

**REVISED**

**SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.1**

**SECTION 4: BUSINESS**

<b>Meeting Date:</b>	November 14, 2016
<b>Subject:</b>	Approve City Manager Employment Contract
<b>From:</b>	Douglas L. White, Deputy City Attorney
<b>Submitted by:</b>	Douglas L. White, Deputy City Attorney

**RECOMMENDATION**

It is recommended that the Riverbank City Council ("City Council") approve the City Manager Employment Agreement between the City of Riverbank ("City") and Sean Scully.

**SUMMARY**

In August 2016, the City of Riverbank ("City") began recruitment efforts to fill its vacant City Manager position. After interviewing several qualified candidates, the City Council directed staff to commence contact negotiations with Sean Scully. Mr. Scully has spent the last decade working for municipalities throughout the Central Valley, beginning as an Assistant Planner of Economic Development in the City of Turlock, through his current position as City Manager in Gustine.

**FINANCIAL IMPACT**

The potential financial impact will depend on the terms of the final agreement approved by the City Council.

**STRATEGIC PLAN**

Consideration of hiring a new City Manager who meets the City Council's approval is consistent with the City's goal of attracting, developing and retaining quality staff.

**ATTACHMENTS**

City Manager Employment Agreement

## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Riverbank, a municipal corporation, (“City”) and Sean Scully (“Employee”), an individual. City and Employee may individually be referred to herein as “Party” or collectively as “Parties”. There are no other parties to this Agreement.

### RECITALS

- A. City requires the services of a person with proven executive and administrative qualifications to fill the position of Riverbank City Manager (“City Manager”).
- B. City, acting by and through the Riverbank City Council (“City Council”) has evaluated Employee’s knowledge, experience, administrative skills and abilities and desires to hire and appoint Employee as City Manager pursuant to the terms of this Agreement.
- C. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as City Manager.
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code (“Government Code”) Section 53260 *et seq.*

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

### AGREEMENT

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

**Section 2. Effective Date.** This Agreement shall become effective on January 2, 2017 (“Effective Date”).

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

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

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

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

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

**Section 3.4. Term.** The term of this Agreement shall be for three (3) years from the Effective Date ("Term"). The City Council may extend the Term for a period of two (2) years. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 7 below.

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

## **Section 5. Compensation and Evaluations.**

**Section 5.1. Base Salary.** City shall pay Employee an annual salary of One Hundred and Forty Thousand Dollars (\$140,000.00) ("Base Salary"), and payable in installments at the same time that the other City employees are paid. A salary review shall occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive a five percent (5%) Base Salary increase each January upon receiving a performance evaluation of at least "Satisfactory."

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

**Section 5.3. Review and Evaluation.** The City Council agrees to review and evaluate Employee's performance of his duties as City Manager pursuant to the terms of this Agreement ("Review and Evaluation") on not less than an annual basis, and to provide Employee with a written performance review. Employee will be evaluated within the first six (6) months of his employment, in June 2017. The annual Review and Evaluation shall then be conducted in June of each year, or at the City Council's discretion.

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

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

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

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

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

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

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

**Section 5.11. City Vehicle.** City shall provide Employee with a Two Hundred Fifty Dollar (\$250.00) car allowance per month, with an annual increase of Twenty Dollars (\$20.00) over the Term of this Agreement. Employee shall name City as an additional insured under Employee's automobile insurance coverage. Employee may use a City vehicle for travel on all City-related business based on availability.

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

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

**Section 5.14. Deferred Compensation.** City shall establish and maintain a deferred compensation plan and pay the sum of Five Thousand Dollars (\$5,000.00) per year on behalf of Employee into said deferred compensation plan payable in pro rata installments at the same time other employees of the City are paid.

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

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

**Section 7. Termination of Employment and Severance.**

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

benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to Severance as set forth in Section 7.3 of this Agreement.

