

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, MAY 24, 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. 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 for Mental Health Awareness Month – May 2022** - It is recommended that the City Council read and present the Proclamation to Shellie Lamar, Manager for Family Support Network and Luly Arias, Promotora for the Riverbank Community.

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 May 10, 2022 City Council and Local Redevelopment Authority Board Minutes.
- Item 9.3** Second Reading by Title Only and Adoption of Ordinance 2022-003 Approving a Development Agreement for The Heritage Collection at Sierra Street Subdivision at Sierra Street Tentative Map 01-2021 relating to real property located at 6448 Claus Road (APN 062-020-001).
- Item 9.4** Adopt a Resolution Authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361 Allowing the City to Continue a Hybrid Virtual Meeting Environment.
- Item 9.5** Adopt a Resolution Calling and Giving Notice for the Holding of a General Municipal Election to be held on Tuesday, November 8, 2022, for the By-District Elections of Councilmember District 1 and Councilmember District 3, as required by the Provisions of the Laws of the State of California relating to General Law Cities; to request the Stanislaus County Board of Supervisors to permit the County Elections Official to render Election Services to the City; and, to request the Consolidation of Said Election with the Statewide General Election Held on the Same Date.

10. PUBLIC HEARINGS – No Public Hearings Scheduled.

11. NEW BUSINESS

- Item 11.1** **Adopt a Resolution Granting an Appropriation Request for an Increase in Budget from the General Fund Reserve for Centennial Mural** - It is recommended that the City Council consider and approve a resolution appropriating an increase in an amount not to exceed \$8,000 to fund Mural Labor and Materials in celebration of the City of Riverbank Centennial. – ***This agenda item has been revised to include a new Attachment 2 B to the staff report title “Proposed Increased Budget”.***
- Item 11.2** **Adopt a Resolution Continuing the Approved River Cove River Access Closure Plan** – It is recommended that the City Council consider and adopt a resolution to continue the approved River Cove River Access Closure Plan as developed by staff.

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 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 LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code §54956.9)
Name of Case: Riverbank Land LLC v. City of Riverbank

Item 13.3 **LIABILITY CLAIMS**
(Pursuant to Government Code § 54961)
Claimant: Carlton Strauss
Agency Claimed Against: City of Riverbank

Item 13.4 **CONFERENCE WITH LABOR NEGOTIATORS**
(Pursuant to Government Code §54957.6)
Agency representative: City Manager Marisela Garcia
Employee Organizations: Riverbank Mid-Management Employee Association

14. RECONVENE – REPORT FROM CLOSED SESSION

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.

Item 14.2 Report from Closed Session on **Item 13.2**
CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Pursuant to Government Code §54956.9)
Name of Case: Riverbank Land, LLC

Item 14.3 Report from Closed Session on **Item 13.3**
LIABILITY CLAIMS
(Pursuant to Government Code § 54961)
Claimant: Carlton Strauss
Agency Claimed Against: City of Riverbank

Item 14.4 Report from Closed Session on **Item 13.1**
CONFERENCE WITH LABOR NEGOTIATORS
(Pursuant to Government Code §54957.6)
Agency representative: City Manager Marisela Garcia

Employee Organizations: Riverbank Mid-Management Employee Association

15. ADJOURNMENT

- The next regular City Council meeting will be on June 14, 2022 at 6:00 p.m.

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted 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 19th day of May, 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

JOIN THE MEETING VIA ZOOM PLATFORM

- Join by this link: <https://us02web.zoom.us/j/83431226314>
- Join by accessing website: <https://zoom.us/join>, enter **Webinar ID: 83431226314**
- Join by telephone: **1 669 900 9128 or 1 346 248 7799, plus Webinar ID: 83431226314**

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:	May 24, 2022
Subject:	Proclamation – Mental Health Awareness Month – May 2022
From:	Marisela H. Garcia, City Manager
Submitted by:	Gaby Hernandez, Confidential Assistant

RECOMMENDATION

It is recommended that the City Council read the Proclamation for Mental Health Awareness Month – May 2022; and present to Shellie Lamar, Manager for Family Support Network and Luly Arias, Promotora for the Riverbank Community.

SUMMARY

Mental Health Awareness month began in the United States in 1949 and was started by the Mental Health America (MHA) organization (then known as the National Association for Mental Health). During the month of May, MHA, its affiliates and other organizations interested in mental health, conduct a number of activities which are based on a different theme each year. Displaying or wearing the color green (green ribbon) can show others that you care about mental health. It can also be worn in memory of a loved one. The focus of this effort is to promote the importance of good mental health, well-being and stigma reduction within communities, individuals and families. Mental Health Awareness Month is observed by using social media platforms, collaborating with local partners, and events. Family Support Network in partnership with Promotores /Community Health Outreach workers play a critical role in promoting community-based health education and prevention, particularly in communities historically underserved by the U.S. healthcare system. Promotores are indigenous to Latino immigrant communities they serve, speak the same language, are intrinsically involved in the host community, and are committed to providing “servicio de Corazon” (heartfelt service).

FINANCIAL IMPACT

There is no financial impact with the report.

ATTACHMENT

1. Proclamation



**CITY OF RIVERBANK
PROCLAMATION**

**MENTAL HEALTH AWARENESS
MONTH, MAY 2022**

WHEREAS, Family Support Network has been serving the Riverbank community since 1993; and

WHEREAS, our mission is to improve the wellbeing of families and the community by providing increased access to resources and services that support mental health, wellness, Prevention and early intervention as well as health education classes, parent support groups and school readiness programs in English and Spanish; and

WHEREAS, our vision is to sustain on-going advocacy for bringing critical services to underserved populations in our communities through locally accessible activities, bilingual staff, and a trusted safe place for individuals and families to ask for and receive information and support that is culturally appropriate;

WHEREAS, the green ribbon is the international symbol for mental health awareness; and

WHEREAS, the focus of this effort is to promote the importance of good mental health, well-being and stigma reduction within communities, individuals and families.

NOW, THEREFORE, LET IT BE RESOLVED that the City Council of the City of Riverbank hereby proclaims May 2022 as Mental Health Awareness Month.

May 24, 2022

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.1

SECTION 9: CONSENT CALENDAR

Meeting Date:	May 24, 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:	May 24, 2022
Subject:	Approval of the May 10, 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 May 10, 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 May 10, 2022, City Council and Local Redevelopment Authority Board Minutes.

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



MINUTES

TUESDAY, MAY 10, 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 - Councilmember District 1 Luis Uribe called the meeting to order at 6:04 p.m.

2. FLAG SALUTE - Councilmember District 1 Luis Uribe led the pledge of allegiance.

3. INVOCATION – Pastor Randy Richardson provided the invocation.

4. ROLL CALL

Interim City Clerk Teixeira announced Vice Mayor Campbell and Mayor O'Brien are out on an excused absence therefore, Councilmember District 1 Luis Uribe will preside over the meeting.

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

Council Member / Authority Member District 4 Darlene Barber-Martinez

Members of the City Council / Local Redevelopment Authority Absent and Excused:

Vice Mayor / Vice Chair (CM-D03) Cal Campbell

Mayor / Chair Richard D. O'Brien

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.

Councilmember Uribe opened Public Comment at 6:08 p.m.

Vicki Holt, Riverbank Library Branch Manager reported on upcoming free events and programs offered at the library including:

- In-person Story Time on Tuesdays at 11:00 a.m., featuring both English and Bilingual story times; noting space is limited she advised customers will need to sign up online at stanislauscountylibrary.org to secure a space.*
- A monthly Master Garden Class will begin Wednesday, May 11, at 6:00 p.m.*
- Summer Reading Challenge open to all ages, children to adults; begins May 17, and ends August 2.*
- California State Park Passes, which may be used at over 200 State parks, good for two weeks are available for checkout by customers. Customers will need to reserve passes on an online hold list at stanislauscountylibrary.org*
- A Ukulele Kit is available for checkout.*
- The Library Book Club returned in January 2022. This month's book is One Hundred Years of Solitude by Gabriel García Márquez. Discussion is scheduled for May 3, at 4:00 p.m.*

There being no further public comments, Councilmember Uribe closed Public Comments at 6:11 p.m.

8. PRESENTATIONS (Informational only) – None Scheduled.

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 April 26, 2022 City Council and Local Redevelopment Authority Board Minutes.

Item 9.3 Adopt Resolution 2022-045 Approving the Transportation Development Act Local Transportation Fund (LTF) Non-Transit Claim for Fiscal Year 2021/2022 Other Purposes and Amending the Budget for the City of Riverbank to Conform to Said Claim.

ACTION: *By motion moved and seconded (Barber-Martinez / Hernandez / passed 3/0) to approve Consent Calendar Items 9.1 through 9.3, as presented. Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Uribe, Hernandez and Barber-Martinez
NAYS: None / ABSENT: Vice Mayor Campbell, and Mayor O'Brien /
ABSTAINED: None*

10. PUBLIC HEARINGS

Item 10.1: First Reading and Introduction by Title Only of an Ordinance Approving a Development Agreement (DA) for The Heritage Collection at Sierra Street Subdivision Development Agreement No. 03-2021 (Dept. File #21-0021) – SCM Hearthstone LLC, The Heritage Collection at Sierra Street Subdivision - 6448 Claus Road (APN 062-020-001). The project site has a General Plan Land Use Designation of Medium Density Residential (MDR) and is zoned Planned Development (PD). The adoption of a Development Agreement is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines. The Planning Commission, with a vote of 5/0 at their meeting of April 19, 2022, recommended approval of the DA to the City Council – It is recommended that the City Council open the public hearing, accept public testimony and Introduce and Waive the First Reading of Ordinance 2022-____, for a Development Agreement which extends the life of approved The Heritage Collection at Sierra Street Tentative Map 01-2021 relating to real property located at 6448 Claus Road (APN 062-020-001). *The Public Hearing Notice was published in the Riverbank News on April 27, 2022.*

The time being 6:13 p.m., Councilmember Uribe opened the public hearing requesting staff's report.

Planning and Building Manager Kenney presented a comprehensive staff report and PowerPoint Presentation recommending the City Council approve the request by SCM Hearthstone LLC to waive the first reading and introduce by title only an Ordinance approving a Development Agreement (DA) for The Heritage Collection at Sierra Street Subdivision Development Agreement No. 03-2021 (Dept. File #21-0021) for property located at 6448 Claus Road (APN 062-020-001) and known as – SCM Hearthstone LLC, The Heritage Collection at Sierra Street Subdivision.

Councilmember Uribe asked if there was any public comment. There being no public comment; Councilmember Uribe closed the public hearing at 6:23 p.m. and brought the item back to the Council for action.

ACTION: *By motion moved and seconded (Uribe / Barber-Martinez / passed 3/0) to approve the first reading and introduction of the proposed Ordinance approving a Development Agreement (DA) for The Heritage Collection at Sierra Street Subdivision Development Agreement No. 03-2021 (Dept. File #21-0021) – SCM Hearthstone LLC, The Heritage Collection at Sierra Street Subdivision - 6448 Claus Road (APN 062-020-001). Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Uribe, Barber-Martinez, and Hernandez
NAYS: None / ABSENT: Vice Mayor Campbell and Mayor / Chair O'Brien /
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 Clerk Teixeira advised there were no new items to report on at this time.

Item 12.2 Council/Authority Member

Councilmember Hernandez she and Councilmember Barber-Martinez had recently attended a legislative meeting. She reported recognizing that affordable housing is necessary both she and Councilmember Barber-Martinez shared their support for the State budget request for affordable housing.

Councilmember Barber-Martinez added to Councilmember Hernandez's report stating, also discussed was funding for homeless services particularly mental health. In conclusion, she advised that Councilmember Hernandez and herself will be attending the League of California Cities City Leaders Summit May 11, through May 13.

Councilmember Uribe reported on the following:

- *May is Mental Health Awareness Month.*
- *This Saturday, May 14, 2022, at 9:30 a.m., YAFT (Young Adults Fighting Tobacco) and YAAB (Young Adults Advisory Board), the Sierra Club and Stanislaus Climate Action will assemble at the community center park to pick up cigarette butts and trash in the surrounding streets. There will be approximately 30 youths involved in this event. Anyone wishing to participate is invited to come on out to assist.*
- *On Tuesday, May 17, at 6:30 p.m., the Riverbank Historical Society will be hosting a book launch event *The Peach Rebellion*, a fictional book which takes place in Modesto, Riverbank and Oakdale. Proceeds from this event will benefit the Riverbank Historical Museum.*

Item 12.3 Mayor/Chair

Due to absence of the Mayor O'Brien, there were no comments.

13. ADJOURNMENT OF THE REGULAR MEETING

There being no further business, Councilmember Uribe adjourned the regular meeting at 6:26 p.m. to the next regular scheduled City Council / LRA Meeting of May 24, 2022.

ATTEST: (Adopted 05/24/2022)

APPROVED:

Kathy L. Teixeira
Interim City Clerk / LRA Recorder

Luis Uribe
Councilmember District 1

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.3

SECTION 9: CONSENT CALENDAR

Meeting Date:	May 24, 2022
Subject:	Second Reading by Title Only of Ordinance 2022-003 Approving a Development Agreement for The Heritage Collection at Sierra Street Subdivision
From:	Marisela H. Garcia, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council approve Ordinance No. 2022-003 (Attachment 1) for a Development Agreement which extends the life of approved The Heritage Collection at Sierra Street Tentative Map 01-2021 relating to real property located at 6448 Claus Road (APN 062-020-001).

