either party) the agreement will terminate 5 years from the effective date of the anniversary (January 1). This added term and lengthy termination procedure are requested by Gilton to ensure a long-term commitment by the City which is important given the level of investment Gilton intends to carry forth related to AB 1383 compliance on behalf of the City of Riverbank. Additionally, a lengthy termination term allows a significant period of time for both parties to prepare for moving the service contract on to another waste hauler (or renegotiate the contract with Gilton if that is the direction from Council).

2. Consumer Price Index (CPI) Changes – Gilton has requested that the Council consider amendments to the CPI. The CPI adjustment cap in the previous agreement was capped at 2.5%, Gilton has requested this cap be increased to 5% as CPI priced changes have occasionally exceeded 2.5% in the past which has not allowed Gilton to adjust for CPI cost increases that exceed the capped amount of 2.5%. Regardless, under the proposed updated terms Gilton could request CPI adjustments to the contract for any amount over the actual CPI adjustment (up to a ceiling of 5%).
3. SB 1383 – Compliance Language and Detail –The agreement represents updated language more clearly defining various SB 1383 requirements.
4. Updated Anticipated Rates (subject to 218 process) – The rates contained in the attachment to the agreement are the requested amended increase to service costs which will be studied and reviewed during the Proposition 218 process. If the Council does not approve the rates at the conclusion of the Proposition 218 process or if a majority of the rate payers protest the rates under the Proposition 218 process the rates would not be instituted. The rate sheets generally indicate the general residential cost per month as was discussed at the last workshop on this matter, the rate sheets also include increases to additional services, as well as commercial rates. (Rate sheets are both attached to the franchise agreement as an exhibit and also attached to this staff report for ease of reference).
5. Updated Additional Service Cost as it relates to SB 1383 components – SB 1383 not only requires a reduction of organic waste currently going to landfills, it also has specific procurement requirements for each jurisdiction to procure a specific amount of compost on a yearly basis. Gilton has provided additional optional service costs for those services in addition to service costs for monitoring, reporting, route reviews, waste audits, as well as outreach and education. Staff feels it is most appropriate to opt in for the provision of these additional services by Gilton to completely verify compliance with SB 1383. (Additional Service Costs are both attached to the franchise agreement as an exhibit and also attached to this staff report for ease of reference).

As approved via Resolution 2021-090, execution of the agreement is contingent upon a satisfactory conclusion to the Proposition 218 process, including the adoption of the proposed rates. Should rates be adopted at the Public Hearing, Mayor O'Brien is authorized to proceed with execution of the agreement.

FINANCIAL IMPACT

Should the protest hearing reveal that a majority of the property owners did not protest the proposed rate increase, and the City Council adopts the Resolution to establish the new rates, those will become effective May 1, 2022.

Waste collection and disposal fees are paid by the customers that receive service, therefore residents and commercial customers will note the increase in rates in the July 2022 billing.

The City will collect additional franchise fees on the gross revenues generated which are placed in the General Fund.

STRATEGIC PLAN

This report has been prepared to accomplish the following Goal established during the August 10, 2021 Strategic Planning Session:

“Ensure Financial Stability”

ATTACHMENT

1. Draft City Council Resolution 2022- ; Accepting and Closing the Proposition 218 Public Notification and Protest Process as it Relates to the Proposed Rate Increase for Solid Waste Disposal Services.
2. Draft City Council Resolution 2022- ; Approving the Proposed Solid Waste Rates (this item is contingent upon the results of the protest process).

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, ACCEPTING AND CLOSING THE PROPOSITION 218 PUBLIC
NOTIFICATION AND PROTEST PROCESS AS IT RELATES TO A PROPOSED RATE
INCREASE FOR SOLID WASTE DISPOSAL SERVICES**

WHEREAS, the City of Riverbank ("City") has negotiated a franchise agreement for the collection, transportation and disposal of solid waste, green waste and recyclables ("Franchise Agreement") with Gilton Solid Waste Management, Inc. ("Gilton"); and

WHEREAS, the Solid Waste Rate Study, approved on December 14, 2021, prepared by Bartle Wells Associates ("Rate Study"), finds that the various rates proposed by Gilton are reasonably related to the cost of service; and

WHEREAS, the City is proceeding to comply with Proposition 218 requirements in connection with the proposed rate increase and franchise agreement; and

WHEREAS, Proposition 218 notices were mailed, pursuant to Government Code 53755, to the mailing and billing addresses of owners and tenants of parcels within the City who are responsible for paying for solid waste services/record owners of each parcel receiving solid waste services on January 6, 2022, which complies with the minimum 45-day notice requirement; and

WHEREAS, under Proposition 218 if written protests against the proposed fee or charge are presented to the City by a majority of owners of the identified parcels prior to the close of the public hearing, the agency shall not impose the fee or charge;

WHEREAS, the City Clerk has verified and counted the protests and determined that there are valid protests.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY ACCEPT AND CLOSE the Proposition 218 public notification and protest process with receipt of less than a majority protest vote as declared by the City Clerk of the City of Riverbank. The City Council may adopt a rate increase for solid waste services in accordance with the Rate Study, consistent with Proposition 218.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:
NAYS:
ABSENT:
ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK ADOPTING
THE REVISED RATES FOR SOLID WASTE DISPOSAL SERVICES AND
AUTHORIZING THE MAYOR TO EXECUTE THE FRANCHISE AGREEMENT WITH
GILTON SOLID WASTE MANAGEMENT, INC.**

WHEREAS, the City of Riverbank ("City") has negotiated a franchise agreement for the collection, transportation and disposal of solid waste, green waste and recyclables ("Franchise Agreement") with Gilton Solid Waste Management, Inc. ("Gilton"); and,

WHEREAS, the Solid Waste Rate Study, approved by Council on December 14, 2021, prepared by Bartle Wells Associates ("Rate Study"), finds that the various rates proposed by Gilton and presented in Exhibit A, herein attached, are reasonably related to the cost of service; and,

WHEREAS, the City has complied with Proposition 218 requirements in connection with the proposed rate increase and franchise agreement; and,

WHEREAS, The City Council did accept and close the Proposition 218 public notification and protest process with receipt of less than a majority protest vote as declared by the City Clerk of the City of Riverbank; and,

WHEREAS, The City Council, as authorized by Ordinance No. 2014-007, may establish new solid waste disposal rates by Resolution.

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

1. Adopts the revised rates as presented in Exhibit A, and which may be amended from time to time based on the franchise agreement, for Solid Waste Disposal Services; and,
2. Authorizes the Mayor to execute a Franchise Agreement with Gilton Solid Waste Management, Inc.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

Kathy L. Teixeira
Interim City Clerk

APPROVED:

Richard D. O'Brien
Mayor

Attachments: Exhibit A

EXHIBIT A

Rate Type	Current Monthly Rates	Proposed Monthly Rates Effective 5/1/2022
Residential - 90 gallon MSW Cart & Organics Cart	23.40	35.25
Residential - 30 gallon MSW Cart & Organics Cart	20.52	32.37
Residential - 90 gallon MSW Cart & Organics Cart - Low Income Senior/Disabled Rate	17.55	29.40
Residential - 30 gallon MSW Cart & Organics Cart - Low Income Senior/Disabled Rate	15.44	27.29
Residential - (2) 90 gallon MSW Cart & Organics Cart	30.85	50.70
Residential - (3) 90 gallon MSW Cart & Organics Cart	38.30	66.15
Residential - (2) 90 gallon MSW Cart & Organics Cart - Low Income Senior/Disabled Rate	24.37	42.82
Non Residential & Small Business - 90 Gallon MSW Cart	23.40	35.25
Non Residential & Small Business - 30 Gallon MSW Cart	20.59	32.44
Non Residential & Small Business - (2) 90 Gallon MSW Cart & Organics Cart	30.85	50.70
Non Residential & Small Business - (3) 90 Gallon MSW Cart & Organics Cart	38.30	66.15
Non Residential & Small Business - (4) 90 Gallon MSW Cart & Organics Cart	45.75	81.60
Commercial - 1 yd Bin 1x per week pickup	57.06	69.41
Commercial - 2 yd Bin 1x per week pickup	90.63	115.33
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Commercial - 3 yd Bin 3x per week pickup	316.53	427.68
Commercial - 3 yd Bin 4x per week pickup	426.25	574.45
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Commercial - 6 yd Bin 5x per week pickup	833.35	1,203.85
Commercial - 6 yd Bin 6x per week pickup	\$867.31	\$1,311.91

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 10.2

SECTION 10: PUBLIC HEARINGS

Meeting Date:	April 12, 2022
Subject:	A Resolution Authorizing a 13.4% Inflationary Adjustment Increase to the City of Riverbank System Development Fees Based on the Construction Cost Index to be effective May 1, 2022.
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Tammy Alcantor, Assistant Finance Director

RECOMMENDATION

It is recommended that the City Council consider adopting a resolution authorizing a 13.4% Inflationary Adjustment increase to the City of Riverbank System Development Fees (also known as Development Impact Fees) based on the Construction Cost Index.

SUMMARY

Resolution 2015-021 adopted on March 24, 2015 authorizes the City to review the Construction Cost Index by City (as published monthly in the Engineering News Records), and may increase System Development Fees by the same percentage of increase in said index.

System Development Fees have not been increased since 2018, therefore we believe it is prudent to present a fee increase based on the aforementioned Index.

BACKGROUND

The purpose of a System Development Fee is to provide a rational and equitable basis for the expansion of capital facilities to accommodate the impacts created by new development. For many years, traditional sources of infrastructure funding have been inadequate to maintain the existing systems and this has left no revenue available to expand the system to meet growing needs. Development fees provide a mechanism where new development cumulatively mitigates their total impact on the city's systems on a proportionate basis to their individual impact by paying fees to expand the systems based on the relative size of the development.

In 2015 City staff, with the assistance of the AECOM consulting group, underwent a significant update to the previously adopted 2005 System Development Fees. This

update resulted in a fee program which reflected community infrastructure needs for the planned growth delineated in the 2005-2025 General Plan.

Because the fees are established in order to address future infrastructure needs, staff wanted to ensure that the City Council would have the ability to apply a cost inflation factor in order to address future construction cost increases. Resolution 2015-021 allows for the City to propose a fee increase based on the “Construction Cost Index by City” as published monthly in the Engineering News Record (see Exhibit A). Based on the San Francisco and Los Angeles ENR Cost Index for 2021, staff is proposing a 13.4% increase in all System Development Fees.

The proposed fee levels are as follows:

2022 PROPOSED FEE LEVELS

SYSTEM DEVELOPMENT FEES

Land Use	Water	Sewer	Storm	Parks/Rec	Gen Gov/ Police	Traffic	5% Admin	Total
Residential	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU
Clustered Rural (RR)	\$15,828	\$5,896	\$8,957	\$4,039	\$1,463	\$4,167	\$2,017	\$42,369
Lower Density (LDR)	\$8,244	\$3,595	\$8,124	\$4,592	\$1,662	\$3,501	\$1,486	\$31,203
Medium Density (MDR)	\$7,914	\$3,003	\$3,280	\$3,935	\$1,423	\$3,084	\$1,132	\$23,771
Higher Density (HDR)	\$5,738	\$3,687	\$3,701	\$3,280	\$1,186	\$2,625	\$1,010	\$21,227
Mixed Use (Residential) (MU)	\$5,738	\$1,116	\$2,395	\$2,862	\$1,036	\$4,167	\$866	\$18,181
Non-Residential	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot
Community Commercial (CC)	\$2.43	\$1.94	\$4.99	N/A	\$0.43	\$6.53	\$0.82	\$17.13
Mixed Use (Commercial) (MU)	\$2.44	\$1.95	\$4.96	N/A	\$0.43	\$6.79	\$0.83	\$17.40
Industrial/Business Park (I/BP)	\$2.42	\$1.64	\$4.89	N/A	\$0.32	\$6.76	\$0.79	\$16.82
Office (MU LU Classification)	\$2.38	\$1.52	\$4.79	N/A	\$0.60	\$4.12	\$0.67	\$14.07

STRATEGIC PLAN

This is directly related to the City’s Strategic Plan Goals to Achieve and Maintain Financial Stability and Sustainability and Maintain and Improve the City’s Infrastructure and Service Delivery Systems.

FINANCIAL IMPACT

There is no financial impact associated with the application

ATTACHMENT

1. Attachment A: ENR’s Cost Indexes by City
2. Draft City Council Resolution 2022-
3. Exhibit A: Proposed 2022 System Development Fees

Share: [f](#) [t](#) [G+](#)<http://www.ca.gov><mailto:subject=DGS%20California%20Construction%20Cost%20Index%20CCCI&body=%0ahttps%3A%2F%2Fwww.dgs.ca.gov%2FRESD%2FResources%2FPage-Content%2FReal-Estate-Services-Division-California-Construction-Cost-Index-CCCI%3Fsearch%3Dccci%2520table%0a%0a%0aFor example, how to sell to the state?>[DGS HOME \(/\)](#)[HOME \(/RESD\)](#)[SERVICES \(/RESD/SERVICES\)](#)[FORMS \(/RESD/FORMS\)](#)[RESOURCES \(/RESD/RESOURCES\)](#)[NEWS \(/RESD/NEWS\)](#)[ABOUT \(/RESD/ABOUT\)](#)[CONTACT \(/RI](#)

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DGS California Construction Cost Index CCCI

Client agencies can find current construction cost index for California by the Real Estate Services Division.