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

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

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

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

1. Conviction of a felony;
2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;

4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates City's Personnel Rules and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from City Manager's office and duties;
9. Willful destruction or misuse of City property;
10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;
11. Willful violation of federal, state or City discrimination laws;
12. Continued substance abuse which adversely affects performance of Employee's duties as City Manager;
13. Refusal to take or subscribe any oath or affirmation which is required by law; or
14. Permanent disability of Employee, or Employee becoming otherwise unable to perform the duties of City Manager, by reason of sickness, accident, illness, injury, mental incapacity or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves.

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

**Section 8. Indemnification.** City shall defend, hold harmless and indemnify Employee against any tort, personnel, civil rights or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager in accordance with California's Government Claims Act (Government Code Section 825 *et seq.*), and shall provide a defense to Employee in accordance with Government Code Sections 995-



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**Section 11. General Provisions.**

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

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

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

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

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

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

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

**11.8. Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is

claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

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

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

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

**[SIGNATURE PAGE TO FOLLOW]**

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

**CITY:**

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

By: \_\_\_\_\_  
Richard D. O'Brien, Mayor

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Annabelle Aguilar, City Clerk

Date Signed: \_\_\_\_\_

Approved as to Form and Content:

By: \_\_\_\_\_  
Thomas P. Hallinan, City Attorney

**EMPLOYEE:**

By: \_\_\_\_\_  
Sean Scully, an individual

Date Signed: \_\_\_\_\_

PROPOSED

**REVISED**

**SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 4.2**

**SECTION 4: BUSINESS**

<b>Meeting Date:</b>	November 14, 2016
<b>Subject:</b>	Approve Assistant City Manager Contract
<b>From:</b>	Douglas L. White, Deputy City Attorney
<b>Submitted by:</b>	Douglas L. White, Deputy City Attorney

**RECOMMENDATION**

It is recommended that the Riverbank City Council ("City Council") approve an Assistant City Manager Employment Agreement between the City of Riverbank ("City") and Marisela H. Garcia.

**SUMMARY**

On November 8, 2016, the City Council provided direction to staff and legal counsel to take the necessary steps to create an Assistant City Manager position and make the corresponding changes to the Riverbank Municipal Code ("R.M.C"). Staff anticipates presenting the City Council with a proposed ordinance to amend the R.M.C. at the next regular City Council meeting.

Staff is presenting an employment agreement for the position of Assistant City Manager between the City and Marisela H. Garcia consistent with the City Council's direction to establish a succession plan and provide a mechanism for current staff to advance. Ms. Garcia currently holds the position of Director of Finance and has served as the Interim City Manager since the City Manager position became vacant. This new employment agreement would reflect Ms. Garcia's current role and duties and add the duties of Assistant City Manager to her position.

The employment agreement contains substantially the same terms as Ms. Garcia's current employment agreement with the City but will contain corresponding adjustments based on the increase in duties and responsibilities.

**FINANCIAL IMPACT**

Any budgetary adjustments necessary to accommodate the terms of this employment agreement will be based on the difference between Ms. Garcia's current salary structure and one for the Assistant City Manager position.

## **REVISED**

### **STRATEGIC PLAN**

While the Assistant City Manager position is not specifically included in the City's Strategic Plan, it is consistent with the City's goal of attracting, developing and retaining quality staff.

### **ATTACHMENTS**

Assistant City Manager Employment Agreement

## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Riverbank, a municipal corporation, (“City”) and Marisela H. Garcia (“Employee”), an individual. City and Employee may individually be referred to herein as “Party” or collectively as “Parties”. There are no other parties to this Agreement.