SUMMARY

The proposed project consists of a Development Agreement ("DA", Attachment 2), which extends the life of TM 01-2021 of a forty-seven (47) lot single-family residential subdivision with an overall density of 8.13 du/net acre. The project site currently has a General Plan Land Use designation of Medium Density Residential (MDR) and is zoned Planned Development (PD). The Planning Commission, with a vote of 5-0 at their regular meeting of April 19, 2022, recommended that the City Council approve the Development Agreement with Resolution 2022-003 (Attachment 3). The City Council at their regular meeting of May 10, 2022 voted 3:0 to approve the ordinance.

BACKGROUND

The project site of The Heritage Collection at Sierra Street ("Heritage") is situated on the eastern side of Riverbank and is bounded by the Diamond Bar West subdivision to the north; ranchettes to the east; the railroad tracks to the south with Riverbank High School across Patterson Road; and a vacant parcel to the west with single-family residential across Claus Road. The formal address of the proposed project site is 6448 Claus Road. The project site is vacant with no improvements of value. Riverbank High School is

located south of the site across Patterson Road. Before 2021, the subject parcel had a General Plan designation of Community Commercial (CC) with General Commercial (C-2) zoning.

A. Tentative Map 01-2021

Tentative Map 01-2021 is a small lot single-family residential subdivision. The lot sizes are less than the R-1 zone standard size of 6,000 square feet; therefore, the property was approved in 2021 for a rezone to PD which accommodates the smaller lots. The lots range in size from 3,662 square feet to 6,743 square feet.

Tentative Map 01-2021 was first approved by the Planning Commission on August 17, 2021 and then by the City Council on September 28, 2021 (after they approved the Rezone request). The following findings were made by both bodies:

1. The proposed map is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the adopted Conditions of Approval remain.*
2. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the approved Conditions of Approval which relate to connectivity, sidewalks, and the provision of amenities remain.*
3. The site is physically suitable for the type of development. *The site is suitable for a new subdivision of this type.*
4. The site is physically suitable for the proposed density of the development. *The site is physically suitable for a proposed density of 8-16 dwelling units per net acre.*
5. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitats. *The design of the subdivision should not injure fish, wildlife, or their habitats, none of which are present on the site.*
6. The design of the subdivision or the type of improvements is not likely to cause serious public health problems. *The design of the subdivision should not cause serious health problems.*
7. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through, or use of, property within the proposed subdivision. In this connection, the City Council may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This division shall only apply to easements of record or to easements established by

judgement of a court of competent jurisdiction. *The design of the subdivision should not conflict with any easements of record.*

B. Architecture and Site Plan Review

The Architecture and Site Plan Review for The Heritage was approved by the Planning Commission on August 17, 2021 pursuant to Section 153.095 (G) of the City of Riverbank Code of Ordinances. The design of the project is a small lot, compact, detached single-family residential subdivision. The proposed lot sizes vary. The typical minimum interior lot size dimensions are 40 feet by 80 feet. The typical minimum corner lot size dimensions are 45 feet by 80 feet. The minimum lot size proposed for the subdivision is 3,720 square feet and the maximum lot size proposed is 6,743 square feet. There are four (4) floor plan models, two (2) architecture types: Craftsman and Cottage, and six (6) color schemes.

C. Transportation and Circulation

The Heritage project is required to improve portions of Sierra Street and Central Avenue to be consistent with the City's Circulation Element Street Design Standards.

D. Stormwater Basin

The City developed LID guidelines due to storm water discharge standards implemented by the State of California through the MS4 permit process. The Heritage property owner intends to enter into an agreement with the developer of Diamond Bar East to use their stormwater basin to be located at the corner of Snedigar Road and Patterson Road, just north of the railroad tracks. This will be accomplished by running stormwater pipes east to the basin, using an acquired easement in future Sierra Street. The basin will be a dual use basin with a walking path/exercise stations along the rim and a shade structure with picnic tables, grills, and enhanced landscaping.

E. Park-in-lieu Fee

Pursuant to RMC Section 11-3-12(c), the Project has an obligation to dedicate park land or pay a park-in-lieu fee. The developer has not set aside land for a park so must pay the fee. The obligation for this project is 0.43 acres to be paid based on values of land at the time the Final Map is recorded. A recent appraisal by another developer shows an acre of residential/park land is valued at \$130,000 per acre. Therefore, if this does not change by Final Map, the project will owe \$55,900 in park in-lieu fees for the forty-seven (47) houses (\$1,140 per unit).

Development Agreement

A. Term

A development agreement vests the rights of the developer. The term of the Development Agreement is five (5) years unless the agreement is terminated, modified, or extended.

The developer may request to extend the term of the agreement one time for the length of five (5) years. The City Council may approve the extension which would then be recorded on the property in the official records of Stanislaus County.

B. System Development Fees

Developer shall pay all fees subject to the Mitigation Fee Act, Government Code section 66000 *et seq.*, including System Development Fees, impact fees, connection fees, public facilities fees or similar fees adopted by the City, and all other fees imposed as conditions of approval of the Property. City and Developer have agreed in concept to System Development Fee credits attributable to Developer.

ENVIRONMENTAL DETERMINATION

The adoption of a Development Agreement is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines. All Mitigations and Conditions of Approval on the project will continue to apply during the life of the proposed Development Agreement.

PUBLIC NOTICE

On April 25, 2022, public notices for the City Council hearing were mailed to interested parties and property owners within 300 feet of the project location. The Planning Commission hearing notice was placed on the City's website on April 25, 2022. It was also posted at City Hall North, South, the post office and sent to the library on April 25, 2022. The subject property was posted by the applicant on April 5, 2022. The public notice was published in the Riverbank News on April 27, 2022.

ATTACHMENTS

Attachment 1 – Draft Ordinance No. 2022-003

Attachment 2 – The Heritage Collection at Sierra Street Development Agreement

Attachment 3 – Planning Commission Resolution No. 2022-003 (with no attachments)

**CITY OF RIVERBANK
ORDINANCE 2022-003**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING DEVELOPMENT AGREEMENT NO. 03-2021 FOR THE HERITAGE
COLLECTION AT SIERRA STREET SUBDIVISION (APN 062-020-001)**

WHEREAS, SCM Hearthstone, LLC, which proposes to develop 47 residential lots in the City of Riverbank ("City") and related public improvements, is requesting to extend by Development Agreement the life of Tentative Map 01-2021, a subdivision known as The Heritage Collection at Sierra Street ("The Heritage" or "Project"); and

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

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

WHEREAS, On September 28, 2021, the City Council adopted Ordinance No. 2021-006, approving a rezone of 12.27 acres to Planned Development and allowing for a net density of eight to sixteen (8-16) dwelling units per net acre; and

WHEREAS, On September 28, 2021, the City Council adopted Resolution No. 2021-048, approving Tentative Map 01-2021 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 47 residential lots on 12.27 acres; and

WHEREAS, the City of Riverbank Planning Commission held a duly noticed public hearing on Tuesday, April 19, 2022 to consider The Heritage Development Agreement and provided their recommendation of approval to the City Council with a vote of 5-0; and

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

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on May 10, 2022 to consider the introduction of The Heritage at Sierra Street Development Agreement for first reading and with a 3:0 vote approved it for a second reading; and

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

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

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

Section 1: The City Council of the City of Riverbank approves a Development Agreement by and between SCM Hearthstone LLC and the City of Riverbank relating to the development known as “The Heritage Collection at Sierra Street” located on the following APN: 062-020-001.

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

Section 3: Notice of the public hearing on the proposed Development Agreement Ordinance was published in the Riverbank News, a newspaper of general circulation, on April 27, 2022; and Notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor’s roll, on April 25, 2022.

Section 4: Pursuant to the California Environmental Quality Act (CEQA) environmental impacts relating to the Project were evaluated in the Notice of Exemption adopted on September 28, 2021, when the City Council approved a Tentative Map and Rezoning for the Project. Pursuant to CEQA Guidelines Section 15378, the Development Agreement is within the purview of The Heritage Project, for which environmental impacts have already been reviewed. Thus, approval of the Development Agreement does not require further environmental review.

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

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

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on May 10, 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 24th day of May 2022; motioned by Councilmember _____, seconded by Councilmember _____; moved said ordinance by a City Council vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

Tom P. Hallinan
City Attorney

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

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

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

(Space above line for recorder's use only)

APN: 062-020-001

DEVELOPMENT AGREEMENT BY AND BETWEEN THE

CITY OF RIVERBANK

AND

SCM HEARTHSTONE, LLC

RELATING TO THE DEVELOPMENT KNOWN AS THE

“The Heritage Collection at Sierra Street”

Adopted by City Council Ordinance No. 2022-____
on _____, 2022

DEVELOPMENT AGREEMENT

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

This Agreement is made with reference to the following facts:

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Government Code section 65864 *et seq.* (the “Development Agreement Statute”), which authorizes the City to enter into a development agreement with any persons and entities having a legal or equitable interest in real property, to provide for the development of such property and establish certain development rights therein. The Parties acknowledge on their own behalf that each has: (i) negotiated the terms and conditions of this Agreement in good faith; (ii) extensively reviewed the terms and conditions of this Agreement; and (iii) found the terms and conditions of this Agreement to be fair, just and reasonable. Additionally, City acknowledges that this Agreement is consistent with City’s General Plan and that buildout of the Project, including the Infrastructure Improvements, in accordance with this Agreement, will provide substantial benefits to City furthering important public health, safety and welfare interests while eliminating uncertainty in planning, and facilitating progressive installation of necessary Infrastructure Improvements to serve the Project.

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

C. Developer represents that, as of the recordation of this Agreement, it will have a legal or equitable interest to land consisting of approximately 12.27 acres, as shown on the tentative map attached hereto as **Exhibit A**, and legally described in **Exhibit B** (the “Property”).

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

(i) On September 28, 2021, the City Council adopted Ordinance No. 2021-006, to approve a Rezone for the project site (APN 062-020-001) from General Commercial (C-2) to Planned Development (PD);

(ii) On September 14, 2021, the City Council adopted Resolution No. 2021-084, approving Tentative Subdivision Map 01-2020 (“The Heritage Collection at Sierra Street Tentative Map”, “The Heritage Map”) and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 47 residential lots on 12.27 acres;

(iii) On August 17, 2021, the Planning Commission adopted Resolution No. 2021-017 approving Architecture and Site Plan Review 02-2021 for the site plan and elevations for The Heritage Collection at Sierra Street;

(iv) On April 19, 2022, the Planning Commission adopted Resolution No. 2022-003 with a vote of 5-0 to recommend approval of the Development Agreement to the City Council for The Heritage Collection at Sierra Street.

E. The City finds that Pursuant to the California Environmental Quality Act, the Project’s forty-seven (47) residential lots are exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects. The project is consistent with the (a) General Plan and its (b) EIR, (c) existing utility services are available to serve the project, (d) the project has no wetlands or value as wildlife habitat, (e) the project site is not on any environmental clean-up list, (f) the site and surrounding properties do not have the potential of exposure to future residents of hazardous substances, (g) the project will not have a significant effect on historical resources, (h) the site is not within an earthquake fault zone or subject to wildland fires, landslides or flooding, (i) the site is not within a developed open space area, and (j) the site is not located within the boundaries of a state conservancy. The City has determined as an exempt project under CEQA, no further environmental review is required on the residential lots.

F. Developer has proposed to develop the Property into forty-seven (47) residential lots, and related public improvements in conformance with the provisions of this Agreement and the Project Approvals (the “Project”).

G. Subsequent to the approval of this Agreement, City and Developer understand that additional land use approvals, entitlements and permits may be necessary to implement the Project (“Subsequent Approvals”). The Subsequent Approvals will include, but may not be limited to, a System Development Fee Reimbursement Agreement, a draft copy of which is attached hereto for reference as **Exhibit D**. As the Developer will be financing or completing all Improvements prior to recordation of Final Map, the Parties hereby agree that a Subdivision Improvement Agreement is not required.

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

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

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

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

ARTICLE 1 DEFINITIONS

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

1.01. “Agreement” means this Development Agreement entered into by and between the City and Developer relating to the development known as “The Heritage Collection at Sierra Street”.

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

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

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

1.05. “Conditions of Approval” shall mean the consolidated conditions of approval for the Project, attached, and incorporated hereto as **Exhibit C**.

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

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

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

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

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

consent of Developer, (d) limit the number of final occupancies issued by the City; or (e) any combination of the foregoing.

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

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

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

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

1.15. “Property” shall mean 12.27 acres of real property in the City of Riverbank and the County of Stanislaus, State of California, as shown on the Tentative Map in **Exhibit A**.

1.16. “Heritage Tentative Map” shall refer to the Tentative Subdivision Map for the Project, as approved by the City Council on September 14, 2021 by Resolution No. 2021-084, attached and incorporated hereto as **Exhibit A**, which may be amended from time to time in compliance with this Agreement.

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

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

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

ARTICLE 2 GENERAL PROVISIONS

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

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

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

- Exhibit A: The Heritage Collection at Sierra Street Tentative Map
- Exhibit B: Legal Description of Property
- Exhibit C: Conditions of Approval
- Exhibit D: Draft System Development Fee Reimbursement Agreement
- Exhibit E: System Development Fee Charts
- Exhibit F: Draft Assumption and Assignment Agreement

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

2.05. Term.

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

(b) Extension. Developer may request to extend the Term of the Agreement one time for the length of five (5) years. The City Council may approve a one-time extension. If approved, the extension shall be recorded on the Property in the official records of Stanislaus County.