The California Construction Cost index is developed based upon Building Cost Index (BCI) cost indices average for San Francisco and Los Angeles ONLY as produced by Engineering News Record (ENR) and reported in the second issue each month.

The current five year CCCI table is updated the 2nd half of the month for the current month. The ENR BCI reports cost trends for specific construction trade labor and materials in the California market and does not reflect current market bidding environment. Prior to July 1991, CCCI was recorded quarterly, all months post July 1991 are calculated based on the ENR BCI reports and recorded for each month.

California Construction Cost Index 2021-2025

Month	2025	2024	2023	2022	2021
January				8151	7090
February				8293	7102
March				8736	7130
April					7150
May					7712
June					7746
July					7892
August					8122
September					7900
October					8080
November					8141
December					8072
Annual % *					13.4%

*Annual Percentage is calculated from December to December.

HISTORIC CALIFORNIA CONSTRUCTION COST INDEX

[Expand All](#)

CALIFORNIA CONSTRUCTION COST INDEX 2016-2020

CALIFORNIA CONSTRUCTION COST INDEX 2011-2015

CALIFORNIA CONSTRUCTION COST INDEX 2006-2010

CALIFORNIA CONSTRUCTION COST INDEX 2001-2005

CALIFORNIA CONSTRUCTION COST INDEX 1996-2000

QUESTIONS AND RESOURCES

Have questions about the CCCI, please contact us.

CONTACT

Project Management & Development Branch

Department of General Services
Real Estate Service Division

707 Third St., 4th Floor
West Sacramento, California 95605
Phone: (916) 376-1700

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**CITY OF RIVERBANK
RESOLUTION NO. 2022-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING A 13.4% INFLATIONARY ADJUSTMENT INCREASE
TO THE CITY OF RIVERBANK SYSTEM DEVELOPMENT FEES BASED ON THE
CONSTRUCTION COST INDEX TO BE EFFECTIVE MAY 01, 2022**

WHEREAS, the City Council of the City of Riverbank adopted Resolution 2015-021 on March 24, 2015 which established revised System Development Fees; and

WHEREAS, Section 5 of Resolution 2015-021 authorizes the City to review and recommend an increase to the System Development Fees based on the Construction Cost Index by City (as published monthly in the Engineering News Records) as of January 1 of each year; and

WHEREAS, in order to ensure that the fee program accurately reflects the rising costs of construction it is prudent to recommend an increase to the 2018 System Development Fees; and

WHEREAS, the January 2022 Construction Cost Index by City for San Francisco and Los Angeles was determined to be 13.4%; and

WHEREAS, a 13.4% cost inflation factor has been used in order to determine the proposed 2022 System Development Fees.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank authorizes a 13.4% Inflationary Adjustment Increase to the 2018 System Development Fees as presented in Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

2022 PROPOSED FEE LEVELS**SYSTEM DEVELOPMENT FEES**

Land Use	Water	Sewer	Storm	Parks/Rec	Gen Gov/ Police	Traffic	5% Admin	Total
Residential	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU
Clustered Rural (RR)	\$15,828	\$5,896	\$8,957	\$4,039	\$1,463	\$4,167	\$2,017	\$42,369
Lower Density (LDR)	\$8,244	\$3,595	\$8,124	\$4,592	\$1,662	\$3,501	\$1,486	\$31,203
Medium Density (MDR)	\$7,914	\$3,003	\$3,280	\$3,935	\$1,423	\$3,084	\$1,132	\$23,771
Higher Density (HDR)	\$5,738	\$3,687	\$3,701	\$3,280	\$1,186	\$2,625	\$1,010	\$21,227
Mixed Use (Residential) (MU)	\$5,738	\$1,116	\$2,395	\$2,862	\$1,036	\$4,167	\$866	\$18,181
Non-Residential	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot	Per Square Foot
Community Commercial (CC)	\$2.43	\$1.94	\$4.99	N/A	\$0.43	\$6.53	\$0.82	\$17.13
Mixed Use (Commercial) (MU)	\$2.44	\$1.95	\$4.96	N/A	\$0.43	\$6.79	\$0.83	\$17.40
Industrial/Business Park (I/BP)	\$2.42	\$1.64	\$4.89	N/A	\$0.32	\$6.76	\$0.79	\$16.82
Office (MU LU Classification)	\$2.38	\$1.52	\$4.79	N/A	\$0.60	\$4.12	\$0.67	\$14.07

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 10.3

SECTION 10: PUBLIC HEARINGS

Meeting Date: April 12, 2022

Subject: First Reading by Title Only and Introduction of a Proposed Ordinance Amending Title XV, Land Usage, by repealing in their entirety Sections §153.215 ZONING PERMITS, §153.216 USE PERMITS, §153.217 VARIANCE, §153.218 APPEALS, and §153.219 MOBILE HOME PERMITS, and substituting them with new Sections and adding new Sections §153.210 through §153.214.

From: Marisela H. Garcia, Interim City Manager

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

RECOMMENDATION

It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance (Attachment 1) to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on April 26, 2022, for consideration of its adoption.

SUMMARY

The proposed Zoning Ordinance Amendment is a staff-initiated proposal to modify the Riverbank Municipal Code (RMC) to update the City's Administrative Procedures as it relates to processing entitlement applications.

Specifically, the amendments include:

- Repeal Section §153.215 Zoning Permits, §153.216 Use Permits, §153.217 Variance, §153.218 Appeals, and §153.219 Mobile Home Permits and substituting them with new Sections §153.215 through §153.219. The new Sections are a re-organization of the City's Administrative Procedures and includes processing procedures for planning entitlements, including Use Permits, Architecture and Site Plan Review, Variance and Appeals.
- Add Section §153.210 Purpose, §153.211 Permits – General, §153.212 Application, §153.213 Supporting Information, and §153.214 Review Procedure to

the RMC. The new Sections provide general processing procedures, including but not limited to supporting information required for new application submittals and public hearing notice requirements.

The Planning Commission, at their regular meeting of March 15, 2022 and with a vote of 4-0, recommended approval of the ordinance to the City Council (Attachment 2).

BACKGROUND AND ANALYSIS

The City's Municipal Code includes administrative procedures for the processing of entitlement applications. Typically, these procedures include submittal requirements and procedures for specific entitlement applications. Together, these Sections are entitled "Permits, Variances, Appeals". The City's Zoning Code includes processing procedures for the following entitlement applications:

- Use Permits
- Variance
- Appeal
- Mobile Home Permits

Each section related to entitlement includes procedures for application submittal, public hearing notice, appeal, action by Planning Commission or the Community Development Director and expiration date of the specific entitlement. The purpose of updating the administrative procedures is to assist in streamlining review of entitlement applications and provide consistency related to the supporting information requirement for the entitlement applications (e.g., Legal Description of the property, location map, environmental information form, site plans, elevations, etc.).

Additionally, the Mobile Home Permits Section is being removed. Currently, the City requires a Mobile Home Permit for the placement of a mobile home on a zoned R-1, R-2, R-3 or R-4 (there is no R-4 zoning district) which contains one single-family dwelling. As a by-right use, State law allows the placement of a mobile home on a single-family lot and is treated as a single-family dwelling. Furthermore, the City's Zoning Code allows for the development of Accessory Dwelling Units (ADUs) consistent with State law. As such, a Mobile Home Permit should no longer be required.

The proposed Zoning Ordinance Amendment would re-organize and re-format these Sections in the Zoning Code and together would rename the Sections "Administrative Procedures". Specifically, the proposed Zoning Ordinance Amendment includes the following components:

Section §153.210 Purpose

This Section provides Purpose of the Administrative Procedures title. The purpose is to provide administrative and legislative procedures for the review of plans, the processing and review of applications, and for appeal procedures with respect to Community Development Director and Planning Commission determinations.

Section §153.211 Permits – General

This Section requires that applications for any permit (e.g., Conditional Use Permit, Architecture and Site Plan Review, Variance, etc.) are prepared and submitted by the applicant and processed by the City pursuant to the provisions set forth in the Zoning Title. The purpose of this Section is to ensure that applications are reviewed by the appropriate body or person pursuant to City regulations.

Section §153.212 Application

This Section details that application for any permit, variance, appeal, or other entitlement considered by the City, shall be made on a form prescribed by the City and signed by the applicant and the owner of the affected property and shall be accompanied by a fee.

Section §153.213 Supporting Information

The purpose of this Section is to ensure that applications submitted to the City are accompanied by supporting information, such as legal description of the property, location map showing the project site and general vicinity, a completed environmental information form, and project plans (e.g., site plan, elevations, floor plans, and other maps and information necessary required by the City).

Section §153.214 Review Procedure

This Section provides the general review procedure for City staff to use when reviewing entitlement applications. The list includes the Preliminary Review for reviewing applications for completeness, CEQA review and final review and action.

Section §153.215 Public Hearing Notice

The purpose of this Section is to require Public Hearing notice pursuant to State law (Government Code Section 65091) for applicable entitlements. For example, Use Permits are a Public Hearing and require a Public Hearing Notice published in the newspaper and mailed to property owners within 300 feet 10-days prior to the Public Hearing.

Section §153.216 Use Permits

This Section provides the procedures for processing Use Permits. The procedure includes required information to be submitted by an applicant (Form), Public Hearing requirement, Approval Findings, Denial, Appeal, and Effect (expiration date of the approval).

The Approval Findings have been updated as a list of required findings for Planning Commission to make when reviewing and approving Use Permits. The approval findings are as follows:

- (1) The proposed use is consistent with the General Plan, any applicable Specific Plan, and all applicable provisions of this Chapter.
- (2) The establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case (location, size, design,

and operating characteristics), be detrimental to the health, safety, and general welfare of the persons residing or working in the neighborhood or to the general welfare of the city.

- (3) The proposed use is consistent with the purpose of the applicable zoning district or districts.
- (4) The proposed use meets the minimum requirements of this title applicable to the use and complies with all other applicable laws, ordinances, and regulations of the city and state.

Section §153.216 (H)(3) *Effect* extends the expiration date of a Use Permit from twelve (12) months to twenty-four (24) months due to labor and materials shortages brought on by the Covid-19 pandemic.

Section §153.217 Architecture and Site Plan Review

This is a new Section providing review procedures for Architecture and Site Plan Review. Architecture and Site Plan Review applications are required for all developments, buildings, structure, and other facilities constructed or modified in any Zoning District. For example, a proposed new commercial building where the use is permitted requires an Architecture and Site Plan Review application. Compared to Use Permits, findings for Architecture and Site Plan Review applications are related to consistency with City regulations and development standards, conflicts with vehicular, bicycle or pedestrian transportation modes of circulation, site layout, and architecture. Specifically, the Approval Findings are as follows:

- (1) The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Planned Development, Master Plan or Specific Plan provisions, improvement standards, and other applicable standards and regulations adopted by the city.
- (2) The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation.
- (3) The site layout (orientation and placement of buildings and parking areas), as well as the landscaping, lighting, and other development features, is compatible with and compliments the existing surrounding environment and ultimate character of the area under the General Plan.
- (4) The proposed architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting, and similar elements, establishes a clear design concept and is compatible with the character of the buildings on adjoining and nearby properties.

Section §153.217 (G)(3) *Effect* extends the expiration date of an Architecture and Site Plan Review approval from twelve (12) months to twenty-four (24) months due to labor and materials shortages brought on by the Covid-19 pandemic.

Section §153.218 Variance

A Variance application is a special request to the City to waive or alter one (1) or more specific development standards. Generally, Variance applications are processed when there are practical difficulties and unnecessary hardship that result from the strict application of certain provisions and development standards. For example, a Variance application may be warranted when a proposed development on an irregularly shaped lot cannot meet a specific setback requirement. Variances are typically reserved for special circumstances and specific findings must be made for the Planning Commission to approve the request.

Specifically, the Approval Findings are as follows:

- (1) Because of special circumstances applicable to the property including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives the subject property of the privileges enjoyed by other properties in the vicinity and under identical zone classifications.
- (2) The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner and will not constitute a grant of special privileges.
- (3) The granting of such application will not, under the circumstances of the particular case, materially adversely affect the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

Section §153.219 Appeals

This Section provides the procedures for submitting and processing an Appeal. An appeal can be made by an interested person dissatisfied with a determination or action of the Community Development Directory or Planning Commission within ten (10) days from the date of the action.

ENVIRONMENTAL REVIEW

The proposed Zoning Ordinance Amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061(b)(3) by the “Common Sense Exemption” that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

The proposed amendments to not change the zoning designation on any individual property and does not affect existing land use. The purpose of the amendment is to update the City’s Administrative Procedures as it relates to receiving and processing

entitlement applications. The proposed amendment will not directly or indirectly result in the development of a specific project.

FINANCIAL IMPACT

None. This project is funded by the State of California through a Senate Bill 2 Grant.

2020-2025 STRATEGIC PLAN

The Strategic Plan's purpose is to help the City prioritize its efforts, allocating both fiscal and human resources to achieve a shared Vision and Goals that also reflect community priorities and needs. Obtaining and using a Senate Bill 2 Grant is a strategy that supports the City's Goal to "Ensure the City's Continued Financial Stability."

1.3 Continue to seek local, regional and federal grant opportunities to support City projects, programs, and initiatives.

In this case, the City was awarded a State Grant in order to implement updates and streamline the City's Administrative Procedures.

PUBLIC NOTICE

The City Council public hearing notice was published in the Riverbank News on March 23, 2022, posted at City Hall North, City Hall South, and the Riverbank Community Center.