### RECITALS

- A. On November 8, 2016, the Riverbank City Council (“City Council”) directed staff to take the necessary steps to create an Assistant City Manager position.
- B. On \_\_\_\_\_, 20\_\_\_\_, the City Council adopted Ordinance No. \_\_\_\_\_, establishing the duties and powers of the Assistant City Manager.
- C. The City requires the services of a person with proven executive and administrative qualifications to fill the position of Assistant City Manager.
- D. Employee has served as the City’s Director of Finance since December 2006.
- E. The City, acting by and through the City Council, has evaluated Employee’s knowledge, experience, administrative skills and abilities and desires to hire and appoint Employee as Assistant City Manager pursuant to the terms of this Agreement.
- F. Employee shall continue her duties as the City’s Director of Finance.
- G. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as Assistant City Manager.
- H. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code (“Government Code”) Section 53260 *et seq.*

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

### AGREEMENT

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

**Section 2. Effective Date.** This Agreement shall become effective on the effective date of Ordinance No. \_\_\_\_\_ (“Effective Date”).

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

**Section 3.1. Appointment of Assistant City Manager and Duties.** Employee shall serve as the Assistant City Manager of the City, and shall be vested with the powers, duties, and responsibilities set forth in \_\_\_\_\_ of the Riverbank Municipal Code (“R.M.C.”) and California law. Employee shall further perform the functions and duties specified under the laws of the State of California, the R.M.C., the Ordinances, and Resolutions of the City, and such other duties and functions as the City Manager may from time-to-time assign.

**Section 3.2. Director of Finance Duties.** Employee shall also remain the Director of Finance and shall be vested with the powers, duties, and responsibilities set forth in Section 31.04 of the R.M.C.

**Section 3.3. No Secondary Employment.** Employee agrees to devote all of her productive time, ability and attention to the City’s business. During the Term, as defined in Section 3.4 of this Agreement, Employee shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Manager. Provided, however, that Employee has the right to volunteer for such nonprofit organizations as she may see fit; and further provided that such volunteer services shall not interfere with her duties on behalf of the City.

**Section 3.4. Exempt Employee.** The general business hours for City employees are Monday through Fridays, 9:00 a.m. to 5:00 p.m. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*). Employee shall not receive overtime or extra compensation for hours worked outside of the City’s general business hours, which are necessary to fulfill the duties of the Assistant City Manager and Director of Finance position, unless otherwise provided in this Agreement.

**Section 3.5. Term.** The term of this Agreement shall be for four (4) years from the Effective Date (“Term”). The City Council may extend the Term for a period of one (1) year. No later than four (4) months prior to the expiration of the Term, the City Council shall provide written notice to Employee as to whether the City Council intends to extend the Term. Termination of this Agreement shall be in accordance with Section 7 below.

**Section 4. At-Will Employment.** Employee is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and R.M.C. Section 31.03(E). Accordingly, the City Manager may terminate Employee’s employment at any time, with or without cause. Employee shall only be entitled to

Severance, as defined below, if City terminates Employee's employment without cause as set forth in Section 6.3.

## **Section 5. Compensation and Evaluations.**

**Section 5.1. Base Salary.** City shall pay Employee an annual salary of One Hundred and Thirty Thousand Dollars (\$130,000) ("Base Salary"), Step \_\_\_\_\_, and payable in installments at the same time that the other City employees are paid. A salary review shall occur annually in accordance with Section 5.3 of this Agreement. Employee shall receive any cost of living adjustment that is granted to all City employees. Employee shall receive a step increase annually upon receiving a performance evaluation of at least "Satisfactory". At any such time that the City Manager leaves employment with the City and Employee must fulfill the duties of City Manager, Employee will immediately receive a step increase. If Employee is already at Step E, then she will receive a five percent (5%) Base Salary increase for the time spent as City Manager.

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

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

**Section 5.4. Healthcare Benefits.** City provides medical benefits to its employees through the San Joaquin Valley Insurance Association. Employee shall contribute towards her healthcare benefits in increments of five percent (5%) on an annual basis beginning each fiscal year, but not to exceed a twenty percent (20%) total Employee contribution.