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

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

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

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

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

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

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

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

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

3.03. Priority of Enactment. The Parties intend that this Agreement, together with the Project Approvals, shall serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to the development of the Project. In the event of conflict between various documents referenced in this Agreement, the Parties agree that the

following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) the Development Agreement; (2) the Project Approvals; (3) the General Plan; and (4) the ordinances, resolutions, policies and regulations adopted by the City in effect on the Effective Date including the ordinances governing the permitted uses of land, the density and intensity of uses, the timing of development, and the design, improvement, construction standards, policies and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the zoning ordinance and all other ordinances, codes, rules, policies and regulations of the City.

3.04. Character Design. Each home built as part of the Project shall conform to the Community and Character Design elements of the General Plan, specifically the policies of Goal Design-3, 4, and 5. The design of each home shall comply with Architecture and Site Plan Review 02-2021, approved by the Planning Commission on August 17, 2021.

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

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

3.07 Subdivision Maps.

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

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

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

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

(b) Changes Mandated by Federal or State Law. As provided in section 65869.5 of the Development Agreement Statute, this Agreement shall be modified or suspended as necessary to comply with state or federal laws or regulations enacted after the Effective Date, which prevent or preclude compliance with one or more provisions of this Agreement. Upon

discovery of a subsequently enacted and conflicting state or federal law, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of City Law or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law. In such discussions, City agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such state or federal law and that such proposed changes shall be deemed to be consistent with this Agreement without further need for any amendment to this Agreement or the Project Approvals.

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

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

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

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

(g) City Ordinances of General Applicability. The City may apply to the Project any subsequently enacted ordinances, only if all of the following conditions apply: (i) such subsequently enacted ordinances or guidelines have general applicability to all other relevant

parcels within the City; (ii) such ordinances are not in direct conflict with the adopted ordinances or guidelines that were in effect on the Effective Date, and (iii) the application of such ordinances or guidelines would not prevent development, or significantly increase the cost of development, of the Project.

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

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

ARTICLE 4 FEES, COSTS AND REIMBURSEMENTS

4.01. Processing and Inspection Costs. Developer shall pay those processing, inspection and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developer hereunder.

4.02. City Impact Fees. Except as provided in this Agreement, Developer shall pay all fees subject to the Mitigation Fee Act, Government Code section 66000 *et seq.*, including System Development Fees, impact fees, connection fees, public facilities fees or similar fees adopted by the City, and all other fees imposed as conditions of approval of the Property ("Fees"), as of the Effective Date of this Agreement. New Fees enacted after the Effective Date of this Agreement

shall not be imposed upon the Project. Notwithstanding the above, Fees adopted prior to the Effective Date of this Agreement applicable to the Project may be increased or reduced, provided that such revised fees (a) must be reasonable, (b) have a direct nexus to development of the Property and Project, (c) apply generally to similar private projects or works within the City, and (d) the application of any such fee to the Property shall not require an amendment to this Agreement or any Project Approvals.

4.03. System Development Fee Credits. City and Developer have agreed in concept to System Development Fee credits or reimbursements attributable to Developer, as provided in the agreement attached as **Exhibit D** (the “System Development Fee Reimbursement Agreement” or “Reimbursement Agreement”). City shall review, consider and remit fee credits and reimbursements attributable to Developer consistent with the City’s System Development Fee (“SDF”) program. City may update its SDF program to incorporate a sewer capacity fee, to update the traffic fee, and/or to update the community park component of the parks fee. Updates to the City’s SDF program fees must occur within two (2) years after the Effective Date of this Agreement to be applicable to the subject Property. In no event, however, shall City adopt or increase the SDF fee for sewer capacity, traffic, or the community park component of the parks fee by more than twenty-five percent (25%) of the current SDF amounts shown on **Exhibit E** (“Eligible Project Specific Reimbursements”) attached hereto. In the event the City Manager reasonably determines that the existing sewer infrastructure is inadequate to serve the Project, the City may increase the SDF fees to cover such improvements, but shall not exceed fifty percent (50%) of the current SDF amounts for sewer shown in **Exhibit E**, or increase any other SDF category within the program, except sewer capacity, traffic and parks. The SDF fee for sewer capacity, traffic and parks may be subject to an annual escalation for inflation commencing five (5) years after the Effective Date, provided that in no event shall escalation exceed three percent (3%) per annum. In addition, no SDF fee increase shall apply to any property for which the Developer has previously paid, requested a credit of such SDF fee(s), or pulled a building permit for such property or building.

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

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

ARTICLE 5 IMPROVEMENTS, SERVICES AND UTILITIES

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

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

5.03 Subdivision Improvement Agreement. As the Developer will be financing or completing all Improvements prior to recordation of Final Map, the Parties hereby agree that a Subdivision Improvement Agreement is not necessary.

5.04 Storm Drainage Improvements. Developer agrees to construct storm drainage improvements which shall be a condition to recording the final map. These improvements will stub out at the Diamond Bar East basin.

5.05 Parkland. Developer is not constructing a park and is required to pay standard park fees and a park-in-lieu fee.

ARTICLE 6 CITY OBLIGATIONS

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

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

ARTICLE 7 DEFAULT, REMEDIES, TERMINATION

7.01. General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. Any Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may terminate this Agreement and institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement. In no event shall either Party be liable to the other for consequential damages for any default or breach of this Agreement.

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

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

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

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

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

ARTICLE 8 INDEMNIFICATION

8.01. Indemnification. Developer hereby agrees to indemnify the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from Developer or Developer's contractors, subcontractors,

agents or employees operations under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's contractors or subcontractors. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action.

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

ARTICLE 9 ASSIGNMENT; MORTGAGEE PROTECTION

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

9.02. Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.01 above, no mortgagee shall have any affirmative obligation or duty under this Agreement to construct or complete improvements, or to guarantee such construction or completion. A mortgagee who takes lawful possession of the Property shall, however, assume any or all development rights consistent with any vested rights and this Agreement. Foreclosure under a mortgage, deed of trust, deed in lieu of foreclosure or sale following foreclosure or deed in lieu of foreclosure is permitted without the consent of the City. Following its acquisition of all or a portion of the Project, such holder of any mortgage or deed of trust, or any successor in interest thereto, shall be entitled to the benefits of this Agreement, shall be bound by its terms and obligations, and shall have standing to enforce the provisions of this Agreement, including the terms and conditions of Project Approvals which pertain to the Project or such portion thereof in which it holds an interest. Any such holder or successor who comes into possession of the Project, or any portion thereof, shall take the Project, or such portion thereof, subject to any claims for payments or charges against the Project or such

portion thereof, which accrue under this Agreement or Project Approvals prior to the time such holder or successor comes into possession of the Project or such portion thereof. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder or successor to devote the Project, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by Project Approvals and this Agreement, subject to all of the terms and conditions of this Agreement.

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

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

ARTICLE 10 GENERAL

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

10.02. Project is a Private Undertaking. Both Parties acknowledge that the Project is a private development. No partnership, joint venture or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

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

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

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

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

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

10.08. Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

10.09. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight

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

If to City:	City of Riverbank 6707 3rd Street Riverbank, CA 95367 Attn: City Manager
With a copy to:	Brenner White LLP 1414 K Street, 3 rd Floor Sacramento, CA 95814 Attn: Douglas L. White, Esq.
With a copy to:	Neumiller and Beardslee c/o Rod A. Attebery Po Box 20 Stockton CA 95209
If to Developer:	SCM Hearthstone LLC 1920 Standiford Avenue, Suite 1 Modesto, CA 95350

10.10. Prevailing Wage. Developer shall be solely responsible for determining whether construction of any or all of the improvements required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that the payment of prevailing wages is required, Developer shall use diligent good faith efforts to ensure full compliance with those requirements. Developer shall defend, indemnify and hold harmless City, its agents, employees, officers and officials from any liability, loss, debts, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section shall survive the termination of this Agreement.

10.11 Project is a Private Undertaking. It is specifically understood and agreed to by and between the Parties that: (1) each and every phase the Project is a private development; (2) City has no interests or responsibilities, or duty to third parties, concerning any improvements until such time and only until such time that City accepts any dedications or Infrastructure Improvements pursuant to the provisions of this Agreement or in connection with the Project

Approvals; (3) Developer shall have full power over and exclusive control of the Subject Property, subject only to the limitations and obligations of Developer under this Agreement; and (4) Developer is not an agent of the City, and City is not an agent of Developer, and neither Party shall be considered to be in a joint-venture with the other Party. If any provision of this Agreement results in an obligation of either Party under state or federal law that is contrary to the intent of the Parties expressed herein, said provision shall be invalidated and severed from the Agreement and the rest of the Agreement shall remain in full force and effect.

10.12 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in the Superior Court of Stanislaus County.

10.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all negotiation or previous agreements between the Parties with respect to the development and buildout of the Project. To the extent there are conflicts or inconsistencies between this Agreement and any prior agreement, map approval, permit or conditions of approval, the provisions of this Agreement shall prevail. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Developer. All amendments, which are authorized in the manner provided by law, must be in writing, signed by the appropriate authorities of City and Developer, in a form suitable for recording by the Stanislaus County Clerk-Recorder. Any such amendments shall be promptly recorded.

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

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

10.16 Attorneys' Fees. Should any action or dispute arise concerning the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including, without limitation, attorneys' fees on any appeal, reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary or appropriate costs incurred in the action.

10.17 Covenants Run with the Land. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Subject Property and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project and the Subject Property, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

10.18 Estoppel Certificate. Developer may, and from time to time, deliver written notice to City requesting City to certify in writing that, to the best knowledge of City: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, or if so amended or modified, identifying the amendments or modifications; and (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature of such default. City shall execute and return such certificate within fifteen (15) business days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer. Costs incurred by City in preparing any estoppel certificate requested by Developer shall be reimbursed by Developer.

[Signatures on following page]

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

CITY	DEVELOPER
The City of Riverbank, a California municipal corporation	The Heritage Collection at Sierra Street
By: _____ Richard D. O'Brien, Mayor	By: _____ Steve Mothersell, President
Date: _____	
APPROVED AS TO FORM:	
By: _____ Tom Hallinan, City Attorney	
ATTEST:	
By: _____ City Clerk	

EXHIBIT A

The Heritage Collection at Sierra Street Tentative Map

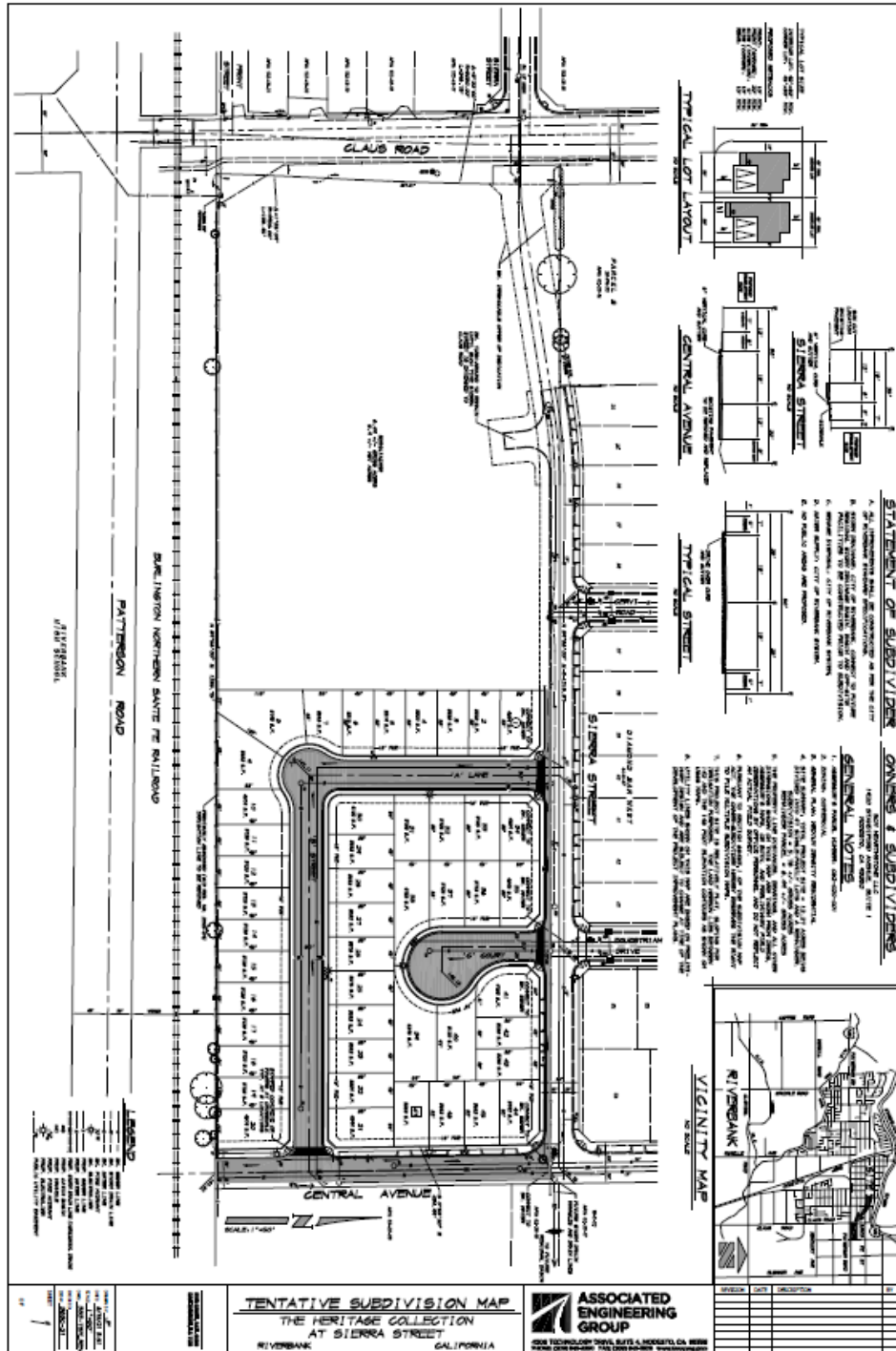


EXHIBIT B

Legal Description of Property

Real Property in the City of Riverbank, County of Stanislaus, State of California, described as follows:

PARCELS A, B, C, AND D, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED APRIL 18, 1975, IN BOOK 21 OF PARCEL MAPS, AT PAGE 13, STANISPAUS COUNTY RECORDS.