ATTACHMENTS

1. Draft Ordinance 2022-
2. Planning Commission Resolution 2022-001 (no exhibits with this item)

**THE CITY COUNCIL
OF THE CITY OF RIVERBANK
ORDINANCE 2022-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AMENDING RIVERBANK MUNICIPAL CODE BY ADDING SECTIONS
§153.210 THROUGH §153.214 AND REPEALING IN THEIR ENTIRETY SECTIONS
§153.215, ZONING PERMITS, §153.216, USE PERMITS, §153.217, VARIANCE,
§153.218, APPEALS, AND §153.219 MOBILE HOME PERMITS, AND AMENDING
THEM WITH NEW SECTIONS §153.215 THROUGH §153.219**

WHEREAS, on March 2, 2022, notice of the Planning Commission public hearing was published in the Riverbank News in compliance with California Government Code Section 65090, and posted in public places throughout the City and on the City's website; and

WHEREAS, the Planning Commission held a public hearing on March 15, 2022 to consider an amendment to the City of Riverbank Municipal Code and with a vote of 4-0, recommended approval of this ordinance to the City Council; and

WHEREAS, the proposed amendments to the Riverbank Municipal Code implement the requirements of State law and add local policies that are within the scope of the State law; and

WHEREAS, the amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061(b)(3) by the "Common Sense Exemption" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, The Riverbank Planning Commission made the following finding:

1. The proposed Zoning Ordinance Amendment is consistent with the City's General Plan Land Use Element.
2. The proposed Zoning Ordinance Amendment furthers the public interest, convenience, and general welfare of the City. The amendments would ensure consistency of the Riverbank Municipal Code with the General Plan and State law, and update application processing procedures that are relevant to the current practices in the planning profession.

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

SECTION 1: Title XV: Land Usage, Chapter 153: Zoning, Section 153.215: Zoning permits, Section 153.216: Use permits, Section 153.217: Variance, Section 153.218: Appeals, and Section 153.219: Mobile home permits, shall be repealed in its entirety and amended with new Title XV: Land Usage, Chapter 153 Zoning, Sections 153.215 through §153.219, and new Title XV: Land Usage, Chapter 153 Zoning, Sections 153.210 through 153.214 shall be added, which shall read as follows:

Administrative Procedures

Section

- 153.210 Purpose
- 153.211 Permits – General
- 153.212 Application
- 153.213 Supporting Information
- 153.214 Review Procedure
- 153.215 Public Hearing Notice
- 153.216 Use Permits
- 153.217 Architecture and Site Plan Review
- 153.218 Variance
- 153.219 Appeals

§ 153.210 PURPOSE

(A) The purpose of sections 153.210 through 153.219 is to provide administrative and legislative procedures for the review of plans, the processing and review of applications for consideration and relief under this Chapter, and for appeal procedures with respect to Community Development Director and Planning Commission determinations.

§ 153.211 PERMITS – GENERAL

(A) Application for any permit, variance, appeal, zoning ordinance amendment or other entitlement provided by this Chapter shall be prepared and submitted by the applicant, shall be processed by the city, and shall be reviewed by the appropriate body or person pursuant to this Chapter and the more specific provisions set forth in subsequent sections for the specific entitlement.

§ 153.212 APPLICATION

(A) Application for any permit, variance, appeal, or other entitlement provided by this Chapter and considered by the city, shall be made on form prescribed by the city

and signed by the applicant and the owner of the affected property or authorized agent and shall be accompanied by the fee prescribed by a separate city ordinance.

§ 153.213 SUPPORTING INFORMATION

- (A) Applications to be considered by the city shall be accompanied by the following supporting information as may be applicable:
 - (1) A legal description of the property (required);
 - (2) A location map showing the project site and the general vicinity of the site (required);
 - (3) A completed environmental information form as prescribed by the city in its CEQA Guidelines (required);
 - (4) Site plans, elevations plans, floor plans, and other maps and data as may be necessary to describe the existing conditions on and surrounding the property and the proposed plans for the future development of the property. The Planning Commission shall by resolution, maintain a listing of the minimum documentation necessary for submittal in support of each type of application;
 - (5) Such other information specified in this title for the particular entitlement requested.

§ 153.214 REVIEW PROCEDURE

- (A) Upon submittal to the city, applications shall be processed in accordance with the following:
 - (1) Preliminary review. Within thirty days following initial submittal of an application the following actions shall be taken by the Community Development Director or his/her designee:
 - (a) A determination shall be made as to whether the application is in order and complete pursuant to city requirements and CEQA Guidelines.
 - (b) If the application is determined to be not in order or complete the applicant shall be notified of the deficiencies in application and/or specific data necessary to make it complete.
 - (c) At such time as the application is determined to be complete, the applicant shall be notified.
- (B) CEQA. Following certification that an application is complete the city shall review the proposal conducting any studies necessary for its property consideration and

causing the preparation of reports for the reviewing body including any prerequisite environmental documents.

(C) Final Review and Action.

(1) If the matter is one requiring a public hearing, a public hearing date shall be set and advertised pursuant to § 153.215.

(2) If the matter is one allowing the Community Development Director or his/her designee action, the matter shall be reviewed and action shall be taken.

(3) If the matter is one requiring Planning Commission action or recommendation to the City Council, the matter will be forwarded to the Planning Commission for their review and action or recommendation.

(4) If the matter is one requiring City Council action, the matter will be forwarded to the City Council for their review and action.

§ 153.215 PUBLIC HEARING NOTICE

(A) Whenever the provisions of this title state that a public hearing shall be held, a public hearing notice shall be given pursuant to § 65091 of the Government Code.

(B) All mailing or publication shall be accomplished at least ten (10) days prior to the public hearing.

(C) The failure of any person to receive notice required by this section, shall not affect the authority of the city to act on a matter before it, provided proper notice has been found to be given.

§ 153.216 USE PERMITS

(A) *Purpose.* Use permits may be issued for any of the uses or purposes for which such permits are required and are subject to the provisions of this section.

(B) *Form.* Applications for a use permit shall be made to the Planning Commission in writing on a form prescribed by the Commission and shall be accompanied by sufficient information in writing, drawings or pictures to show the detail of the proposed use or building(s). Applications for a use permit shall provide evidence to support the approval findings pursuant to § 153.216(D). A filing fee in such amount as may be fixed by the City Council shall be paid at the time the application is filed.

(C) *Public Hearing.* The Planning Commission shall give notice and hold a public hearing on each application for a use permit in accordance with the provisions of § 153.215 of this chapter.

(D) *Approval Findings.* The Planning Commission shall make the following findings to approve a Use Permit application:

(1) The proposed use is consistent with the General Plan, any applicable Specific Plan, and all applicable provisions of this Chapter.

(2) The establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, and general welfare of the persons residing or working in the neighborhood or to the general welfare of the city.

(3) The proposed use is consistent with the purpose of the applicable zoning district or districts.

(4) The proposed use meets the minimum requirements of this title applicable to the use and complies with all other applicable laws, ordinances, and regulations of the city and state.

(E) *Conditions.* The Planning Commission may designate such conditions in connection with the use permit as it deems necessary to secure the purpose of this title and may require such guarantees and evidence that such conditions are being or will be complied with.

(F) *Denial.* In cases where any use permit is refused, the Planning Commission shall state its reasons for such refusal.

(G) *Appeal.* Appeal of the Planning Commission's action on the request for a Use Permit shall be made in accordance with the procedures specified in § 153.219 (Appeals).

(H) *Effect.* Use permit shall not become effective for ten (10) days after being granted and in the event an appeal is filed, shall not become effective until a decision is made by the Council on such appeal.

(1) No building or zoning permit shall be issued in any case where a use permit is required by the provisions of this title unless and until such use permit has been granted by the Planning Commission or Council and then only in accordance with the terms and conditions of the use permit granted.

(2) No application for a use permit which has been denied shall be resubmitted for a period of one (1) year from the date the order of denial became final, except on grounds of new evidence or proof of change of project conditions found to be valid by the Planning Commission or City Council, whichever issued the order of denial.

(3) Any use permit granted shall be null and void twenty-four (24) months from the date of final approval thereof unless prior to such expiration date, the property is being used for the purpose of which the use permit was granted or unless a valid building permit is in effect for the construction of necessary buildings or appurtenances to such use. The Planning Commission may defer expiration of the permit for a period not exceeding one (1) year upon application, in writing, by the owner of the property prior to expiration provided such use is still permitted in the district in which it is proposed to be located.

§ 153.217 ARCHITECTURE AND SITE PLAN REVIEW

(A) *Purpose.* The purpose of these regulations is to allow architecture and site plan review of all developments, buildings, structures and other facilities constructed or modified in any zone where architecture and site plan review is required in order to foster a good design character through consideration of aesthetic and functional relationships to surrounding development, and in order to further enhance the city's appearance, and the livability and usefulness of properties.

(B) *Form.* Applications for an Architecture and Site Plan Review permit shall be made to the Planning Commission on a form prescribed by the Planning Commission and shall be accompanied by sufficient information in writing, drawings, or pictures to show the detail of the proposed building(s). Applications for an Architecture and Site Plan Review permit shall provide evidence to support the approval findings pursuant to § 153.217(D). A filing fee in such amount as may be fixed by the City Council shall be paid at the time the application is filed.

(C) *Public Hearing.* The Planning Commission shall give notice and hold a public hearing on each application it receives for Architecture and Site Plan Review in accordance with the provisions of § 153.215.

(D) *Approval Findings.* The Planning Commission shall make the following findings to approve an Architecture and Site Plan Review application:

(1) The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Planned Development, Master Plan or Specific Plan provisions, improvement standards, and other applicable standards and regulations adopted by the city.

(2) The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation.

(3) The site layout (orientation and placement of buildings and parking areas), as well as the landscaping, lighting, and other development features, is compatible with and compliments the existing surrounding environment and ultimate character of the area under the General Plan.

(4) The proposed architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting, and similar elements, establishes a clear design concept and is compatible with the character of the buildings on adjoining and nearby properties.

(E) *Conditions.* The Planning Commission may designate such conditions in connection with the architecture and site plan review as it deems necessary to secure the purpose of this title and may require such guarantees and evidence that such conditions are being or will be complied with.

(F) *Appeal.* Appeal of the Planning Commission's action on the request for an Architecture and Site Plan Review shall be made in accordance with the procedures specified in § 153.219 (Appeals).

(G) *Effect.* The Architecture and Site Plan Review shall not become effective for ten (10) days after being granted and in the event an appeal is filed, shall not become effective until a decision is made by the Council on such appeal.

(1) No building or zoning permit shall be issued in any case where an architecture and site plan review application is required by the provisions of this title unless and until such permit has been granted by the Planning Commission, or City Council and then only in accordance with the terms and conditions of the Architecture and Site Plan Review permit granted.

(2) No application for an architecture and site plan review application which has been denied shall be resubmitted for a period of one (1) year from the date the order of denial became final, except on grounds of new evidence or proof of change of conditions found to be valid by the Planning Commission or City Council, whichever issued the order of denial.

(3) Any architecture and site plan review granted shall be null and void twenty-four (24) months from the date of final approval thereof unless prior to such expiration date, a valid building permit is in effect for the construction of necessary buildings or appurtenances of the review. The Planning Commission may defer expiration of the permit for a period not exceeding one (1) year upon application, in writing, by the owner of the property prior to expiration provided such use is still permitted in the district in which it is proposed to be located.

§ 153.218 VARIANCE

(A) *Purpose.* Each zoning district has specific development standards and a variance is a special request for the city to waive or alter one (1) or more of those standards. When practical difficulties, unnecessary hardship and outcomes inconsistent with the general purpose of this title result from the strict application of certain

provisions thereof, a variance may be granted as provided in this section except for uses not permitted by zoning district regulations.

(B) *Form.* An application for variance shall be made in writing on a form prescribed by the city and shall be accompanied by a filing fee (that is subject to change by City Council resolution). Applications for a Variance shall provide evidence to support the approval findings pursuant to § 153.218(D).

(C) *Public Hearing.* The Planning Commission shall give notice and hold a public hearing on each application for a variance in accordance with the provisions of § 153.215.

(D) *Approval Findings.* The Planning Commission shall make the following findings to approve a Variance application:

(1) Because of special circumstances applicable to the property including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives the subject property of the privileges enjoyed by other properties in the vicinity and under identical zone classifications.

(2) The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner and will not constitute a grant of special privileges.

(3) The granting of such application will not, under the circumstances of the particular case, materially adversely affect the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

(E) *Conditions.* The Planning Commission may impose such conditions in connection with a variance as it deems necessary to secure the purposes of this chapter and may require a bond guarantee or other assurances that such conditions are being or will be complied with.

(F) *Appeal.* Appeal of the Planning Commission's action on the request for a Variance shall be made in accordance with the procedures specified in § 153.219 (Appeals).

(G) *Effect.*

(1) The Variance shall not become effective for ten (10) days after being granted and in the event an appeal is filed, shall not become effective until a decision is made by the Council on such appeal.

(2) No application for a variance which has been denied shall be resubmitted for a period of one (1) year from the date of said order of denial became final, except on grounds of new evidence or proof of change of conditions found to be valid by the Planning Commission.

(3) Any variance granted shall be null and void twelve (12) months from the date of final approval thereof unless prior to such expiration date, the property is being used as stated in the variance, or unless a valid building permit is in effect for the construction of buildings or appurtenances to such variance. The Planning Commission may defer expiration of the variance for a period not exceeding one (1) year upon receiving an application, in writing, by the owner of the property prior to expiration provided the conditions for granting the variance have not changed.