From the Effective Date of this Agreement to June 30, 2017, the City shall pay the full premium for Employee's health care benefits. Beginning on July 1, 2017, Employee shall contribute five percent (5%) of the cost of her healthcare benefits and the City will contribute the remainder. On July 1, 2018, Employee shall contribute ten percent (10%) of the cost of her healthcare benefits and the City will contribute the remainder. On July 1, 2019, Employee shall contribute fifteen percent (15%) of the cost of her healthcare benefits and the City will contribute the remainder. On July 1, 2020, Employee shall contribute twenty percent (20%) of the cost of her healthcare benefits and the City will contribute the remainder. The City will pay the full premium for Employee and family dental and vision coverage during the Term of this Agreement.

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

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

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

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

**Section 5.9. Executive Leave.** It is recognized that Employee must devote a great deal of time outside the normal office hours to City business. To that end, Employee shall receive ninety-six (96) hours of executive leave at the beginning of each fiscal year, eighty (80) of which may be cashed out if not used. Any unused executive leave expires on the June 30 of each fiscal year.

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

**Section 5.11. Deferred Compensation.** City shall establish and maintain a deferred compensation plan and pay the sum of Two Hundred and Fifty Dollars (\$250.00) per month on behalf of Employee into said deferred compensation plan. Employer will also match Employee’s contribution to the deferred compensation plan in an amount not to exceed Twenty Five Dollars (\$25.00) each pay period. City will also contribute to the Union Pension Retirement Fund at the rate of one hundred and seventy-three (173) hours worked time multiplied by the negotiated rate for any given year each month (e.g.  $173 \times .93 = \$160.89$ ). Employee shall receive any adjustment to this program granted to all other Department Heads.

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

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

## **Section 6. Termination of Employment and Severance.**

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

**Section 6.2. Termination by City Manager.** The City Manager may terminate this Agreement and remove Employee from her position as Assistant City Manager at any time with or without cause, subject to ratification by the City Council. Within ten (10) days of the City Manager's termination of this Agreement, Employee may make a written request for a hearing before the City Council in closed session. At the hearing, Employee may submit written testimony, information or documentation to the City Council for consideration. Any oral testimony on behalf or in support of Employee will be limited to oral testimony from Employee only. Any written or oral testimony, information or documentation submitted to the City Council in closed session will be confidential. Upon termination for any reason, City shall compensate Employee for all accrued vacation and executive leave as well as thirty percent (30%) of sick leave earned but not used. This compensation shall be based upon Employee's salary as of the date of employment termination.

**Section 6.3. Termination Without Good Cause.** In the event City terminates this Agreement without cause, as defined below in Section 6.4, the City shall pay Employee a sum equal to six (6) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code Section 53260, including without limitation, that the maximum amount of Severance pay that Employee may receive shall be the lesser of (i) six (6) months base salary or (ii) if the unexpired term of the contract is greater than eighteen (18) months, the maximum cash settlement shall be an amount equal to the monthly salary of the Employee multiplied by eighteen (18). Any cash settlement related to the termination of this Agreement received by Employee from City

shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position while employed with City Pursuant to Government Code Section 53243.2. This Severance shall be paid in the same manner as other Employees unless otherwise agreed to by the City and Employee. In the event City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at her cost pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act (“COBRA”).

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

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

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

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

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

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

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

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

**Section 9. Notices.** Any notice or communication required hereunder between City and Employee must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or

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

If to City: City of Riverbank  
ATTN: City Clerk  
6707 Third Street  
Riverbank, California 95367

and Churchwell White, LLP  
ATTN: Thomas P. Hallinan  
1414 K Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

If to Employee: Marisela H. Garcia  
\_\_\_\_\_  
\_\_\_\_\_

## **Section 10. General Provisions.**

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

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

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

**10.4. Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former

requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

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

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

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

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

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

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

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

**[SIGNATURE PAGE TO FOLLOW]**

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

**CITY:**

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

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Annabelle Aguilar, City Clerk

Date Signed: \_\_\_\_\_

Approved as to Form and Content:

By: \_\_\_\_\_  
Thomas P. Hallinan, City Attorney

**EMPLOYEE:**

By: \_\_\_\_\_  
Marisela H. Garcia, an individual

Date Signed: \_\_\_\_\_

PROPOSED