PROPERTY ADDRESS: 6448 Claus Road, Riverbank, CA 95367

APN: 062-020-001-000

DRAFT

EXHIBIT C

Conditions of Approval

City of Riverbank
Planning Commission
Resolution No. 2021-016

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY
OF RIVERBANK RECOMMENDING APPROVAL OF THE
REQUEST OF SCM HEARTHSTONE LLC FOR TENTATIVE MAP 01-
2021 TO SUBDIVIDE 12.27± ACRES INTO 47 PLANNED
DEVELOPMENT SINGLE FAMILY RESIDENTIAL LOTS AND A
REMAINDER LOT, LOCATED AT 6448 CLAUS ROAD APN: 062-020-
001**

WHEREAS, an application has been received from SCM Hearthstone LLC, with a proposal to subdivide approximately 12.27± acres into forty-seven (47) single family lots and a remainder lot (6.49 gross acres), which allows for a net density of eight to sixteen (8-16) dwelling units per acre; and

WHEREAS, the City Subdivision Ordinance, Section 152.037 states that as a condition of approval of a tentative map, the subdivider shall dedicate and develop parkland, pay a fee in lieu thereof, or both, at the option of the City. In this case the City has chosen to accept the payment of an in-lieu fee for parkland dedication based on values of land at the time the Final Map is recorded. The obligation for this project is the value of 0.43 acres;

WHEREAS, the proposed tentative map is consistent with the following General Plan policies discussed in the staff report: DESIGN-2.7 (sidewalks), DESIGN-3.1 (continuity), DESIGN-3.2 (pedestrian-friendly), DESIGN 5.2 (eyes on the street), CONS-4.2 (stormwater); and

WHEREAS, Tentative Map 01-2021 was reviewed by the Riverbank Planning Commission at a regular meeting held on August 17, 2021 in the manner prescribed by law; and

WHEREAS, The Riverbank Planning Commission recommends approval of the requested Tentative Map dated June 15, 2021 prepared by Associated Engineering Group, Inc. and modified by adopted Conditions of Approval, and incorporated herein as a part of this Planning Commission Resolution; and

WHEREAS, The Planning Commission of the City of Riverbank hereby finds and adopts the following findings:

- A. The project is consistent with the General Plan with modification by the adopted conditions of approval.
- B. Notice to the general public and adjoining neighbors in the time and in the manner required by State Law and City Code was provided.

Riverbank Planning Commission
August 17, 2021
Resolution No. 2021-016
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REIMBURSEMENT AGREEMENT

- C. The City finds that Pursuant to the California Environmental Quality Act, the proposed Tentative Map is exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects. The project is consistent with the (a) General Plan and its (b) EIR, (c) existing utility services are available to serve the project, (d) the project has no wetlands or value as wildlife habitat, (e) the project site is not on any environmental clean-up list, (f) the site and surrounding properties do not have the potential of exposure to future residents of hazardous substances, (g) the project will not have a significant effect on historical resources, (h) the site is not within an earthquake fault zone or subject to wildland fires, landslides or flooding, (i) the site is not within a developed open space area, and (j) the site is not located within the boundaries of a state conservancy.
- D. The approval of Tentative Map 01-2021 to divide parcel APN 062-020-021 (12.27± acres) into 47 single family lots and a remainder lot (5.9 net acres) will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood in that the project is similar to, and compatible with, neighboring uses in the area.

Whereas, the request for the Tentative Map is hereby recommended for conditional approval by the Planning Commission of the City of Riverbank, subject to and modified by the following conditions:

1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in Planning Commission Resolution 2013-014, including annexing into Community Facilities District 2016-01 (currently in process), or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
2. The project storm drainage system shall be sized to manage the storm water from Sierra Street, Central Avenue, and all interior streets and lots within a storage basin per City Standards.
3. Connection to the existing Diamond Bar West storm drain basin is required in the first phase of the project
4. Storm water on the west side of Central Avenue shall also be managed with roadside swales and horizontal drains or connected to the storm basin.
5. Additional storm water inlets are required per City Standards and are not to exceed 500 feet spacing.
6. Sierra Street shall be fully constructed from Claus Road to the existing improvements constructed with Diamond Bar West.
7. Complete street improvements are required on Claus Road which includes curb, gutter, and sidewalk. A crosswalk for school children shall be constructed at Claus Road and Sierra Street.
8. A concrete sound wall is required along the railroad tracks.

Riverbank Planning Commission
August 17, 2021
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REIMBURSEMENT AGREEMENT

9. Three amenities are required per the Rezone application: (1) decorative garage doors, (2) decorative garage lights, and (3) pavers or colored pavement at crosswalks at the subdivision entrance.
10. Three (3) sets of landscape and irrigation plans conforming to the state's MWEL requirements shall be prepared and submitted with fee for review and approval by the City's contract landscape architect before Final Map. The storm basin shall be fully landscaped and slope protection provided; and
11. The City's Post Construction Standards Plan needs to be followed including DMA's LID standards, and the required worksheets located in the Appendix of the document. The document is available on the City's website; and
12. All existing overhead electrical shall be placed underground; and
13. Applicant shall pay an in-lieu fee for parkland dedication based on values of land at the time the Final Map is recorded. The obligation for this project is the value of 0.43 acres; and
14. All wet utilities are to be cleaned, tested, and videotaped prior to acceptance by the City of Riverbank; and
15. Street names shall be approved by City Council on the Final Map; and
16. An automatic fire system shall be provided for all Group R occupancies. CFC 903.2.8; and
17. Buildings shall be provided with proper address identification in accordance with the California Fire Code as amended by the Stanislaus Consolidated Fire Protection District. CFC 505.1; and
18. Approved fire apparatus access roads shall be provided for every facility, building, or portion of a building hereafter constructed or moved into the jurisdiction. All fire apparatus access roads shall meet the design requirements of the California Fire Code. CFC 503.1.1; and
19. During construction, Fire apparatus access roads shall be clearly marked with notices or markings that include the words NO PARKING – FIRE LANE. The markings shall be clean and legible at all times. CFC 503.3; and
20. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the site. CFC 507.1; and
21. Fire apparatus access roads and a water supply for fire protection shall be installed and made serviceable prior to and during the time of construction. CFC 501.4; and
22. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two (2) times per day; and
23. All haul trucks transporting soil, sand, or other loose material off-site shall be covered; and

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24. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited; and
25. All vehicle speeds on unpaved roads shall be limited to fifteen (15) miles per hour; and
26. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binding are used; and
27. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes. Clear signage shall be provided for construction workers at all access points; and
28. All construction equipment shall be maintained and properly tuned in accordance with manufacture's specifications. All equipment shall be checked by a certified visible emissions evaluator; and
29. Post a publicly visible sign with the telephone number and person to contact at the Air District regarding dust complaints. The Air District shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations; and
30. Applicant shall comply with San Joaquin Valley Air Pollution Control District's Rule 9510 Indirect Source Review; and
31. If potential human remains are encountered, the construction contractor shall halt work in the vicinity (within 100 feet) of the find and contact the City of Riverbank. The project applicant and/or contractor shall be required to contact the Stanislaus County Coroner in accordance with Public Resources Code Section 5097.98 and Health and Safety Code Section 7050.5. If the coroner determines the remains are Native American, the coroner would contact the Native American Heritage Commission (NAHC). As provided in Public Resources Code Section 5097.98, the NAHC would identify the person or persons believed to be most likely descended from the deceased Native American. The most likely descendent makes recommendations for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98; and
32. Consistent with the requirements of the City of Riverbank Municipal Code, the National Pollutant Discharge Elimination System (NPDES) Construction General Permit, the project applicant shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential adverse impacts on surface water quality through the project construction period. The SWPPP shall be designed to address the following objectives:
 - a. All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity, are controlled using source control and treatment control best management practices (BMPs).
 - b. Where not otherwise permitted by the Regional Water Quality Control Board, all non-

stormwater discharges are identified and eliminated.

- c. BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity in accordance with the Construction General Permit; and

33. The project applicant shall fully comply with the City of Riverbank Municipal Code and all Regional Water Quality Control Board stormwater permit requirements, including Provision C.3 of the Municipal Regional Permit (MRP). This will require preparation and implementation of a complete Stormwater Control Plan (SCP) for the project, which shall be submitted to the City Engineer for review and approval prior to any construction activity. The SCP shall act as the overall program document designed to provide measures to mitigate potential water quality impacts associated with the operation of the proposed project and shall be designed to comply with both MRP and City of Riverbank requirements. At a minimum, the SCP for the project shall include the following:

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

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

- a. All internal combustion engine-driven equipment shall be equipped with mufflers that are in good condition and appropriate for the equipment.
- b. "Quiet" models of air compressors and other stationary noise sources shall be used, where technology exists.
- c. Stationary noise-generating equipment shall be located as far as feasible from sensitive receptors (neighboring dwellings).
- d. Unnecessary idling of internal combustion engines shall be prohibited.
- e. Staging areas and construction material storage areas shall be located as far away as possible from adjacent sensitive land uses (neighboring dwellings).
- f. Construction-related traffic shall be routed along major roadways (Claus Road and

Patterson Road) and as far as feasible from sensitive receptors.

- g. Residences or noise-sensitive land uses adjacent to construction sites shall be notified of the construction schedule in writing. The construction contractor shall designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison shall determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and shall institute reasonable measures to correct the problem. The construction contractor shall conspicuously post a telephone number for the liaison at the construction site.
- h. The construction contractor shall hold a pre-construction meeting with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, construction schedule, and construction liaison) are completed.

NOW THEREFORE, BE IT RESOLVED the City of Riverbank Planning Commission recommends for approval Tentative Map No. 01-2021 (**Exhibit A**), subject to these Conditions of Approval established by Resolution No. 2021-016 and to be recorded as modified.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a meeting held on the 17th of August, 2021; motioned by Commissioner Link, seconded by Commissioner Basso, and upon roll call was carried by the following vote of 5-0:

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

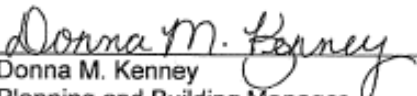
NOES:

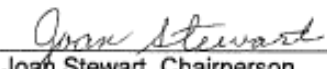
ABSENT:

ABSTAIN:

Attest:

Approved:


Donna M. Kenney
Planning and Building Manager


Joan Stewart, Chairperson
Planning Commission

Attachment: Exhibit A – Tentative Map 01-2021

Riverbank Planning Commission
August 17, 2021
Resolution No. 2021-016
Page 6 of 6

REIMBURSEMENT AGREEMENT

EXHIBIT D

Draft System Development Fee Reimbursement Agreement

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the “Agreement”) is made this ____ day of _____ 20__ (the “Effective Date”), by and between the City of Riverbank, a municipal corporation (“City”), and _____ (“Developer”). City and Developer may each be referred to individually as a “Party” or collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

A. On September 14, 2021, the City Council adopted Resolution No. 2021-084 approving Tentative Map 01-2020 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately forty-seven (47) residential lots on 12.27 acres.

(a)

B. On September 14, 2021, the City Council adopted Resolution No. 2021-084, approving Tentative Map 01-2020 (the “Tentative Map” and “Project Area”). The Tentative Map is attached hereto for reference, as **Exhibit A**.

(b)

C. On _____, 2022, City adopted Ordinance No. 2022-____, approving a development agreement between City and Developer (the “Development Agreement”), to extend the life of the Tentative Map, clarify the conditions of approval applicable to the Project Area, establish vested entitlements to construct forty-seven (47) residential lots in the Project Area, and overall, to promote the logical and orderly development of the Project Area.

(c)

D. Developer is obligated to construct and install public improvements in the Project Area (the “Improvements”).

(d)

E. City proposes to provide Developer credits for the installation of the Improvements that the City has identified in its System Development Fee (“SDF”) program. The total reimbursement for each category of Improvements is provided in **Exhibit B** attached hereto (the “SDF Fee Reimbursements”).

(e)

F. The revised SDF fees for each unit in the Project Area, as revised in accordance with this Agreement, is provided in **Exhibit C** attached hereto.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

AGREEMENT

Section 1. Project Scope. Developer shall be responsible for the design, construction, installation and bonding of the Improvements. City shall approve all plans and specifications for the construction, and City shall inspect and accept the Improvements in accordance with Riverbank Municipal Code (“City Code”). The design and installation of the Improvements shall be to the satisfaction of City in its sole discretion, in accordance with City Code.

Section 2. Reimbursement. As provided below, City shall reimburse Developer for the completion and acceptance by City of the Improvements listed in Exhibit B.