(4) The Planning Commission may revoke or modify the approval of a variance as indicated in § 153.247 of this chapter.

§ 153.219 APPEALS

(A) *Purpose.* The purpose of these provisions is to prescribe the procedure through which an appeal may be made in case an interested person is dissatisfied with any order, requirement, permit, decision, determination, or disapproval, made in an administration, interpretation, or enforcement of this Chapter.

(B) *Approval Authority.* The following table identifies the approving authority for each entitlement:

Entitlement	Approving Authority	
	Community Development Director	Planning Commission
Use Permit		X
Architecture and Site Plan Review		X
Variance		X
Home Occupation	X	
Sign Permit	X	
Determination of Similar Use	X	

(C) *Appeal Authority.* Any person dissatisfied with a determination or action of the Community Development Director or Planning Commission made pursuant to this Chapter may appeal such action to the designated appeal authority listed in the table below, within ten (10) days from the date of the action. Actions by City Council are final, and no further administrative appeals are available.

Approving Authority for Action Being Appealed	Appeal Authority	
	Planning Commission	City Council
Community Development Director	X	
Planning Commission		X

(D) *Form.* All appeals shall be submitted in writing, identifying the determination or action being appealed and specifically stating the basis or grounds of the appeal. Appeals shall be filed within ten (10) days from, but not including, the date of the determination or action for which an appeal is made, accompanied by a filing fee established by City Council resolution, and submitted to the Community Development Director. The time limit will extend to the following business day where the last of the specified number of days falls on a day that the city is not open for business. The filing of an appeal shall stay the issuance of any necessary subsequent permit(s) associated with any right or entitlement that will be subject to the appeal.

(1) *Appeal of the Community Development Director Decision.* The applicant or any other person aggrieved may appeal such decision by filing a written notice with the Community Development Director prior to the time the decision becomes final. The Community Development Director shall furnish forms of notice of appeal.

(2) *Appeal of Planning Commission Decision.* The applicant or any other person aggrieved may appeal such decision by filing a written notice of appeal with the Community Development Director prior to the time the decision becomes final.

(E) *Public Hearing.* Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within sixty (60) days from the date of appeal submittal. Notice of the appeal shall be provided pursuant to noticing requirements consistent with state law.

(F) *Appeal Hearing and Action.* Each appeal shall be considered a de novo (new) hearing. In taking its action on an appeal, the appeal authority shall state the basis for its action. Only such evidence and plans as were submitted to and ruled upon the approving authority may be provided to the appeal authority for review. The appeal authority may act to confirm, modify, or reverse the action of the approving authority, in whole or in part, or add or amend such conditions as deemed necessary. The action of the appeal authority is final on the date of decision and, unless expressly provided by this title, may not be further appealed.

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter, or any part thereof is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section,

subsection, subdivision, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

SECTION 3: This Ordinance shall become effective thirty (30) days from and after its final passage, provided it is published pursuant to Government Code section 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on April 12, 2022. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the ____ day of _____, 2022; motioned by Councilmember _____, seconded by Councilmember _____; moved said ordinance by a City Council vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

Tom P. Hallinan
City Attorney

**City of Riverbank
Planning Commission
Resolution No. 2022-001**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK
RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF AN ORDINANCE
AMENDING TITLE XV: LAND USAGE, BY REPEALING IN THEIR ENTIRETY
SECTION §153.215: ZONING PERMITS, SECTION §153.216: USE PERMITS,
SECTION §153.217: VARIANCE, SECTION §153.218: APPEALS, AND SECTION
§153.219 MOBILE HOME PERMITS, AND SUBSTITUTING THEM WITH NEW
SECTIONS AND ADDING NEW SECTIONS §153.210 THROUGH §153.214.**

WHEREAS, the proposed amendments to the Riverbank Municipal Code implement Administrative Procedures for the review and processing of entitlement applications; and

WHEREAS, on March 2, 2022, notice of the Planning Commission public hearing was published in the Riverbank News in compliance with California Government Code Section 65090, and posted in public places throughout the City; and

WHEREAS, the Planning Commission held a public hearing on March 15, 2022, to consider the proposed amendments to the Riverbank Municipal Code; and

WHEREAS, the proposed amendments comply with the General Plan in that “the City and Redevelopment Agency will encourage, through incentives, streamlining, flexible standards, and other means, development of employment-generating uses (Policy LAND-4.1)”, “The City will encourage the revitalization of existing commercial areas through flexible development standards, public investment, property assemblage, incentives, streamlined entitlement processes, catalyst projects, public-private partnerships, and other means (Policy LAND-4.2)”, and “The City will encourage and assist small, locally-owned businesses that wish to locate, expand, or simply continue to do business in Riverbank through flexible development standards, public investment, property assemblage, incentives, streamlined entitlement process, public-private partnerships, and other means (Policy LAND-4.3)”; and

WHEREAS, the amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061(b)(3) by the “Common Sense Exemption” that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, The Riverbank Planning Commission made the following findings:

1. The proposed Zoning Ordinance Amendment is consistent with the City's

General Plan Land Use Element, as enumerated in the General Plan Consistency section of the Staff Report.

2. The proposed Zoning Ordinance Amendment further the public interest, convenience, and general welfare of the City. The amendments would ensure consistency of the Riverbank Municipal Code with the General Plan and State law, and update administrative procedures related to processing entitlement applications.

NOW THEREFORE, BE IT RESOLVED the City of Riverbank Planning Commission forwards its recommendation to the City Council to adopt draft Ordinance No. 2022-XXX (Exhibit A).

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 15th of March, 2022, motioned by Commissioner Diana, seconded by Commissioner Stewart, and upon roll call was carried by the following vote 4-0:

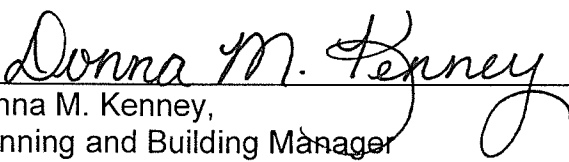
AYES: Commissioners: Link, Stewart, Dinan, and Reuben

NOES:

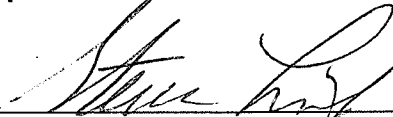
ABSENT: Commissioners Fenrich and Basso (excused)

ABSTAIN:

Attest:


Donna M. Kenney,
Planning and Building Manager

Approved:


Steve Link, Chairperson
Planning Commission

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.1

SECTION 11: NEW BUSINESS

Meeting Date:	April 12, 2022
Subject:	A Resolution of Concurrence and Support for the Approval of the Fiscal Year 2022-2023 Annual Action Plan (AAP)
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Lety Ibanez, Housing Specialist

RECOMMENDATION

It is recommended that the City Council open the Community Meeting, accept Public Comment, and consider adopting a Resolution of Concurrence and support for the approval of the Fiscal Year 2022-2023 Annual Action Plan (AAP).

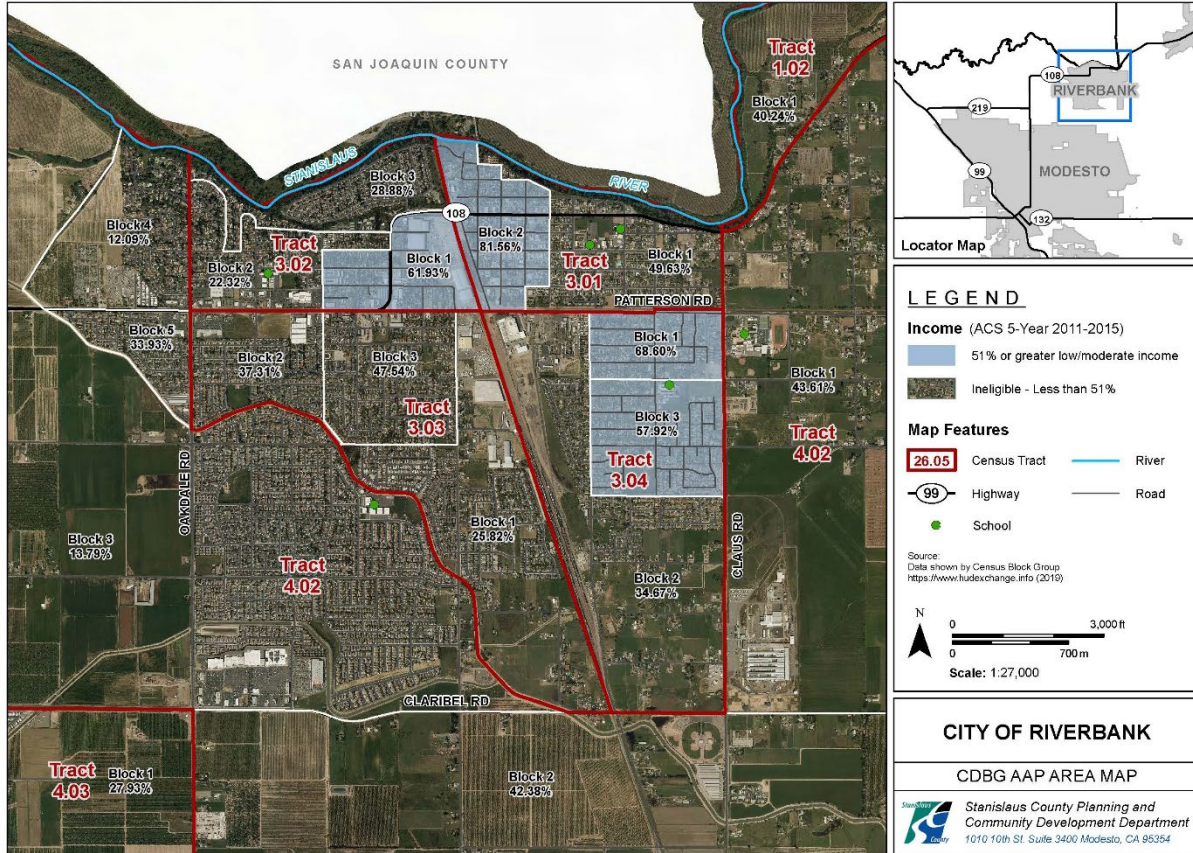
SUMMARY

The adoption of the Annual Action Plan (AAP) is a requirement of the U.S. Department of Housing and Urban Development (HUD) for jurisdictions that receive and administer certain HUD block grants on an entitlement basis.

BACKGROUND

In June 2019, the City became part of the Stanislaus County Urban County ("Urban County") and HOME Consortium for a direct allocation of Community Development Block Grant (CDBG) and HOME Investment Partnership funding from the federal Department of Housing and Urban Development (HUD). Every year the Urban County and HOME Consortium (managed by the City of Turlock) are required to prepare an Annual Action Plan which discusses the projects that will be undertaken by the entities in the Urban County and the Consortium. It is recommended that the City Council hold a Community Meeting to accept public comments on the Draft Annual Action Plan and consider adoption of a Resolution of Concurrence.

The City is only permitted to use this funding within census tracts that reflect a 51% or greater low/moderate income level. The following gray-shaded areas reflect those census tracts where projects may be undertaken:



Status of the Fiscal Year 2021-2022 Annual Action Plan (AAP)

For Fiscal Year 2021-22, the City programmed its funding for the Castleberg Park Trail & ADA upgrades. The City has submitted the Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 document for review and comment to the County and is awaiting final approval. In addition, the scope of the project will require additional funding sources (over and above the Consortium funding) in order to be completed to our specifications and needs.

Fiscal Year 2022-2023 Annual Action Plan (AAP)

The AAP is an integral component of the Urban County's Consolidated Plan, and describes the specific programs and projects that will be undertaken during Fiscal Year 2022-2023. For Fiscal Year 2022-23, HUD has not yet announced the estimated amount of CDBG allocation for infrastructure projects. However, the funding will be reserved in order to complete the following water project in Fiscal Year 2022-23:

Project	Location	Cost Estimate
Water Line Installation	In Alley on Riverside from Corporation Yard to 4 th Street	\$325,000
Total FY 2021-22 & FY 2022-23		\$325,000

STRATEGIC PLAN

This report is in conformance with the City of Riverbank's Strategic Plan goal to "Maintain a High Quality of Life".

FINANCIAL IMPACT

For Fiscal Year 2022-23, HUD has not yet announced the estimate amount of CDBG allocation for infrastructure projects. The funds from FY 2021-2022 of \$173,758 in CDBG will be combined with the FY 2022-23 allocation (yet to be determined) to complete the water line installation.