2.1. *Amount of Reimbursement.* City shall reimburse Developer an amount up to the total reimbursement, for each SDF category shown in Exhibit B provided that the Improvements are accepted by City.

2.2. *Source of Reimbursement.* Reimbursements to Developer shall come from the following:

(a) SDF Fee Credit. Upon issuance of each of the forty-seven (47) building permits in the Project Area, City shall reduce the SDF fees collected from Developer for each category of SDF fees related to the Improvement to be constructed (the “SDF Fee Credit”), in an amount up to the total SDF reimbursement shown on Exhibit B.

(b) SDF Fee Reimbursement. In some cases, such as _____ the total SDF reimbursement exceeds the SDF Fee Credits available for the Project Area. In such case, after issuance of the ____th building permit in the Project Area, City shall pay the difference between the total SDF reimbursement and the SDF Fee Credits from the appropriate development impact fee fund, if funds are available, after the Improvements have been accepted by City as complete. City shall track and make payments to Developer based on the timing and priority of the request compared to other developers, using the date the City Council issues the ____th building permit as the priority date for reimbursement from City’s SDF.

2.3. *Limited Obligation.* City shall only be required to provide SDF Fee Credits to Developer for Improvements listed in Exhibit B. City makes no warranty, express or implied, that SDF Fee Credits will be available to fully compensate Developer for the cost of installing the Improvements. In no event shall City be required to reimburse Developer directly from City’s general fund. Developer further acknowledges that any deficiency in reimbursement for the cost of the Improvements shall in no way diminish Developer’s obligations with respect to any provision in the Tentative Map or Development Agreement.

2.4. *Conditions for Payment.* City shall provide SDF Fee Credits to Developer only after all of the following conditions have been met to City’s satisfaction:

(a) Developer has designed and constructed the Improvements in accordance with the City's public improvement design standards;

(b) City has formally accepted the dedication of Improvements for which the SDF Fee Credit reimbursement is sought by Developer;

(c) Developer is not in default of any obligation under this Agreement, the Development Agreement or any other agreement related to the Project Area, such as a subdivision improvement agreement; and

(d) Developer is not in default of any monetary obligation to the City, including without limitation plan check and inspection fees, loan repayments due to the City, ad valorem property taxes, special assessments or special taxes.

Section 3. Compliance with Laws. Developer shall insure that all work performed on the Improvements is performed in a manner that complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of City, as these rules and regulations may be modified or changed from time to time.

Section 4. City Inspection of Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Improvements and areas where construction of the Improvements is occurring or will occur.

Section 5. Quality of Work; Compliance with Laws and Codes. The construction plans and specifications for the Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is commenced.

Section 6. Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

Section 7. Limited City Obligation. The obligations arising from this Agreement are neither a debt of City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the issuance of SDF Fee Credits, as provided herein. Neither the City's general fund nor any special fund of City, except for the applicable account associated with each SDF category, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of City is not pledged for the payment of any obligation arising from this Agreement. Developer shall not compel the forfeiture of any of City's property to satisfy any obligations arising from this Agreement.

Section 8. Liens, Claims, and Encumbrances. Upon request by City, Developer shall provide a written guarantee and assurance to City that there are no liens, claims, or monetary encumbrances on the Improvements, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which reimbursement is requested under this Agreement for the Improvements. Notwithstanding any other provision or term of this Agreement, City shall have no obligation to make any reimbursement payments until Developer has cleared any and all liens, claims and monetary encumbrances from the Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

Section 9. Acceptance. The City Engineer shall accept the Improvements in his or her sole discretion, pursuant to City Code, all applicable federal and state rules and regulations, and a subdivision improvement agreement between the Parties.

Section 10. Indemnity. [omitted – see subdivision improvement agreement].

Section 11. Assignment of Fee Credits. Fee Credits to be issued by City are personal to Developer and shall not automatically run with the land or the subsequent purchasers of Developer's property. Developer may transfer or assign any or all Fee Credits associated with this Agreement by providing notice to the City through a written statement in a form acceptable to the City Attorney. City may accept the assignment of Fee Credits for the same SDF categories to future developments on a dollar-for-dollar basis. The written statement shall notify the City of the credit amount that Developer intends to transfer or assign to specified properties or developments. After receipt of such written request from Developer and prior to issuance of building permits, City shall confirm in writing the amount of related SDF fees that City will collect from the assignee. In the absence of such written statement by City, no assignee may claim SDF Fee Credits attributable to this Agreement.

Section 12. Notice. Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Clerk

With a courtesy copy to:

City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Manager

And to:

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

Developer:

With a copy to:

Either Party may give notice hereunder to designate a different address to which subsequent notices, payments or instruments shall be delivered.

Section 13. General Provisions.

13.1. *Term.* The term of this Agreement shall start as of the Effective Date written above and shall remain in effect until all Improvements have been accepted by City and City has awarded all SDF Fee Credits to Developer.

13.2. *Termination.* In the event Developer defaults in the performance of any of its obligations under this Agreement or materially breaches any of the provisions of this Agreement, and such default or breach is not cured by Developer within 10 business days (or such longer period as may be necessary) of written notice from City specifying such default, City shall have the option to terminate this Agreement upon written notice to Developer, or seek any available remedies at law.

13.3. *Captions.* Captions to each Section of this Agreement are for convenience purposes only, and are not part of this Agreement.

13.4. *Severability.* If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

13.5. *Governing Law; Venue.* This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Stanislaus, State of California.

13.6. *Assignment.* This Agreement shall not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld or delayed, and any assignment without such written consent shall be void and ineffective.

13.7. *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the reimbursement of SDF Fee Credits. The Parties acknowledge that a subdivision improvement agreement will address improvement standards, bonding requirements and other provision related to the construction of the Improvements and their dedication to City.

13.8. *Modification.* This Agreement may be amended only by a written instrument signed by the Parties.

13.9. *Counterparts.* This Agreement may be executed in counterpart s, each of which shall be deemed an original, but both of which together shall constitute one instrument.

13.10. *Exhibits.* All exhibits attached hereto are incorporated as part of this Agreement.

13.11. *Interpretation.* Each Party acknowledges it has reviewed this Agreement with its own legal counsel and based upon the advice of that counsel, freely entered into this Agreement.

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

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

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

13.15. *Attorneys’ Fees.* In the event any party to this Agreement commences litigation for specific performance or damages for the breach of this Agreement, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court costs incurred.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the above-referenced Effective Date.

CITY:

City of Riverbank, a California municipal
corporation

By: _____
_____, City Manager

Date Signed: _____

DEVELOPER:

a [California limited liability
company/corporation]

By: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:

By: _____
Tom Hallinan, City Attorney

EXHIBIT A

Tentative Map

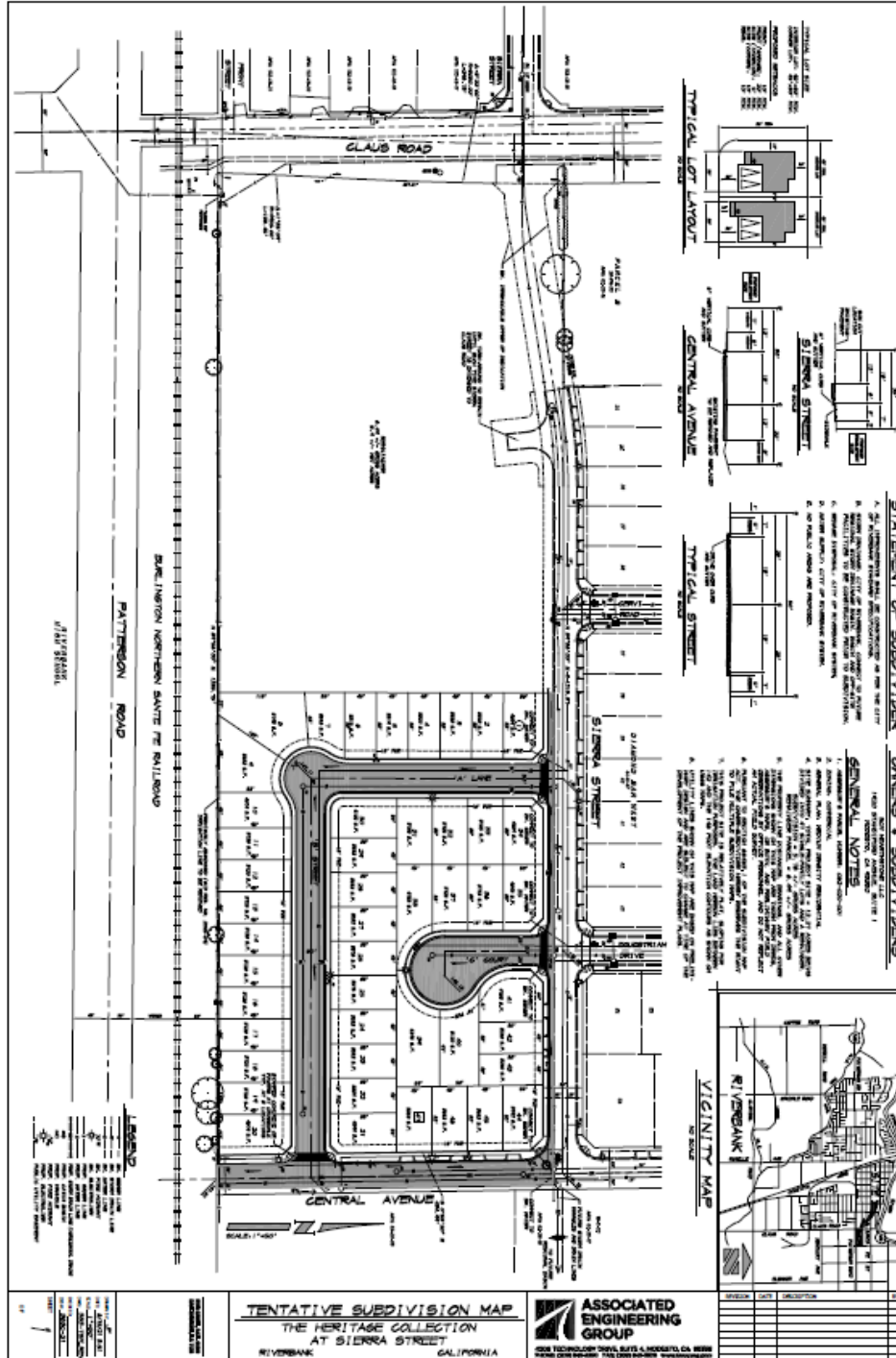


EXHIBIT B

SDF Fee Reimbursements

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

DRAFT

EXHIBIT C

Adjusted SDF Fee Schedule

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

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

EXHIBIT E

Riverbank Fee Charts

2022 System Development Fees*

Land Use	Water	Sewer	Storm Drainage	Parks/ Rec.	General Govt.	Traffic	5% Admin ¹	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

(*Adopted 4/12/2022)

Sewer Connection Fees

Subdivision Lots – Single Family

- ❑ \$400.00/dwelling unit if the sewer lateral has been installed
- ❑ \$30.00 inspection fee, number of inspections to be determined.

Water Connection Fees

Subdivision Lots - Single Family

- \$400.00/dwelling unit to be paid prior to recording of final map.
- \$75.00 inspection fee, number of inspections to be determined.

Water Meters

Applicant to purchase and install own water meters by Public Works standards. Contact Public Works at 869-7128 for water meter information.

EXHIBIT F

Assumption and Assignment Agreement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

Recording fees exempt (Gov. Code §§ 6103, 27383) (Space above line for recorder's use only)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") shall be deemed effective as of _____, 202__ ("Effective Date"), by and between _____, a California Corporation ("Assignor") and _____, a California Corporation ("Subsequent Landowner").

RECITALS

A. Assignor has entered into a Development Agreement with the City of Riverbank, dated _____, which was recorded on _____ as Document No. _____ in the Official Records of Stanislaus County, California (the "Development Agreement").

B. Assignor has agreed to develop property pursuant to the Development Agreement, which is now proposed for assignment pursuant to this Agreement, and is more particularly described as _____, as set forth in more detail in the Legal Description attached and incorporated hereto as **Exhibit A** (the "Assigned Parcels").

C. Subsequent Landowner desires to assume all of Assignor's rights, duties and obligations under the Agreement with respect to the Assigned Parcels and Assignor seeks to be relieved of said assigned rights, duties and obligations in reference to the Assigned Parcels.

NOW, THEREFORE, Assignor and Subsequent Landowner hereby agree as follows:

AGREEMENT

1. Assignor hereby assigns, effective as of _____, 202__, all of the rights, interests, burdens and obligations of Assignor under the Agreement with respect to the Assigned

Parcels. Assignor retains all of the rights, interests, burdens and obligations under this Agreement with respect to all property other than the Assigned Parcels within the Subject Property owned by Assignor.

2. Subsequent Landowner hereby assumes all of the rights, interests, burdens and obligations of Assignor under this Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcels. It is the express intention of both Assignor and Subsequent Landowner that, upon the Effective Date, Subsequent Landowner shall become substituted for Assignor as a “Developer” under the Development Agreement with respect to the Assigned Parcels. Assignor acknowledges that Assignor shall remain subject to the duties and obligations of the Development Agreement if Assignor retains any portion of the Subject Property subject to the Development Agreement.

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

4. Subsequent Landowner’s address for all notices, as described in Section 10.09 of the Development Agreement, shall be as follows:

Attn: _____,

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the above-referenced Effective Date.