ATTACHMENT

1. Draft City Council Resolution 2022-

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, OF CONCURRENCE AND SUPPORT OF THE FISCAL YEAR 2022-
2023 ANNUAL ACTION PLAN (AAP) PREPARED BY THE STANISLAUS COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CONSORTIUM**

WHEREAS, The Stanislaus County Community Development Block Grant (CDBG) Consortium which includes the cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Waterford and unincorporated areas of Stanislaus County will be receiving and expending CDBG funds from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the Stanislaus County CDBG Consortium is required by HUD to prepare an Annual Action Plan (AAP) to document progress made in accomplishing goals set forth in the Consolidated Plan and Action Plan; and

WHEREAS, the planning process serves as the framework for the community-wide dialogue to identify housing and community development priorities that align and focus funding from programs such as CPD formula block grant programs; the Community Development Block Grant (CDBG) Program, the HOME Investment Partnership (HOME) Program, and the Emergency solutions Grant (ESG) Program; and

WHEREAS, the following project(s) listed below have been selected as CDBG projects according to low to moderate income eligibility and existing health and safety issues in the project area(s) for Fiscal Year 2022-23:

Project	Location	Cost Estimate
Water Line Installation	In Alley on Riverside from Corporation Yard to 4 th Street	\$325,000
Total FY 2021-22 & FY 2022-23		\$325,000

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby adopts the Resolution of Concurrence and Support of the Fiscal Year 2022-2023 Annual Action Plan prepared by the Stanislaus County Community Development Block Grant Consortium.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.2

SECTION 11: NEW BUSINESS

Meeting Date:	April 12, 2022
Subject:	City Manager Employment Contract
From:	Douglas White, Deputy City Attorney
Submitted by:	Douglas White, Deputy City Attorney

RECOMMENDATION

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

SUMMARY

The City requires the services of a person with proven executive and administrative qualifications to fill the position of City Manager. The City Manager is the administrative head of the City government under the direction and control of the City Council. Marisela Garcia has been employed with the City since 2006, served as Assistant City Manager uninterrupted since 2016, and has acted as the Interim City Manager since the City Manager position became vacant in February 2022. The position of City Manager is subject to appointment by the City Council. The City, acting by and through the City Council, has evaluated Ms. Garcia's knowledge, experience, administrative skills, and abilities during her employment as Assistant City Manager and during her service as Interim City Manager and has elected to appoint Ms. Garcia to the position of City Manager under the terms of a new employment agreement.

ANALYSIS

The proposed Agreement would be retroactively effective to January 15, 2022 and provide for an annual salary of \$181,032.72, subject to a five percent (5%) annual increase upon receipt of a satisfactory evaluation by the City Council. Other compensation and benefits are set forth in the agreement, including health and retirement benefits. The proposed employment agreement has been reviewed and approved as to

form by the City Attorney. The term of the City Manager employment agreement shall automatically renew for successive one (1) year terms until the City Council or City Manager provides written notice of non-renewal. The City Manager is an at-will employee. The employment would be terminable at any time by either party, subject to the terms of the agreement, including, but not limited to, payment of six (6) months' salary as severance if the City Council terminates the employment without cause.

FINANCIAL IMPACT

The cost of the City Manager's salary and benefits is annually included in the City's budget. This action would be consistent with the salary budgeting for prior years.

STRATEGIC PLAN

The Agreement is reasonable and consistent with the City's goal of attracting, developing, and retaining quality staff.

ATTACHMENTS

1. Draft City Council Resolution 2022- ; Authorizing the Mayor to Execute and Enter into the City Manager Employment Contract
2. Proposed City Manager Employment Agreement

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE AND ENTER INTO THE
CITY MANAGER EMPLOYMENT CONTRACT**

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

WHEREAS, Marisela Garcia has served as Assistant City Manager since 2016 and Interim City Manager since February 2022; and

WHEREAS, the City has evaluated Marisela Garcia's performance in her position as Assistant City Manager and Interim City Manager and desires to appoint her to the position of City Manager; and

WHEREAS, the City and Marisela Garcia now wish to enter into a new employment agreement which will automatically renew for successive one (1) year terms until the City Council or City Manager provides written notice of non-renewal, and which is attached hereto as Exhibit A ("Agreement").

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

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Agreement

EMPLOYMENT AGREEMENT

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

RECITALS

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

B. City, acting by and through the Riverbank City Council (“City Council”) has evaluated Employee's knowledge, experience, administrative skills and abilities and desires that Employee be appointed to the position of City Manager pursuant to the terms of this Agreement.

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

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

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

AGREEMENT

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

Section 2. Effective Date. This Agreement shall be retroactively effective to January 15, 2022 (“Effective Date”).

Section 3. Appointment of City Manager Duties and Term.

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

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

Employee's initial duties shall be as shown in the job description attached as Exhibit A. Employee shall perform Employee's duties and responsibilities under this Agreement pursuant to the laws of the State of California and applicable City municipal codes and resolutions. Employee understands that Employee's duties may be amended from time to time by the City, as necessary to meet the City's needs. No modification or change in Employee's responsibilities, duties or position shall otherwise change or revoke any other provision of this Agreement.

3.2. No Secondary Employment. Employee agrees to devote all such productive time, ability and attention to the City's business as is necessary to the full performance of her duties. During the Term, as defined in Section 3.4 of this Agreement, Employee shall not hold secondary employment or engage in activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests. As such, Employee agrees that Employee will notify the City Council in writing if Employee wishes to accept secondary employment sufficiently in advance to allow the City Council to determine whether there is the appearance of or an actual conflict, or potential conflict, with the satisfactory performance of Employee's duties and/or the best interest of the City. Should the City Council make such a determination, Employee agrees that Employee will forgo the proposed secondary employment. Notwithstanding the foregoing, Employee shall have the right to volunteer for such nonprofit organizations as Employee may see fit, provided that such volunteer services shall not interfere with Employee's duties on behalf of the City.

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

3.4. Term. The term of this Agreement shall begin on the Effective Date and expire on January 15, 2025. ("Term"). The City Council may extend the Term for a period of one (1) year. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 7 below, or as required by law.

Section 4. At-Will Employment. Employee is an at-will employee serving at the pleasure of the City Council, as provided in Government Code section 36506 and R.M.C. Section 31.0 4(F). Accordingly, this Agreement does not confer a right of employment for

any specified term. Employee has no property right in his employment and the City Council may terminate Employee's employment and this Agreement at any time, with or without cause, and Employee shall have no recourse to due process for disciplinary action up to and including termination under any City policy of personnel rule, otherwise specified in this Agreement. Employee shall be entitled to Severance, as defined below, only if City terminates Employee's employment without cause as set forth in Section 7.3.

Unless otherwise specified in this Agreement, Employee shall be bound by all the policies, rules, and regulations of City now in force and effect applicable to Employee's position, and by all such other applicable policies, rules and regulations as may be hereafter implemented and called to Employee's notice and will faithfully observe and abide by the same. No such policy, rule or regulation shall alter, modify, or revoke Employee's status as an at-will employee or any other provision of this Agreement.

Section 5. Compensation and Evaluations.

5.1. Base Salary. In exchange for the performance of Employee's duties, City shall pay Employee an annual salary in the amount of One Hundred Eighty-One Thousand Thirty-Two and 72/100 Dollars (\$181,032.72) ("Base Salary"), payable at the same time as other similarly situated Director level employees are paid. A salary review will occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive a five percent (5%) step increase in Base Salary each January upon receiving a performance evaluation of at least "satisfactory."

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

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

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

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

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

5.7. Vacation. Employee shall earn twenty-five (25) working days (200 hours) of vacation per year. Employee will carry over any existing vacation time from employment with City existing on the Effective Date of this Agreement., however, total vacation accrual will be capped at 400 hours. Once Employee reaches the cap, vacation will cease to accrue until the banked total is less than 400 hours. Unless otherwise specified in this Agreement, vacation accrual, use, and payout shall be administered in accordance with any applicable provisions of City policies, rules, practices and/or regulations applicable to other similarly situated Director level employees. Upon separation from the City, Employee shall be paid for any accrued and unused vacation hours.

5.8. Sick Leave. Employee shall earn one (1) day of sick leave per month of employment. Employee will carry over any existing sick leave from employment with City existing on the Effective Date of this Agreement. Sick leave shall be accrued and shall be administered in accordance with any applicable provisions of City policies, rules, practices and/or regulations applicable to other similarly situated Director level employees.

5.9. Executive Leave. It is recognized that Employee must devote a great deal of time outside the normal office hours to City business. To that end, Employee shall receive ninety-six (96) hours of executive leave at the beginning of each fiscal year. Employee may request to cash out up to twenty-four (24) hours of unused leave each fiscal year. Requests to cash out any amount of executive leave shall be directed to the City's Finance Director. Should there be a vacancy in the Finance Director position, during such vacancy, requests to cash out any amount of executive leave shall be directed to the City Council. Any unused executive leave shall expire on June 30 of each fiscal year and shall not be carried over year to year.

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

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

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

5.13. Pension Plan. City shall contribute Two Hundred Ninety-Two Dollars (\$292.00) per month (or as granted to other similarly situated Director level city employees) to Employee's Union Pension Retirement Fund.

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

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

5.16 Longevity Incentive. Employee shall be eligible for Longevity Pay pursuant to City policy. Employee shall be eligible for longevity pay as follows:

<u>Years of Continuous Full-Time Service</u>	<u>Longevity Pay Rate</u>
20+	7.5% of Base Salary

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

Section 7. Termination of Employment and Severance

7.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least forty-five (45) days advance written notice of the effective date of Employee's resignation unless the Parties otherwise agree in writing. If Employee retires from full-time public service with the City, the Employee shall provide at least three (3) months advance written notice. The Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the

effective date of resignation or retirement, the City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation or retirement, Employee shall not be entitled to Severance as set forth in Section 7.3 of this Agreement.

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

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

7.3. Termination Without Good Cause. In the event City terminates this Agreement without good cause, as defined below in Section 7.4, the City shall pay Employee a sum equal to six (6) months' Base Salary ("Severance"), provided that Employee executes a general release of claims in favor of the City in a format acceptable to the City. Severance shall be paid, in Council's discretion, either in a lump sum or equal installments on regular paydays. This Severance is subject to the restrictions of Government Code section 53260. Any cash settlement related to the termination of this Agreement received by Employee from the City, shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position while employed with the City, pursuant to Government Code section 53243.2. Severance shall be paid in the same manner as to other City employees unless otherwise agreed to by the City and Employee. In the event the City terminates this Agreement, and Employee's employment, Employee shall be entitled to continued medical and dental benefits at her

own cost, pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act (“COBRA”).

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

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

1. Conviction of a felony;
2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Failure to perform duties to the standard set by the City and/or comply with reasonable directives of the City Council;
7. Any conduct which violates the City’s Personnel Rules or other City policies or practices for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from City Manager’s offices and duties;
9. Willful destruction or misuse of City property;
10. Conduct that in any way has a direct, substantial, and adverse effect on the City’s reputation;
11. Willful violation of federal, state or City discrimination laws;
12. Continued substance abuse which adversely affects performance of Employee’s Duties and/or reporting to work while under the influence of alcohol or any drug (whether or not Employee has a valid prescription) which impairs, or has the potential to impair, Employee in the performance of Employee’s duties;

13. Refusal to take or subscribe any oath or affirmation which is required by law;
14. Disability that renders Employee unable to perform the essential functions of her job, which City is unable to reasonably accommodate without placing an undue burden on City;
15. Discourteous or inappropriate treatment of the public or other employees;
16. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests;
17. Dishonesty; and
18. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests.

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

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

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

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

If to City: City of Riverbank
ATTN: City Clerk
6707 Third Street
Riverbank, California 95367
cityclerk@riverbank.org

and White Brenner LLP
ATTN: Thomas P. Hallinan
1414 K Street, 3rd Floor
Sacramento, CA 95814
tom@whitebrennerllp.com
with cc to: doug@whitebrennerllp.com

If to Employee: Marisela H. Garcia
City of Riverbank
6706 Third Street, Suite A
Riverbank, CA 95367
mhgarcia@riverbank.org
CC: personnel file

Section 11. General Provisions.

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

11.2. Entire Agreement. The Parties agree that this Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties relating to Employee's employment and supersedes and renders null and void all other

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

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

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

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

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

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

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

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

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

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

[Signatures on Following Page]

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

CITY:

City of Riverbank, a California municipal
corporation

By: _____
Richard D. O'Brien, Mayor

Date Signed: _____

EMPLOYEE:

By: _____
Marisela H. Garcia, an individual

Date Signed: _____

Attested:

By: _____
Kathy Teixeira, Interim City Clerk

Date Signed: _____

Approved as to Form and Content:

By: _____
Thomas P. Hallinan, City Attorney

EXHIBIT A
Job Description
(See Attached)

CITY OF RIVERBANK

CITY MANAGER

*Class specifications are only intended to present a descriptive summary of the range of duties and responsibilities associated with specified positions. Therefore, specifications **may not include all** duties performed by individuals within a classification. In addition, specifications are intended to outline the **minimum** qualifications necessary for entry into the class and do not necessarily convey the qualifications of incumbents within the position.*

DEFINITION:

Under policy direction, serves as the Chief Executive Officer of the City and directs the activities and operation of all departments; advises and assists the City Council in the conduct of City business; provides administrative oversight to the operational and policy functions of City government; serves as the Executive Director of the Redevelopment Agency; coordinates City business with various programs, officials, and outside agencies; provides a variety of other responsible and complex administrative support to the City Council; performs other related duties as required.

DISTINGUISHING CHARACTERISTICS:

The **City Manager** is the highest administrative management level position in the City and has responsibility for the administrative operation of City departments, which may include developing, recommending, and implementing policies, program planning, fiscal management, administration, and operations of all City functions and services. The incumbent is responsible for accomplishing the City's goals and objectives and for ensuring that the citizens are provided with desired and mandated services in an efficient and cost-effective manner.

SUPERVISION RECEIVED/EXERCISED:

Receives policy direction from the City Council. Exercises direct and indirect supervision over all Department Heads and City staff.