ASSIGNOR:

_____,
a California Corporation

By: _____

Name: _____, _____

Title: _____

On behalf of _____, _____

SUBSEQUENT LANDOWNER:

_____,
a California Corporation

By: _____

Name: _____, _____

Title: _____

On behalf of _____, _____

APPROVED:

_____, City Manager
City of Riverbank

EXHIBIT A

Assigned Parcels

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

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

State of California)
)
County of _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

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

State of California)
)
County of _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

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State of California)
)
County of _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

City of Riverbank
Planning Commission
Resolution No. 2022-003

**A Resolution of the Planning Commission of the City of Riverbank (“City”),
Recommending that the City Council Adopt an Ordinance
Approving a Development Agreement by and Between the
City of Riverbank and SCM Hearthstone, LLC for
The Heritage Collection at Sierra Street Subdivision (APN 062-020-001)**

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

WHEREAS, the Riverbank City Attorney and City staff have negotiated a development agreement (“Development Agreement”) with SCM Hearthstone, LLC (“SCM”), to provide SCM with a vested right to develop 47 single-family residential lots on approximately 12.27 acres in connection with the project known as The Heritage Collection at Sierra Street (“The Heritage” or “Project”), and to extend the life of Tentative Map 01-2021 relating to the Project; and

WHEREAS, the Development Agreement provides a vested right for SCM to improve, develop, and use real property to develop 47 single family residential lots within The Heritage as defined in the Development Agreement; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) environmental impacts relating to the Project were evaluated in the Notice of Exemption (CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects) when the City Council approved a Rezone to Planned Development and Tentative Map for the Project on September 28, 2021. Pursuant to CEQA Guidelines Section 15378, the Development Agreement is within the purview of The Heritage Project, for which environmental impacts have already been reviewed. Thus, approval of the Development Agreement does not require further environmental review; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 19, 2022 to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, the Planning Commission finds the Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the City’s General Plan; and

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

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

THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Riverbank that it hereby recommends City Council approval of Ordinance No. 2022-XXX, approving the Development Agreement (Exhibit "A") between the City of Riverbank and SCM Hearthstone LLC, attached hereto as Exhibit "B" and incorporated herein by this reference.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 19th day of April 2022; motioned by Chair Link, seconded by Commissioner Dinan, and upon roll call was carried by the following Planning Commission vote of 5-0:

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

NAYS:

ABSENT:

ABSTAIN:

Attest:

Donna M. Kenney

Donna M. Kenney, Secretary
Planning and Building Manager

Approved:

Steve Link

Steve Link, Chair
Planning Commission

EXHIBIT A

Development Agreement

EXHIBIT B

Ordinance No. 2022-

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.4

SECTION 9: CONSENT CALENDAR

Meeting Date:	May 24, 2022
Subject:	Adopt a Resolution Authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361 Allowing the City to Continue a Hybrid Virtual Meeting Environment
From:	Tom Hallinan, City Attorney
Submitted by:	Tom Hallinan, City Attorney

RECOMMENDATION

Staff recommends Council adopt a Resolution authorizing the City to Implement Teleconferenced Public Meetings Pursuant to Assembly Bill 361 Allowing the City to Continue a Virtual Meeting Environment.

SUMMARY

NOTE: This report is generally the same staff report presented at the January 25, 2022 Council meeting. As the resolution only extends the allowance for teleconferenced meetings for a 30-day period it is necessary to re-agendize this item for approval.

On September 16, 2021 Governor Newsom signed Assembly Bill ("AB") 361 which allows cities to continue to meet remotely during proclaimed states of emergency under modified Ralph M. Brown Act requirements that are similar but not identical to the rules and procedures established by the previous Executive Orders temporarily suspending provisions of the Brown Act. On September 20, 2021, Governor Newsom signed Executive Order N-15-21 to suspend AB 361 until October 1, 2021. Over the past year, City Council meetings have been held with virtual teleconference components.

AB 361, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Brown Act when a local legislative body holds a meeting during a declared state of emergency by the governor and when state of local health officials have imposed or recommended measures to promote social distancing.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other things rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variant has surged in California, the Legislature has taken action to extend the COVID-19 exceptions to the Brown Acts' teleconference requirements, subject to some additional safeguards. AB 361 allows a local agency to use teleconferencing without complying with the Brown Act provisions in any of the following circumstances:

- The local legislative body holds a meeting during a proclaimed state of emergency by the governor, and state or local officials have imposed or recommended measures to promote social distancing.
- The local legislative body holds a meeting during a proclaimed state of emergency by the governor for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The local legislative body holds a meeting during a proclaimed state of emergency by the governor and has determined, by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

A local agency that holds a meeting under these circumstances would be required by AB 361 to do all of the following, in addition to giving notice of the meeting and posting agendas as required under the Brown act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies.

Pursuant to AB 361 local agencies are required to do all of the following in addition to meeting notice requirements under the Brown Act:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments.
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any actions taken during such a

service disruption can be challenged under the Brown Act's existing challenge provisions).

- Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.
- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.
- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

AB 361 also provides that if a local agency conducts teleconference meetings in reliance on AB 361, the local agency must make the following findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules:

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: The state of emergency continues to directly impact the ability of members to meet safely in person, or State or local officials continue to impose or recommend social distancing measures.

The goal of AB 361 is "to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options" consistent with Executive Order N-29-20. AB 361 contains an urgency clause which became effective upon signing with a sunset of January 1, 2024. However, shortly after signing AB 361, Governor Newsom signed Executive Order N-15-21 to suspend AB 361 until October 1, 2021.

At the October 12th City Council meeting, Council considered whether or not to continue with the hybrid meeting format. During that meeting difficulties were experienced in receiving a specific comment on an agenda item. As such, the Council chose to only extend the hybrid meeting allowance for 2 weeks to determine alternate options for accepting comments or dealing with technical issues. **At the October 26th Council meeting staff gave out the phone number at the dais for any member of the public that had technical issues providing comment by zoom. Two comments were received via this method, if this resolution is approved staff will continue with this measure until it is no longer needed.** Staff is currently in the process of soliciting bids for technological upgrades to the Council Chamber technology setup which will provide improved ability for hybrid and streamed meetings.

Alternatively, the Council could choose to no longer allow hybrid meetings in which case Councilmembers would attend in person or would have to follow the original Brown Act requirements for a remote meeting (public posting etc.). Some local communities still live stream meetings but do not allow remote public comment as an option.

If the Resolution is adopted the City Council will continue to hold in person meetings with a virtual hybrid component. The City Council will revisit the need to conduct

meetings remotely within 30 days of the adoption of this Resolution, it is staff's intention to reevaluate options for hybrid meetings during that time period for future Council consideration.

FINANCIAL IMPACT

None at this time.

ATTACHMENTS

1. Draft City Council Resolution 2022-
2. Letter from Stanislaus County Public Health Officer
Re: Social Distancing Recommendation

CITY OF RIVERBANK

RESOLUTION 2022-____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, PROCLAIMING A LOCAL EMERGENCY AND AUTHORIZING
REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES
OF THE CITY OF RIVERBANK PURSUANT TO ASSEMBLY BILL 361 AND
BROWN ACT PROVISIONS**

WHEREAS, the City Council of the City of Riverbank (the “City”) is committed to preserving public access and participation in meetings of the City Council; and

WHEREAS, all meetings of the City’s legislative bodies are open and public, as required by the Ralph M. Brown Act (Gov. Code, §§ 54950 – 54963), so that any member of the public may attend, participate, and watch the City’s legislative bodies conduct their business; and

WHEREAS, on September 16, 2021, Governor Newsom signed Assembly Bill (“AB”) 361, amending Government Code section 54953, subdivision (e) to allow for remote teleconferencing participation in meetings by members of a legislative body without compliance with the requirements of Government Code section 54953, subdivision (b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for remote teleconferencing participation in meetings by members of a legislative body is that a state of emergency is declared by the Governor, pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City’s boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing or the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the City, specifically, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS, the Stanislaus County Public Health Officer issued an order on September 2, 2021 regarding the highly transmissible Delta Variant and recommending face coverings indoors; and

WHEREAS, there has been a significant increase in COVID-19 cases in Stanislaus County due primarily to the Delta variant of SARS-CoV-2, the virus that causes COVID-19. Emerging evidence indicates that the Delta variant is far more transmissible than prior variants of the virus, may cause more severe illness, and can be spread by fully vaccinated individuals; and

WHEREAS, as a consequence of the declared emergency, the City Council does hereby find that the legislative body of the City shall conduct their meetings without compliance with Government Code section 54953, subdivision (b)(3), as authorized by Section 54953, subdivision (e), and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in Section 54953, subdivision (e)(2); and

WHEREAS, pursuant to Government Code section 54953, subdivision (e)(3), in order to continue to teleconference without compliance with Government Code section 54953, subdivision (b)(3), the City Council shall, not later than 30 days after teleconferencing for the first time pursuant to this Resolution, and every 30 days thereafter, make the following findings by majority vote: The legislative body has reconsidered the circumstances of the state of emergency and any of the following conditions exist: (1) the state of emergency continues to directly impact the ability of the members to meet safely in person or (2) state or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City reserves the option to hold in-person meetings, consistent with local health officer directives, or to continue a practice of remote meetings that still allow multiple options for public participation.

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

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Proclamation of Local Emergency. The City Council hereby proclaims that a local emergency exists throughout the City, and that the legislative body meeting in person could present imminent risks to the health and safety of attendees due to the prevalence of COVID-19 in Stanislaus County and the state, such that the City reserves the right to continue virtual meetings or conduct in-person meetings, consistent with local health guidance or duly issued orders.

Section 3. Remote Teleconference Meetings. The legislative body and designees of the City are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953, subdivision (e), and other applicable provisions of the Brown Act.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) October 30, 2021, or (ii) such time the City Council makes a subsequent finding by majority vote in accordance with Government Code section 54953, subdivision (e)(3), to extend the time during which the legislative bodies of the City may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 24th day of May, 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



**HEALTH SERVICES AGENCY
Public Health Services**

917 Oakdale Road, Modesto, CA 95353

Julie Vaishampayan, MD, MPH
Public Health Officer

Phone: 209.558.8804 Fax: 209.558.7286
www.hsahealth.org

September 22, 2021

To Whom It May Concern:

I recommend that physical/social distancing measures be practiced throughout our Stanislaus County communities to minimize the spread of COVID-19, including implementation of the newly enacted AB 361 to maintain social distancing by legislative bodies of our local agencies. This recommendation is made due to the continued threat of COVID-19 to the community.

I will continue to evaluate this recommendation on an ongoing basis and will communicate when there is no longer such a recommendation.

Julie Vaishampayan, MD, MPH
Public Health Officer
Stanislaus County

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 9.5

SECTION 9: CONSENT CALENDAR

Meeting Date: May 24, 2022

Subject: A Resolution Calling and Giving Notice for the Holding of a General Municipal Election to be held on Tuesday, November 8, 2022, for the By-District Elections of Councilmember District 1 and Councilmember District 3 as Required by the Provisions of the Laws of the State of California Relating to General Law Cities; to Request the Stanislaus County Board of Supervisors to Permit the County Elections Official to Render Election Services to the City of Riverbank; and, to Request the Consolidation of Said Election with the Statewide General Election Held on the Same Date

From: Marisela H. Garcia, City Manager

Submitted by: Kathy L. Teixeira, Interim City Clerk/Elections Official

RECOMMENDATION

It is recommended that City Council adopt the resolution to call, give notice, conduct, and consolidate the City's 2022 General Municipal Election with the Statewide General Election.

INTRODUCTION

Vote-by-Mail November 8, 2022, Statewide General Election

The City of Riverbank consolidates its General Municipal Election with Stanislaus County's conduct of the Statewide General Election and therefore it is important that the City Council and the public be aware of changes that will be implemented for the November Elections by the collaborative direction of Governor Newsom, Secretary of State Weber, and the State Legislators during the COVID-19 pandemic.

On February 2, 2022, California Secretary of State Shirley N. Weber, Ph.D. announced that 11 new California counties, which includes Stanislaus County, have adopted the Voter's Choice Act (VCA) election model. California's efforts to provide eligible voters more convenience and flexibility through the VCA election model will provide more opportunities to choose how, when and where voters cast their ballots. In addition to the vote-by-mail options available to all Californians, voters in VCA counties will have up to 10 days of in-person voting and the choice of casting their ballot at one of several voting

locations within their county. The VCA model provides more voting opportunities for our residents by giving voters more days and more ways to vote and provides an enormous opportunity to make voting more convenient and accessible for working voters, as well as voters from historically underrepresented communities. More information on the Voter's Choice Act can be found at the Secretary of State's website at www.sos.ca.gov/elections/voters-choice-act.

SUMMARY

General Municipal Election on November 8, 2022

The City Council passed an Ordinance in 2015 establishing a "by-district" electoral system, approved Map G illustrating the established four (4) district boundaries, and re-established the continued election of the Mayor at-large. This year's General Municipal Elections will be for the election to fill the seats of Councilmember District 1, and Councilmember District 3, each to serve a four-year term. In accordance with the California Elections Code, the City Council must adopt a resolution to call and give notice for the holding of the November 8, 2022 General Municipal Election, to request the rendering of election services from the County Elections Official, to consolidate the election with the Statewide General Election, and to have the City's Elections official conduct all other related procedures in accordance with the law.

District Boundary Map

The City adopted its four (4) district boundaries in 2015, based on the 2010 census data. Every ten (10) years, and in compliance with the requirements of the FAIR MAPS Act (AB 849, effective January 1, 2020), cities with by-district election systems must use new census data to review and, if needed, redraw City Council district lines to reflect how local populations have changed. This process, called redistricting, ensures all districts have substantially equal population. National Demographic Corporation ("NDC") was hired to conduct and present the 2020 census data analysis for the City of Riverbank (the "City"), and to guide the City in achieving the final district boundaries map for adoption.

The City's consultant NDC completed the review of the 2020 census data with the City's current boundary map and found that the current district boundaries are substantially equal in population. The City Council held four public hearings and as the census data reflected that the total population deviation of the City's current districts was less than 10% and the current districts are substantially equal in population, the City Council was able to choose to retain and adopt the City's current district boundaries map as its final redistricting map. The City Council adopted Resolution 2022-027 to retain the current district boundary map on March 22, 2022 in accordance with California Elections Code section 21600 et seq. and Riverbank Municipal Code section 30.03, subdivision (B)(3) and the City Clerk's office filed the appropriate documentation with the Stanislaus County Elections office.

Nomination Period for Candidacy

The nomination period during which candidates may obtain and file nomination papers to run for office opens at 7:30 a.m. on Monday, July 18, 2022, and closes at 5:00 p.m. on Friday, August 12, 2022 (this is a scheduled closed Friday; however as in years past the City Clerk's office will be open to accommodate candidates). If by the end of said Friday, an incumbent *does not* file nomination papers by 5:00 p.m. for his/her respective seat an automatic extension of the nomination period will occur extending the deadline for that seat for an additional five calendar days, ending at 5:30 p.m., Wednesday, August 17, 2022. Incumbents are not eligible to file nomination papers during the extension period.

COVID-19 Safety Measures

To maintain the health and safety of potential candidates and City staff during the pandemic, the City's Elections Official will implement safety measures as recommended by Public Health Officials, as well as new guidelines provided by the California Secretary of State, Elections Division on how to issue and receive candidate documents during the pandemic.

As the Election date nears and processes evolve, updated information may be obtained on the City's Election website page at www.riverbank.org or by contacting the City Clerk/Elections Office.

FINANCIAL IMPACT

The estimated cost provided by the Stanislaus County Registrar of Voters/Elections Division to render election services from the County and consolidate the City's General Municipal Election with the Statewide General Election is estimated at \$13,000 which will be budgeted.

ATTACHMENTS

- 1) Draft City Council Resolution 2022-____, with copy of certified amended Map G

CITY OF RIVERBANK

RESOLUTION 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, CALLING AND GIVING NOTICE FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE BY-DISTRICT ELECTIONS OF COUNCILMEMBER DISTRICT 1, AND COUNCILMEMBER DISTRICT 3, AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES; TO REQUEST THE STANISLAUS COUNTY BOARD OF SUPERVISORS TO PERMIT THE COUNTY ELECTIONS OFFICIAL TO RENDER ELECTION SERVICES TO THE CITY OF RIVERBANK; AND TO REQUEST THE CONSOLIDATION OF SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION HELD ON THE SAME DATE

WHEREAS, on December 8, 2015, the City Council adopted Ordinance No. 2015-019 changing the City of Riverbank's electoral system from "at-large" to "by-district" to fill its four (4) Councilmember Office seats, to approve Map G that established the four (4) district boundaries, and to re-establish the election of the Mayor at-large; and

WHEREAS, the adopted Ordinance authorized the City Clerk to make technical adjustments to the district boundaries when needed, and therefore by City Council Resolution 2022-027, Map G was reviewed for compliance with the requirement of the FAIR MAPS Act (AB 849, effective January 1, 2020); and

WHEREAS, the City used the new 2020 census data to consider redrawing Map G the current district boundaries so that districts will be substantially equal in population; and

WHEREAS, the census data reflected that the total population deviation of the City's current districts was less than 10%, the current districts are substantially equal in population; and

WHEREAS, the City Council choose to retain and adopt the City's current district boundaries final redistricting map (attached hereto as Exhibit A) the City Council may choose to retain and adopt the City's current district boundaries map without changing the boundaries of the other council districts in accordance with California Elections Code; and

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on Tuesday, November 8, 2022, in the City of Riverbank for the purpose of electing Councilmember District 1, Councilmember District 3; each to serve a four-year term; and

WHEREAS, in the course of the conduct of an election it is necessary that the City request election services to be rendered by the County's Elections Division, as they are the entity equipped to conduct, canvas, and declare the results of an election in the manner provided by law; and

WHEREAS, pursuant to the Election Code of the State of California, Section 10002, the City of Riverbank shall submit a resolution to the County Board of Supervisors requesting to permit the County Elections Official to render election services to the City of Riverbank for the conduct of an election; and

WHEREAS, the City Council of the City of Riverbank desires to call the November 8, 2022, General Municipal Election and, pursuant to Section 10403 of the California Elections Code, shall file a resolution with the County Board of Supervisors and a copy with the County Elections Official requesting that its general municipal elections be consolidated with the statewide general election to be held on the same date, and furthermore, to have the County Elections Official perform specified election services for the City of Riverbank.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That pursuant to the requirements of the laws of the State of California relating to General Law cities, there is called and ordered to be held in the City of Riverbank, California, on Tuesday, November 8, 2022, a General Municipal Elections for the purpose of submitting to the qualified voters a ballot for the by-district election of two (2) Councilmembers for residencies District 1 and District 3; each to serve a full four-year term.

Section 2. That pursuant to the Elections Code of the State of California, Section 10400, et seq. the Board of Supervisors of the County is hereby requested to consent and agree to the consolidation of the City of Riverbank's General Municipal Elections with the Statewide General Elections to be held on Tuesday, November 8, 2022.

Section 3. That pursuant to the requirements of the Elections Code of the State of California, Section 10002, the City Council, as the governing body of the City of Riverbank, is requesting by resolution, that the Board of Supervisors of Stanislaus County permit the County Elections Official to render specified services to the City relating to the conduct of the said election.

Section 4. That the specified election services requested by the City Council are all applicable procedural requirements, and any other processes incidental to and connected with the conduct of the election, performed by the County Elections Official in accordance with the provisions of law regulating a regularly scheduled election in order to properly and lawfully conduct, canvass, and certify the results of the election.

Section 5. That pursuant to the Elections Code of the State of California, Section 10418, the Board of Supervisors of Stanislaus County is hereby requested to issue instructions to the County Elections Official to take any and all steps necessary for the holding of a consolidated November 8, 2022, general election.

Section 6. That pursuant to the Elections Code of the State of California, Section 10002, the City Council recognizes that consolidation of Riverbank's General Municipal Elections with the Statewide General Elections, conducted by the County, provides the City an opportunity to share its costs of conducting its elections with other jurisdictions and therefore shall reimburse the County, upon completion of the work performed and upon presentation of an invoice to the City, for the City's share of costs incurred.

Section 7. That the polls for the election shall open at seven o'clock a.m (7:00 a.m.). of the day of the election and shall remain open continuously from that time until eight o'clock p.m. (8:00 p.m.), except as provided in Section 14401 of the Elections Code of the State of California.

Section 8. CANDIDATE'S STATEMENT (Election Code Section 13307)

A. Pursuant to the State of California Elections Code, candidates shall be required to pay a deposit of \$1,000 at the time of filing the nomination papers, for the pro rata cost of printing, handling, translating, mailing, and including the candidate statement in the voter pamphlet.

B. Depending on the actual cost, the City Clerk is directed to bill candidates for any additional expenses incurred in excess of the \$1,000 deposit or refund any overage paid to the City.

C. The candidate statement will be limited to no more than 200 words.

Section 9. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

Section 10. That in the event of a tie vote, if any two or more persons receive an equal and the highest number of votes for an office, as certified by the Election Official, County of Stanislaus Registrar-Recorder/County Clerk, the City Council, in accordance with Election Code § 15651(a), shall set a date and time and place and summon the candidates who have received the tie votes to appear, and will determine the tie by lot.

Section 11. That in light of the existing COVID-19 pandemic, and the Governor's Executive Order N-64-20 and any subsequent Order, including the Secretary of State guidelines issued in regards to Election processes and procedures, the City Clerk shall take necessary health and safety precautions issued by Public Health Officials to minimize the risk of the coronavirus.

Section 12. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for the holding of municipal elections.

Section 13. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Section 14. That the City Clerk is hereby directed to file a certified copy of this resolution with the Stanislaus County Board of Supervisors and with the County Elections Official.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 24th day of May, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTESTED:

APPROVED:

Kathy L. Teixeira
Interim City Clerk / Elections Official

Richard D. O'Brien
Mayor

Attachment: Exhibit A - Certified Amended Map G adopted by City Council Resolution 2022-027

DRAFT

City of Riverbank



RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.1

SECTION 11: NEW BUSINESS

Meeting Date:	May 10, 2022
Subject:	Appropriation Request for Increase in Budget from the General Fund Reserve for Centennial Mural
From:	Marisela H. Garcia, City Manager
Submitted by:	Gabriela Hernandez, Confidential Assistant

RECOMMENDATION

It is recommended that the City Council consider and approve the attached resolution appropriating an increase an amount not to exceed \$8,000 to fund Mural Labor and Materials in celebration of the City of Riverbank Centennial.

SUMMARY

On September 28th the City Council held a workshop to discuss the events developed by the Centennial Committee and provide feedback. Additionally, staff prepared and presented a budget to fund the activities throughout this year (culminating in August of 2022). It was anticipated that expenditures for the Centennial Mural would be approximately \$3,000 which would fund the Mural Artist, Labor and Materials. However, after the initial meeting with Mural Artist, Alexandra Riddle, where design, timeline, and materials were discussed, it was established that we had underbudgeted for this Mural. We have been quoted at a much higher rate than anticipated, this is comprehensible as we have seen an inflation in costs of goods. Staff advised in the Centennial Workshop, if additional budgetary augmentation was needed, staff would return to Council to request it.

Staff is recommending that these funds be drawn from the General Fund reserve as this is an unbudgeted expense and the benefit of these programs cannot be funded by other funds (water, sewer, etc.). The current General Fund reserve is approximately \$4,300,000 and is currently in a healthy position.

FINANCIAL IMPACT

An additional \$8,000 increase in the Riverbank General Fund Centennial Account. This is a not to exceed amount.

ATTACHMENTS

1. Draft City Council Resolution 2022-
2. A - Preliminary Budget
B - Proposed Increased Budget
3. Mural Proposal Renderings

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL APPROPRIATING AN ADDITIONAL
AMOUNT NOT TO EXCEED \$8,000 FROM THE GENERAL FUND RESERVE TO
FUND THE CITY OF RIVERBANK CENNTENIAL MURAL, LABOR,
AND MATERIALS**

WHEREAS, the City of Riverbank will celebrate its centennial on August 23, 2022;
and

WHEREAS, the City Council directed the creation of a Centennial Committee who
has helped define and craft a variety of events to celebrate; and

WHEREAS, the City of Riverbank staff have developed a notional budget for these
activities, events and materials; and

WHEREAS, staff will work with the Mural Artist to minimize these costs and
maintain within budget; and

WHEREAS, the General Fund is the sole fund by which it is appropriate to fund
this activity; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of
Riverbank hereby approves appropriate of an amount not to exceed \$8,000 to fund the
City of Riverbank Centennial Mural;

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular
meeting held on the 24th day of May, 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 Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Centennial Celebration 2022

Preliminary Budget



Estimated

NON-SALE PROMOTIONAL MATERIALS

\$5,000

Pins, Coins, Banners, etc.

FOR SALE PROMOTIONAL MATERIALS

\$5,000

Shirts, Hats, Bags, etc.

1920's DINNER

\$5,000

Dinner, Music, Decorations

Tickets for sale

FOUNDERS DAY CARNIVAL

\$5,000

Carnival Games, Vendors,

NO DANCE, DANCE- CAR SHOW & PICNIC

\$3,000

Food, Decorations

DOWNTOWN CELEBRATION

\$10,000

Food, Music Band, Parade, Fireworks Show,

Decorations, etc.