ESSENTIAL FUNCTIONS: *(include but are not limited to the following)*

- Accepts full responsibility for all City activities, programs, and services, including directing the development and implementation of goals, objectives, policies, and procedures; ensures that established goals and priorities are achieved.
- Provides advice and consultation to the City Council on the development and implementation of City programs and services.
- Directs and participates in the preparation and administration of the City budget; prepares and submits to the City Council reports of finances and administrative activities; keeps Council advised of financial conditions, program progress, and present and future needs of the City.
- Reviews and evaluates program service delivery methods and systems within the City, including administrative and support systems and internal relationships; identifies opportunities for improvement and implements changes to standard operating procedures to enhance services.
- Coordinates the preparation of the agenda for the City Council; addresses the City Council on behalf of City staff; represents the City Council to employees, community groups, individual members of the

public, and other governmental agencies; responds to the most difficult complaints and requests for information.

- Directs the implementation, maintenance and enforcement of City personnel policies and practices as prescribed by the City Council; directs staff or serves as the chief negotiator in labor relations activities; selects, supervises, trains, and evaluates assigned staff.
- Confers with department heads and managers concerning administrative and operational problems, work-plans, and strategic plans; makes appropriate decisions or recommendations; oversees the preparation and implementation of long-range plans for the City.
- Serves as a resource for the City Council, department personnel, City staff, other organizations and the public; coordinates pertinent information, resources, and work-teams necessary to support a positive and productive environment.
- Performs all duties as prescribed by City Council actions; directs the preparation of plans and specifications for work, which the City Council requests.
- Attends and participates in professional and community meetings as necessary; stays current on issues relative to public administration and relative service delivery responsibilities; responds to and resolves sensitive and complex community and organizational inquiries, issues, and complaints; establishes and maintains a customer service orientation within the City organization.
- Establishes positive working relationships with representatives of community organizations, state/local agencies and associations, City management and staff, and the public.

PHYSICAL, MENTAL AND ENVIRONMENTAL WORKING CONDITIONS:

Position requires prolonged sitting, standing, walking, reaching, twisting, turning, kneeling, bending, squatting, and stooping in the performance of daily activities. The position also requires grasping, repetitive hand movement, and fine coordination in preparing statistical reports and data using a computer keyboard. Additionally, the position requires near and far vision in reading correspondence, statistical data and using a computer. Acute hearing is required when providing phone and personal service. The need to lift, drag, and push files, paper, and documents weighing up to 25 pounds also is required.

Some of these requirements may be accommodated for otherwise qualified individuals requiring and requesting such accommodations.

QUALIFICATIONS: *(The following are minimal qualifications necessary for entry into the classification.)*

Education and/or Experience:

Any combination of education and experience that has provided the knowledge, skills, and abilities necessary for a **City Manager**. A typical way of obtaining the required qualifications is to possess the equivalent of eight years of directly related experience at an administrative, management, or staff level in municipal government, with at least five years as a manager or supervisor, and a bachelor's degree in public administration, business administration, public finance or a related field. A master's degree is highly desirable.

License/Certificate:

Possession of, or the ability to obtain, a valid Class C California driver's license.

KNOWLEDGE/ABILITIES/SKILLS: *(The following are a representative sample of the KAS's necessary to perform essential duties of the position.)*

Knowledge of:

Modern public administration methods, procedures, organizations, and functions; current social, political, and economic trends and operating characteristics of municipal government; principles and practices of municipal budgeting and finance; methods and techniques for goal setting and program evaluation; redevelopment laws and practices; economic development practices, guidelines, and regulations; local and state legislative processes; principles of effective public relations and interrelationships with community groups and agencies, the private sector, and other levels of government; methods and techniques of supervision, training, and motivation; basic principles of mathematics; applicable federal, state, and local laws, codes, and regulations regarding local government operations; methods and techniques of scheduling work assignments; standard office procedures, practices, and equipment; modern office practices, methods, and equipment, including a computer and applicable software; methods and techniques for record keeping and report preparation and writing; proper English, spelling, and grammar; occupational hazards and standard safety practices.

Ability to:

Provide effective leadership and coordinate the activities of a full-service municipal organization; develop and administer sound citywide goals, objectives, policies, and methods for evaluating achievement and performance levels; properly interpret and make decisions in accordance with laws, regulations, and policies; work with and coordinate the activities of administrative officials while encouraging their development as administrators; prepare clear and comprehensive written reports; serve effectively as the administrative agent of the City Council; represent the City Council to the general public and representatives of other agencies; facilitate group participation and consensus building; plan, organize, train, evaluate, and direct work of assigned staff; perform mathematical calculations quickly and accurately; interpret, explain, and apply applicable laws, codes, and regulations; read, interpret, and record data accurately; organize, prioritize, and follow-up on work assignments; work independently and as part of a team; make sound decisions within established guidelines; analyze a complex issue, and develop and implement an appropriate response; follow written and oral directions; observe safety principles and work in a safe manner; communicate clearly and concisely, both orally and in writing; establish and maintain effective working relationships.

Skill to:

Operate an office computer and a variety of word processing and software applications.

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.3

SECTION 11: NEW BUSINESS

Meeting Date: April 12, 2022

Subject: Adopt a Resolution to Award and Authorize the City Manager to Enter into Professional Service Agreements for Retainer On-Call Services for Building Inspection and Plan Checking Services for the City of Riverbank to West Coast Code Consultants, Inc. (WC-3), CSG Consultants, Inc., 4Leaf, Inc., and Bureau Veritas.

From: Marisela H. Garcia, Interim City Manager

Submitted by: Donna Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council approve the attached Resolution awarding Retainer On-Call Services for Building Inspection and Plan Checking Services to West Coast Code Consultants, Inc. (WC-3), CSG Consultants, Inc., 4Leaf, Inc., and Bureau Veritas and authorize the City Manager to enter into a contract with each of these firms to perform on-call building inspection and plan checking services for the City of Riverbank. In addition, the Resolution authorizes the City to negotiate separate contracts with these firms as needed for specific development projects.

STAFF SUMMARY

On March 11, 2022, the City received four Request for Qualifications (RFQ) for On-Call Building Inspection and Plan Check Services to perform building inspections and plan checking on various developments within the City of Riverbank.

The City received proposals from the following firms:

West Coast Code Consultants, Inc. (WC-3)
CSG Consultants, Inc.
4Leaf, Inc.
Bureau Veritas

The four (4) Proposals for On-Call Building Inspection and Plan Checking Services were received and reviewed by the Planning & Building Manager, Senior Building Inspector, and Senior Community Development Specialist. After a thorough analysis of the proposals utilizing the established criteria set forth in the RFQ, these four (4) firms were deemed to have met the City's qualification requirements.

After a thorough discussion, the decision was made to recommend all four (4) firms be awarded on-call professional service agreements with the City to supplement our existing plan checking firm Pacific Plan Review (PPR). PPR has been unable to secure the services of a contract building inspector to assist our current (and only) inspector. Due to increased development within the City, it is believed that we will need the expertise of all four firms to meet the building inspection and plan checking needs of development within the City. This will also give the City the opportunity to dedicate a firm to a large or complex development project and ensure an expedited review with quick turnaround times. Separate contracts will be negotiated for specific development projects. Individual Project Task Orders will be created for each project needing building inspection and plan checking services and will be deemed an attachment to each firm's Professional Services Agreement.

FINANCIAL IMPACT

No financial impact to the City of Riverbank's budget. Inspection and plan check fees will be covered by each separate development project.

ATTACHMENTS

1. Draft City Council Resolution 2022-

CITY OF RIVERBANK

RESOLUTION 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, TO AWARD AND AUTHORIZE THE CITY MANAGER TO ENTER INTO PROFESSIONAL SERVICE AGREEMENTS FOR RETAINER ON-CALL SERVICES FOR BUILDING INSPECTION AND PLAN CHECKING SERVICES FOR THE CITY OF RIVERBANK TO WEST COAST CODE CONSULTANTS, INC. (WC-3), CSG CONSULTANTS, INC., 4LEAF INC., AND BUREAU VERITAS

WHEREAS, on March 11, 2022, the City received four (4) Request for Qualifications (RFQ) proposals for On-Call Building Inspection and Plan Checking Services to perform inspections and review plans on various developments within the City of Riverbank; and

WHEREAS, the four (4) proposals were reviewed by the selection committee; and

WHEREAS, the committee deemed all four (4) firms meet the City's qualification requirements detailed in the RFQ;

WHEREAS, the committee recommended awarding all four (4) firms, West Coast Code Consultants, Inc. (WC-3), CSG Consultants, Inc., 4Leaf, Inc., and Bureau Veritas for On-Call Professional Service Agreements;

WHEREAS, the City Manager is authorized to enter into Professional Service Agreements for Retainer On-Call Services for Building Inspections and Plan Checking Services for the City of Riverbank; and

WHEREAS, the committee believes the expertise of all four (4) firms will be needed to meet the building inspection and plan checking needs of development within the City; and

WHEREAS, separate contracts will be negotiated for specific development projects. Individual Project Task Orders will be created for each project needing building inspection and plan checking services and will be deemed an attachment to each firm's Professional Services Agreement.

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

1. Award Professional Service Agreements for Retainer On-Call Services for Building Inspection and Plan Checking Services to West Coast Code Consultants, Inc., CSG Consultants, Inc., 4Leaf, Inc., and Bureau Veritas.

2. Authorize the City Manager to negotiate and enter into a contract with each of these firms on an On-Call basis for building inspection and plan checking services for development projects within the City of Riverbank.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.4

SECTION 11: NEW BUSINESS

Meeting Date: April 12, 2022

Subject: A Resolution Authorizing the Execution of a Performance Agreement between the City of Riverbank and Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501c3) for the Coordination of the 2022 Cheese & Wine Festival

From: Marisela H. Garcia, Interim City Manager

Submitted by: Sue Fitzpatrick, Director of Parks and Recreation

RECOMMENDATION

It is recommended that the City Council consider approval of the Resolution Authorizing the Performance Agreement with Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501c3) for the Coordination of the 2022 Cheese & Wine Festival.

SUMMARY

On February 22, 2022, the City Council gave staff direction to proceed with Simply Devine Events, LLC for the planning of the Cheese & Wine Festival that will occur on October 8, and 9, 2022.

An updated performance agreement has been drafted for City Council approval. Simply Devine Events, LLC would like to include their non-profit Simply Devine Foundation (501c3) in all contracts and agreements with the City of Riverbank.

BACKGROUND

The Riverbank Cheese and Wine Festival has been held in Riverbank for the past 44 years. The Festival was administered by the Riverbank Chamber of Commerce for many years until it was sold to the Riverbank Rotary Club. The Rotary Club administered the Festival for eight years and in 2014 made the decision that they were unable to continue the event. The City then purchased the event from the Rotary Club for \$15,000.

The City Parks and Recreation Department contracted with Chris Ricci Presents, Inc. for six years for the coordination of the festival.

This year the City Parks and Recreation Department, with City Council approval, will contract with Simply Devine Events, LLC for the second year and enter into a performance agreement for services, by Resolution for the 2022 year, as attached in **Exhibit A**.

STRATEGIC PLAN

This item is relevant to the City Strategic Plan by ***Enhancing the Quality of Life through Recreation and Community Events***.

FINANCIAL IMPACT

The performance agreement engages Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501c3) to provide the 2022 Cheese & Wine Festival event coordination services and establishes that the costs for those services is \$25,000.

Over the past seven years, the festival has been financially successful and has not required funding from the General Fund. The goal of the department is for this festival to be self-sustaining.

ATTACHMENT

1. Draft City Council Resolution 2022-
2. Exhibit A: Performance Agreement
3. Exhibit B: Scope of Services

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE EXECUTION OF A
PERFORMANCE AGREEMENT WITH SIMPLY DEVINE EVENTS, LLC
IN CONJUNCTION WITH SIMPLY DEVINE FOUNDATION (501C3)
FOR THE PLANNING, ORGANIZING AND IMPLEMENTATION OF THE CHEESE
AND WINE FESTIVAL IN THE AMOUNT OF \$25,000**

WHEREAS, the Cheese and Wine Festival ("Festival") has been a tradition in the City of Riverbank ("City") for many years, the City of Riverbank purchased the Festival rights in 2014, establishing it as a safe and enjoyable event; and

WHEREAS, in November, 2019 a Request for Proposal was released for the coordination of the 2020 Cheese & Wine Festival; and

WHEREAS, on January 28, 2020, the City Council directed City staff to accept the proposal submitted by SS Consulting, now under the new business name Simply Devine Events, LLC; and

WHEREAS, on February 22, 2022 the City Council directed staff to plan for the 2022 Cheese & Wine Festival to be held on October 8, and 9, 2022 contracting with Simply Devine Events, LLC; and

WHEREAS, the Performance Agreement engages Simply Devine Events, LLC, to provide event coordination services and establishes that the costs for those services is \$25,000 to be paid within 30 days after implementation of the festival.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby authorizes the City Manager to execute the Performance Agreement between Simply Devine Events, LLC and the City of Riverbank, attached hereto as **Exhibit A**.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember_____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachments: Exhibit A – Performance Agreement with Simply Devine Events, LLC

Exhibit A PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT (the “Agreement”) is made and entered into this 12th day of April, 2022 (the “Effective Date”), by and between the City of Riverbank, a municipal corporation of the State of California (“City”) and Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501C3) (“Consultant”). City and Consultant may each be referred to hereinafter separately as “Party” and collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

This Agreement is being entered into with reference to the following facts:

- A. City owns and operates the annual Riverbank Cheese and Wine Festival, a longstanding local tradition consisting of arts and crafts and food booths featuring award-winning cheese and wine which is normally held the second weekend of October (“Festival”).
- B. On January 28, 2020, the Riverbank City Council (“City Council”) accepted the proposal submitted by SS Consulting for the operation of the Cheese & Wine Festival for 2020. SS Consulting has since changed their business name to Simply Devine Events, LLC.
- C. On February 11, 2020, the City Council authorized the City Manager to enter into the agreement. In March, 2020 the event was cancelled due to COVID- 19.
- D. Consultant, Simply Devine Events, LLC desires to perform the scope of services included in its proposal for the 2022 Cheese & Wine Festival on the terms and conditions set forth below.

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

AGREEMENT

Section 1. Description of Work.

1.1. Scope of Services. Consultant shall perform the work set forth in **Exhibit B**, attached hereto (the “Services”). Consultant shall provide all labor, equipment, material and supplies required or necessary to properly, competently and completely perform the work or render the Services under this Agreement. Consultant shall determine the method, details and means of doing the work or rendering the Services. Any request for work or services not included in Exhibit B will be considered a request for additional or modified Services (“Modification” or “Modifications”). Consultant shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.

1.2. City Requested Modification of Services. City may, by written order, authorize Modifications to the Services. If such Modifications cause an increase in the cost or time required for performance of Consultant's Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Consultant and, if necessary, amend the terms of Exhibit A. The Services, completion schedule, or compensation shall not be revised unless City and Consultant mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance or such other terms or conditions mutually agreed upon by the Parties.

1.3. Consultant Requested Modification in Services. Consultant shall not be compensated for work outside of the Services described in this Agreement, unless, prior to the commencement of the Services:

a. Consultant provides City with written notice that specific work requested by City or required to complete the Services is outside the agreed upon terms set forth in the Agreement. Such notice shall: (1) be supported by substantial evidence that the work is outside the Services; (2) set forth the Consultant's proposed course of action for completing the work and a specific request for the City to approve the Modification to the Services; (3) set forth the Consultant's proposed revisions, if any, to the completion schedule for the Services; and (4) set forth the Consultant's proposed revisions, if any, to the compensation of the Services; and

b. City agrees that the Services require a Modification;

c. City gives prior approval in writing to all adjustments, if any, to the completion schedule and compensation; and

d. The Parties execute a written amendment to this Agreement describing any Modification, together with any adjustment in the completion schedule or compensation for Consultant's work.

Section 2. Compensation and Payment Schedule. The total cost of the Services described in Section 1 of this Agreement shall not exceed Twenty-Five Thousand Dollars (\$25,000.00). City shall pay Consultant for services within 30 days after implementation of the festival.

Section 3. Late Payment. Parties agree that payment for the Services set forth in Section 2 of this Agreement that is more than ten (10) days late is subject to a late fee of one and half percent (1.5%) interest per amount due in a given thirty (30) day period.

Section 4. Term and Time for Completion. The term of this Agreement shall commence on the Effective Date and shall remain in effect for a period of one year or thirty (30) days after City affirms in writing that all required Services have been completed, whichever occurs first (the "Term"). The Parties may mutually agree in writing to terminate the Agreement earlier as provided in Section 13 or otherwise extend the Term pursuant to this Agreement.

Section 5. Time of Performance. Consultant warrants that it shall perform all Services for the benefit of the City in preparation of, during, and after the conclusion of the Festival. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

Section 6. Independent Contractor. Consultant will employ, within the Festival Budget, as approved by the City, all personnel reasonably necessary to perform the Services. All acts of Consultant, its agents, officers, employees and all others acting on behalf of Consultant relating to this Agreement will be performed as independent contractors. Consultant, its agents and employees will represent and conduct themselves as independent contractors and not as employees of City. Consultant has no authority to bind or incur any obligation on behalf of City.

Section 7. Sub-Consultants. Parties agree that Consultant may employ sub-consultants for purposes of carrying out the Services for the Festival including but not limited to 1) a concessionaire, 2) a sponsorship consultant, 3) a consultant to create and manage the Festival's website, 4) a consultant responsible for alcohol sales at the Festival Consultant shall be responsible for managing any sub-consultants, 5) Vendor Coordinator. **Consultant shall not enter into any agreements with sub-consultants without first obtaining written approval from City related to payment for sub-consulting services.** No subcontract shall be awarded or an outside consultant engaged by Consultant for any purpose not listed herein unless prior written approval is obtained from City.

Section 8. Compliance with Laws and Standards. Consultant agrees that it shall conduct its work and perform the Services in accordance with all applicable federal, state, and local laws, ordinances and regulations.

Section 9. Insurance. Consultant and City shall, at their sole expense, maintain in effect at all times during the duration of this Agreement, not less than the following coverage and limits of insurances:

9.1. Workers Compensation. Consultant shall carry such insurance as will protect City and Consultant from claims under Worker's Compensation and Employers' Liability Acts and the type and amount of such insurance shall be maintained in strict compliance with the State of California statutes. This insurance shall also waive all right to subrogation against City, its employees, directors, officers and agents.

9.2. General Liability. City shall obtain and keep in full force and effect general liability insurance including provisions for contractual liability, personal injury, independent consultants and broad form property damage coverages. This insurance shall be on a comprehensive occurrence basis form with a standard cross liability clause or endorsement. The limit for this insurance shall be no less than One Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and Two Million Dollars (\$2,000,000.00) in the aggregate.

Such insurance shall also:

a. Name City and its officers, employees, agents and representatives, including Consultant, as additional insured by endorsement with respect to the performance of this Agreement. This coverage shall contain no special limitation on the scope of its protection afforded to the aforementioned additional insured.

b. Be primary with respect to any insurance or self-insurance programs covering City and its officers, employees, agents and representatives.

c. Contain standard separation of insured provisions.

9.3. Automobile Liability. Consultant shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented or borrowed. This insurance shall have a standard cross liability clause or endorsement. The limit amount for this insurance shall be no less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.

9.4. Certificates of Insurance. Promptly upon execution of this Agreement and prior to commencement of any work, Consultant shall provide City with certificates of insurance evidencing that all insurance or endorsements required by this Agreement have been obtained and are in full force and effect. Approval of the insurance by City shall not relieve or decrease any liability of Consultant. In addition, in the event any change is made in the insurance carrier, policies or nature of coverage required under this Agreement, Consultant shall notify City in writing prior to making such changes. The failure to notify City of the cancellation of any insurance policy required herein shall be consider a material breach of this Agreement.

Such insurance shall include a provision for endorsement naming City, its officers, directors, employees and agents as additional insureds with respect to liability arising out of the performance of any work under this Agreement, and providing that such insurance is primary insurance with respect to the interest of City and that any other insurance maintained by City is in excess to and not contributing insurance with the insurance required in this Agreement. Consultant shall place all insurance required herein with insurers licensed to do business in the State of California, with an acceptable Best's Key Rating Guide rating of at least A:VII.

Section 10. Indemnification and Hold Harmless. Consultant shall protect, indemnify, hold harmless and defend City, its directors, officers, employees and agents, from any and all claims, fines, demands, costs, expenses (including but not limited to attorney's fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suits or judgments for damages of any nature whatsoever (hereinafter collectively referred to as "Claims") to the extent arising out of the breach of this Agreement in whole or in part by, or willful or fraudulent misconduct or negligent acts, errors or omissions by Consultant, its employees, agents or consultants, or the agent, employee or consultant of any one of them in the performance of their duties or in their operations under this Agreement, but not including the sole or active negligence or the willful misconduct of City.

Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Consultant from its obligations to indemnify as to any Claims so long as the event upon which such Claims are predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

Submission of insurance certificates or other proof of compliance with the insurance requirements in this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. The obligation of this indemnity article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Section 11. Consequential Damages. In no event shall either of the Parties hereto be liable to the other for the payment of any consequential damages. However, the provisions of this section shall not restrict Consultant's indemnification obligations pursuant to this Agreement.

Section 12. Liabilities. Consultant will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier or other service provider whose facilities or services are used in furnishing any portion of the service received by the City. Consultant will not be liable for any failure of performance that is caused by or the result of any act or omission by City or any entity other than Consultant that furnishes services, facilities or equipment used in connection with Consultant services or facilities.

Except as expressly provided in this Agreement, Consultant makes no expressed or implied representations or warranties, including any warranties regarding merchantability or fitness for a particular cause.

Section 13. Termination. This Agreement may be terminated by City or Consultant upon the failure of the other Party to perform any of the material provisions of this Agreement ("Breach"). In the event a Breach of this Agreement occurs, the non-breaching Party shall provide the other written notice of the Breach. The Parties agree that this Agreement will terminate in the event the Breach is not remedied within ten (10) business days following written notice, or if remedy is not possible within 10 business days, or if the breaching Party has not taken meaningful steps within such time period to remedy the Breach.

Notwithstanding the termination of this Agreement in the event of a Breach, City may terminate this Agreement prior to the expiration of the Term ("Early Termination"), without cause or reason, by notifying Consultant in writing of City's desire to terminate this Agreement early (the "Early Termination Notice"). Upon receipt of any Early Termination Notice, Consultant shall immediately cease performing the Services. Consultant will be entitled to compensation, as of the date Consultant receives the Early Termination Notice, for the Services actually (a) performed and (b) costs incurred, provided that such compensation amount shall not in any case exceed the maximum sum set forth in Section 2 of this Agreement. In the event of Early Termination, City shall pay the remainder of the amount of any outstanding invoice within thirty (30) days of receipt of a final invoice from Consultant.

Section 14. Agreement Renewal. City may renew this Agreement for an additional contract term of one (1) year by providing Consultant thirty (30) days' written notice prior to the end of the Term of this Agreement.

Section 15. Attorney's Fees. In the event that any arbitration, litigation or other action or proceeding of any nature between City and Consultant becomes necessary to enforce or interpret all or any portion of this Agreement or because of an alleged breach by either Party of any of the terms contained herein, it is mutually agreed that the prevailing Party in such action shall be

entitled to their attorney's fees, costs and expenses incurred in connection with the prosecution or defense of such action or proceeding.

Section 16. Force Majeure. No Party shall have any liability to the other herein by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civic disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

Section 17. Remedies Not Exclusive. The use by either Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the Party using such remedy of, or limit the application of any remedy provided by law.

Section 18. Notices. Any notice or communication required hereunder between City and Consultant 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 Third Street
Riverbank, California 95367
Attention: Sue Fitzpatrick, Director of Parks and
Recreation

With courtesy copies to:

City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Manager

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

If to Consultant: Simply Devine Events, LLC
839 Spring Creek Dr.
Ripon, Ca. 95366
Attention: Tamra Spade, Consultant

Section 19. General Terms and Conditions.

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

19.2. Waiver. Any waiver at any time by either Party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

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

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

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

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

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

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

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

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

19.11. Entire Agreement. This writing constitutes the entire agreement between the Parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both Parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties or promises with respect to the subject matter of this Agreement except those contained in or referred to in this Agreement.

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

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

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

19.15. 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 the fulfill the purposes and intentions of this Agreement.

19.16. 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 nor conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

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

CITY:

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

By: _____
Marisela H. Garcia, Interim City Manager

Date Signed: _____

Approved as to Form:

By: _____
Tom Hallinan, City Attorney

Attest:

By: _____
Kathy L. Teixeira, Interim City Clerk

Consultant:

Simply Devine Events, LLC

By: _____
Sharon Silva, Consultant
Tamra Spade, Consultant

Date Signed: _____

Exhibit B
Scope of Services
2022 Riverbank Cheese & Wine Festival

Consultant shall perform the work set forth as follows:

- Plan, Coordinate and implement all aspects of the 45th Riverbank Cheese & Wine Festival
- Use various forms of publicity including but not limited to social media, banners, news articles and radio announcements to increase awareness of the Festival in a timely manner
- Recruit, communicate effectively with, and handle set up and take down of all vendors
- Seek Sponsorships and donations to increase sources of revenue for the event. This includes Beer Sponsors, Wine, and Cheese donations.
- Arrange for all rental equipment such as golf carts, generators, barricades, portable restrooms, fencing party rentals and all other equipment necessary for a successful event
- Arrange for all deliveries, set up, clean up and take down of all equipment.
- Set up all professional services, sub-contracts and labor necessary to implement the Festival. This includes but is not limited to a security company, electrician, sound/stages, Entertainment, DJ Services
- Arrange for and monitor ticket sales for the Wine Tasting component of the Festival.
- Order Wine Glasses, recruit wineries, and schedule volunteers or labor needed to produce a well- organized, well supervised and successful wine and cheese tasting experience for attendees.
- Provide an opportunity for community involvement for our schools and non-profit organizations to participate in the Festival and where possible generate funds for their organizations.
- Ensure all ABC license requirements are met and monitored in all areas of the event.
- Work with City staff and obtain support and technical assistance as needed. Hold monthly meetings to update the Parks and Recreation Director and staff of Festival planning, challenges encountered and financial status both of revenue and expenses.
- Meet with Fire Department, Police Chief, and Security Personnel to review security requirements and Emergency Action Plan.
- Work closely with the City Parks Supervisor and Public Works Supervisor for street closure information, notifications, fire lanes, instructions and placement of fencing, concrete barriers and post Festival clean up.
- Create a map of the Festival Boundary and present an update to the City Council on event planning status in a few months prior to the Festival.

- Communicate with businesses and residents well in advance and throughout the planning stages of the Festival and during the Festival.
- Hold at minimum two meetings with the downtown businesses to listen to their concerns regarding the Festival.

The City will provide the following Services:

- Assistance retaining current sponsorships
- Information learned from operating the Festival for the past 7 years
- Street Closure prior to event, and street clean up and re-opening
- Assistance with maps, fire clearances, permits as needed
- Mailing lists
- Administrator rights to the Cheese & Wine Website and Facebook
- Tent Donations from Gilton and in-kind services that they provide to the City
- Part time staff as needed for custodial at the Community Center or the Antigua Rental venue to be reimbursed at an agreed upon rate.

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.5

SECTION 11: NEW BUSINESS

Meeting Date:	April 12, 2022
Subject/ Title:	A Resolution 2022-____ authorizing the Mayor to Execute a Lease with Simply Devine Events, LLC for the Area Associated with the Riverbank Cheese and Wine Festival
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Sue Fitzpatrick, Director of Parks and Recreation

RECOMMENDATION

Motion to adopt Resolution 2022-____ authorizing the Mayor to enter into a lease agreement with Simply Devine Events, LLC in conjunction with Simply Devine Foundation (501c3) for the area associated with the Cheese and Wine Festival held October 8, and October 9, 2022.

SUMMARY

The City of Riverbank ("City") plans to hold the 45th Annual Cheese and Wine Festival ("Festival") on October 8, and 9, 2022. The City has entered into an agreement with Simply Devine Events, LLC to provide event coordination for the Festival. In furtherance of the agreement with Simple Devine Events, LLC, City staff proposes that the City enter into a lease agreement with Simply Devine Events, LLC to temporarily lease the property upon which the festival will be held on October 8, 2022 and October 9, 2022.

The resolution, if adopted, will authorize the Mayor to execute a lease agreement with Simply Devine Events, LLC.

BACKGROUND

The city has organized the festival for a number of years and has previously worked with Simply Devine Events, LLC. The increased interest requires that Simply Devine Events, LLC and the City have more flexibility in managing the area and streets where the festival will be held. The lease agreement does not charge rent to Simply Devine Events, LLC for

the two-day lease but instead provides the City and Simply Devine Events, LLC with safeguards in the form of insurance requirements and other provisions for providing a Festival that serves the residents of the City and the greater community at large who may wish to attend the Festival. This will ensure that the Festival continues to be a successful and enjoyable activity that brings City residents and visitors from near and far to City events.

FINANCIAL IMPACT

There is no direct cost to the City in entering into the lease agreement. The City has already entered into a separate agreement with Simply Devine Events, LLC for services.

ATTACHMENT

1. Draft City Council Resolution 2022-
2. Lease Agreement

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT
WITH SIMPLY DEVINE EVENTS, LLC IN CONJUNCTION WITH SIMPLY DEVINE
FOUNDATION (501C3) FOR THE RIVERBANK CHEESE AND WINE FESTIVAL**

WHEREAS, the City has previously entered into a contract with SS Consulting to provide event coordination for the 2020 annual Cheese and Wine Festival; and

WHEREAS, on April 27, 2021, the Riverbank City Council approved an agreement with Simply Devine Events, LLC, formerly SS Consulting, to Coordinate the 2021 Cheese & Wine Festival; and

WHEREAS, in furtherance of the partnership between the City of Riverbank and Simply Devine Events, LLC, the City desires to temporarily lease City-controlled property to Simply Devine Events, LLC Consulting for the Cheese and Wine Festival time period of October 8, 2022 through October 9, 2022; and

WHEREAS, pursuant to Government Code Sections 37380(a) and 40602(b) the City may lease property it owns or controls through an agreement signed by the Mayor.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby authorizes the Mayor of the City to execute an agreement, hereto as **Exhibit A**, with Simply Devine Events, LLC to lease the property upon which the Cheese and Wine Festival for the time period of October 8, 2022, through October 9, 2022.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of April, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Exhibit A - Copy of Lease Agreement with Simply Devine Events, LLC

TEMPORARY LEASE AGREEMENT

THIS TEMPORARY LEASE AGREEMENT (the “Lease”) is made and entered into on this 12th day of April 2022, by the City of Riverbank, a California municipal corporation (the “City”), and Simply Devine Events, LLC in conjunction with Simply Devine Foundation 501c-3). City and Lessee shall be referred to herein individually as “Party” and collectively as the “Parties”. There are no other parties to this Lease.

RECITALS

A. City desires to lease to Lessee certain real property, including any and all improvements, in the City of Riverbank, County of Stanislaus, State of California that will be used in conjunction with the services Lessee has agreed to provide for the Riverbank Cheese and Wine Festival, the scope of which is described in the Performance Agreement the City and Lessee entered into on April 12, 2022 and is attached hereto as **Exhibit A** (the “Property”); and

B. City, as a municipal corporation, may lease property it owns or controls pursuant to Government Code section 37380(a); and

C. Lessee desires to lease the Property from the City for uses related to the Riverbank Cheese and Wine Festival; and

D. This Lease does not involve a public project as defined in Public Contract Code section 20161, and does not require bidding pursuant to Public Contract Code section 20162.

NOW, THEREFORE, with reference to these recitals and on the terms and conditions contained in this Lease, City agrees to lease the Property to Lessee on the following terms and conditions:

AGREEMENT

Section 1. Recitals. The recitals above are true and correct and are hereby incorporated into and made part of this Lease by this reference. In the event of any inconsistency between the recitals and Sections 1 through 20 of this Lease, Sections 1 through 20 shall prevail.

Section 2. Effective Date. This Lease and all of its provisions shall become effective once it is executed by all of the Parties (the “Effective Date”).

Section 3. Term of Lease. The term of this Lease shall be for a period of two (2) days (“Term”) commencing at 6:00 a.m. October 8, 2022 and expiring 11:59 p.m. October 9, 2022 (“Expiration Date”). Either Party may terminate this Lease prior to the Expiration Date by providing the other Party written notice of the intent to terminate at least thirty (30) calendar days in advance of any early termination date.

Section 4. Condition of the Property. Lessee acknowledges and agrees that the Property is to be leased to Lessee in an “as is” condition with all faults. City does not make any representations

or warranties of any kind whatsoever, either express or implied, with respect to the Property, its suitability for Lessee's Intended Use (as defined below) or use of the Property or any such related matters. Lessee agrees with and represents to City, that the Property has been inspected by it and that the Lessee has been assured by means independent of City or City's agents of the truth of all facts material to this Lease and that the Property is being leased by Lessee as a result of its inspection and investigation and not of a result of any representations made by City and City's agents.

Section 5. Permitted Uses of the Property. Lessee shall use the Property for activities related to the annual Riverbank Cheese and Wine Festival as detailed in **Exhibit A**. (the "Intended Use"). Lessee shall only use the Property for the purposes provided herein or uses that are incidental, supporting and compatible with the uses provided herein.

Section 6. Changes in Permitted Uses. If Lessee desires to change the use of the Property to another use or uses, or add another use, such change in use shall require the prior written approval of the City.

Section 7. Compliance with Laws. Lessee shall promptly comply with all laws and with the requirements of any governmental authority having jurisdiction over Property, including but not limited to: the federal government, the state of California, the County of Stanislaus, all ordinances of the City, and all rules and regulations of the police and fire departments or other municipal authorities of the County of Stanislaus or the City that have authority over the premises. Lessee's compliance may include the obligation to make improvements, repairs, and alterations on the Property whether such compliance was foreseen or unforeseen. Lessee shall immediately furnish City with a copy of any notices received from any governmental agency, financial institution, insurance company, or inspection bureau pertaining to or in connection with the Premises.

Section 8. City's Access to Property. City or City's agents, representatives or employees retain the right to enter the Property at all reasonable times to determine whether Lessee is complying with the terms of this Lease, to perform any other obligation of Lessee after Lessee's failure to perform same, if Lessee defaults under this Lease, and for the purpose of doing other lawful acts that may be necessary to protect the City's interest in Property. City shall be permitted to enter on the Property, as may reasonably be necessary, in order to make improvements or do other work, or to make improvements, repairs, or maintenance to adjacent property owned by City. Nothing in this section shall imply any duty on the part of the City to make any inspection or take any action related to the Property.

Section 9. Assignment and Subleasing. Lessee shall not assign, transfer or encumber this Lease or any interest herein without the prior written consent of City. Lessee shall not sublease all or any part of the Property or allow any persons other than Lessee's agents, subcontractors or employees to use all or part of the Property without the prior written consent of City. City's consent to one assignment, sublease, occupations, or use by another person shall not be deemed to be a consent to any subsequent assignment, sublease or occupation or use by any other person. Any assignment or sublease without the prior written consent of City shall be void. City shall have the right to assign or transfer all or any part of this Lease or any rights to it at any time without Lessee's consent.

Section 10. Insurance Coverage. Lessee, and any and all of Lessee's subcontractors, shall at all times during the Lease Term maintain and keep in force insurance coverage with an insurer approved by City which will adequately protect City against liability and property damages upon the Property. The minimum coverage required by this section shall be liability insurance for two million dollars (\$2,000,000.00) per injury or occurrence. Proof of the insurance coverage obtained by Lessee shall be given to City at least thirty (30) calendar days before the Lease Term commences in the form of a Certificate of Liability issued by the insurer.

Such insurance shall also:

A. Name City and its officers, employees, agents and representatives, as additional insured by endorsement with respect to the performance of this Lease. This coverage shall contain no special limitation on the scope of its protection afforded to the aforementioned additional insured.

B. Be primary with respect to any insurance or self-insurance programs covering City and its officers, employees, agents, and representatives.

C. Contain standard separation of insured provisions.

Section 11. Indemnification of City. Lessee shall indemnify, hold harmless and defend City and City's officials, employees, agents, representatives and contractors from all liability associated with the Property or Lessee's operations, business, conduct, or management of the Property, or any act, omission, or negligence of Lessee or any other Lessee's representatives, subcontractors or invitees, pertaining to this Lease and the use of the Property contemplated herein. This indemnification shall extend and protect City against any liability, claim, suit, action or other proceeding for damage of any kind relating to the Property, directly or indirectly, allegedly suffered, incurred, or threatened including: personal injury, death, property damage, inverse condemnation, or any combination of these, regardless of whether or not such liability, claim or damage was foreseeable by City or Lessee prior to execution of this Lease.

Section 12. Termination of Lease and Remedies. In the event of any default by Lessee, in addition to any and all other rights and remedies available to City at law or in equity, City shall have the right to immediately terminate this Lease and all rights of Lessee hereunder by giving written notice to Lessee of such election by City, in the manner provided in Section 17 of this Lease. If City shall elect to terminate this Lease, then it may recover any amount permitted under California law.

Section 13. Remedies Cumulative. All rights and remedies under this Lease shall be nonexclusive of and in addition to any other remedy available at law or in equity.

Section 14. Destruction of Premises. In the event that the Lessee causes or allows the total or partial destruction of the Property, the Lessee, at its sole expense, shall repair, reconstruct or cause to repair or reconstruct any damaged property or structure of the City.

Section 15. Surrender of Property. Lessee agrees that, on expiration of the Lease Term, the Property and all attachments, fixtures and improvements thereon, shall be surrendered to City in good order, condition, and repair.

Section 16. Expenses of Enforcement. Should any legal action or proceeding be necessary to enforce or interpret this Lease, the prevailing Party shall be entitled to reasonable costs of enforcement or interpretation, including but not limited to, attorney fees, costs, disbursements, and collection costs in addition to other relief to which such Party is entitled.

Section 17. Notice. Any notice or communication required hereunder between City and Lessee must be in writing, and may be given either personally, by email, 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 email, a notice or communication shall be deemed to have been given and received upon the email timestamp of the receiving party. Notice transmitted by email after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to be 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 Third Street
Riverbank, California 95367
Attention: Sue Fitzpatrick, Director of Parks and Recreation

With courtesy copies to: City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Manager

And to: Brenner White
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Lessee: Simply Devine Events, LLC
 839 Spring Creek Dr.
 Ripon, Ca. 95366

Any Party may change their address for the purposes of this section by giving written notice of the change to the other Parties in the manner provided in this section.

Section 19. Amendments to Lease. This Lease may be supplemented, amended, or modified only by the mutual written consent of the Parties. No supplement, amendment, or modification of this Lease will be binding unless it is in writing and signed by all of the Parties. No provisions in either Party's correspondence or other business forms used by either Party will supersede or add to the terms and conditions of this Lease.

Section 20. General Provisions.

A. Time of Essence. Time is of the essence for this Lease and each provision contained within is made and declared to be a material, necessary and essential part of this Lease.

B. Partial Invalidity. If a court or an arbitrator of competent jurisdiction holds any provision of this Lease to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Lease would be defeated by the loss of the illegal, unenforceable, or invalid provision.

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

D. Headings Not Controlling. The headings in this Lease are included for convenience only and neither affect the construction or interpretation of any provision in this Lease nor affect any of the rights or obligations of the Parties to this Lease.

E. 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 Lease.

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

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

H. 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. Acceptance

by City of any performance by Lessee after the time the same was due shall not constitute a waiver by City of the breach or default of any covenant, term, or condition unless otherwise expressly agreed to by City in writing.

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

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

IN WITNESS WHEREOF, City and Lessee have duly executed this Lease, with the intention of being bound by it as of the Effective Date set forth above.

CITY:

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

By: _____
Richard D. O'Brien, Mayor

Approved as to Form:

By: _____
Tom Hallinan, City Attorney

Attest:

By: _____
Kathy L. Teixeira, Interim City Clerk

LESSEE:

Simply Devine Events, LLC

By: _____
Tamra Spade, Consultant

Date: _____

2022 Cheese & Wine Festival Boundary Map