CENTENNIAL MURAL

\$3,000

Local Artist

OTHER ASSORTED MINI EVENTS

\$6,500

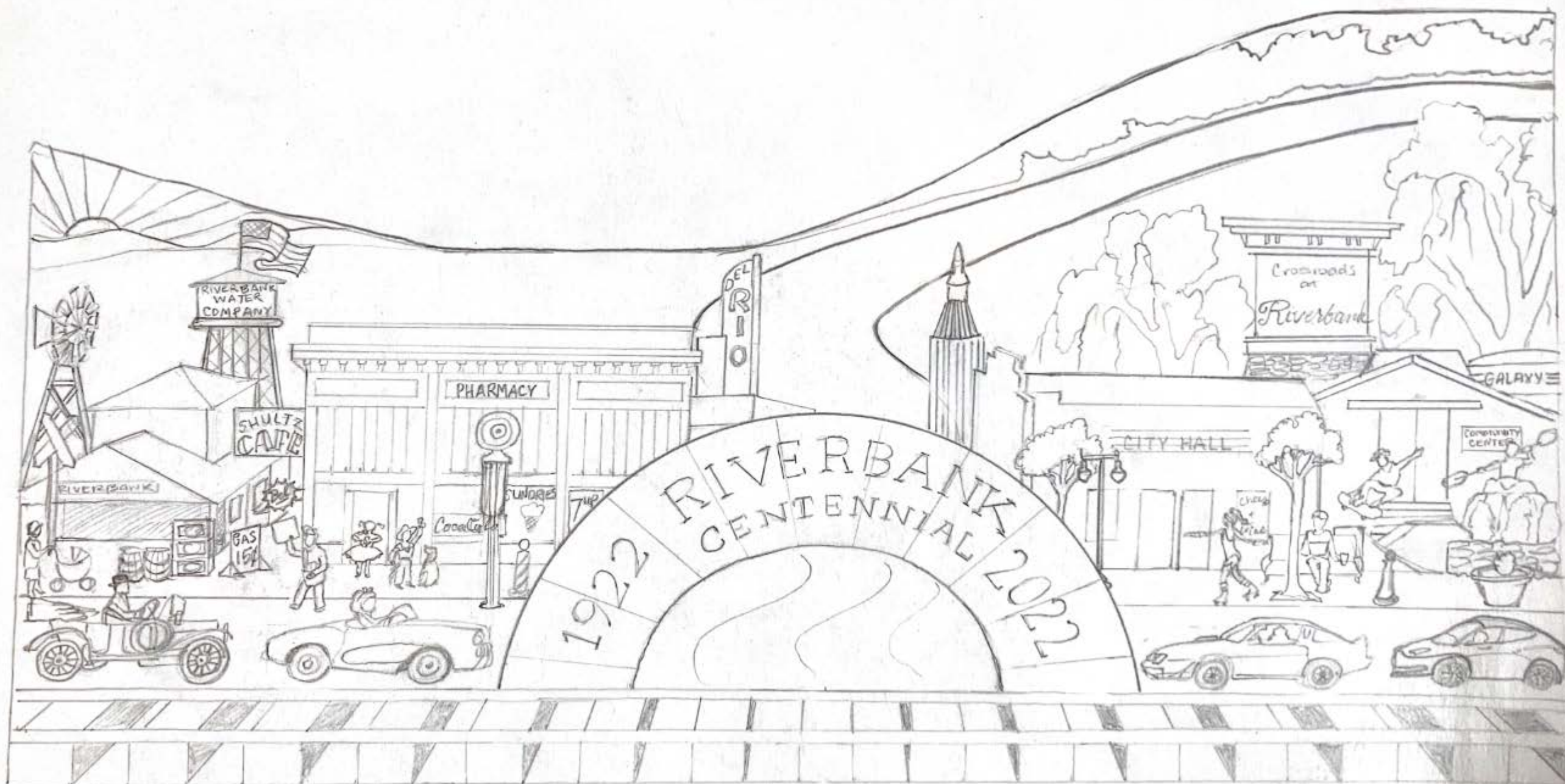
Scavenger Hunt, historical booklets, historical pictures
for public buildings display, promotional video, etc.

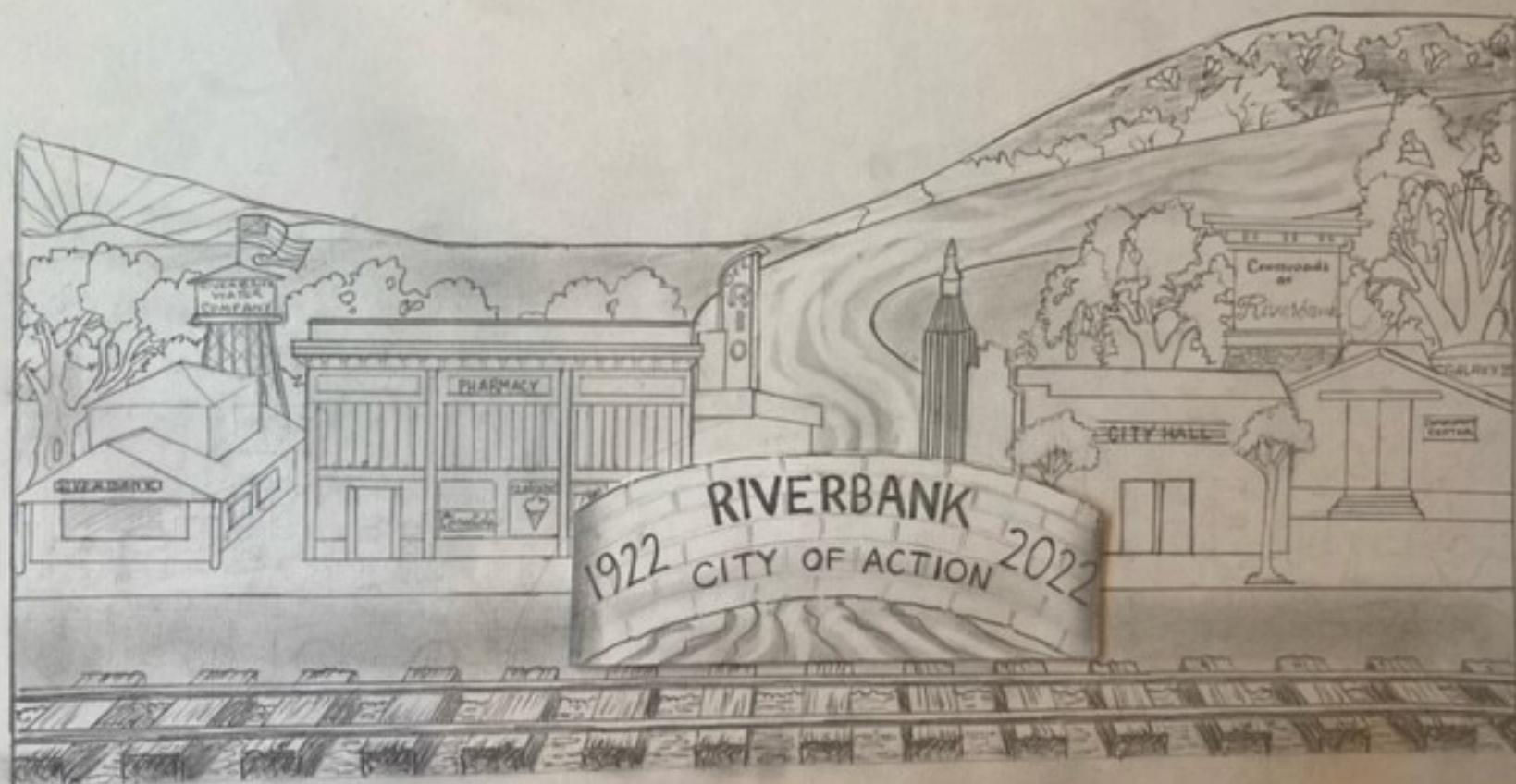
TOTAL EXPENSES

\$42,500

RIVERBANK CENTENNIAL MURAL COST

<u>ITEM</u>	<u>COST</u>
MATERIALS PROFESSIONAL QUALITY, EXTERIOR LIGHT FAST, WATERPROOF ACRYCLIC MURAL PIANTS, PERMANENT CLEAR COAT VARNISH, REMOVABLE GRAFFITTI VARNISH, BRUSHES, DROP CLOTH, BUCKET	MATERIAL TOTAL \$1,000
LABOR MEETINGS AND DESIGN, SKETCHS, PAINT MURAL LOCATION	611 SQUARE FEET X \$15/SQ FOOT LABOR TOTAL \$9, 165
ADD ON SUBCONTRACT SPRAY -ON VARNISH UPON COMPLETION THROUGH ARTIST IR CITY ESTIMATED LABOR COST	SUBCONTRACT TOTAL (OPTIONAL) \$500
	Total Cost \$10,665 Original Budget \$ 3,000 Over Budget \$7, 665













Crossroads at
Riverbank

CITY HALL

RIVERBANK
1922 100 YEARS OF ACTION 2022

Alexander Riddle

RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY

AGENDA ITEM NO. 11.2

SECTION 11: NEW BUSINESS

Meeting Date: May 24, 2022

Subject: A Resolution Continuing the Approved River Cove River Access Closure Plan

From: Marisela H. Garcia, City Manager

RECOMMENDATION

It is recommended that the City Council continue the closure plan as developed by staff and provide any other additional direction as needed. The Closure Plan expired on November 1, 2021.

SUMMARY

Over the summer season of 2020, the City of Riverbank staff and elected officials were actively engaged in discussions with residents in the River Cove neighborhood regarding a number of nuisance issues related to the increased use of the river access along River Cove Drive. A variety of concerns were raised by some residents related to increased traffic, litter, destruction of natural habitat, and illegal activities associated with the large numbers of visitors accessing the river in the River Cove area over the summer. These concerns are not a recent development, depending on the river conditions of any given year the nuisance related issues have been a concern for the neighborhood for many years, with discussions on this matter happening for well over a decade. It appears as though the problems within the area increase during hot summers when the river levels are low. When the river levels are low there are a variety of sandy banks available along the river's edge which are attractive to visitors and rafters.

In November of 2020 the City Council held a workshop (widely noticed to the River Cove neighborhood) on the variety of nuisance issues that were experienced during the 2020 summer season. After much discussion and deliberation on a variety of possible solutions, the City Council directed staff to make necessary preparations for the closure of the river access areas for the 2021 season to allow for the repair and regrowth of the riparian/natural habitat.

Staff returned to Council on March 9, 2021 where the closure plan was presented and Resolution No. 2021-006 was adopted which authorized the implementation of the Closure Plan. This Closure Plan expired on November 1, 2021.

UPDATED CLOSURE PLAN

Due to the large linear area along River Cove Drive that abuts the river staff has chosen to focus the closure notices and physical barriers to the key river access commonly used by visitors.

Date Range: Closure Effective May 25, 2022 through November 1, 2022. Staff will return with a report to Council at the end of the summer season to identify effectiveness of the closure with regard to the area regrowth and associated nuisance issues. In addition, staff are researching permanent solutions for Council to consider for future years.

Closure Notices: The notices will inform the public that river access is closed for the summer season (dates noted above) due to riparian habitat repair and cleanup. The notice will direct visitors to Jacob Meyers Park as an alternative.

Fencing: Split rail fencing has been placed at the entrance locations that lead to the key areas used and those areas that have been most effective by the large amounts of use in the past. Repairs to the fencing will be made due to damage.

Education: Staff will replace signage previously installed (physical and electronic) within this area notifying the public of the closure.

Replanting and Riparian Regrowth: Staff is currently working on a plan as well as budgetary requests for the upcoming budget to appropriate replant the area that has been damaged over years of use.

Enforcement: Enforcement will take a variety of forms depending on the level of voluntary compliance with the closure. Citations can be issued as the area has been closed by order of the City Council. In general staff will use discretion to first educate and then proceed with more progressive enforcement options.

FINANCIAL IMPACT

Financial impact of this closure will primarily be related to additional staff time in coordinating the enforcement effort. Minor costs related to the replacement and repair of signage and fencing. Staff will also develop a budget for consideration related to the plants and trees needed for the repair of the area for future Council consideration.

ATTACHMENTS

1. Draft City Council Resolution 2022-

CITY OF RIVERBANK

RESOLUTION 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, APPROVING THE CONTINUATION OF A CLOSURE PLAN FOR THE
RIVER COVE NEIGHBORHOOD RIVER BANK ACCESS AREA**

WHEREAS, a variety of concerns have been raised by residents related to increased traffic, litter, destruction of natural habitat, and illegal activities associated with the large numbers of visitors accessing the river in the River Cove area over the summer; and

WHEREAS, depending on the river conditions of any given year the nuisance related issues have been a concern for the neighborhood for many years, with discussions on this matter happening for well over a decade; and

WHEREAS, November of 2020 the City Council held a workshop (widely noticed to the River Cove neighborhood) on the variety of nuisance issues that were experienced during the 2020 summer season; and

WHEREAS, after much deliberation on a variety of possible solutions, the City Council directed staff to make necessary preparations for a closure plan of the River Cove neighborhood river bank access areas for the 2021 season to allow for the repair and regrowth of the riparian/natural habitat; and

WHEREAS, on March 9, 2021 the City Council approved Resolution 2021-006 which authorized the implementation of the River Cove River Access Closure Plan; and

WHEREAS, the approved Closure Plan expired on November 1, 2021 and it is the desire to continue this closure plan through the 2022 summer period to allow for the continued riparian regrowth.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby finds, determines, and declares as follows:

Continuation of the Closure Plan

Due to the large linear area along River Cove Drive that abuts the river staff has chosen to focus the closure notices and physical barriers to the key river access commonly used by visitors.

1. **Date Range**: Closure Effective May 25, 2022 through November 1, 2022. Staff will return with a report to Council at the end of the summer season to identify effectiveness of the closure with regard to the area regrowth and associated

nuisance issues. In addition, staff are researching permanent solutions for Council to consider for future years.

2. **Closure Notices**: The notices will inform the public that river access is closed for the summer season (dates noted above) due to riparian habitat repair and cleanup. The notice will direct visitors to Jacob Meyers Park as an alternative.
3. **Fencing**: Split rail fencing has been placed at the entrance locations that lead to the key areas used and those areas that have been most effective by the large amounts of use in the past. Repairs to the fencing will be made due to damage.
4. **Education**: Staff will replace signage previously installed (physical and electronic) within this area notifying the public of the closure.
5. **Replanting and Riparian Regrowth**: Staff is currently working on a plan as well as budgetary requests for the upcoming budget to appropriate replant the area that has been damaged over years of use.
6. **Enforcement**: Enforcement will take a variety of forms depending on the level of voluntary compliance with the closure. Citations can be issued as the area has been closed by order of the City Council. In general staff will use discretion to first educate and then proceed with more progressive enforcement options.
7. **Flexibility of Plan**: It is recognized that unforeseen issues or concerns may arise during the implementation of this plan that may not have been considered and therefore Council will be apprised of any changes deemed necessary to this plan to address and alleviate the matter.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 24th day of May, 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 Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor