



CITY COUNCIL REGULAR MEETING

**Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA**

Thursday, June 03, 2021

Regular Meeting 6:00 PM

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Council Members to attend City Council meetings telephonically. Please be advised that some, or all, of the Clearlake City Council Members may attend this meeting telephonically.

Furthermore, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which waives the mandate of public, in-person accessibility to Council meetings provided there are other means for the public to participate. Effective immediately and continuing only during the period in which state or local public health officials have imposed or recommended social distancing measures, the Clearlake City Council meetings will be viewable via livestreaming on the City of Clearlake's YouTube Channel https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA and the public may participate through Zoom at the link listed below.

Balancing the health risks associated with COVID-19, while appreciating the public's right to conduct the people's business in a transparent and open manner, the City wants you to know that you can submit your comments and questions in writing for City Council consideration by sending them to the Administrative Services Director/City Clerk at mswanson@clearlake.ca.us. To give the City Council adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

Beginning April 1st, 2021, the public may attend City Council meetings in person. However, the Council Chambers will have limited capacity and attendees must adhere to masking and social distancing mandates. You may view the meeting live on YouTube at the City of Clearlake's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at <https://www.youtube.com/user/LakeCountyPegTV/featured>.

AGENDA

Zoom Link: <https://clearlakeca.zoom.us/j/99228046290>

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

ROLL CALL

PLEDGE OF ALLEGIANCE

INVOCATION/MOMENT OF SILENCE: *The City Council invites members of the clergy, as well as interested members of the public in the City of Clearlake, to voluntarily offer an invocation before the beginning of its meetings for the benefit and blessing of the City Council. This opportunity is voluntary and invocations are to be less than three minutes, offered in a solemn and respectful tone, and directed at the City Council. Invocational speakers who do not abide by these simple rules of respect and brevity shall be given a warning and/or not invited back to provide a subsequent invocation for a reasonable period of time, as determined appropriate by the City. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, not express the City Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faith represented and practiced among the citizens of Clearlake. If a scheduled invitational speaker does not appear at the scheduled meeting, the Mayor will ask that the City Council observe a moment of silence in lieu of the invocation. More information about the City's invocation policy is available upon request by contacting the Administrative Services Director/City Clerk at (707) 994-8201x106 or via email at mswanson@clearlake.ca.us.*

MEETING PROCEDURES: *All items on agenda will be open for public comments before final action is taken. Citizens wishing to introduce written material into the record at the public meeting on any item are requested to provide a copy of the written material to the Administrative Services Director/City Clerk prior to the meeting date so that the material may be distributed to the City Council prior to the meeting. Speakers must restrict comments to the item as it appears on the agenda and stay within a three minutes time limit. The Mayor has the discretion of limiting the total discussion time for an item.*

ADOPTION OF THE AGENDA *(This is the time for agenda modifications.)*

PRESENTATIONS

- [1.](#) Presentation of a Proclamation Commending Sergeant Rodd Joseph on His Retirement
2. Presentation by Housing and Community Development on the RecoverCA Owner-Occupied Rehabilitation and Reconstruction Program
- [3.](#) Presentation of a Proclamation Declaring June 2021 as LGBTQ+ Pride Month

PUBLIC COMMENT: *This is the time for any member of the public to address the City Council on any matter not on the agenda that is within the subject matter jurisdiction of the City. **The Brown Act, with limited exceptions, does not allow the Council or staff to discuss issues brought forth under Public Comment.** The Council cannot take action on non-agenda items. Concerns may be referred to staff or placed on the next available agenda. Please note that comments from the public will also be taken on each agenda item. Comments shall be limited to three (3) minutes per person.*

CONSENT AGENDA: *All items listed under the Consent Agenda are considered to be routine in nature and will be approved by one motion. There will be no separate discussion of these items unless a member of the Council requests otherwise, or if staff has requested a change under Adoption of the Agenda, in which*

case the item will be removed for separate consideration. Any item so removed will be taken up following the motion to approve the Consent Agenda.

4. Award of Contract for Environmental Services for the Dam Road Roundabout Project.
Recommended Action: Authorize City Manager to enter into a contract with ECORP for the Dam Road Roundabout Project in the amount of \$63,175.968 and authorize the City Manager to approve up to 10% for additional unforeseen contract amendments
5. Continuation of Declaration of Local Emergency Issued on March 14, 2020 and Ratified by Council Action on March 19, 2020
Recommended Action: By motion keep declaration of emergency active and set next review in sixty days
6. Continuation of Declaration of Local Emergency Issued on October 9, 2017 and Ratified by Council Action October 12, 2017
Recommended Action: By motion keep declaration of emergency active and set next review in 30 days
7. Consideration of Resolution No. 2021-28, a Resolution of the City of Clearlake, approving a temporary road closure for the Community Block Party.
Recommended Action: By motion, adopt resolution
8. Minutes of the May Meetings
Recommended Action: Receive and file
9. Warrants
Recommended Action: Receive and file

PUBLIC HEARING

Notice to the Public:

The City Council, when considering the matter scheduled for hearing, will take the following actions:

- a) Open the Public Hearing*
- b) Presentation by Staff*
- c) Presentation by Applicant or Appellant (if applicable)*
- d) Accept Public Testimony*
- e) Applicant or Appellant Rebuttal Period (if applicable)*
- f) Close the Public Hearing*
- g) Council Comments and questions*
- h) Council Action*

Once the hearing is closed, no further public comment will be taken. If you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you, or someone else, raised orally at the public hearing or in written correspondence received by the city at or before the public hearing.

Public hearings listed for continuance will be continued as noted and posting of this agenda serves as notice of continuance. Any matter not noted for continuance will be posed separately.

10. Consideration of Development Agreement, DA 2021-02 for Akwaaba, INC., to allow the expansion of their existing cannabis operation to include a Microbusiness; Ordinance No. 254-2021

Recommended Action: Hold first reading of Ordinance No. 254-2021, read it by title only, waive further reading and set second reading and adoption for the June 17, 2021 meeting

11. Consideration of Development Agreement (DA 2021-03) Green Growth Solutions, LLC., for a Commercial Cannabis Operation; Ordinance No. 255-2021

Recommended Action: Hold First Reading of Ordinance No. 255-2021, Read by Title Only, Waive Further Reading and Set Second Reading and Adoption for June 17th, 2021.

BUSINESS

12. Consideration of rejection of bids for demolition of structures located at 14525 Lakeshore Drive Clearlake, CA 95422

Recommended Action: Reject all bids for the demolition of all structures at 14525 Lakeshore Drive

CITY MANAGER AND COUNCILMEMBER REPORTS

FUTURE AGENDA ITEMS

CLOSED SESSION

- (13)** Conference with Labor Negotiators: Agency Designated Representatives: City Manager Alan Flora and Administrative Services Director/City Clerk Melissa Swanson; Employee Organization: Clearlake Municipal Employees Association, Clearlake Police Officers Association, Clearlake Middle Management Association

- (14)** Conference with Legal Counsel- Existing Litigation: Pursuant to Government Code Section 54956.9: Case No. CV-421149; Name of Case: City of Clearlake v. County of Lake, a political subdivision of the State of California; Board of Supervisors of the County of Lake, a public body of the County of Lake; Barbara C. Ringen, in her official capacity as the Treasurer-Tax Collector of the County of Lake; and Does 1 through 30, inclusive

ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

ADJOURNMENT

POSTED: May 28, 2021

BY:



Melissa Swanson, Administrative Services Director/City Clerk



Commending Rodd Joseph

WHEREAS Sergeant Rodd Joseph began his law enforcement career with the Watsonville Police Department in 1994 after serving in the U.S. Army with a combat deployment; and

WHEREAS, while at Watsonville, Sergeant Joseph served in a variety of special assignments, including K-9 handler and detective. While assigned to investigations, his work on a case was featured on America's Most Wanted. He investigated numerous violent crimes and served on the department's color guard; and

WHEREAS, between 2002 and 2005, Sergeant Joseph spent time working at the Kent and Lakewood Police Departments in Washington. He spent some of this time working as a School Resource Officer. In 2005, he returned to California and served at the Susanville Police Department where he worked in patrol, as an FTO and as a detective. He earned recognition as Officer of the Year in 2006. Before leaving Susanville Police, Sergeant Joseph was assigned as an acting sergeant; and

WHEREAS, in May 2007, Sergeant Joseph joined the Clearlake Police Department as a sergeant. Sergeant Joseph has supervised many patrol teams and fulfilled additional responsibilities including as a scheduling sergeant, K-9 supervisor, background investigator and traffic supervisor. He reinitiated the department's explorer program that had been inactive for several years and served as the lead advisor until additional personnel took over. He has received several recognitions during his time with the department; and

LET IT BE PROCLAIMED that Rodd Joseph is to be commended for his commitment to serving the citizens of the City of Clearlake and is congratulated on his retirement and extended warmest wishes for the future.

Dated this 3rd day of June, 2021

Dirk Slooten, Mayor



LGBTQ+ Pride Month June 2021

WHEREAS, our nation was founded on the principle of equal rights for all people, but the fulfillment of this promise has been long in coming for many Americans. Some of the most inspiring moments in our history have arisen from the various civil rights movements that have brought one group after another from the margins to the mainstream of American society; and

WHEREAS, in the movement toward equal rights for lesbian, gay, bisexual and transgender (LGBTQ+) people, a historic turning point occurred on June 28, 1969, in New York City, with the onset of the Stonewall Riots. During these riots, LGBTQ+ citizens rose up and resisted police harassment that arose out of discriminatory criminal laws that have since been declared unconstitutional. In the four decades since, civil rights for LGBTQ+ people have grown substantially, and LGBTQ+ pride celebrations have taken place around the country every June to commemorate the beginning of the Stonewall Riots; and

WHEREAS, California has been a leader in advancing the civil rights of its LGBTQ+ citizens. And while further progress is needed, it is important to recognize and celebrate the substantial gains that have been achieved.

NOW, THEREFORE, the City Council of the City of Clearlake does hereby proclaim June 2021 as "LGBTQ+ Pride Month" in Clearlake and calls upon its citizens to eliminate prejudice everywhere it exists and celebrate the diversity of our community.

Dated this 3rd day of June, 2021

Dirk Slooten, Mayor

CITY OF CLEARLAKE

CITY COUNCIL STAFF REPORT

MEETING OF: June 3, 2021

Agenda Item No.

Subject: Award of Contract for Environmental Services for the Dam Road Roundabout Project **Date:** May 24, 2021

Reviewed & Approved:

From: Adeline Brown, Engineer Tech

Recommended Action: Authorize City Manager to enter into a contract with ECORP for Environmental Services for the Dam Road Roundabout Project in the amount of \$63,175.96 and authorize the City Manager to approve up to 10% for additional unforeseen contract amendments.

ISSUE STATEMENT AND DISCUSSION:

The City solicited proposals for Environmental Services for the Dam Road Roundabout Project. These services include a biological resource assessment, cultural resource studies, a traffic study, and other site assessments related to environmental impacts. This project was advertised on the City website, advertised in the newspaper and sent to various Builders Exchange Plan rooms. The City opened bids on April 15, 2021 from the following consultants:

- Environmental Science Associates \$60,500.00
- ECORP \$63,175.96
- AES \$84,289.00
- GHD Non-responsive
- Metropolitan Planning Group Non-responsive

Two proposals were deemed non-responsive. Staff recommends that the City Council approve and direct the City Manager to enter into a contract with ECORP in the amount of \$63,175.96 and authorize the City Manager to approve up to 10% for additional unforeseen contract amendments.

FINANCIAL AND/OR POLICY IMPLICATIONS:

There are no policy implications with this recommendation. Funding for this project will be funded wholly through the State Transportation Improvement Program (STIP).

CITY OF CLEARLAKE

CITY COUNCIL STAFF REPORT

Subject: Continuation of Declaration of Local Emergency
Issued on March 14, 2020 and Ratified by Council
Action March 19, 2020

Reviewed & Approved:

From: Melissa Swanson, Administrative Services
Director/City Clerk

Recommended Action: By motion keep declaration of emergency active and set next review in sixty days

ISSUE STATEMENT AND DISCUSSION:

On March 13, 2020 City Manager Flora, as the Director of Emergency Services for the City of Clearlake, declared in the attached Proclamation by the Director of Emergency Services Declaring a Local Emergency due to the state and federal declaration of the COVID-19/Coronavirus pandemic:

“That conditions of disaster or extreme peril to the safety of the persons and property have within the City that are likely to be beyond the control of the services, personnel, equipment, and facilities of the City”

According to California Government Code Section 8630:

- (a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
- (b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
- (c) The governing body shall review the need for continuing the local emergency at least once every 30 days until the governing body terminates the local emergency.
- (d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

On March 19th, 2020, the Council ratified the Proclamation of the Local Emergency by adoption of Resolution No. 2020-10. The Council must continue the Proclamation every 60 days or terminate the local emergency.

It is recommended that the City Council again continue the Proclamation of Emergency ratified in Resolution No. 2020-10 and review the status of the Proclamation again within 60 days.

FINANCIAL AND/OR POLICY IMPLICATIONS:

There is potential for recovery of costs by the City due to the declared state of emergency.

CITY OF CLEARLAKE

CITY COUNCIL STAFF REPORT

Subject: Continuation of Declaration of Local Emergency
Issued on October 9, 2017 and Ratified by Council
Action October 12, 2017

Reviewed & Approved:

From: Melissa Swanson, Administrative Services
Director/City Clerk

Recommended Action: By motion keep declaration of emergency active and set next review
in 30 days

ISSUE STATEMENT AND DISCUSSION:

On October 9th, 2017, former City Manager Folsom, as the Director of Emergency Services for the City of Clearlake, declared in a Proclamation by the Director of Emergency Services Declaring a Local Emergency:

“That conditions of extreme peril to the safety of the persons and property have arisen within the City of Clearlake caused by the wildfire on October 9th, 2017.”

According to California Government Code Section 8630:

- (a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
- (b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
- (c) The governing body shall review the need for continuing the local emergency at least once every 30 days until the governing body terminates the local emergency.
- (d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

On October 12th the Council ratified the Proclamation of the Local Emergency by adoption of Resolution No. 2017-78. The Council must continue the Proclamation every 30 days or terminate the local emergency.

It is recommended that the City Council again continue the Proclamation of Emergency ratified in Resolution No. 2017-78 and review the status of the Proclamation again within 30 days.

FINANCIAL AND/OR POLICY IMPLICATIONS:

There is potential for recovery of costs by the City due to the declared state of emergency.

CITY OF CLEARLAKE

CITY COUNCIL STAFF REPORT

MEETING OF: June 3, 2021

Agenda Item No.

Subject: Consideration of Resolution No. 2021-28, A **Date: May 27, 2021**
Resolution of the City of Clearlake, approving a
temporary street closure for the Community
Block Party.

Reviewed & Approved:

From: Tina Viramontes- Deputy City Clerk

Recommended Action: By motion, adopt resolution.

ISSUE STATEMENT AND DISCUSSION:

Project Description: Kevin Victorian has submitted a Special Event application for the C.N.A. Community Block Party Event to be held on Saturday June 12, 2021. The applicant is requesting temporary street closure as follows:

- a) Konocti Avenue between 37th Avenue and 38th Avenue from 10:00am – 3:00pm

The event will focus on creating goodwill and community awareness in the neighborhood and take place at Konocti Avenue between 37th Avenue and 38th Avenue. It will also include a free barbeque for area residents.

The application and permitting process includes provisions for the sponsor to assume the responsibility for placement and removal of physical barricades as per California Motor Vehicle Code Section 21103 and requires \$1,000,000 in liability insurance coverage naming the City of Clearlake additional insured, along with other insurance and indemnification provisions between the City and Kevin Victorian.

RESOLUTION NO. 2021-28**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
AUTHORIZING TEMPORARY CLOSURE OF A PORTION OF KONOCTI AVENUE
FOR THE PURPOSE OF CONDUCTING A COMMUNITY BLOCK PARTY EVENT**

WHEREAS, Kevin Victorian has requested permission from the City Council to temporarily close a portion of Konocti Avenue in the City of Clearlake on June 12, 2021 for the purpose of conducting a Community Block Party Event,

WHEREAS, the City Council of the City of Clearlake deems such closure necessary for the safety of persons using that portion of Konocti Avenue for said activities pursuant to Section 21101 of the Vehicle Code; and

NOW, THEREFORE, the City Council of the City of Clearlake hereby authorizes the temporary street closure of a portion of Konocti Avenue as follows:

Konocti Avenue between 37th Avenue and 38th Avenue from 10:00 a.m. – 3:00 p.m. on June 12, 2021

PASSED AND ADOPTED on June 3, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake



CITY COUNCIL REGULAR MEETING

**Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA**

Thursday, May 06, 2021

Regular Meeting 6:00 PM

MINUTES

Zoom Link: <https://clearlakeca.zoom.us>

ROLL CALL

PRESENT

Mayor Dirk Slooten
Vice Mayor Russ Perdock
Council Member David Claffey
Council Member Russ Cremer
Council Member Joyce Overton

PLEDGE OF ALLEGIANCE

INVOCATION/MOMENT OF SILENCE

ADOPTION OF THE AGENDA

There were no changes to the agenda.

Motion made by Vice Mayor Perdock, Seconded by Council Member Cremer.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

PRESENTATIONS

1. Swearing-in of New Police Department Employees
2. Presentation of a Proclamation Declaring May 9th - May 15th as Police Week
3. Presentation of Police Department Employee Awards
4. Proclamation Declaring May 2 - May 8, 2021 as Public Employee Appreciation Week
5. Proclamation Declaring May 2021 as Military Appreciation Month
6. Proclamation Declaring May 2021 as Older Americans Month

PUBLIC COMMENT

Sofia Roberts asked when the dog park will be opened again. Additionally she stated Lupoyoma Street needs repaired.

Lorie Akin spoke regarding the traffic on Burns Valley Road.

Bruce McReynolds spoke regarding the traffic on Burns Valley Road.

CONSENT AGENDA

Motion made by Council Member Cremer, Seconded by Council Member Claffey.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

7. Minutes of the April 15, 2021 Meeting
8. Warrants
Recommended Action: Receive and file
9. Continuation of Declaration of Local Emergency Issued on March 14, 2020 and Ratified by Council Action on March 19, 2020
Recommended Action: By motion keep declaration of emergency active and set next review in sixty days
10. Continuation of Declaration of Local Emergency Issued on October 9, 2017 and Ratified by Council Action October 12, 2017
Recommended Action: By motion keep declaration of emergency active and set next review in 30 days
11. Consideration of Development Agreement DA-2021-01 Chandra Martinez for a Commercial Cannabis Operation
Recommended Action: Hold second reading of Ordinance No. 252-2021, read it by title only, and adopt ordinance
12. Second Reading of Amendment to Clearlake Municipal Code Section 3-4 Purchasing and Sales
Recommended Action: Approve second reading of Ordinance No. 253-2021, read by title only, waive further reading and adopt ordinance
13. Adoption of a Resolution to Continue City Participation in the Abandoned Vehicle Abatement Service Authority
Recommended Action: Adopt Resolution No. 2021-27 to continue City Participation in Abandoned Vehicle Abatement Service Authority
14. Adoption of the 14th Amendment to the FY 2020-25 Budget (Resolution 2020-27) Appropriating Funding for the 2021 Chip Seal Project; Resolution No. 2021-26
Recommended Action: Adopt Resolution

BUSINESS

15. Presentation and Discussion with Woodland College Regarding a Promise Program for Clearlake Students

Recommended Action: Provide Direction to Staff

It was the consensus of the Council to direct staff to put together an MOU with the Woodland Community College District for a future meeting.

16. Award of Construction Contract for the 2021 Chip Seal Project

Recommended action: Authorize City Manager to enter into a contract with Pavement Coatings for the 2021 Chip Seal Project in the amount of \$335,048 and authorize the City Manager to approve up to 10% for additional unforeseen contract amendments

Public Works Director Goodman gave the staff report.

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

17. Visioning Forum Planning Committee Appointment

Recommended Action: By motion confirm the Mayor's appointment

Administrative Services Director/City Clerk Swanson gave the staff report.

Motion made by Council Member Overton, Seconded by Council Member Claffey.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

CITY MANAGER AND COUNCILMEMBER REPORTS**FUTURE AGENDA ITEMS**

Councilmember Cremer asked the traffic committee to review Burns Valley Road.

CLOSED SESSION

- (18) Conference with Labor Negotiators: Agency Designated Representatives: City Manager Alan Flora and Administrative Services Director/City Clerk Melissa Swanson; Employee Organization: Clearlake Municipal Employees Association, Clearlake Police Officers Association, Clearlake Middle Management Association

ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

There was no action taken in closed session.

ADJOURNMENT

The meeting was adjourned at 8:29 p.m.

BY:



Melissa Swanson, Administrative Services Director/City Clerk



CITY COUNCIL REGULAR MEETING

**Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA**

Thursday, May 20, 2021

Regular Meeting 6:00 PM

MINUTES

Zoom Link: <https://clearlakeca.zoom.us>

ROLL CALL

PRESENT

Mayor Dirk Slooten
Vice Mayor Russ Perdock
Council Member David Claffey
Council Member Russ Cremer
Council Member Joyce Overton

WORKSHOP

Workshop called to order at 5:02 p.m.

City Manager Flora gave an overview of 2021-2022 priority projects.

Councilmember Overton arrived at 5:10 p.m.

BUSINESS

Regular meeting called to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

INVOCATION/MOMENT OF SILENCE

ADOPTION OF THE AGENDA

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer,
Council Member Overton

PRESENTATIONS

1. Presentation of May's Adoptable Dogs

2. Presentation of a Proclamation Declaring May 22 - 28, 2021 as Safe Boating Week
3. Presentation of a Proclamation Declaring May 2021 as California Tourism Month
4. Presentation by PG&E of the 2021 Outlook for Public Safety Power Shutoffs and Wildfire Safety Efforts
5. Presentation of the Lake County Tourism Improvement District Annual Report

PUBLIC COMMENT

Kevin Victorian spoke about fire danger in the Avenues due to overgrown vegetation.

CONSENT AGENDA

City Manager announced a reduction in the rate adjustment for Clearlake Waste Solutions.

Motion made by Council Member Cremer, Seconded by Council Member Claffey.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

6. Warrants
Recommended Action: Receive and file
7. Minutes of the April 14, 2021 Lake County Vector Control District Board Meeting
Recommended Action: Receive and file
8. Clearlake Waste Solutions Notice of Intent to Adjust Rates July 1, 2021
Recommended Action: Receive and file

BUSINESS

9. Discussion Regarding the Sale of Property Located at 14795 Burns Valley Road to DANCO Communities for Development of Mixed Income Housing
Recommended Action: Authorize the City Manager to Execute the Exclusive Negotiation Agreement with DANCO Communities and to Further Enter Into a Disposition and Development Agreement or other Agreements as Necessary for Sale of Property at 14795 Burns Valley Road.

City Manager Flora gave the staff report.

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

10. Discussion and Declaration of Successor Agency Property located at 2890 Old Highway 53 as Surplus Land

Recommended Action: Adopt Resolution No. SA 2021-03 Declaring Agency-owned Property at 2890 Old Highway 53 as Surplus Land

The City Council sat as the Successor Agency on this item. Executive Director Flora gave the staff report.

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.

Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

CITY MANAGER AND COUNCILMEMBER REPORTS

FUTURE AGENDA ITEMS

CLOSED SESSION

- (11) Conference with Labor Negotiators: Agency Designated Representatives: City Manager Alan Flora and Administrative Services Director/City Clerk Melissa Swanson; Employee Organization: Clearlake Municipal Employees Association, Clearlake Police Officers Association, Clearlake Middle Management Association

ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

There was no action taken in closed session.

ADJOURNMENT

Meeting was adjourned at 8:40 p.m.

BY:



Melissa Swanson, Administrative Services Director/City Clerk



Clearlake, CA

Check Register

Item 9.

Packet: APPKT00601 - 5/20/21 AP Check Run AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
001911	ADAMS ASHBY GROUP INC	05/20/2021	Regular	0.00	5,156.25	10739
000085	ARAMARK UNIFORM SERVICES	05/20/2021	Regular	0.00	147.93	10740
000102	AT&T	05/20/2021	Regular	0.00	18.00	10741
001397	AT&T CALNET 3	05/20/2021	Regular	0.00	23.80	10742
001397	AT&T CALNET 3	05/20/2021	Regular	0.00	23.80	10743
001397	AT&T CALNET 3	05/20/2021	Regular	0.00	23.95	10744
001418	B & G TIRES OF CLEARLAKE	05/20/2021	Regular	0.00	541.31	10745
000068	BOB'S JANITORIAL	05/20/2021	Regular	0.00	684.42	10746
2404	CALTRONICS	05/20/2021	Regular	0.00	626.16	10747
000024	CLEARLAKE POLICE ASSOCIATION	05/20/2021	Regular	0.00	1,625.00	10748
000548	COMPUTER LOGISTICS	05/20/2021	Regular	0.00	100.10	10749
001977	CONCENTRA	05/20/2021	Regular	0.00	49.50	10750
VEN01151	CSAA INSURANCE EXCHANGE	05/20/2021	Regular	0.00	1,026.64	10751
000194	DEPARTMENT OF TRANSPORTATION	05/20/2021	Regular	0.00	2,444.85	10752
000160	DEPT OF JUSTICE	05/20/2021	Regular	0.00	281.00	10753
000073	EASTLAKE SANITARY LANDFILL	05/20/2021	Regular	0.00	43.16	10754
001199	EUREKA OXYGEN CO	05/20/2021	Regular	0.00	75.23	10755
001336	GO FOR IT JANITORIAL	05/20/2021	Regular	0.00	1,195.00	10756
000121	HIGHLANDS WATER COMPANY	05/20/2021	Regular	0.00	682.37	10757
VEN01136	HUMBOLDT STATE UNIVERSITY SPONS	05/20/2021	Regular	0.00	6,911.98	10758
VEN01048	Minnesota Life Insurance	05/20/2021	Regular	0.00	880.75	10759
001489	NAPA AUTO PARTS	05/20/2021	Regular	0.00	404.57	10760
000026	NATIONWIDE RETIREMENT SOLUTION	05/20/2021	Regular	0.00	1,131.86	10761
001913	OCCU-MED LTD	05/20/2021	Regular	0.00	736.20	10762
001889	PERFORMANCE MECHANICAL	05/20/2021	Regular	0.00	79.00	10763
001536	PRECISION WIRELESS SERVICES	05/20/2021	Regular	0.00	1,586.32	10764
2433	UNIVERSAL PRECAST CONCRETE	05/20/2021	Regular	0.00	41,868.00	10765
000708	VALIC LOCKBOX	05/20/2021	Regular	0.00	695.00	10766

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	57	28	0.00	69,062.15
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	57	28	0.00	69,062.15

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	5/2021	69,062.15
			69,062.15



Clearlake, CA

Check Register

Item 9.

Packet: APPKT00603 - 5/27/21 AP Check Run AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
VEN01085	ACC BUSINESS	05/27/2021	Regular	0.00	603.58	10767
000085	ARAMARK UNIFORM SERVICES	05/27/2021	Regular	0.00	49.31	10768
001397	AT&T CALNET 3	05/27/2021	Regular	0.00	45.65	10769
001397	AT&T CALNET 3	05/27/2021	Regular	0.00	197.29	10770
001397	AT&T CALNET 3	05/27/2021	Regular	0.00	820.77	10771
000068	BOB'S JANITORIAL	05/27/2021	Regular	0.00	81.51	10772
001665	BRUNO SABATIER	05/27/2021	Regular	0.00	60.00	10773
001811	CALIFORNIA EXTERMINATORS ALLIA	05/27/2021	Regular	0.00	100.00	10774
002392	DE LAGE LANDEN PUBLIC FINANCE	05/27/2021	Regular	0.00	829.68	10775
001835	DIRK SLOOTEN	05/27/2021	Regular	0.00	60.00	10776
000004	EDWARD A ROBEY JR	05/27/2021	Regular	0.00	60.00	10777
000096	GOLDEN STATE WATER COMPANY	05/27/2021	Regular	0.00	312.74	10778
001939	JIM SCHOLZ	05/27/2021	Regular	0.00	60.00	10779
002274	JOHN R BENOIT	05/27/2021	Regular	0.00	6,347.67	10780
002276	JOSE L SIMON III	05/27/2021	Regular	0.00	60.00	10781
000108	LAKE COUNTY RECORD BEE	05/27/2021	Regular	0.00	102.27	10782
002280	LAW OFFICES OF P SCOTT BROWNE	05/27/2021	Regular	0.00	1,837.00	10783
001434	LYN DISTRIBUTING	05/27/2021	Regular	0.00	768.95	10784
000793	MEDIACOM	05/27/2021	Regular	0.00	10.00	10785
VEN01113	MUNICIPAL RESOURCE GROUP,LLC	05/27/2021	Regular	0.00	5,400.00	10786
001489	NAPA AUTO PARTS	05/27/2021	Regular	0.00	131.27	10787
2434	NATIONWIDE INSURANCE	05/27/2021	Regular	0.00	1,332.35	10788
001392	OFFICE DEPOT	05/27/2021	Regular	0.00	122.93	10789
000049	PETTY CASH	05/27/2021	Regular	0.00	42.42	10790
001843	PG&E CFM	05/27/2021	Regular	0.00	52.81	10791
002031	REDWOOD COAST FUELS	05/27/2021	Regular	0.00	1,153.67	10792
002376	ROBERT DEWALT	05/27/2021	Regular	0.00	200.00	10793
002273	STACEY MATTINA	05/27/2021	Regular	0.00	60.00	10794
002277	STANLEY A ARCHACKI	05/27/2021	Regular	0.00	60.00	10795
002375	THOMAS DEWALT	05/27/2021	Regular	0.00	800.00	10796
000099	U.S. CELLULAR	05/27/2021	Regular	0.00	949.03	10797
2433	UNIVERSAL PRECAST CONCRETE	05/27/2021	Regular	0.00	3,801.10	10798
002278	VICTORIA CAROL BRANDON	05/27/2021	Regular	0.00	60.00	10799
002264	WEX BANK	05/27/2021	Regular	0.00	7,841.05	10800
002191	ENTERPRISE FM TRUST	05/19/2021	Bank Draft	0.00	33,398.85	DFT0000828

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	44	34	0.00	34,413.05
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	1	1	0.00	33,398.85
EFT's	0	0	0.00	0.00
	45	35	0.00	67,811.90

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	5/2021	67,811.90
			67,811.90

CITY OF CLEARLAKE CITY COUNCIL STAFF REPORT

MEETING OF: June 3, 2020

Subject: Consideration of Development Agreement, DA 2021-02 for Akwaaba, INC., to allow the expansion of their existing cannabis operation to include a Microbusiness. From: Alan D. Flora, City Manager Mark Roberts, Senior Planner	Date: May 27, 2021 Reviewed & Approved:
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Recommended Action: Hold First Reading of Ordinance No. 254-2021 Read by Title Only, Waive Further Reading and Set Second Reading and Adoption for Development Agreement 2021-02.

Background:

The applicant, Angie Decoux (representative of Akwaaba, Inc.) is proposing to modify their existing business operation involving a storefront cannabis dispensary located at 3995 Alvita Avenue (colloquially referred to as 14196 Lakeshore Drive) in order to engage in all four (4) commercial cannabis activities associated with a microbusiness permit, including but not limited to:

- **Retail** (Type 10 - *Storefront*): Sells cannabis goods to customers at its premises or by delivery. A storefront retailer must have a licensed physical location (premises), including address, where commercial cannabis activities are conducted. ☐ The applicant intends to maintain existing dispensary storefront as Triple C Collective.
- **Cultivation** (Type 4: *Nursery Only*) - Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. ☐ Local regulations in the Zoning Code (Chapter 18-45: "Definitions," CMC) place additional restraints on microbusiness operations, requiring a dispensary component and limiting the type of cultivation activity to nursery-only, as defined by State regulations for the issuance of a Type 4 license: *cultivation of cannabis solely as a nursery*.
- **Distribution** (Type 13: *Transport Only*) – Storage, packaging, labeling, transportation, and transfer of cannabis goods and products. ☐ The BCC restricts microbusinesses to "Transport Only" Distribution: which authorizes the transportation of its own cannabis products, as well other licensed cultivator's/manufacturer's/distributor's product. However, a licensee cannot engage in any other distributor activities (i.e., does not authorize the transportation of cannabis goods to a licensed retailer).

- **Manufacturing** (Type 6 Level 1: *Non-volatile Only*) – packages a prepared cannabis product, including but not limited to: edibles, topicals, tinctures, extracts, vape cartridges, and capsules. The California Department of Public Health (state agency responsible for licensing and regulating commercial cannabis manufacturing in California) limits micro businesses to only engage in Type 6, *Non-volatile* Manufacturing, utilizing solvents such as carbon dioxide, ethanol, water, butter or oil, or performing extraction using mechanical method. Type 6 licensees may also conduct Type N or P activities (infusion/packaging or labeling).

The **additional proposed cannabis activities** will occupy the existing vacant tenant spaces on either side of the Triple C Collective storefront in “Lakeshore Plaza,” totaling 2,083 square feet of commercial property separated into three (3) distinct units.

- The smaller 524 square foot space to the north is intended to house manufacturing and nursery operations, as well as an eighty-six (86) square foot administrative office.
- The 586 square foot unit to the south will accommodate the remaining distribution activities, employee restrooms/breakrooms.
- The ninety-five (95) square feet of additional office space
- Majority of the square footage will have restricted access with the exception of the seven hundred and twenty (720) square foot retail area (“Triple C Collective”) and the unallocated eighty-six (86) square feet of office space adjacent to the north.

Planning Commission Actions:

On April 27, 2021, the Planning Commission found the project to be in compliance with all applicable regulations and/or requirements and adopted “PC Resolution 2021-11 approving the above Conditional Use Permit Applications, Commercial Cannabis Regulatory Permit and found the project exempt from California Environmental Quality Act (CEQA) Pursuant to Section 15301 (Existing Facilities – Class 1).

Planning Commission Recommendation: The Planning Commission also recommended approval to the City Council of the Development Agreement (DA 2021-02) at their April 27, 2021 meeting. *[Refer to Attachment A, Resolution of Recommendation (PC 2021-12) from the Planning Commission]*

In accordance with Section 5-25.030 of the City of Clearlake Municipal Code, a Development Agreement for the commercial cannabis operations is required. The use permits have been conditioned not to be effective until the Development Agreement has been adopted by the City Council. The applicant concurs with all provisions of the Development Agreement.

This agenda item is focused on the approval of a Development Agreement regarding the subject business and does not venture into potential changes to existing City regulations or ordinances related to allowable cannabis operations. The approval of the proposed Development Agreement should be considered based on existing cannabis related regulations.

FINANCIAL AND/OR POLICY IMPLICATIONS:

The Development Agreement will create a positive revenue source for the City based on the fee structure set forth in the terms of the agreement. There will be a semi-annual production fee paid, as well as an annual facility fee. The actual revenue cannot be estimated at this time since it will be dependent upon the success of the business.

RECOMMENDED ACTION:

Hold First Reading of Ordinance No. 254 -2021, Read by Title Only, Waive Further Reading and Second Reading and Set Adoption for June 17th, 2021.

ATTACHMENTS:

- A. Staff Report Packet and Resolution (Resolution # PC 2021-11 and 2021-12) from the Planning Commission Approving Conditional Use Permit, CUP 2021-14 and recommending approval of Development Agreement (DA 2021-02)
- B. Ordinance 254-2021 of the City Council Adopting Development Agreement (DA 2021-02)



PLANNING COMMISSION MEETING

Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA

Tuesday, April 27, 2021

6:00 PM

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Council Members to attend Planning Commission meetings telephonically. Please be advised that some, or all, of the Clearlake Planning Commission Members may attend this meeting telephonically.

Furthermore, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which waives the mandate of public, in-person accessibility to Council meetings provided there are other means for the public to participate. Effective immediately and continuing only during the period in which state or local public health officials have imposed or recommended social distancing measures, the Clearlake Planning Commission meetings will be viewable via livestreaming on the City of Clearlake's YouTube Channel https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA and the public may participate through Zoom at the link listed below.

Balancing the health risks associated with COVID-19, while appreciating the public's right to conduct the people's business in a transparent and open manner, the City wants you to know that you can submit your comments and questions in writing for Planning Commission consideration by sending them to the Assistant Planner Susanna Amaro-Gutierrez at sgutierrez@clearlake.ca.us. To give the Planning Commission adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

Beginning April 1st, 2021, the public may attend Planning Commission meetings in person. However, the Council Chambers will have limited capacity and attendees must adhere to masking and social distancing mandates. You may view the meeting live on YouTube at the City of Clearlake's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at <https://www.youtube.com/user/LakeCountyPegTV/featured>.

AGENDA

Zoom Link: <https://clearlakeca.zoom.us/j/98468448723>

CALL TO ORDER

MEETING PROCEDURES: *During this Planning Commission meeting, public comment will be accepted via email. If you would like to comment remotely, please follow the protocols below:*

- *Send comments via email to the Assistant Planner at sgutierrez@clearlake.ca.us prior to the commencement of the Planning Commission meeting.*
- *Identify the subject you wish to comment on in your email's subject line.*
- *Each Public Comment emailed to the Assistant Planner will be read aloud by the Chair or a member of staff for up to three minutes or will be displayed on a screen.*

- Public Comment emails which are received after the beginning of the meeting will not be included in the record.*
- Any live comments will be accepted throughout the meeting via Zoom. Staff requests that commenters please utilize Zoom's "hand raise" feature to signify when they would like to speak.*

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the Planning Commission less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

ROLL CALL

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

Notice to the Public:

The Planning Commission, when considering the matter scheduled for hearing, will take the following actions:

- a) Open the Public Hearing*
- b) Presentation by Staff*
- c) Presentation by Applicant or Appellant (if applicable)*
- d) Accept Public Testimony*
- e) Applicant or Appellant Rebuttal Period (if applicable)*
- f) Close the Public Hearing*
- g) Commissioner Comments and questions*
- h) Commissioner Action*

Once the hearing is closed, no further public comment will be taken. If you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you, or someone else, raised orally at the public hearing or in written correspondence received by the city at or before the public hearing.

Public hearings listed for continuance will be continued as noted and posting of this agenda serves as notice of continuance. Any matter not noted for continuance will be posed separately.

PUBLIC HEARING

1. Consideration of Conditional Use Permit application CUP 2021-14 for a Commercial Cannabis microbusiness in an existing dispensary, allowing cultivation (nursery only), manufacturing, distribution, and retail.

Recommended Action: Adopt PC Resolutions 2021-11 and 2021-12 to approve Conditional Use Permit Application CUP 2021-14 and recommend the approval of Development Agreement DA 2021-02, authorizing a Cannabis Micros Business Permit for Akwabba, LLC Company and finding it exempt from environmental review in accordance with CEQA (Section 15301).

CITY MANAGER AND COMMISSIONER REPORTS

FUTURE AGENDA ITEMS

ADJOURNMENT

POSTED: April 23, 2021



Melissa Swanson, Administrative Services Director/City Clerk



**STAFF REPORT
CLEARLAKE PLANNING COMMISSION
For the Meeting of April 27, 2021**

Agenda Item No. 1

To: City of Clearlake Planning Commission
From: Mark Roberts & Susanna Gutierrez, Planning Department
Application File: Conditional Use Permit CUP 2021-14
 Development Agreement DA 2021-02
Subject: 1. Cannabis Microbusiness Permit Application
 2. Development Agreement (companion application)

Data Summary

Location: 3995 Alvita Avenue
Assessor's Parcel: 040-043-340-000
Applicant: Angie Decoux, representative of Akwaaba, Inc.
Owner: Clinton (Quincy) Jackson, Sphynx, Inc.
Zoning Designation: CD, Downtown Commercial Mixed-Use
General Plan: Commercial

I. Recommendations:

1. Find the project categorically exempt from environmental review in accordance with the California Environmental Quality Act (CEQA Section 15301. Existing Facilities – Class 1).
2. Adopt PC Resolution 2021-11 approving the Conditional Use Permit CUP 2021-14 and Cannabis Regulatory Permit CBRP 2021-02 for a cannabis microbusiness permit, contingent on the approval of DA 2021-02.
3. Adopt PC Resolution 2021-12 recommending approval of the referenced companion application (Development Agreement DA 2021-02) to the City Council.

II. Background/Situation:

- The applicant, Angie Decoux (representative of Akwaaba, Inc.) is requesting approval of Conditional Use Permit Application 2021-14 with the intent of modifying their existing business operation involving a storefront cannabis dispensary at 3995 Alvita Avenue

(colloquially referred to as 14196 Lakeshore Drive) in order to accommodate a cannabis microbusiness. The property owner, Clinton (Quincy) Jackson of Sphynx Inc., has provided the appropriate documentation authorizing the submittal of the associated application materials.

- The project site lies within the City’s main commercial corridor, located in the downtown area about 1.3 miles west of State Hwy 53 inland side of Lakeshore Drive (within the FEMA designated AE floodway). This corner property at the intersection of Lakeshore Drive and Alvita Avenue is comprised of a single, semi-rectangular parcel (APN 040-043-340-000), totaling 11,761 square feet.
- The applicable zoning districts include: the Downtown Commercial Mixed-Use (CD) and the Commercial Cannabis Business (CB)/Commercial Cannabis Dispensary (CBR) Combining Zones,¹ which are intended to provide for a wide range of retail sales, service and entertainment uses meeting community-wide and regional market demands, as well as commercial cannabis activities (as defined in Chapter 18-43) and commercial cannabis dispensaries – limited to the *CBR Retail Zoning District* on the “Commercial Cannabis Business Combining Zoning District Map” attached.
- According to information from the Lake County Assessor’s office, the parcel was originally developed in 1958 and is currently considered a commercial property. There are no recent building permits on file with the City, with the exception of minor electrical work in 2018. The site’s use type appears to have been consistently commercial in recent years, with only one other City business license on file (Sphynx Inc., Retail, Unit A; Business license active 4/1/2013 to 1/1/20). Triple C Collective maintains both an active local business license (#12000220) and state cannabis retailer license (C10-0000551-LIC), operating as legal nonconforming retail dispensary predating the adoption of a local commercial cannabis ordinance.
- The surrounding downtown area is almost exclusively made up of other similarly zoned Commercial/Cannabis (CD/CB/CBR) parcels, with the exception of 1.280 juxtaposed acres (APNs 040-051-12 & 13) of High Density Residential (HDR) property on the opposite side of Lakeshore Drive. The established multi-family developments appear to conform with local land use regulations intended to guide development in this area.² This application is not anticipated to impact the discussed CD/HDR zoning boundary; staff considers the proposed development (involving an existing, legally permitted storefront dispensary, without involving any physical expansion), sufficiently cohesive in scale and design so as not to disrupt the neighborhood fabric as long as the appropriate conditions of approval are maintained.

¹ Relevant local land use regulations recently revised by Zoning Ordinance Amendment ZOA 2020-01. See Chapters 18-08 and 18-17 of the Clearlake Municipal Code for updated zoning information.

² The official “Use Types” or occupation of these two parcels are classified by the County Assessor’s Office as *residential/residential hotel/motel/resorts*.

III. Project Description:

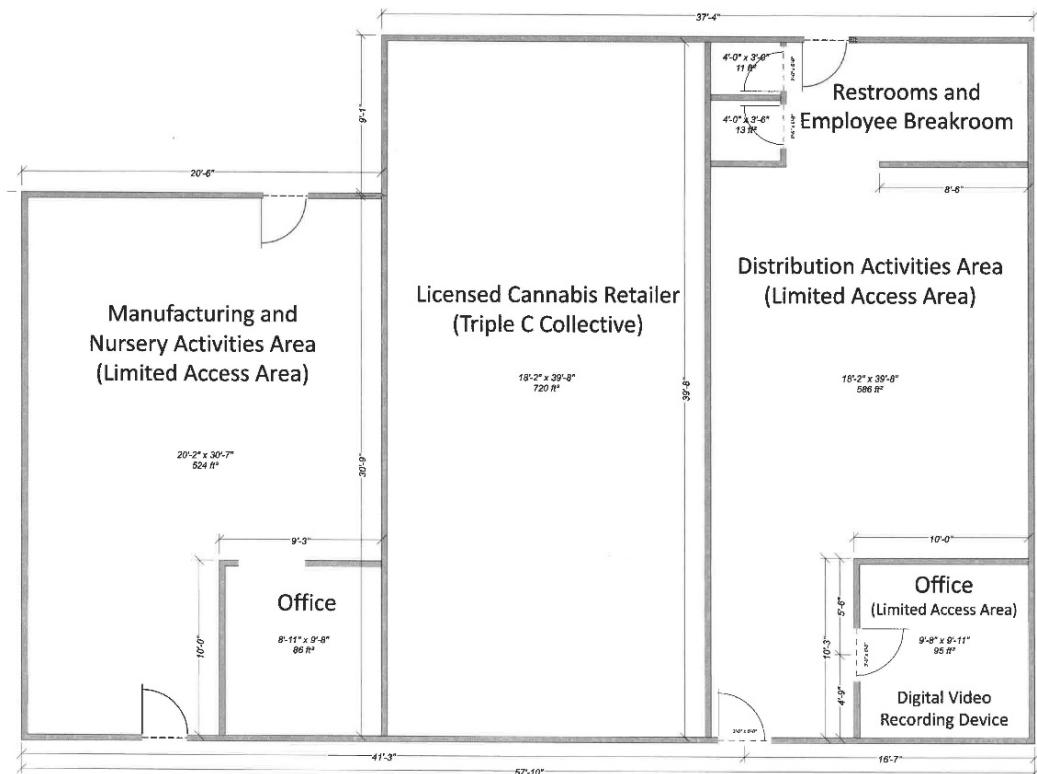
- As noted in the submittal materials, the applicant intends to engage in all four (4) allowed commercial cannabis activities associated with a microbusiness permit (to be located completely inside the existing tenant spaces within the commercial property located at 3995 Alvita Avenue):
 - **Retail (Type 10 - Storefront):** sells cannabis goods to customers at its premises or by delivery. A storefront retailer must have a licensed physical location (premises), including address, where commercial cannabis activities are conducted.
 - The applicant intends to maintain existing dispensary storefront as Triple C Collective.
 - **Cultivation³ (Type 4: Nursery Only)** - any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
 - Local regulations in the Zoning Code (Chapter 18-45: "Definitions," CMC) place additional restraints on microbusiness operations, requiring a dispensary component and limiting the type of cultivation activity to nursery-only, as defined by State regulations for the issuance of a Type 4 license: *cultivation of cannabis solely as a nursery*.
 - **Distribution (Type 13: Transport Only)** – storage, packaging, labeling, transportation, and transfer of cannabis goods and products.
 - The BCC restricts microbusinesses to "Transport Only" Distribution: which authorizes the transportation of its own cannabis products, as well other licensed cultivator's/manufacture's/distributor's product. However, a licensee cannot engage in any other distributor activities (i.e. does not authorize the transportation cannabis goods to a licensed retailer). but does not perform any of the other functions of a distributor.
 - **Manufacturing (Type 6 Level 1: Non-volatile Only)** – packages a prepared cannabis product, including but not limited to: edibles, topicals, tinctures, extracts, vape cartridges, and capsules.
 - The California Department of Public Health (state agency responsible for licensing and regulating commercial cannabis manufacturing in California) limits microbusinesses to only engage in Type 6, *Non-volatile* Manufacturing,⁴ utilizing solvents such as carbon dioxide, ethanol, water,

³ Cultivation activities under jurisdiction of state agency California Department of Food and Agriculture (CDFA), which establishes conditions under which indoor and outdoor cultivation may occur, establishes an electronic track-and-trace system to track cannabis from seed to sale, and assists other state agencies in protecting the environment and public health and safety.

⁴ The applicant has indicated that they plan to use a solvent-less extraction process.

butter or oil, or performing extraction using mechanical method. Type 6 licensees may also conduct Type N or P activities (infusion/packaging or labeling).

- The additional cannabis activities requested in this application are proposed to occupy the existing vacant tenant spaces on either side of the Triple C Collective storefront in “Lakeshore Plaza,” totaling 2,083 square feet of commercial property separated into 3 distinct units.
 - The smaller 524 square foot space to the north is intended to house manufacturing and nursery operations, as well as an eighty-six (86) square foot administrative office. The 586 square foot unit to the south will accommodate the remaining distribution activities, employee restrooms/breakrooms, and ninety-five (95) square feet of additional office space (including a digital recording equipment area designated limited access). Almost all of the proposed floor space is designated limited access), with the exception of the seven hundred and twenty (720) square foot retail area (“Triple C Collective”) and the unallocated eighty-six (86) square feet of office space adjacent to the north.



The operation will have six employees: two officers, two managers and two technicians, and maintain the following hours of operation:

- Dispensary: 10:00 am to 9:30p.m (as is)
- Manufacturing: 9:00am to 7:00p.m.
- Distribution: 8:00a.m. to 8:00p.m.
- Nursery: 8:00a.m. to 8:00p.m.

The application materials submitted for review include an operations security plan, an odor management, an employee safety and training plan, with information on parking and signage as well. Refer to Attachment 3, Operational Plan for details.

IV. General Plan, Land Use and Zoning Compliance Consideration:

General Plan:

The proposed microbusiness permit would allow for the integration of the existing, legally established cannabis operation, whose location specifically allows the development of both Commercial and Commercial Cannabis Development (at a compatible scale), and is consistent with a number of goals, objectives, and policies as described in the General Plan. Chapter 10 (“Economic Development”) specifically includes several objectives aimed towards increasing employment opportunities and creating a diverse economic base.

Furthermore, the project complies with the Preferred Growth Scenario for the Lakeshore Drive Corridor, which is identified in the most recently adopted General Plan as one of the City’s nine (9) key growth areas that extends from Old Highway 53 to Austin Park.

The project’s potential impact on continuity and pedestrian functionality along Lakeshore Drive, in context of being one of Clearlake’s most prominent arterial streets, is a particularly relevant piece of analysis and a key component of achieving a more connected and walkable community, contributing heavily to the overall success of the commercial downtown.

Municipal Code:

- On February 28, 2019 the Commercial Cannabis Ad Hoc Committee considered a request to allow commercial cannabis microbusinesses to operate within City limits and recommended the item to the Planning Commission. The Planning Commission later convened to discuss related proposed amendments to the Clearlake Municipal Code in order to permit microbusiness operations on April 2, 2019. These revisions were finally considered by the City Council and adopted on May 9, 2019.

- Police code section 5-20.3 (“Marijuana Dispensary Regulations”) of the Clearlake Municipal Code limits retail cannabis dispensaries (including storefronts associated with a microbusiness) to no more than three (3) permits at any time; all three dispensary permits were issued to the existing/established retailers soon after the adoption of a local commercial cannabis ordinance, simultaneously authorizing their legal nonconforming status (Triple C included).

Use Permit Considerations:

In accordance with Section 18-28.40 of the Zoning Code, while granting the approval of a conditional use permit application (as required for the operation of a commercial cannabis business within the associated cannabis combining district), the Planning Commission must find that the proposed use will not be detrimental to the health, safety or welfare of persons working or living at the site or within the vicinity. **The Director, Planning Commission or City Council may deny the proposal or attach additional conditions of approval as deemed necessary to maintain these regulations.**

Design Review:

- Additional tenant improvements, potentially involving minor alterations to the existing commercial infrastructure (ie parking, lighting, trash enclosures, signage, landscaping, and/or fencing) will be subject to design review approval by staff/relevant agencies in accordance with Chapter 18-33 of the Zoning Code.
 - A separate condition of approval has been included in the use permit resolution requiring the submittal of all associated plan check documents (in detail and to scale) necessary to determine the project’s compliance with various local/state/federal regulations, as well as confirmation of any additionally obtained permit approvals or clearances.
- **Off-Street Parking:** The project site provides over 20 parking spaces currently utilized by the dispensary. Based on the modifications to the existing principal use and building occupancy, no additional parking spaces will be required to meet the minimum number of parking spaces needed. This application did not include any improvements to the parking lot area.
 - The applicant is ultimately responsible for meeting all relevant accessibility codes and will need to provide proof of ADA compliance as a standard condition of the property’s certificate of occupancy).



- **Lighting:** This project includes the installation of new exterior lighting, particularly for security purposes, which is an essential improvement lacking throughout the majority of the City's commercial downtown. Any new light fixtures will be subject to compliance of Section 18-20.120 of the Zoning Code regarding night sky preservation, local commercial lighting design standards, and all relevant building codes.
- **Trash/Recycling Containment:** The operational plan calls for collecting, storing, and weekly removal of trash. In accordance with Municipal Code Section 18-120.070, a trash enclosure plan for the storage of recycling/trash receptacles, as well as a waste removal plan of appropriate scale for the proposed business will be required for review in coordination with Lake County Special Districts and Environmental Health Departments.
- **Signage:** As noted in the application material, the business owner plans on utilizing the existing dispensary signage for the microbusiness and has not proposed any changes at this time. We were unable to verify the number, types, and sizes of signs to determine whether or not the existing signage program for the dispensary complies with the City's sign regulations.
 - **Municipal Code (Section 18-21: Sign Regulations)** explains: "Except for cannabis dispensaries and *cannabis microbusinesses*, which shall have a sign program approved as a component of a use permit for the microbusiness, there shall be no signage or markings on the premises or off site which in any way evidences that commercial cannabis operations are occurring on the property"



- Landscaping:** Landscaping design and installation shall comply with the requirements of the City's Landscaping Design Standards and Guidelines (landscaping not included as part of the application file's submitted scope of work). There currently exists some greenery along the front of the property but remains largely absent from site.



- Fencing:** When considering the compatibility between a potential cannabis business and adjacent properties, the Planning Commission shall condition the use permit with appropriate setbacks and/or buffering techniques such as fencing, walls, berms or landscaping to mitigate any potential conflicts between the cannabis business and surrounding uses.
 - The application submittals did not include any new fencing proposals.

V. Environmental Determination:

The project is considered Categorical Exempt from additional environmental review in accordance with Section 15301, Existing Facilities – Class 1 of the California Environmental Quality Act (CEQA).

VI. Agency and Public Review:

This project application package was circulated to relevant local, state and federal agencies for review and comment.

Responses from Lake County Environmental Health indicated that written declaration of chemical names and quantities will be required to be submitted prior to occupancy.

Lake County Air Quality Management District provided a list of relevant permitting requirements.

Lake County Fire provided comments detailing the required occupancy submittals/standards, including but not limited to: occupancy inspection, fees, Knox box, fire extinguishers, emergency lighting, fire sprinklers/alarm, equipment details, and specific standard operating procedures (Cannabis requirements details: <https://www.lakecountyfire.com/node/74>)

The structure is currently served by Lake County Special Districts, who has requested clarification on the manufacturing waste management (specifically waste removal site).

All unresolved agency requirements (local/state/federal) **must** be met before permit issuance which has been included as a separate condition of approval in the attached use permit Resolution PC 2021-11.

In addition, as required by Code, all properties within 600 feet of the project were notified of the request for a Microbusiness Permit. No comments were received from neighboring property owners regarding the proposed project.

The City Attorney has reviewed draft versions of this staff report and development agreement, concurring with the validity of the land use analysis performed.

VII. Alternatives:

The key intent of a microbusiness permit is to allow for the vertical integration of low-impact cannabis licenses on a small scale. Alternately, applicants have the option to pursue any combination of licenses individually but would be required to purchase any extraneous inventory from separate licensee holders, creating additional markup on the final product, disproportionately affecting small business. A microbusiness permit would authorize a single entity applicant to obtain a stand-alone, multi-use cannabis permit

rather than applying for and operating multiple license types independently. To clarify, this approval would not include any alteration or expansion of the existing retail dispensary footprint.⁵

IX. Attachments:

1. Resolution No. PC 2021-11 Approving Conditional Use Permit CUP 2021-14
2. Resolution No. PC 2021-12 Recommending Approval of Development Agreement DA 2021-02
3. Operational Plan
4. Vicinity Map
5. Site Specific Plans
6. GIS Maps

⁵ Ordinance No. 229-2019: A permittee shall not make physical change, alteration, or modification of the Permitted Premises that materially or substantially alters the Permitted Premises from the plans approved by the Review Authority without the prior written approval of the Review Authority. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Permitted Premises, or modifications made for the purpose of increasing power usage, or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress.

Attachment 1 – Use Permit Resolution

RESOLUTION NO. PC 2021-11

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CLEARLAKE
CONCURRING WITH ISSUING AN EXEMPTION UNDER CEQA SECTION 15301
(CLASS 1 – EXISTING FACILITIES) AND APPROVING USE PERMIT UP 2021-14
AND COMMERCIAL CANNABIS REGULATORY PERMIT CBRP 2021-02 FOR A
CANNABIS MICROBUSINESS AT THE PROPERTY LOCATED IN THE CD,
DOWNTOWN COMMERCIAL, AND CB, COMMERCIAL CANNABIS BUSINESS
ZONING DISTRICTS AT 3995 ALVITA DRIVE, CLEARLAKE, CALIFORNIA, APN:
040-043-34**

WHEREAS, Angie Decoux, Akwaaba, LLC., as developer/operator, and Quincy Jackson, Sphynx, Inc. as property owner, applied for approval of Cannabis Microbusiness Use Permits at 3995 Altiva Drive, Clearlake, CA, in the CD, Downtown Commercial and CB, Commercial Cannabis Business Zoning Districts, APN 040-0430-34; and

WHEREAS, Cannabis Business Use Permit Application UP 2021-14 has been made in accordance with Section 18-43, Commercial Cannabis of the Clearlake Municipal Code.

WHEREAS, a companion application, Development Agreement DA 2021-02 has been filed for commercial cannabis operations by Angie Decoux at the same location; and

WHEREAS, the project is exempt from environmental review in accordance with Section 15301 of CEQA Guidelines under “Existing Facilities”; and

WHEREAS, the General Plan designates the project site as Commercial. As conditioned, the proposed use would be consistent with the General Plan; and

WHEREAS, the existing cannabis dispensary located within the same building as the proposed cannabis micro-business use was established and in operation prior to the City’s adoption of cannabis regulations; that in accordance with Section 18-23.020 of the Zoning Code, Non-conforming Uses, the dispensary component of this project is considered preexisting/non-conforming, whose proposed business operation (as conditioned) shall result in a lesser discrepancy between the existing conditions and the zoning requirements for the district; and

WHEREAS, In accordance with Section 18-28.040 of the Zoning Code the use as proposed will not be detrimental to the health, safety or welfare of persons working or living at the site or within the vicinity.

WHEREAS, the Planning Commission has considered this project on this date at a duly noticed public hearing, the staff report, public testimony, and found that the project is compatible with the surrounding area, it will not be detrimental to adjacent property owners or the public at large, and approval is in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Clearlake that the project is hereby approved, subject to the following conditions being satisfied:

Conditions of Approval:

1. The use permit approval shall not become effective, operative, vested or final until a Notice of Categorical Exemption has been filed with the State Clearing House and the Lake County Clerk's Office.
2. The use permit shall not become operational until a development agreement has been adopted by the City Council in accordance and a commercial cannabis regulatory permit has been approved and issued by the City Manager, at the recommendation of the Planning Commission, in accordance with the Municipal Code.
3. The permit holder shall operate in full compliance with fire safety rules and regulations of the Lake County Fire District.
4. The Planning Commission may revoke or modify the use permit in the future if the Commission finds that the use to which the permit allows is detrimental to health, safety, comfort, general welfare of the public; constitutes a public nuisance; if the permit was obtained or is being used by fraud; and/or if one or more the conditions upon which a permit was granted are in noncompliance or have been violated. Applicant shall be notified of potential violations of the use permit prior to action taken by the Planning Commission.
5. Cannabis Business Conditional Use Permit Application CUP Permit 2021-14 has been made in accordance with Section 18-43 of the Municipal Code, Zoning Regulations, which refers to Commercial Cannabis Uses
6. The developer/operator shall agree to indemnify, defend, and hold harmless the City or its agents, officers and employees from and against any and all claims, actions, demands or proceeding (including damage, attorney fees, and court cost awards) against the City or its agents, officers, or employees to attach, set aside, void, or annul an approval of the City, advisory agency, appeal board, or legislative body concerning the permit or entitlement when such action is brought within the applicable statute of limitations. In providing any defense under this Paragraph, the applicant, business operator, property owner, developer shall use counsel reasonably acceptable to the City. The City shall promptly notify the applicant, business operator, property owner, developer of any claim, action, demands or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the developer/operator of any claim, action, or proceeding, or if the City fails to cooperate fully in the defense, the developer/operator shall not thereafter be responsible to defend, indemnify, or hold the City harmless as to that action. The City may require that the developer/operator to post a bond, in an amount determined to be sufficient, to satisfy the above indemnification and defense obligation. Developer/operator understands and acknowledges that City is under no obligation to

defend any claim, action, demand or proceeding challenging the City's actions with respect to the permit or entitlement.

7. Conditional Use Permit CUP 2021-14 may be transferred to new owners subject to obtaining a new commercial cannabis regulatory permit, upon the new owner's written agreement to maintain all conditions of approval.

8. The developer/operator shall be responsible to pay all sales, use, business and other applicable taxes, and all license, registration, and other fees and permits required under federal, state and local law and pursuant to the Development Agreement DA 2021-02 for the project.

9. This developer/operator shall cooperate with the City with respect to any reasonable request to audit the business' books and records for the purpose of verifying compliance with the Municipal Code and this Use Permit and related Development Agreement DA 2021-02 including but not limited to a verification of the amount of taxes required to be paid during any period for the project.

10. Secure any required permits from the City of Clearlake (Building Department, Planning and Public Works), Fire District, Lake County Air Quality Management District, Lake County Water Resources Department, Lake County Environmental Health Department and/or all applicable Federal, State and local agency permits.

11. The applicant shall install a proper ventilation system as approved by the Lake County Air Quality Control Management District, in order to prevent off site odors from impacting neighboring properties.

12. In accordance with the Municipal Code and requirements made by the Lake County Fire Protection Lake County Air Quality Management District and Lake County Health Department, the following detailed plans shall be submitted for review and approval by the Planning, Building, and/or Police Departments and other related agencies as applicable prior to operation/occupancy:

- a. Odor Control Plan (compliant with Section 18-43.060)
- b. Security Plan (compliant with Section 18-43.060).
- c. Exterior Lighting Plan (compliant with Sections 18-20.120 and 18-43.060 and with the City's Lighting Standards, including design review approval)
- d. Waste/Recycling and Enclosure Plan (compliant with Section 18-20.070 and with the City's Trash and Recycling Enclosure Requirements and Design Standards, including design review approval).
- e. Fencing Plan for security of all cannabis businesses activities (compliant with Section and the City's Fence Design Standard including design review approval).

- f. Hazardous Materials Mitigation Plan if required by the Lake County Fire Protection District and/or the Lake County Environmental Health Department)
- g. Air Quality Permit if required by Lake County Air Quality Management District.
- h. Civil site plans identifying existing and proposed storm drains, drainage ditches, curbs, sidewalks, gutters, and striping, as regulated by the City's Design and Construction Standards, Off-Street Parking Regulations, and Parking Design Standards to be found in compliance with all other applicable local/federal/state laws (including ADA and CASP requirements).
- j. Sign plan that demonstrates compliance with the City's sign regulations. All non-compliant signs shall be immediately removed. Installation of signs without prior City approval may be grounds for revocation of this use permit.
- k. Proof of legal lot status, compliant with the provisions of the Subdivision Map Act.

13. A building permit shall be secured for all improvements and improvements shall be completed in accordance with the approved plans prior to occupancy.

14. Conditional Use Permit CUP 2021-14 shall be subject to revocation or modification by the Planning Commission if the Commission finds that there has been a) noncompliance with any of the foregoing conditions, or b) the Commission finds that the use for which this permit is hereby granted is so exercised as to be substantially detrimental to persons or property in the neighborhood of the use. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to the City of Clearlake Municipal Code.

15. All conditions of Use Permit UP 2021-14 are necessary to protect the general health, safety and welfare of the public. If any condition of this entitlement is held to be invalid by a court, the whole entitlement shall be invalid. The Planning Commission specifically declares that it would not have approved this entitlement unless all of the conditions herein are held as valid.

PASSED AND ADOPTED on this 27th day of April, 2021 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chairman, Planning Commission

ATTEST:

Clerk, Planning Commission

Attachment 2: DA Resolution

RESOLUTION NO. PC 2021-12**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CLEARLAKE, RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT DA 2021-02 FOR ANGIE DECOUX, AKWAABA, LLC., FOR THE PROPERTY LOCATED AT 3995 ALVITA DRIVE, CLEARLAKE, CALIFORNIA, APN: 040-043-34**

WHEREAS, DEVELOPER leases real property located at 3995 Alvita Drive, identified as Assessor's Parcel Number 040-043-34 ("Property") that is the subject of this agreement; and

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, the Property is located within the City's CD, Commercial Downtown and CB, Commercial Cannabis Business Zoning Districts and subject to the land use regulations of the City's Municipal Code; and

WHEREAS, DEVELOPER intends to operate a cannabis business on the Property including Cultivation, Manufacturing and Distribution, in conjunction with an existing cannabis dispensary, and has received approval of related activities; and

WHEREAS pursuant to Sections 5-20 and 18-43 of the Municipal Code, a development agreement for the commercial cannabis business is required; and

WHEREAS, DEVELOPER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with Sections 5-20 and 18-43 of the Municipal Code and Section 68564, et seq. of the Government Code and the rules and regulations of CITY; and

WHEREAS, the Planning Commission has considered this Development Agreement DA 2021-02 at a duly noticed public hearing.

NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF CLEARLAKE ("PLANNING COMMISSION") HEREBY FINDS AND RESOLVES AS FOLLOWS:

SECTION 1. The property located at 3995 Alvita Drive, Clearlake, CA legally described by Assessor's Parcel Number 040-043-34 ("Project Site" and/or "Property").

SECTION 2. The applicant/developer has requested CITY to enter into a development agreement and proceedings have been taken in accordance with Section 68564, et seq. of the Government Code and the rules and regulations of CITY.

SECTION 3. On or about April 13, 2021 the Planning Commission of the City of Clearlake held a duly noticed public hearing at which interested persons had the opportunity to testify and at which the Planning Commission considered the Development Agreement.

SECTION 4. The development agreement proposed herein is consistent with the General Plan of the City of Clearlake in that the Potential Activity consists of a cannabis micro-business which is authorized in the zone subject to obtaining conditional use permits from the Planning Commission.

SECTION 5. Use Permit (UP 2021-14) approved by the Planning Commission in compliance with the Municipal Code on April 27, 2021 for a cannabis business permit is not operational until Development Agreement 2021-02 has been approved City Council and executed by the City and the Developer.

SECTION 6. The Planning Commission therefore recommends to the City Council to adopt Development Agreement DA 2021-02 attached hereto as Exhibit 1.

SECTION 7. If any section, division, sentence, clause, phrase or portion of this resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

The Secretary shall attest to the adoption of this resolution and shall forward a copy to the applicant, and any person requesting the same.

PASSED AND ADOPTED on this of 27th day of April, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson, Planning Commission

ATTEST:

Clerk, Planning Commission

Exhibit 1: Development Agreement DA 2021-02

[Draft Development Agreement DA 2021-02 posted for review under “Current Planning” on the City of Clearlake website 4/24/2021, available here: <https://clearlake.ca.us/397/Planning-Department>]

Attachment 3: Operational Plan

PROJECT DESCRIPTION

Akwaaba, LLC proposes to establish a Commercial Cannabis Microbusiness Facility (Facility) at 14196 Lakeshore Drive in the City of Clearlake, California (Lake County APN 040-043-340). Akwaaba, LLC's proposed Facility will conduct Distribution, Non-volatile Manufacturing, and Nursery (cultivation) activities. The proposed Facility will be located in a building that houses a well-established California-licensed Cannabis Retailer, the Triple C Collective, and much of the products produced by the proposed Facility will be sold through that retailer.

Nursery (Cultivation) – production of immature cannabis plants for licensee-to-licensee and retail sale

Distribution – storage, packaging, labeling, transportation, and transfer of cannabis goods/products

Non-volatile Manufacturing – production of cannabis products using non-volatile extraction and/or infusion processes (Akwaaba, LLC proposes to use solventless extraction processes)

ORGANIZATIONAL STRUCTURE

2 Officers (Executive and Operations)

2 Managers/Supervisors (Manufacturing and Distribution)

2 Technicians (Nursery and Manufacturing/Distribution)

HOURS OF OPERATION

Manufacturing Activities: 9am to 7pm

Distribution Activities: 8am to 8pm

Nursery Activities: 8am to 8pm

CALIFORNIA CANNABIS TRACK-and-TRACE SYSTEM ("METRC")

Akwaaba will adhere to the inventory tracking and recording requirements of the California Cannabis Track-and-Trace (CCTT) system (also known as "METRC"). All staff will be trained in the requirements of the CCTT system, and a member of Akwaaba's managerial staff will be the designated track-and-trace system administrator. All cannabis transfers/movement will be reported through the CCTT system, and the track-and-trace system administrator will supervise all tasks with high potential for diversion/theft.

OPERATIONS PLAN – SECURITY

Akwaaba, LLC's Operations Officer will be responsible for implementing their Security Operating Procedures. Security Operating Procedures include:

- Maintaining a record of all individuals that enter limited-access areas
- Creating and assigning Employee Identification (ID) Badges
- Maintaining and monitoring digital video surveillance system (CCTV system)
- Ensuring that the Facility's alarm system is functioning properly, serviced regularly, and monitored continuously
- Directing and coordinating with security service personnel

All entry ways and exits will be secured with solid doors and commercial grade locks. Windows will be locked and secured with window security bars.

A closed-circuit television (CCTV) system will be installed and maintained throughout the Facility. The CCTV system will record activities throughout the Facility, 24 hours a day, seven days a week, 365 days a year. Video from the CCTV system will feed into a digital video recording device capable of storing at least 90 days of surveillance recording data. The digital video recording device will be equipped with a failure notification system that notifies Akwaaba, LLC's Operations Manager via an electronic message sent to their cellular phone, in the event of any interruptions or failures.

Akwaaba, LLC will contract with West*Alert Security Services to install, maintain, and monitor their alarm system, 24 hours a day, 7 days a week, 365 days a year. Components of the alarm system will be determined by West*Alert, but at a minimum will be equipped with door and window contacts, exterior bells, and interior motion detectors.

OPERATIONS PLAN – ODOR MANAGEMENT

The HVAC system of the Facility will be equipped with carbon filters/air scrubbers to mitigate/eliminate odors emanating from the building. The HVAC and odor mitigation systems will be serviced regularly to maintained efficient and effective odor control.

OPERATIONS PLAN – SIGN INFORMATION

The Triple C Collective (Licensed Cannabis Retailer) occupies a portion of the building in which the proposed Microbusiness Facility will be located. The Triple C Collective has signage indicating that a cannabis business exists in the building. Akwaaba, LLC will not post any additional signage indicating that the proposed Cannabis Microbusiness Facility is located within the building.

OPERATIONS PLAN – PARKING

Akwaaba, LLC staff and associates will utilize the existing parking spaces located on the southeast side of the building (accessed from Lakeshore Drive).

OPERATIONS PLAN – EMPLOYEE SAFETY & TRAINING

Employees will be trained to safely use equipment and/or procedures, then will be supervised while utilizing equipment and/or procedures, before being allowed to utilize equipment and/or procedures without supervision. Safety Data Sheets (SDSs) for all potentially hazardous materials stored and/or used within the facility will be maintained onsite for employees to reference at all times. Employees will be required to wear manufacturer-recommended personal protective equipment (PPE) when working with potentially hazardous materials and/or equipment.

The following Emergency Contact/Action Information will be posted in conspicuous locations throughout the proposed Cannabis Microbusiness Facility.

LOCAL FIRE DEPARTMENT

Lake County Fire Protection District – Station 70
14815 Olympic Drive, Clearlake, CA 95422
(707) 994-0733
Chief William Sepeta

LOCAL POLICE DEPARTMENT

Clearlake Police Department
14050 Olympic Drive, Clearlake, CA 95422
(707) 994-8251
Chief Andrew White

LOCAL HOSPITAL

Adventist Health Clear Lake
15630 18th Avenue, Clearlake, CA 95422
(707) 994-6486

OPERATIONS PLAN – NEIGHBORHOOD COMPATIBILITY

There is already a well-established licensed cannabis retailer within the building of the proposed Cannabis Microbusiness Facility. The property is zoned C3-DD (Visitor Commercial - Design District) which allows for uses compatible with the proposed Cannabis Microbusiness Facility.

OPERATIONS PLAN – WASTE MANAGEMENT

Solid waste from the proposed Cannabis Microbusiness Facility will be collected each week by Clearlake Waste Solutions. Wastewater from the proposed Facility will discharge to the Southeast Regional Wastewater System of the Lake County Sanitation District (Special Districts Administration).

OPERATIONS PLAN – MANUFACTURING

Akwaaba, LLC proposes to conduct non-volatile cannabis manufacturing activities in a portion of their proposed Cannabis Microbusiness Facility, to produce solventless extracts (bubble hash, hash and flower rosin), infused prerolls, and transdermal salves.

EQUIPMENT (technical specifications attached):

Stainless Steel Trichome Extractor

Pneumatic Heat Press ("rosin press")

65-gallon Stainless Steel Vessel ("hash washer") to produce solventless cannabis extracts (technical specifications attached).

MATERIALS

Shea Butter

Dry Ice (CO₂)

Ice/Water (H₂O),

Nylon Mesh Liners and Filters

Stainless Steel Screens

Parchment Paper

Plastic Totes

OPERATIONS PLAN - DISTRIBUTION

Akwaaba, LLC proposes to conduct distribution activities (weighing, packaging, labeling, and storage) in a portion of their proposed Cannabis Microbusiness Facility.

EQUIPMENT AND MATERIALS

Distribution Vehicle (utility van)

Steel Shelves

Certified Scales

Refrigerator

Computer and Printer (for METRC and Manifests)

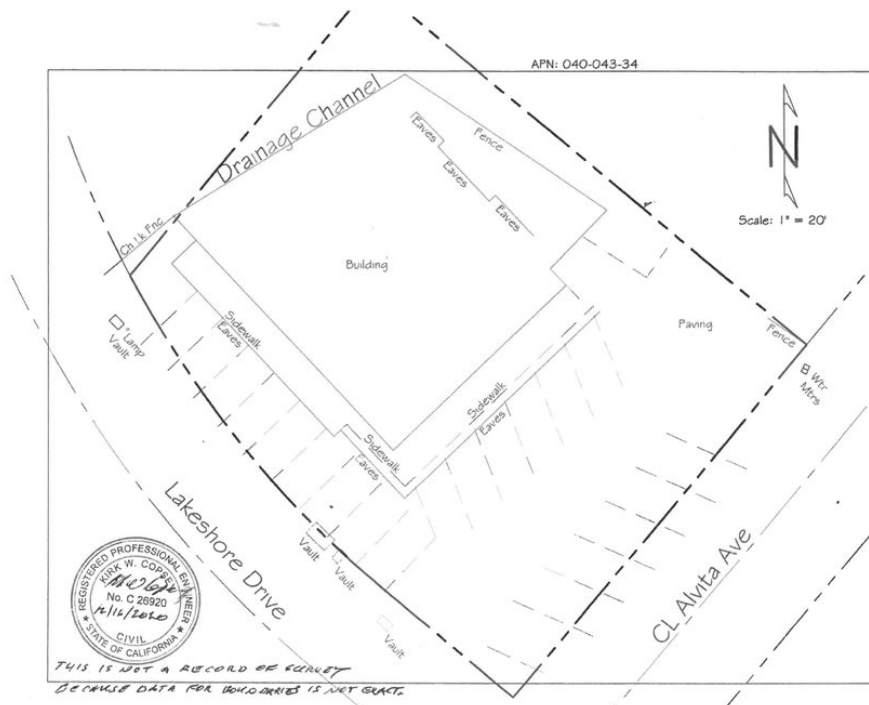
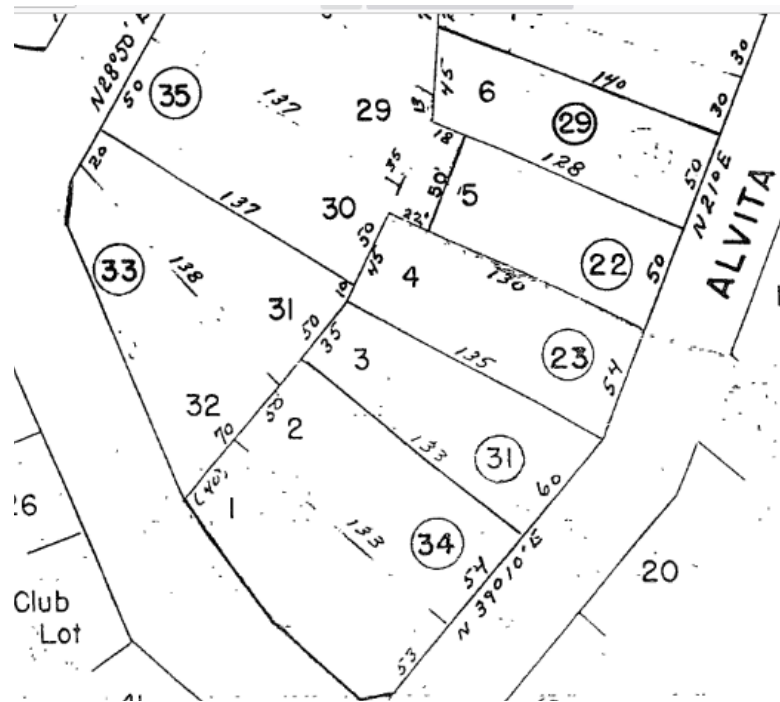
File Cabinets

Attachment 4: Vicinity Map

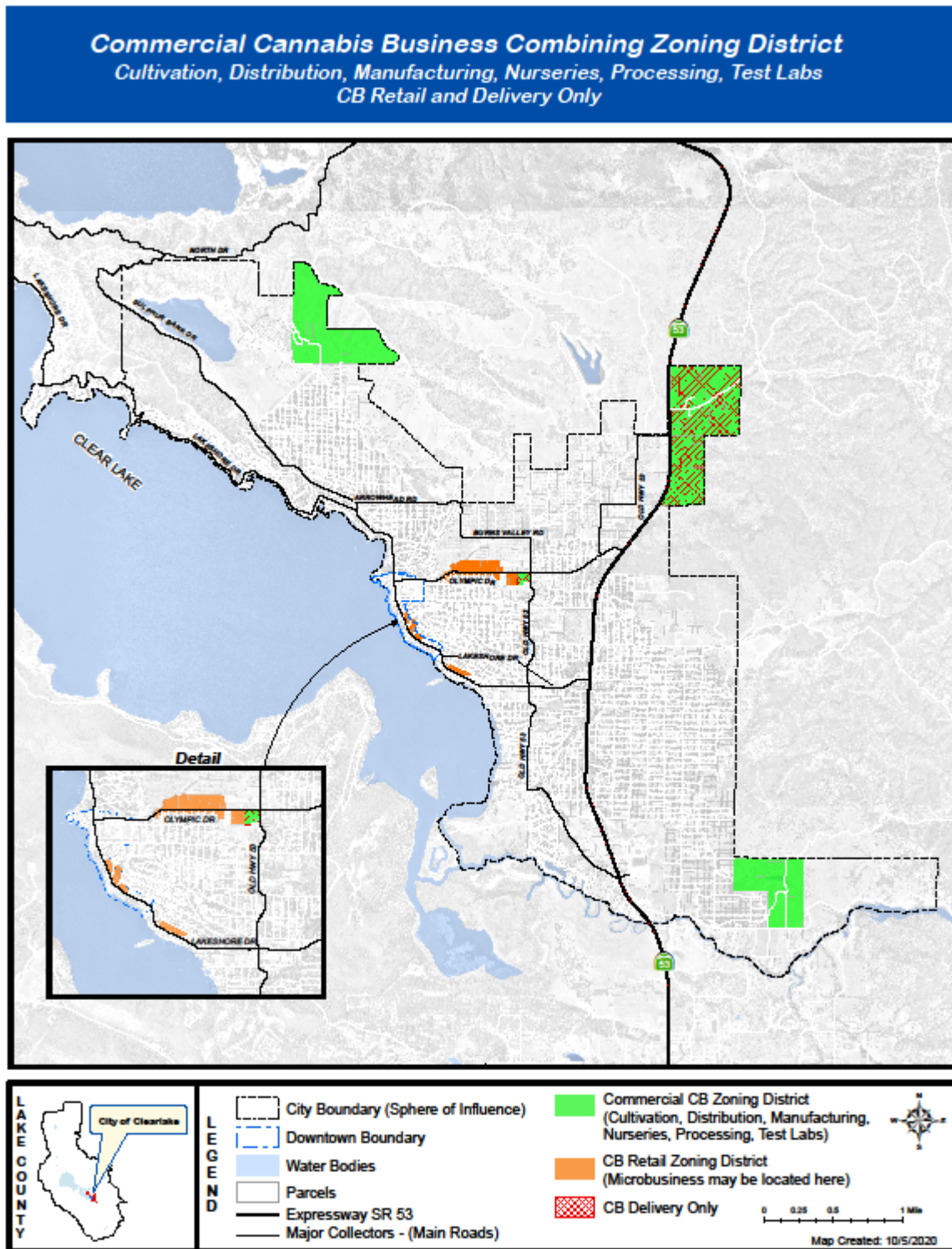


3995 Alvita Drive
APN 040-043-34

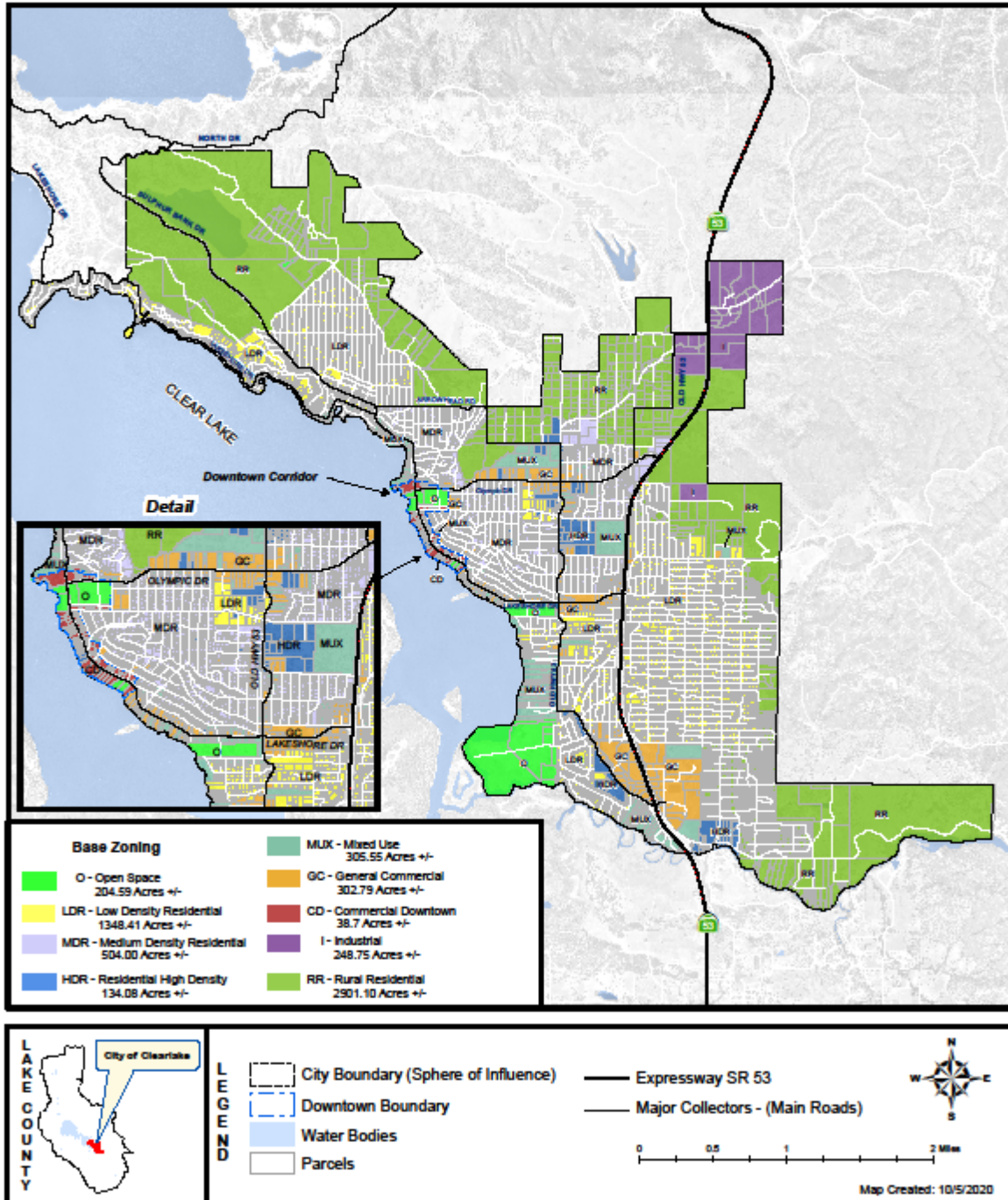
Attachment 5: Site Specific Maps

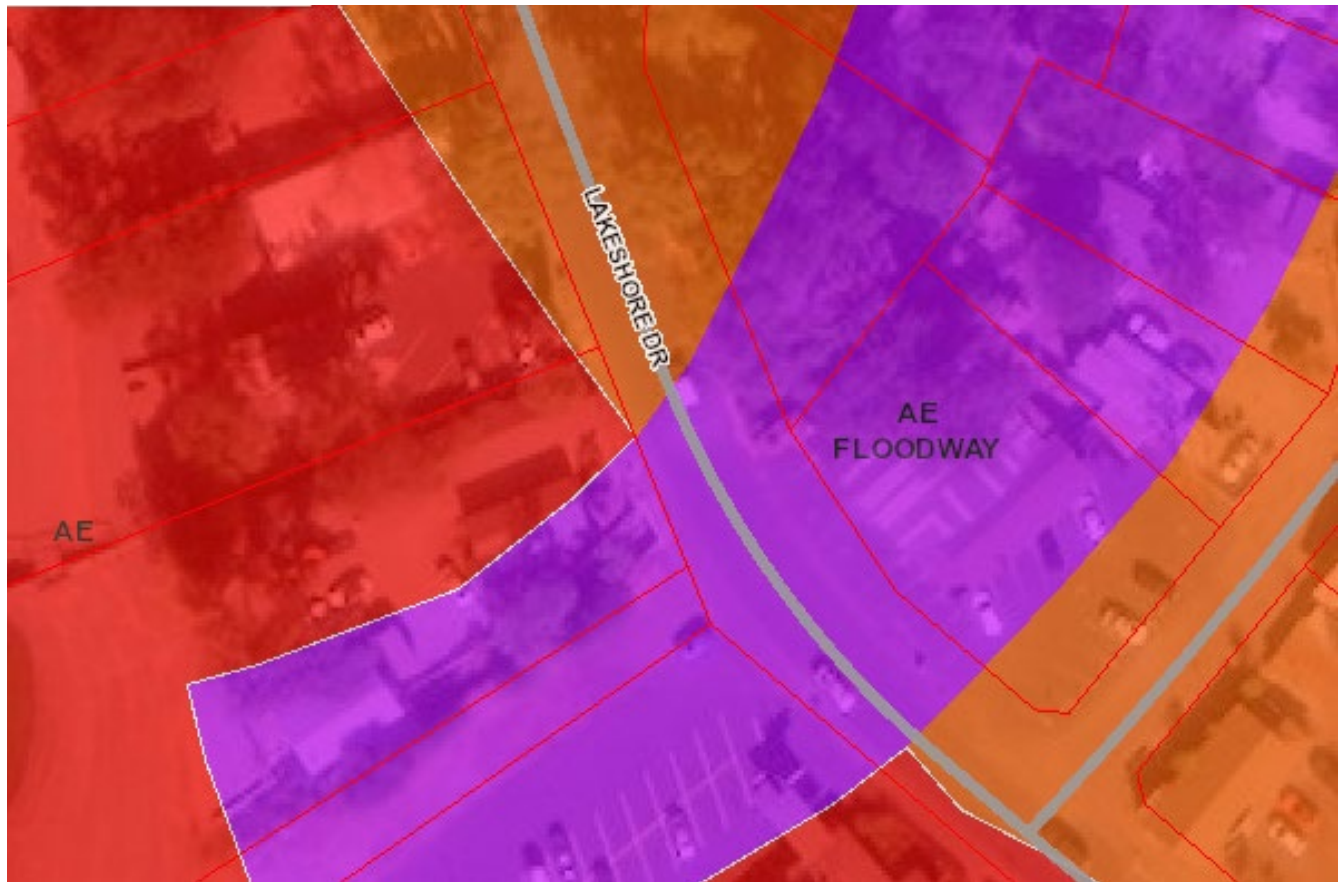


Attachment 6: GIS Maps



CITY OF CLEARLAKE BASE ZONING DISTRICTS





CITY OF CLEARLAKE
ORDINANCE NO. 254-2021
AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
APPROVING A DEVELOPMENT AGREEMENT (DA 2021-0) WITH
ANGIE DECOUX, REPRESENTATIVE OF AKWAABA, INC. FOR PROPERTY LOCATED AT 3995 ALVITA
AVENUE (COLLOQUIALLY REFERRED TO AS 14196 LAKESHORE DRIVE), FURTHER DESCRIBED AS
ASSESSOR'S PARCEL NUMBER 040-430-34

WHEREAS, the State of California enacted California Government Code Sections 65864, etc. to authorize municipalities to enter into Development Agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction; and

WHEREAS, Angie Decoux, [representative of Akwaaba, LLC], (TENANT), who intends to operate commercial cannabis businesses at subject property, located at 3995 Alvita Avenue (Colloquially referred to as 14196 Lake Shore Drive); City of Clearlake, County of Lake, State of California ("Site") that is the subject of this agreement; and

WHEREAS, the TENANT presently intends to develop Microbusiness Commercial Cannabis Operation (*Retailer, Cultivation, Distribution, and Manufacturing*) on the site consistent with the California Cannabis Laws, the City's Municipal Code, and Project Approvals (known as the "Project"); and

WHEREAS, the Planning Commission of the City of Clearlake approved Conditional Use Permit Application to allow Microbusiness Commercial Cannabis Operation (*Retailer, Cultivation, Distribution, and Manufacturing*) on April 27th, 2021 and;

NOW THEREFORE, the City Council of the City of Clearlake does hereby ordain as follows:

SECTION 1. After conducting duly noticed hearings before the City Council on June 3rd, 2021 and June 17th, 2021, and after independent review and consideration, the City Council approves the execution of the Development Agreement, hereby adopted as Exhibit A to this Ordinance.

SECTION 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3. Execution. The Mayor shall sign, and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED this 17th day of June 2021.

AYES:

NOES:

ABSENT OR NOT VOTING:

Dirk Slooten, Mayor

Attest:

Melissa Swanson, City Clerk

Exhibit A: Development Agreement 2021-02

RECORDING REQUESTED BY

AND WHEN RECORDED MAILTO:

City of Clearlake

14050 Olympic Dr.

Clearlake, CA 95422

Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Recording Fee Exempt per Government Code §27383

DEVELOPMENT AGREEMENT (DA 2021-02)

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this **17th** day of **July** 2021 (the “Execution Date”), by and between the **CITY OF CLEARLAKE, a California municipal corporation** (“City”) and **Angie Decoux & Clinton “Quincy” Jackson of Akwaaba, Inc. (“developer/owner”)**. City and Owner are sometimes referenced together herein as the “Parties.” In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a “Party.” The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

- A. The State of California enacted California Government Code Sections 65864 *et seq.* (“Development Agreement Statutes”) to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the developer, and to meet certain public purposes of the local government.
- C. Owner currently holds an option to lease (from Sphynx Inc.) approximately 2,083 square feet of commercial property located at 3995 Alvita Avenue (colloquially referred to as 14196 Lakeshore Drive), City of Clearlake, County of Lake, State of California (the “Site”).

- D. Owner intends to operate a cannabis facility and operation. All such cannabis facilities shall operate in accordance with the California State Compassionate Use Act (Health & Safety Code § 11362.5) (“CUA”), the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7 *et seq.*) (“MMPA”), and the 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General (the “AG Guidelines”), and Senate Bill 94, the Medicinal and Adult Use of Cannabis Regulation and Safety Act (“MAUCRSA”), creating a unified regulatory structure for adult use and medical cannabis, and all regulations promulgated by the responsible state agencies to implement MAUCRSA (collectively the “California Cannabis Laws”). Prior to operating a cannabis facility, Owner shall be required to obtain use and cannabis business regulatory permits from the City for the facility and operations.
- E. Ultimately, Owner intends to obtain state licenses issued pursuant to MAUCRSA to operate cannabis facilities at the Site, once such licenses are being issued.
- F. Owners presently intend to develop and open a cannabis operation on the Site consistent with the California Cannabis Laws and Project Approvals (known as the “Project”).
- G. Owner applied to City for a development agreement and will subsequently need to obtain special use permits and regulatory permits for the Project. This Agreement, and the special use and regulatory permits, when and if issued by the City, shall collectively be referred to as “Project Approvals”.
- H. The Project will maintain inventory of cannabis and cannabis products under the California Cannabis Laws.
- I. The City adopted Ordinance No’s. 200-2017 and 201-2017 permitting Cannabis Delivery Only Dispensaries and Cannabis Businesses (as those terms are defined in the applicable city ordinances) in strict compliance with the applicable California Cannabis Laws regulating delivery only dispensaries and cannabis cultivation, manufacturing, processing, and distribution under certain conditions and provisions.
- J. City and Owner have agreed that, as a condition of allowing the Project, as defined herein, and due to the unique circumstances of the proposed Project, Owner shall pay to the City a semi-annual fee based on the gross revenue of the operations, and an annual Facility Fee, as hereinafter defined, which fees shall abate if and when the City adopts a tax on Cannabis Delivery Only Dispensaries and Cannabis Businesses.
- K. All procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 *et seq.*, and the CEQA Guidelines, Title 14 of the California Code of Regulations, Chapter 3, §15000 *et seq.* have been satisfied as has gone through an Environmental Analysis and was found exempt from California Environmental Quality Act (CEQA) Pursuant to Section 15301 (Existing Facilities – Class 1).
- L. City has given public notice of its intention to adopt this Agreement and has conducted public

hearings thereon pursuant to California Government Code §65867. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses, and programs specified in City's General Plan, zoning code and municipal ordinances.

- M. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City and the Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety and welfare are best served by entering into this obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement, *i.e.*, assuring Owner that it will enjoy the development rights.
- N. The City agrees that Owner's land use entitlements for the Project shall vest for the term of this Agreement as described below.
- O. After conducting a duly noticed hearing on April 27, 2021 in conjunction with certain amendments and additions to the City's Municipal Code, the Planning Commission of the City reviewed, considered and approved the Project and recommended approval of the execution of this Agreement to the City Council. The Planning Commission found the Project: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized zoning code; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.
- P. After conducting a duly noticed hearing on **June 17, 2021** in conjunction with amendments and additions to the City's Municipal Code creating an allowable use, appropriate zoning, and comprehensive regulations for the proposed use, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project: consistent with the objectives, policies, general land uses, and programs specified in the general plan; compatible with the uses authorized in the zoning code; is in conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Clearlake and its residents.

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

AGREEMENT

1. **Binding Effect of Agreement.** The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Site as described in **Exhibit A (Legal Description)** and shown in **Exhibit B (Site Lease/Map)** and incorporates by reference all Development Approvals approved by the City for the Site. Except as otherwise provided in Section 15 of this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Site. In order to provide continued notice thereof, the Parties will record this Agreement with the Lake County Recorder. The word “Owner” as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Site. Should the size or orientation of any Site component specified above be changed in minor respects, *e.g.*, changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties and their successors shall remain as provided herein.

2. **Relationship of the Parties.** It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Owners will be deemed to be the agent of the other for any purpose whatsoever. City and Owners hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owners joint ventures or partners.

3. **Term.** Except as otherwise specified herein, the term of this Agreement (the “Term”) is 3 years from the date the Owner begins commercial operation at the Project Site (“Operation Date”). The Operation Date shall be no later than 12 months following the Execution Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided.

3.1 **Term Extension – Third Party Issues.** Notwithstanding the Parties’ expectation that there will be no limit or moratorium upon the Project’s development or the issuance of building or other development related permits (a “Development Limitation”) during the Term, the Parties understand and agree that various third parties may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by Owner.

3.1.1 **Litigation.** Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project’s development, or third party-initiated

litigation having the actual effect of delaying the Project's development. This extension period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2 Government Agencies. Any delay arising from or related to the act(s) or omission(s) any third-party governmental agency, quasi-public entity or public utility, and beyond the reasonable control of Owner.

3.1.3 Force Majeure. Any delay resulting from riot, war, acts of terrorism, an event during the Term creating radioactive or toxic/hazardous contamination, a catastrophic earthquake, flood, fire or other physical natural disaster, excluding weather conditions regardless of severity, strikes or industrial disputes at national level effecting development involved personnel not employed by Owner, their subcontractors or suppliers and effecting an essential portion of the Project's development, excluding any industrial dispute that is specific to development taking place as a part of the Project.

3.2 Term Extensions. The Term of this Agreement will be extended for seven additional years upon a determination of the City Council, by way of resolution of the City Council acted on at a regularly scheduled meeting, that both of the conditions listed in subparts 3.2.1 and 3.2.2 below have been fully satisfied and the Owner is in full compliance:

3.2.1. No Default by Owner. Owner shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Owner did in fact default as to this Agreement, upon notice from City, that Owner did cure said default during the period to cure provided herein to City's satisfaction.

3.2.2 Finding of Community Compatibility. The City Council shall review the operations of Owner prior to granting an extension of the term of this Agreement and make a finding that the Project, notwithstanding that the Project activities may not be in precise technical compliance with the issued regulatory permit and special use permit, continue to be compatible with surrounding land uses and are not detrimental to the public health, safety and general welfare.

3.2.3. Mutual Agreement of Parties. In addition to the process listed above for a seven-year term extension, this Agreement's Term may be extended by mutual agreement of the Parties and formal amendment of this Agreement.

3.3 Termination of Agreement. Upon the termination of this Agreement, either by expiration or otherwise, Owner shall have no right to engage in the Project activities at the Project Site, except as may otherwise be allowed by City ordinance, law or separate development agreement.

4. Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

4.1. Certified Report. "Certified Report" shall mean a detailed document prepared by Owner on a form acceptable to the City's Director of Finance to report to the City the

gross receipts of the Project's operations and sales, as defined herein, in the Project during each semi-annual period starting January 1 and July 1 of each calendar year. Each Certified Report shall be certified as true and correct by a duly authorized officer of Owner.

4.2. Development Approvals. "Development Approvals" means the land use entitlements approved by the City for the development of site improvements and buildings on the Site which define the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings.

4.3. Production Fee. "Production Fee" shall mean a semi-annual fee remitted to the City by Owner based on the Gross Receipts of its Project operations, as defined below, in the amount of 5% of gross sales from operations.

4.4. Certification of Non-Income Tax Exemption. Owner certifies that Owner is not income tax exempt under State or Federal Law and that Owner will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board.

4.5. Facility Fee. Facility Fee shall mean an annual fee remitted to the City by Owner in the amount of \$2 per gross square foot of the entire Project facility. The Facility Fee shall be paid annually, starting July 1st of each year. A late fee of 5% of the amount due shall be added to any payment 5 days past due. Fees later than 30 days past due will constitute a breach subject to Section 20 of this agreement.

4.6. Semi-Annual Production Fee. The semi-annual Production Fee will be due no later than July 30th for the preceding period of January 1st through June 30th and no later than January 31st for the preceding period of July 1st through December 31st. A late fee of 5% of the amount due shall be added to any payment 30 days past due.

4.7. "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Project. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

4.7.1. The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

4.7.2. Other than as provided in this Agreement, taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Developer is paying any fee or providing any improvement pursuant to this Agreement.

4.7.3. The control and abatement of nuisances;

4.7.4. The granting of encroachment permits and the conveyance of rights and interests which provides for the use of, access to or the entry upon public property, as may be approved by mutual agreement between Developer and City; and

4.7.5. The exercise of the power of eminent domain.

4.8. “Existing Land Use Regulations” means all Land Use Regulations in effect as of the approval date of this Agreement, including the Project Approvals.

4.9. “Gross Receipts” means 5% (five percent) for 1) wholesale and retail sales of cannabis products by Owner to third parties.

5. Fee Payments by Owner. In consideration of City’s entering into this Agreement and authorizing the development and operation of the Project, the requirements for City services created by the Project, the City insuring Owner’s compliance with this Agreement, California Cannabis Laws and the City’s municipal ordinances, throughout the Term of this Agreement, Owner shall make the following payments to City:

5.1. Production Fee Payments by Owner. Semi-annual payments of the Production Fee by Owner to the City as specified in Section 7 herein. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement, but the Production Fee under this Agreement shall cease if any City-wide tax is imposed specifically on Cannabis cultivation.

5.2. Facility Fee Payments by Owner. Annual payments of the Facility Fee by Owner to the City. The obligations of Owner under this Section shall survive the expiration or any earlier termination of this Agreement, but the Facility Fee shall cease if any City-wide tax is imposed specifically on Cannabis cultivation.

5.3. Sales Tax Point of Sale. Owner agrees that Clearlake will be designated as the point of sale for all operations, as allowed by law.

6. Community Participation. Owner agrees to participate in the community as a good corporate citizen and sponsor events and organizations that improve the community.

6.1. Clearlake Chamber of Commerce. Owner agrees to immediately apply for membership in the Clear Lake Chamber of Commerce and, if accepted, maintain an annual membership in good standing.

7. Payment Procedures. The following payment procedures shall apply during the operation of the Project:

7.1. Remittance of Production Fee/Certified Reports. Within thirty (30) calendar days following the end of each semi-annual period during the Term of this Agreement, Owner shall submit the Certified Report to the City’s Finance Director and a payment for the Production Fee for that Operational Period as identified in the Certified Report. Owner shall pay

Production Fees to the City on a semi-annual basis without exception. Any material misstatement or misrepresentation in the Certified Report and any failure to pay Production Fees when due shall constitute events of default by Owner subject to the default provisions of this Agreement.

7.2. Maintenance of Records. Owner shall maintain complete records of their operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by Tenants and/or any operator of the facility. Owner shall maintain such records in a form and location reasonably accessible to the City, following reasonable notice to Owner and/or any operator, for a period of at least five (5) calendar years following Owner's submission of the Certified Report to which the records apply.

7.3. Audit. Within ninety (90) calendar days following the end of each semi-annual payment term, the City may conduct an audit or arrange for a third-party independent audit, at Owner's expense, of Owner records regarding Certified Reports and the Production Fees. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to Owner, and shall reasonably attempt to schedule the audit so as to reduce the impact on Tenants' operations as much as is feasible. Owner shall cooperate with the City in completing the audit. If the audit reveals that Owner has underpaid the Production Fee, Owner shall pay such underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance in addition to all costs of the audit, including city staff time and outside consultants. If the audit reveals that the Owner has overpaid any amount of the Production Fee, City shall provide written notification to Owner and shall credit such amount against Owner's subsequent semi-annual payment of Production Fees.

8. Covenants of Owner. During the Term of this Agreement, Owner hereby covenants and agrees with the City as follows:

8.1. Implementation. Owner shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to all applicable laws, this Agreement, the Project Approvals and the Municipal Code.

8.2. Enhanced Design Requirement. Owner shall submit a design plan for the building and site, for review and approval by the Planning Director, which shall incorporate at a minimum upgraded fencing and landscaping improvements consistent with the Community Character and Design Policies in the City's General Plan.

8.3. Maintain & Operate Project. Owner shall maintain and operate the Project on the Site throughout the Term of this Agreement, in accordance with the Project Approvals and all City, and State laws.

8.4. Hold Harmless. Owner shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from the Project, this Agreement, the approval of the Project, and the activities of Owner, their members, officers, employees, agents, contractors, invitees and any third parties on the Site, from and against any challenges to the validity of this Agreement or other Project Approvals. The obligations of Owner

under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

9. Covenants of City. During the Term of this Agreement, City hereby covenants and agrees with Owner as follows:

9.1. Expeditious Services. City shall process applications and address questions and concerns raised by Owner representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon Owner's request, or if, in an exercise of City's own discretion, City staff determines that it cannot comply with this section, City shall expeditiously engage the services of private contract planners, plan checkers or inspectors ("Private Contractors") to perform such services as may be necessary to assist in processing the project plans as described herein. Compensation of such Private Contractors shall be at Owner's sole cost and expense, inclusive of any administrative cost to City of integrating services by Private Contractors into the project's development processing. Owner shall pay such costs and expenses of Private Contractors via reimbursement to City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors.

9.2 Vested Rights. During the Term of this Agreement, Owner shall have the vested right and entitlement to develop and operate the Project in accordance with the Existing Land Use Ordinances, in addition to any Cannabis Cultivation Operating Standards adopted by the City Council, which may be amended at the City's discretion. Parties acknowledge that neither the City nor the Owner can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Owner shall have the vested right to develop the Project in such order and at such rate and at such times as Owner deems appropriate in the exercise of its business judgment, provided that Owner is in compliance with the Project Approvals.

9.3 Building Permits and Other Approvals and Permits. Subject to (a) Owner's compliance with this Agreement, the Project Approvals the Existing Land Use Ordinances, the Building Ordinances, and Operating Standards; and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to Owner promptly upon application therefore all necessary use permits, building permits, occupancy certificates, regulatory permits, licenses and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

9.4 Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Existing Land Use Ordinances, but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable.

10. Effect of Agreement.

10.1 Grant of Right. This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants to Owner the right and entitlement to develop the Project and use the land pursuant to specified and known criteria and rules as set forth in the Project Approvals and Existing Land Use Ordinances, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

10.2 Binding on City/Vested Right of Owner. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether taken by ordinance or resolution of the City Council, by referendum, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, the Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development of the Project as set forth in the Project Approvals and the Existing Land Use Ordinances, and the timing provisions of Section 3, and the City has entered into this in order to secure the public benefits conferred upon it hereunder which are essential to alleviate current and potential problems in the City and to protect the public health, safety and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

10.3 Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions and specifications (collectively "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall not apply to the Project Site or Project. The Parties, however, acknowledge that the City's approval of this Agreement and the City Approvals are legislative actions subject to referendum.

10.3.1 Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing or sequencing of development affecting subdivision maps, building permits, or other Subsequent Approvals shall apply to the Project. Owner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or to impose any other limitation that may affect the Project.

11. Specific Criteria Applicable to Development of the Project.

11.1 Applicable Ordinances. Except as set forth in the Project Approvals and subject to the provisions of Section 10.2 below, the Existing Land Use Ordinances shall govern the development of the Site hereunder and the granting or withholding of all permits or approvals required to develop the Site; provided, however, that (a) Owner shall be subject to all changes in processing, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and charges are of general application and are not imposed solely with respect to the Project Site, (b) Owner shall abide by the Building Ordinances in effect at the time of such applications, (c) Development Impact Fees to be paid by Owner shall be those in effect at the time permits are

issued subject to those fees, and (d) development shall be consistent with current Operating Standards.

11.2 Amendment to Applicable Ordinances. Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project if, and only if (i) it is consented to in writing by Owner in Owner's sole and absolute discretion; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) it is required by changes in State or Federal law; (iv) it consists of changes in, or new fees permitted by, Section 4.1; or (v) it is otherwise expressly permitted by this Agreement. The Parties anticipate that the City shall subsequently adopt Operating Standards that govern this type of use, which Regulations, and any amendments thereto, shall apply to the Project.

11.3 Applicability of Zoning Amendments. In the event that the City zoning ordinance is amended by the City in a manner which provides more favorable site development standards for the Project Site or any part thereof than those in effect as of the Effective Date, Owner shall have the right to notify the City in writing of its desire to be subject to all or any such new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council, such new standards shall become applicable to the Project. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project as provided above, but Owner may notify City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project.

12. Permitted Delays, Supersedure by Subsequent Laws.

12.1 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Owner and City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, any referendum elections held on the Enacting Ordinance, or the Land Use Ordinances, or any other ordinance effecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "Laws"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Owner, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

12.2 Supersedure of Subsequent Laws or Judicial Action.

12.2.1 The provisions of this Agreement shall, to the extent feasible, be

modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Owner and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

13. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Owner. It is anticipated due to the term of this Agreement that refinements to the approvals may be appropriate with respect to the details of performance of the City and the Owner. To the extent allowable by law, the Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any operating Memoranda hereunder without further City Council action.

14. CEQA. All procedures of the California Environmental Quality Act ("CEQA"), California Public Resources Code §21000 *et seq.*, and the CEQA guidelines, Title 14 of the California Code of Regulations, chapter 3, §15000 *et seq.* have been satisfied based on the Project being categorically exempt.

15. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City's municipal code, inclusive of such California and International Codes as have been adopted in accord therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

16. Assignment and Transfer of Rights. Except as otherwise provided in this Section, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all

successors-in-interest of the Parties and constitute covenants that run with the Site. Owner, for itself, its heirs, distributes, executors, administrators, legal representatives, successors and assigns, shall not, at any time during the Term, assign, convey, lease, sell or otherwise transfer all or any portion of its rights under this Agreement (“Assignable Rights”) to a third party, a subordinate entity, or a related entity (make an “Assignment”) without the prior written consent of City in each instance, which consent may be withheld in City’s sole discretion. Any assignment in violation of this Section will be void. No permitted assignee of this Agreement may further assign this Agreement without City’s prior written consent.

17. Review for Compliance.

17.1 Periodic Review. Pursuant to CGC §65865.1, City shall engage in an annual review this Agreement, on or before the anniversary of the date of execution, in order to ascertain Owner’s good faith compliance with its terms (the “Periodic Review”). In the event City fails to formally conduct such annual review, Owner shall be deemed to be in full compliance with the Agreement.

18. Amendment or Cancellation. This Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties or in the manner provided in CGC §65865.1 or CGC §65868 and subsection 3.2 above.

18.1 Provide Notice. Provide the other Party with written notice of such State or Federal law or regulation, a copy of such law or regulation and a statement identifying how such law regulation conflicts with the provisions of this Agreement.

18.2 Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such applicable Federal or State law or regulation. If the Parties cannot agree on a manner or method to comply with such Federal or State law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

19. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by telecopier or facsimile (“Fax”) machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Clearlake
14050 Olympic
Drive
Clearlake CA 95422
Attention: City Manager

With copy to: Jones & Mayer, City Attorney

8150 Sierra College Blvd., Suite 190
 Roseville California 95661
 Attention: Ryan R. Jones, Esq.

If to Owner:

Akwaaba, INC.
 Clinton "Quincy"
 Jackson
 3995 Alvita (colloquially referred to as 14196 Lakeshore Drive)
 Clearlake, CA 95422

Notices sent in accordance with this Section shall be deemed delivered upon the: **(a)** date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); **(b)** date of actual receipt (if personally delivered by other means); **(c)** date of transmission (if sent by email or telecopier, so long as sender receives actual confirmation that the transmission was received); or **(d)** date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

20. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, Owner shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Owner's rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Owner that specifies the nature of such default. If such default is not cured by Owner within sixty (60) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, Owner fails to commence to cure the default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate Owner's rights under this Agreement. Default by any Assignee or Owner's successor in interest shall affect only that portion of the Site owned by such Assignee or successor, and shall not cancel or diminish in any way Owner's rights with respect to any portion of the Site not owned by such Assignee or successor. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by Owner against City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

21. Entire Agreement. This Agreement and the Exhibits herein contain the entire integrated agreement among the Parties. The Parties intend that this Agreement state their agreement in full to each and every one of its provisions. Any prior agreements, understandings, promises, negotiations or representations respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, are agreed by all Parties to be null and void.

22. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. Attorneys' Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

25. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of approval.

26. Authority to Execute. All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

27. Estoppel Certificate. City shall, at any time and from time to time within ten (10) days after receipt of written notice from Owner so requesting, execute, acknowledge and deliver to Owner a statement in writing: **(a)** certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and **(b)** acknowledging that there are no uncured defaults on the part of Owner hereunder or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Site. Upon Owner's written request, City shall issue a certificate of performance evidencing completion of any of Owner's obligation(s) under this Agreement.

28. Encumbrances on Real Property.

28.1 Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Site or any portion thereof or any improvements thereon then owned by such person with any mortgage, deed of trust or other security device ("Mortgage") securing financing with respect to the Site or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Site or any portion thereof or any improvements thereon and its successors and assigns ("Mortgagee") shall be entitled to the following rights and privileges.

28.2 Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Owner may request certain interpretations and modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments.

28.3 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Site or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

28.4 Mortgagee Not Obligated. Notwithstanding the provisions of Section 26.2, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder, or to guarantee such performance, except that to the extent that Mortgagee opts to receive the benefits of the Agreement, including the right to operate, any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Site or any portion thereof. Uncured monetary defaults will terminate the Agreement and Mortgagee's right to operate.

28.5 Written Notice of Default. Each Mortgagee shall be entitled to receive written notice from City of any default by Owner under this Agreement, if such default is not cured within thirty (30) days, provided such Mortgagee has delivered a written request to City for such notice. Each Mortgagee shall have a further right, but not the obligation, to cure such default for a period of thirty (30) days after receipt of such notice of default. Any non-curable defaults of Owner of any obligation owed solely to City arising prior to Mortgagee's acquisition

of title to the Site or any portion thereof shall be waived; provided, however, the non-payment of money shall not be deemed a non-curable default.

29. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and, subject to City's written consent, their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

30. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in the Superior Court of Lake County, California.

31. Mutual Covenants. The covenants contained herein, including those contained in the Recitals herein, are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

32. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement ("Successors"). Furthermore, the rights and remedies, together with the benefits and burdens of this Agreement of each Party to this Agreement shall be coextensive with those of its Successors. All provisions of this Agreement shall be enforceable as equitable servitude's and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Site: (a) is for the benefit of and is a burden upon every portion of the Site; (b) runs with the Site and each portion thereof; and, (c) is binding upon each Party and each Successor during ownership of the Site or any portion thereof. From and after recordation of this Agreement, the Agreement shall impute notice to all persons and entities in accord with the recording laws of this State.

33. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement.

34. Waiver. Failure by a Party to insist upon the strict performance of any of this Agreement's provisions by the other party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

35. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

36. Recordation of Agreement. This Agreement and any amendment or cancellation

thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

37. Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

38. Jointly Drafted. It is agreed among the parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

39. Independent Legal Counsel. Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

40. Further Cooperation. The parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

41. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

“CITY”

CITY OF CLEARLAKE, CA a California
Municipal Corporation

Date: _____, 2021

By: _____

Mayor

Attest:

By: _____

City Clerk

Approved as to form:

Jones & Mayer

By: _____

Ryan R. Jones, Esq.

City Attorney

“OWNER”

Green Growth Solutions LLC. (owner)

DATE: _____, 2021.

BY: _____

**EXHIBIT A
LEGAL DESCRIPTION**

To be inserted later

EXHIBIT B
SITE LEASE/MAP

To be inserted later

CALIFORNIA ALL- PURPOSE

CERTIFICATE OF ACKNOWLEDGMENT

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

State of California: _____

County of _____.

On _____, before me, _____

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.

Notary Public Seal

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.

Instructions for Completing this form: This form complies with current California statutes regarding notary wording and if needed, should be completed, and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law. State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment. Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.

- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e., he/she/tl!6y, is /ar6) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.

Here insert name and title of the officer

CITY OF CLEARLAKE CITY COUNCIL STAFF REPORT

MEETING OF: June 3rd, 2021

Agenda Item No.

Subject: Consideration of Development Agreement (DA 2021-03) Green Growth Solutions, LLC., for a Commercial Cannabis Operation	Date: May 27, 2021
From: Alan D. Flora, City Manager Mark Roberts, Senior Planner	Reviewed & Approved:

Recommended Action: Hold First Reading of Ordinance No. 255-2021, Read by Title Only, Waive Further Reading and Set Second Reading and Adoption for June 17th, 2021.

Background:

The applicant Green Growth Solutions, LLC is proposing a commercial cannabis operation located at 2560 Highway 53, Clearlake, CA further described as assessor's parcel number 010-048-05. The site is located on approximately 15.37 acres of vacant, industrially zoned property on the East side of State Route 53, near its intersection with Old Hwy 53 towards the northern City limits.

The proposed operations (CUP 11-20; CUP 12-20 and CUP 13-20) would involve cultivation, processing, and wholesale distribution, to occur between the hours of 8am and 5pm. There would be up to six (6) employees at normal peak shifts with extra staff to accommodate the harvest season. The project is located in the CB, Commercial Cannabis Business District, requiring the approval of a conditional use permit by the Planning Commission, a regulatory permit in accordance with Police Code, and a development agreement ultimately approved by City Council.

According to the Application Packet, the operation will include but is not limited to the following:

- Single-story prefabricated metal building for processing and distribution, totaling 10,000 square feet.
- A two-story prefabricated metal building for indoor cultivation and administrative uses, totaling 40,000 square feet.
- Hybrid greenhouses for indoor cultivation totaling 36,000 square feet two structures (18,000 square feet each).

Planning Commission Actions:

On May 17th 2021, the Planning Commission found the project to be in compliance with all applicable regulations and/or requirements and adopted “PC Resolution 2021-13” approving the above Conditional Use Permit Applications and a Mitigated Negative Declaration (MND) based on the Environmental Analysis of Initial Study IS 2021-01 in accordance with CEQA.

Planning Commission Recommendation: The Planning Commission also recommended approval to the City Council of the Development Agreement (DA 2021-03) at their special meeting on May 17th, 2021. *[Refer to Attachment B, Resolution of Recommendation (PC 2021-14) from the Planning Commission]*

In accordance with Section 5-25.030 of the City of Clearlake Municipal Code, a Development Agreement for the commercial cannabis operations is required. The use permits have been conditioned not to be effective until the Development Agreement has been adopted by the City Council. The applicant concurs with all provisions of the Development Agreement.

This agenda item is focused on the approval of a Development Agreement regarding the subject business and does not venture into potential changes to existing City regulations or ordinances related to allowable cannabis operations. The approval of the proposed Development Agreement should be considered based on existing cannabis related regulations.

FINANCIAL AND/OR POLICY IMPLICATIONS:

The Development Agreement will create a positive revenue source for the City based on the fee structure set forth in the terms of the agreement. There will be a semi-annual production fee paid, as well as an annual facility fee. The actual revenue cannot be estimated at this time since it will be dependent upon the success of the business.

RECOMMENDED ACTION:

Hold First Reading of Ordinance No. 255 -2021, Read by Title Only, Waive Further Reading, and Set Second Reading and Adoption for June 17, 2021.

ATTACHMENTS:

- A. Staff Report and Resolution (Resolution Number PC 2021- 13) from the Planning Commission Approving Conditional Use Permits CUP 11-20, CUP 12-20 and CUP 13-20.
- B. Resolution (Resolution No. PC 2021-14) of the Planning Commission recommending approval of Development Agreement (DA 2021-03)
- C. Ordinance 255-2021 of the City Council Adopting Development Agreement (DA 2021-03)



PLANNING COMMISSION SPECIAL MEETING

Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA

Monday, May 17, 2021

6:00 PM

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Council Members to attend Planning Commission meetings telephonically. Please be advised that some, or all, of the Clearlake Planning Commission Members may attend this meeting telephonically.

Furthermore, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which waives the mandate of public, in-person accessibility to Council meetings provided there are other means for the public to participate. Effective immediately and continuing only during the period in which state or local public health officials have imposed or recommended social distancing measures, the Clearlake Planning Commission meetings will be viewable via livestreaming on the City of Clearlake's YouTube Channel https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA and the public may participate through Zoom at the link listed below.

Balancing the health risks associated with COVID-19, while appreciating the public's right to conduct the people's business in a transparent and open manner, the City wants you to know that you can submit your comments and questions in writing for Planning Commission consideration by sending them to the Assistant Planner Susanna Amaro-Gutierrez at sgutierrez@clearlake.ca.us. To give the Planning Commission adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

Beginning April 1st, 2021, the public may attend Planning Commission meetings in person. However, the Council Chambers will have limited capacity and attendees must adhere to masking and social distancing mandates. You may view the meeting live on YouTube at the City of Clearlake's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at <https://www.youtube.com/user/LakeCountyPegTV/featured>.

AGENDA

Zoom Link: <https://clearlakeca.zoom.us/j/93679096509>

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the Planning Commission less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

MEETING PROCEDURES: *During this Planning Commission meeting, public comment will be accepted via email. If you would like to comment remotely, please follow the protocols below:*

- Send comments via email to the Assistant Planner at sgutierrez@clearlake.ca.us prior to the commencement of the Planning Commission meeting.*
- Identify the subject you wish to comment on in your email's subject line.*
- Each Public Comment emailed to the Assistant Planner will be read aloud by the Chair or a member of staff for up to three minutes or will be displayed on a screen.*
- Public Comment emails which are received after the beginning of the meeting will not be included in the record.*
- Any live comments will be accepted throughout the meeting via Zoom. Staff requests that commenters please utilize Zoom's "hand raise" feature to signify when they would like to speak.*

PUBLIC HEARING

1. Cannabis Cultivation, Processing and Distribution Development Agreement (companion application)
Recommended Action: Adopt Planning Commission Resolutions PC 2021-13 and 2021-14, approving Conditional Use Permit applications CUP 11-20, 12-20, and 13-20 authorizing a Cannabis business operation at 2560 Highway 53, approving Corresponding Mitigated Negative Declaration based on findings from Initial Study IS 2021-01 in accordance with CEQA guidelines, and recommending approval of accompanying Development Agreement DA 2021-02 to City Council.

ADJOURNMENT

POSTED: May 14, 2021



Melissa Swanson, Administrative Services Director/City Clerk



**STAFF REPORT
CLEARLAKE PLANNING COMMISSION
For the Special Meeting of May 17, 2021**

Agenda Item No. 1

To: Clearlake Planning Commission
From: Mark Roberts, Senior Planner
Application File: Conditional Use Permit Applications CUP 11-20, 12-20, & 13-20
 Development Agreement DA 2021-02
 Initial Study IS 2021-01
Subject: Cannabis Cultivation, Processing and Distribution
 Development Agreement (companion application)

Data Summary

Location: 2560 Highway 53
Assessor's Parcel: 010-048-050-000
Applicant/Owner: Green Growth Solutions LLC; Rep. Joseph Gustafson
Zoning Designation: Industrial (I); Cannabis Business (CB); Scenic Corridor (SC)
General Plan: Industrial

I. Recommendations:

1. Adopt Planning Commission Resolution No. PC 2021-13, approving:
 - a. Conditional Use Permit applications CUP 11-20, 12-20, and 13-20 authorizing a Cannabis business operation at 2560 Highway 53.
 - b. Corresponding Mitigated Negative Declaration based on findings from Initial Study IS 2021-01 in accordance with CEQA guidelines.
2. Adopt Planning Commission Resolution No. PC 2021-14, recommending approval of accompanying Development Agreement DA 2021-02 to City Council.

II. Background/Situation:

- Property owner/applicant, Joseph “Joey” Gustafson (rep. of Green Growth Solutions, LLC) is requesting approval of Conditional Use Permit applications CUP 11-20, 12-20, & 13-20 and accompanying Development Agreement DA 2021-02 authorizing the commercial cultivation, processing, and distribution of cannabis at 2560 Highway 53. The site is located on approximately 15.37 acres of vacant, industrially zoned property on the East side of State Route 53, near its intersection with Old Hwy 53 towards the northern City limits.
- The proposed business plan includes:
 - A single-story prefabricated metal building for processing and distribution, totaling 10,000 square feet.
 - A two-story prefabricated metal building for indoor cultivation and administrative uses, totaling 40,000 square feet.
 - Hybrid greenhouses for indoor cultivation totaling 36,000 square feet two structures (18,000 square feet each).

A breakdown of the proposed uses includes:

1st level

Administration and common area:*	10,117 sq. ft.
Cultivation production area:	14,000 sq. ft.
Cultivation processing area:	3,147 sq. ft.
Processing	<u>2,738 sq. ft.</u>
Total	30,000 sq. ft.

*located in the single-story structure

2nd Level

Common area (service corridor):	5,000 sq. ft.
Cultivation production area:	<u>15,000 sq. ft.</u>
Total	20,00 sq. ft.



- The project is located just south of Ogulin Canyon road and similarly permitted cannabis operations.
- As discussed, the proposed operations would involve cultivation, processing, and wholesale distribution, to occur between the hours of 8am and 5pm. There would be up to six (6) employees at normal peak shifts with extra staff to accommodate the harvest season.
- The project is located in the CB, Commercial Cannabis Business District, requiring the approval of a conditional use permit by the Planning Commission, a regulatory permit in accordance with Police Code, and a development agreement ultimately approved by City Council.

III. General Plan Consistency: The General Plan identifies the project site as industrial, compatible with the proposed business operation.

There are also a number of general plan policies promote economic and job creation which this project proposes. For example, the Economic Development Element supports the development of diverse businesses in the community. Policy ED 1.1.2 states "Support a healthy mix of local businesses and mid-sized companies." Policy ED 3.1.1 states "Prioritize economic activities that utilize Clearlake's natural geographic location in the region". Program ED2.1.1.2 states: "Incorporate light industry and compatible uses along State Route 53".

IV. Zoning Compliance:

A. Use Permit Considerations: In accordance with Section 18-28.40 of the Zoning Ordinance, to grant a use permit, the Planning Commission must find that the proposed use will not be detrimental to the health, safety or welfare of persons working or living at the site or within the vicinity. The Planning Commission may deny the proposal or attach conditions as deemed necessary to secure the purposes of these regulations. Being located in the Industrial District, the operations and development meet performance standards set by the Zoning Code and would not be detrimental to the neighborhood.

B. Development Agreement Considerations: In accordance with Section 18-43.020 (C) of the Zoning Code, the Planning Commission will need to consider the proposed development agreement. The applicant has worked with staff and the City Attorney to prepare the agreement. A separate resolution from the Planning Commission recommending approval of the development agreement is included. Once the development agreement has been adopted by the City Council, the use permit will become operational and the land use entitlement for the project will be approved.

C. Building Appearance Considerations:

- The project involves construction of the two new permanent structures and several hybrid greenhouses, subject to design review in accordance with Chapter 18-33 of the Zoning Code. Although the project includes two individual prefabricated metal buildings, they will be built and joined together to give the appearance of one structure. The siding and coloring have been varied to break up the scale of frontage. One oversized roll-up door is provided on the north elevation to service the production area.
- The main buildings would be located within 50 feet of Highway 50; a scenic corridor according to Chapter 18-13 of the Zoning Code. The purpose of Design Review is “to enhance the design characteristic in all neighborhoods within the City of Clearlake.” The purpose of the Scenic Corridor regulations is “to preserve the scenic quality of the land immediately visible from State Highway 53.” The greenhouses are located farther East of CA-53 and should have minimal visual impact.
- The Scenic Corridor District extends along both sides of Highway 53, approximately 300 feet in from the edge of the highway’s pavement. Section 18-13.030 of the Zoning Code provides the following development standards for projects within this corridor:

1. Grading and cut/fill shall be kept to a minimum and shall be prohibited whenever such activities will have an adverse impact of the scenic resources of the State highway.

2. Any exposed slopes resulting from grading shall be stabilized by plantings of compatible vegetation.

- Section 18-13. 40 of the Zoning Code requires a graphic viewshed analysis from various perspectives shall be conducted for proposed use/development. The analysis shall identify

visual resources within the viewshed of the project and indicate how the design of the project addresses those views from each perspective.

- Below are some perspective renderings of the project as it might be seen from Highway 53.



1 RENDERING LOOKING SOUTHEAST
A4.1



4 RENDERING OF ENTRY
A4.1

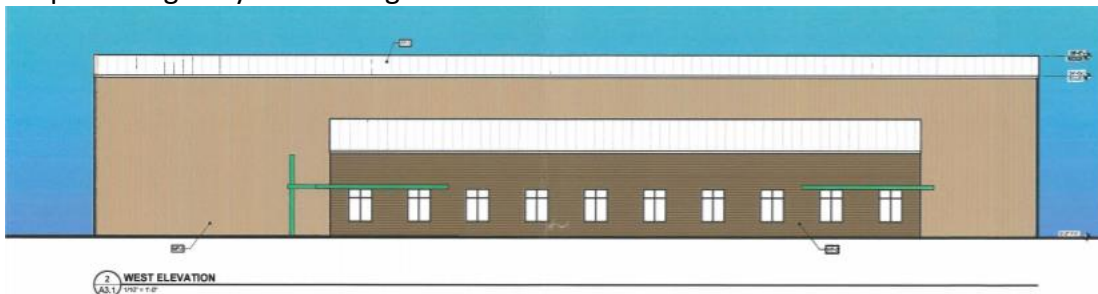


3 RENDERING LOOKING NORTHEAST
A4.1

HIGHWAY 53 BUILDING - Option A

A4.1

Proposed Highway 53 Building Elevation



- The Commission may wish, as a condition of approval to have the building design return for final review with some design embellishment, or return with a whole new building design approach. Or, the Commission could refer these changes to staff for approval.

D. Circulation/Access: Primary access to the site would be from the existing driveway on Highway 53. Alternative access is shown via a frontage road north to Ogulin Canyon. The California Department of Transportation reviewed the project and is acceptable with this access subject to obtaining an encroachment permit for the commercial driveway improvement.

E. Off-Street Parking: As indicated on the site plan 30 parking spaces are proposed on site (6 employees, 4 large truck and 1 accessible). The number of parking spaces proposed may not satisfy the City's Off-Street Parking Code requirements for the size of buildings proposed:

Distributor or Manufacturer	1 space per 800 sf processing area and 300 sf of office area.	1 space per 20,000 sf.
Nursery/Cultivation	1 space per 1,000 sf nursery or cultivation area and 1 space per 300 sf of office or processing floor area	1 space per 20,000 sf.

F. Exterior Lighting: The project business plan calls for new exterior lighting, pending a detailed lighting plan submittal in accordance with Chapter 18-43 of the Zoning Code. Any new lighting will be subject to compliance of Section 18-20.120 of the Zoning Code regarding night sky preservation. The design of such lighting will need to comply with the City's lighting design standards.

G. Signage: No signage has been proposed in the applicant's business plan, however a signage plan will need to be submitted to assure compliance with the City's Sign Regulations.

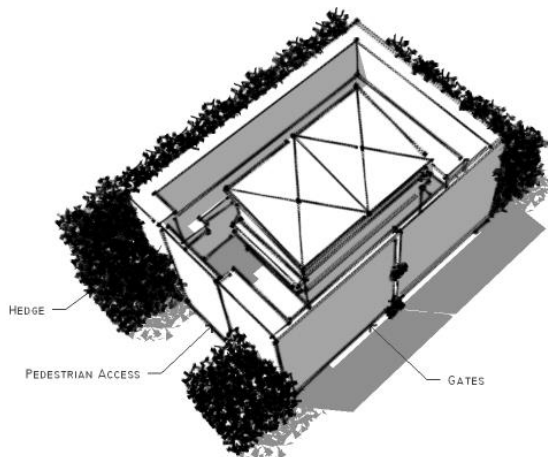
H. Fencing: A cyclone fence surrounding the site is proposed to comply with local standards is referenced in the business plan. A fencing plan needs to be submitted for review and approval by staff that complies with the City's fence design standards. Since a portion of the project site is within the City's Scenic Corridor, fencing visible from Highway 53 should be wrought iron or designed to be attractive, other than chain link. A detailed fencing plan will need to be submitted to assure compliance.

Fencing Design Example for Areas Facing Highway 53:



I. Trash/Recycling Containment: The site plan shows the use of a 15' X 15' trash enclosure to be located centrally for easy access to all operations. The trash enclosure will need to be designed and constructed in accordance with the City's Trash/Recycling Enclosure Design Standards.

Trash Enclosure Design Example:



J. Cannabis Operating Standards: Chapter 18-43 Commercial Cannabis regulations has a number of general and specific to the particular cannabis operation standards that should be considered in reviewing this project as follows:

1. Security Plan-Section 18-43.060 (E): The proposed business plan includes a description of the security program that generally complies with this section.
2. Odor Control-Section 18-43.060 (F): The City shall be required to incorporate and maintain adequate odor control measures such that the odors of cannabis cannot be readily detected. The proposed business plan includes an odor control plan that is complaint driven that proposes possible mitigation of odors once a complaint is received. Being next to Highway 53 exposes a large number of people to potential odors from the facility. Mitigation Measure AIR-7 from the negative declaration includes an odor control plan that includes an enhanced carbon filtering system to comply with the Code.
3. Cultivation Security-Section 18-43.070 (D): Cultivation facilities must be secured from public access with metal security fencing and drive and pedestrian gates with electronic key code or similar access controls approved by the Chief of Police. Security fencing is proposed around the facility.

K. Commercial Cannabis Regulatory Permit: Section 5-25 of the Police Code requires a regulatory permit and use permit issued by the City Manager. These regulations may appear to be redundant to this use permit because the criteria for review are similar to the use permit considerations of the Planning Commission, but provides consistency with State Cannabis regulations and provides the City the ability to more immediately enforce the regulations and cease operations if there is an immediate threat to the public health and safety.

V. Environmental Determination: In accordance with CEQA requirements, an Environmental Assessment/Initial Study has been prepared for the proposed project. The Study (Attachment 12) concludes that, with appropriate mitigation, the project will not result in a significant adverse environmental impact. Specifically, mitigation measures are proposed for Aesthetics and Scenic Resources, Air Quality, Biological Resources, Cultural Resources and Tribal Cultural Resources, Geology and Soils and Transportation. To approve the use permit and development agreement applications, the Commission will need to concur with a determination to issue a mitigated negative.

VI. Agency and Public Review:

Agency Review: The project application package was circulated to reviewing agencies for review and comment. Responses were received from the following agencies:

- Lake County Environmental Health indicated that written declaration of chemical names and quantities will be required to be submitted prior to occupancy. were received from Lake County Environmental Health. The Fire Department will inspect the facility to ensure compliance with the California Fire Code before the business license is issued.

- Lake County Fire Protection provided conditions of approval including the buildings (excluding the greenhouses) must be sprinkled and have a fire alarm. A Knox box override will be required at the entrance to the property, that PRC codes be provided for emergency vehicles, and that storage water tanks will be required to be installed to NFPA standard.
- Caltrans commented that an encroachment permit will be required for any work done within the Caltrans right of way (Hwy 53) and that the driveway width encroachment shall be improved to match the 20-foot opening in the access control bringing it up to Caltrans current standards for commercial driveways.

These comments have been included in the conditions of approval as part of the approving resolution or as mitigations in the environmental document as appropriate.

Public Notice: In addition, as required by Code, all properties within 600 feet of the project were notified of the request for a conditional use permit. No comments were received from neighboring property owners regarding the proposed project.

VII. Attachments

1. Resolution No. 2021-13 (Approving Conditional Use Permits and Environmental Filing)
2. Resolution No. 2021-14 (Recommending Approval of Development Agreement)
3. Operational Plan
4. Site Specific Exhibits
5. Zoning Maps
6. Environmental Documents (Initial Study 2021-01; Mitigated Negative Declaration)

RESOLUTION PC 2021-13

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF CLEARLAKE APPROVING CANNABIS CONDITIONAL USE PERMITS,
UP 11-20 (CULTIVATION); UP 12-20 (PROCESSING), UP 13-20 (DISTRIBUTION), AND
CANNABIS BUSINESS/REGULATORY PERMIT LOCATED AT 2560 HIGHWAY 53, IN THE “I”
INDUSTRIAL; “CB” CANNABIS BUSINESS LAND USE DESIGNATIONS**

APN: 010-048-050

WHEREAS, Green Growth Solutions LLC. (**Joey Gustafson**) Owner and Developer/Operator, applied for approval of Conditional Use Permits, UP 11-20 (Cultivation); UP 12-20 (Processing), UP 13-20 (Distribution), and Cannabis Business/Regulatory Permit at 2560 Highway 53, Clearlake, CA 95422 further described as APN: 010-048-050, in the “I” Industrial Land Use Designation and within the “CB” Commercial and “CB” Delivery Only Cannabis Overlay Designations; and

WHEREAS, Cannabis Business Use Permit Application Use Permit UP 11-20 (Cultivation); UP 12-20 (Processing), UP 13-20 (Distribution), and Cannabis Business/Regulatory Permit has been made in accordance with Section 18-12.20 of the Municipal Code, Zoning Regulations, which refers to distribution of cannabis, involving the selling and delivering of products to retailers, such as dispensaries, as a use subject to a conditional use permit; and

WHEREAS, Commercial Cannabis Regulatory Permit Application has been made in accordance with Section 5-24.04. (h) of the Municipal Code, Police Regulations, which requires that a regulatory permit for commercial cannabis be granted by the Planning Commission; and

WHEREAS, companion applications have been filed for commercial cannabis operations by Chris Jennings at the same location at 2560 Highway 53, Clearlake, CA 95422, in the “I” Industrial Land Use Designation and within the “CB” Commercial and “CB” Delivery Only Cannabis Overlay Designations, APN# 010-048-050 as follows:

- Development Agreement DA 2021-## for a Development Agreement for commercial cannabis operations in accordance with Section 5-030 (b) of the Municipal Code; and

WHEREAS, the General Plan designates the project site as Industrial. As conditioned, the proposed use would be consistent with the General Plan; and

WHEREAS, the project is found to comply with the Zoning Code as conditioned by this use permit; and

WHEREAS, In accordance with Section 18.14.445 (b) of the Zoning Code the use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to the property, improvements or potential development in the vicinity with respect to aspects including, but not limited to, the following:

- (a) The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures;
- (b) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic and the adequacy of proposed off-street parking and loading;
- (c) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
- (d) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking areas, loading areas, service areas, lighting, and signs; and

WHEREAS, the project underwent environmental review subject to the California State CEQA Guidelines, and a Mitigated Negative Declaration has been adopted; and as evidenced by the following:

1. The initial study and Mitigated Negative Declaration has been properly noticed and circulated in compliance with the California Environmental Quality Act (CEQA) of 1970, and in compliance with Section 15070-15075 of the CEQA State Guidelines, by:
 - *Circulation of the environmental analysis (CEQA - Initial Study) and proposed Mitigated Negative Declaration (Notice of Intent) was sent to the State Clearinghouse and various Federal, State and local agencies for the 30-day commenting period between March 23, 2021 through April 26, 2021. No adverse comments were received.*
 - *A Notice of Intent (NOI) was mailed to the surrounding parcels owners within 600 feet of the subject property informing them of the City's decision to adopt a proposed Mitigated Negative Declaration (MND) for the proposed use and that there is a 30-day commenting period on the environmental document between March 23, 2021 through April 26, 2021). No comments were received.*

2. The initial study was prepared in accordance with the California Environmental Quality Act (CEQA), which shows substantial evidence, in light of the whole record, that the project will not result in a significant environmental impact with the incorporated Mitigation Measures/Conditions of Approval and, hereby adopts a Mitigated Negative Declaration (MND) and authorizes staff to file a Notice of Determination in compliance with CEQA.

WHEREAS, adequate public noticing was made for the project in accordance with the Municipal Code; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Clearlake that the project is hereby approved, subject to the following conditions being satisfied:

A. GENERAL CONDITIONS:

1. The use hereby permitted shall substantially conform to the **Site Plan(s), and Project Description** and any conditions of approval imposed by the above **Conditional Use Permits** and Review Authority as shown on the approved site plan for this action **dated May 17, 2021.**
2. Any modifications and/or additions to a use requiring use permit approval shall itself be subject to use permit approval. The addition of an allowed use to a premise occupied by a conditionally allowed use shall require use permit approval of the type required for the existing use. The Community Development Director shall determine when such an addition and/or change is of such a minor or incidental nature that the intent of these regulations can be met without further use permit control.
3. Any conditions established pursuant to these regulations shall be met before the use is established, except that the Community Development Director, Planning Commission or on appeal, the City Council, may establish a schedule for certain conditions to be met after establishment of the use. Continuance of the use shall then be contingent on complying with the schedule for meeting deferred conditions.
4. This use permit does not abridge or supersede the regulatory powers and permit requirements of any federal, state, or local agency requirements, which may retain a regulatory or advisory function as specified by statute or ordinance. The applicant shall obtain and maintained permits as may be required from each agency.
5. The California Department of Fish & Wildlife filing fee shall be submitted as required by California Environmental Quality Act (CEQA) statute, Section 21089(b) and Fish and Game Code Section 711.4. The fee should be paid within five (5) days of approval of the mitigated negative declaration at the Lake County Clerk's Office. Once fees have been paid, the applicant shall submit a copy of all documentation to the City of Clearlake, verifying the fees have been paid. **Said permit shall not become valid, vested or operative until the fee has been paid.**
6. **Prior to operation**, the applicant(s) shall obtain and maintain all applicable permits from all Federal, State and local agencies having jurisdiction over this project, including but not limited to:
 - *CDFA - CALCannabis California Department of Food and Agriculture: (Cultivation licenses)*

- *BCC - Bureau of Cannabis Control (Issues Distributor, Retailer, Testing Lab, Microbusiness, and Temporary Event licenses)*
- *CDPH - MCSB California Department of Public Health's Manufactured Cannabis Safety Branch (Issues Manufacturing licenses)*
- *California Department of Pesticide Regulation*
- *California Department of Fish and Wildlife*
- *California State Water Resources Control Board*
- *California Central Valley or North Coast Regional Water Quality Control Board*

7. If the subject parcel is on a **septic system and/or well**, the applicant shall bring a minimum of three (3) site plans drawn to scale to the Lake County Environmental Health Department for review and approval **prior to submitting a Building Permit Application** with the City of Clearlake.
8. The use permit may be transferred to new owners subject to obtaining a new commercial cannabis regulatory permit, upon the new owner's written agreement to maintain all conditions of approval.
9. If there is a change in the project manager (permit holder representative), the permit holder shall submit notarized written documentation to the City of Clearlake for review and approval. Said documentation shall include the following:
 - *Name of Individual and Title*
 - *Contact Information (Phone, email and address)*
 - *What that individual is authorized to do.*
10. The developer/operator shall agree to indemnify, defend, and hold harmless the City or its agents, officers and employees from and against any and all claims, actions, demands or proceeding (including damage, attorney fees, and court cost awards) against the City or its agents, officers, or employees to attach, set aside, void, or annul an approval of the City, advisory agency, appeal board, or legislative body concerning the permit or entitlement when such action is brought within the applicable statute of limitations. In providing any defense under this Paragraph, the applicant, business operator, property owner, developer shall use counsel reasonably acceptable to the City. The City shall promptly notify the applicant, business operator, property owner, developer of any claim, action, demands or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the developer/operator of any claim, action, or proceeding, or if the City fails to cooperate fully in the defense, the developer/operator shall not thereafter be responsible to defend, indemnify, or hold the City harmless as to that action. The City may require that the developer/operator to post a bond, in an amount determined to be sufficient, to satisfy the above indemnification and defense obligation. Developer/operator understands and acknowledges that City is under no obligation to defend any claim, action, demand or proceeding challenging the City's actions with respect to the permit or entitlement.
11. The developer/operator shall be responsible to pay all sales, use, business and other applicable taxes, and all license, registration, and other fees and permits required under federal, state and local law and pursuant to the approved Development Agreement for the project.
12. This developer/operator shall cooperate with the City with respect to any reasonable request to audit the business' books and records for the purpose of verifying compliance with the Municipal Code and the Use Permits and related Development Agreement including but not limited to a verification of the amount of taxes required to be paid during any period for the project.

13. The applicant is responsible for ensuring that all project workers are informed of, understand, and agree to abide by the approved plans and project conditions.
14. **Prior to operation**, the applicant shall be enrolled in and comply with the **State of California Track and Trace** program and all requirements, including having all cannabis plants properly tagged.
15. **Prior to Operation**, all personnel listed as owners, managers or supervisors shall under undergo and pass a background check by the City of Clearlake Police Department.
 - Pursuant to California Business and Professions Code, Section 26057, if an individual who has failed a background check becomes involved in any aspect of the cultivation process, or if any employee is involved with the cultivation who has not undergone a background check, the use permit will be brought before the Planning Commission for consideration of revocation.
16. **Prior to operation**, all handicap parking areas, routes of travel, building access and bathrooms shall meet American with Disabilities Act (ADA) requirements and be subject to review and approval of a Certified Accessibility Access Specialist (CASP).
17. The applicant(s) shall adhere to the Lake County Division of Environmental Health requirements regarding on-site wastewater treatment and/or potable water requirements. The applicant shall contact the Lake County Division of Environmental Health for details.
18. The use permit approval shall not become effective, operative, vested or final until a Notice of Determination has been filed with the State Clearing House and the Lake County Clerk's Office.
19. The use permit shall not become operational until a Development Agreement has been adopted by the City Council in accordance and a commercial cannabis regulatory permit has been approved and issued by the City Manager, at the recommendation of the Planning Commission, in accordance with the Municipal Code.
20. The permit holder shall operate in full compliance with fire safety rules and regulations of the Lake County Fire District.
21. **Prior to operation and/or development**, the applicant shall secure any required permits from the City of Clearlake (Building Department, Planning and Public Works), Fire District, Lake County Air Quality Management District, Lake County Water Resources Department, Lake County Environmental Health Department and/or all applicable Federal, State and local agency permits.
22. In accordance with the Municipal Code and requirements made by the Lake County Fire Protection Lake County Air Quality Management District and Lake County Health Department, the following detailed plans shall be submitted for review and approval by the Planning, Building, and/or Police Departments and other related agencies as applicable prior to operation/occupancy:
 - Odor Control Plan (compliant with Section 18-43.060)
 - Security Plan (compliant with Section 18-43.060).
 - Exterior Lighting Plan (compliant with Sections 18-20.120 and 18-43.060 and with the City's Lighting Standards, including design review approval)

- Waste/Recycling and Enclosure Plan (compliant with Section 18-20.070 and with the City's Trash and Recycling Enclosure Requirements and Design Standards, including design review approval).
- Fencing Plan for security of all cannabis businesses activities (compliant with Section and the City's Fence Design Standard including design review approval).
- Hazardous Materials Mitigation Plan if required by the Lake County Fire Protection District and/or the Lake County Environmental Health Department)
- Air Quality Permit if required by Lake County Air Quality Management District.
- Civil site plans identifying existing and proposed storm drains, drainage ditches, curbs, sidewalks, gutters, and striping, as regulated by the City's Design and Construction Standards, Off-Street Parking Regulations, and Parking Design Standards to be found in compliance with all other applicable local/federal/state laws (including ADA and CASP requirements).
- Sign plan that demonstrates compliance with the City's sign regulations. All non-compliant signs shall be immediately removed. Installation of signs without prior City approval may be grounds for revocation of this use permit.

23. The applicant shall adhere to all applicable requirements in the City of Clearlake Municipal Code.

B. AESTHETICS

1. All exterior lighting shall incorporate down-light shielding and other designs to avoid excessive light bleed off site and to avoid excessive night sky lighting glare in accordance with the Zoning Code. ***(Initial Study Mitigation Measure AES -1)***

C. AIR QUALITY

1. Construction activities shall be conducted with adequate dust suppression methods, including watering during grading and construction activities to limit the generation of fugitive dust or other methods approved by the Lake County Air Quality Management District. Prior to initiating soil removing activities for construction purposes, the applicant shall pre-wet affected areas with at least 0.5 gallons of water per square yard of ground area to control dust. ***(Initial Study Mitigation Measure AIR-1)***
2. Driveways, access roads and parking areas shall be surfaced in a manner to minimize dust. Driveway approaches shall be constructed of concrete and built to minimum City of Clearlake standards. ***(Initial Study Mitigation Measure AIR-2)***
3. The burning of construction debris is prohibited. Any disposal of vegetation removed as a result of lot clearing shall be lawfully disposed of, preferably by chipping and composting, or as authorized by the Lake County Air Quality Management District and the Lake County Fire Protection District. ***(Initial Study Mitigation Measure AIR-3)***
4. During construction activities, the applicant shall remove daily accumulation of mud and dirt from any roads adjacent to the site (Dam Road). ***(Initial Study Mitigation Measure AIR-4)***
5. Grading permits shall be secured for any applicable activity from the Community Development Department, Building Division. Applicable activities shall adhere to all grading permit conditions,

including Best Management Practices. All areas disturbed by grading shall be either surfaced in manner to minimize dust, landscaped or hydro seeded. **(Initial Study Mitigation Measure AIR-5)**

6. All refuse generated by the facility shall be stored in approved disposal/storage containers, and appropriately covered. Removal of waste shall be on a weekly basis so as to avoid excess waste. All trash receptacles/containers shall remain covered at all times to prevent fugitive odors and rodent odor control plan shall be submitted for review and approval by the City In accordance with the Zoning Code. Odor control shall be maintained to an acceptable level at all times. **(Initial Study Mitigation Measure AIR-6)**
7. An odor control plan shall be submitted for review and approval by the City that complies with the City's Zoning Code. Odor control shall be maintained at all times so that odor from cannabis operations on the site will not be detected outside structures. This plan shall include enhanced carbon filtering to compliance with the Code. **(Initial Study Mitigation Measure AIR-7).**
8. **Prior to Operation**, the applicant shall obtain all necessary permits from the Lake County Air Quality Management District (LCAQMD) and submit a copy of said permits to the City of Clearlake. All permits shall be obtained and maintained for life of the project or until the operation is closed and the equipment is removed.
9. All mobile diesel equipment used for construction and/or maintenance shall be compliant with State registration requirements. Portable and stationary diesel-powered equipment must meet the requirements of the State Air Toxic Control Measures for CI engines as well as the Lake County Noise Emission Standards.
10. The applicant shall maintain records of all hazardous or toxic materials used, including a Material Safety Data Sheet (MSDS) for all volatile organic compounds utilized, including cleaning materials. Said information shall be made available upon request and/or the ability to provide the Lake County Air Quality Management District such information in order to complete an updated Air Toxic Emission Inventory.

D. BIOLOGICAL RESOURCES:

1. **Prior to development**, a protocol-level botanical survey shall be completed within the location defined as being feasible for project activities to occur within this Report. The survey shall follow procedures recommended by CDFW and in accordance with the guidelines established by CNPS, from the document "*Protocols for Surveying and Evaluating Impacts to Specie Status Native Plant Opulations and Sensitive Natural Communities*". **(Initial Study Mitigation Measure BIO-1)**
2. If project development results in a sufficient amount of noise from the use of machinery, construction shall occur between September 1 and January 31 to avoid disturbance to migratory nesting birds, or a buffer shall be established by a qualified biologist if nesting birds are present. **(Initial Study Mitigation Measure BIO-2)**

3. If construction occurs within the migratory bird nesting season (February 1 and August 31), a qualified biologist shall conduct a nesting birds survey fourteen (14) days prior to project development, including vegetation removal. **(Initial Study Mitigation Measure BIO-3)**
4. **Prior to any ground disturbance**, the applicant shall conduct a site inspection for Burrowing Owls Presence within the project area. If Burrow Owls are observed, a pre-construction surveys shall be completed by a qualified biologist fourteen (14) days prior to site development. The survey shall be conducted to determine if the project area has active dens and determine if avoidance of these active dens can occur. If active dens are determined to be present, owl relocation shall occur to other onsite suitable habitat prior to development. **(Initial Study Mitigation Measure BIO-4)**
5. If additional activities are proposed that may result in take of a listed species, agency personnel from CDFW and SFWS shall further analyze the potential impacts and provide technical assistance for any listed species. If required, guidelines for these reconnaissance surveys should be followed in accordance to the CDFW Survey and Monitoring Protocols and Guidelines, which can be located here: <https://www.wildlife.ca.gov/conservation/survey-protocols>. **(Initial Study Mitigation Measure BIO-5)**

E. CULTURAL/TRIBAL RESOURCES

1. During construction activities, if any subsurface archaeological remains are uncovered, all work shall be halted within 100 feet of the find and the applicant shall retain a qualified cultural resources consultant from the City's approved list of consultants to identify and investigate any subsurface historic remains and define their physical extent and the nature of any built features or artifact-bearing deposits. Significant historic cultural materials may include finds from the late 19th and early 20th centuries including structural remains, trash pits, isolated artifacts, etc. **(Initial Study Mitigation Measure CUL-1)**
2. The cultural resource consultant's investigation shall proceed into formal evaluation to determine their eligibility for the California Register of Historical Resources. This shall include, at a minimum, additional exposure of the feature(s), photo-documentation and recordation, and analysis of the artifact assemblage(s). If the evaluation determines that the features and artifacts do not have sufficient data potential to be eligible for the California Register, additional work shall not be required. However, if data potential exists – e.g., there is an intact feature with a large and varied artifact assemblage – it will be necessary to mitigate any Project impacts. Mitigation of impacts might include avoidance of further disturbance to the resources through Project redesign. If avoidance is determined to be infeasible, pursuant to CEQA Guidelines Section 15126.4(b)(3)(C), a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during Project excavation or testing, curation may be an appropriate mitigation. This language of this mitigation measure shall be included on any future grading plans and utility plans approved by the City for the Project. **(Initial Study Mitigation Measure CUL-2)**
3. If human remains are encountered, no further disturbance shall occur within 100 feet of the vicinity of the find(s) until the Lake County Coroner has made the necessary findings as to origin (California Health and Safety Code Section 7050.5). Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the

treatment and disposition has been made. If the Lake County Coroner determines the remains to be Native American, the Native American Heritage Commission must be contacted within 24 hours. The Native American Heritage Commission must then identify the “most likely descendant(s)”, which parties agree will likely be the Koi Nation based upon the Tribe’s ancestral ties to the area and previous designation as MLD on projects in the geographic vicinity. The landowner shall engage in consultations with the most likely descendant (MLD). The MLD will make recommendations concerning the treatment of the remains within 48 hours as provided in Public Resources Code 5097.98. **(Initial Study Mitigation Measure CUL-3)**

F. GEOLOGY & SOILS

1. The project shall incorporate Best Management Practices (BMPs) consistent with the City Code and the State Storm Water Drainage Regulations to the maximum extent practicable to prevent and/or reduce discharge of all construction or post-construction pollutants into the local storm drainage system. **(Initial Study Mitigation Measure GEO-1)**

G. HAZARDS & HAZARDOUS MATERIALS

1. If the project involves storage of hazardous materials equal or greater than 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas the applicant will be required to submit a Hazardous Materials Inventory Disclosure Statement/ Business Plan to the Environmental Health Division via the California Electronic Reporting System. This plan shall be renewed and updated annually or if quantities increase. **(Initial Study Mitigation Measure HAZ-1)**
2. If the amount of hazardous materials is less than 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas, the applicant will need to complete and submit a Hazardous Materials/ Waste Declaration stating the name of the material and the quantity to be stored on site. **(Initial Study Mitigation Measure HAZ-2)**
3. Collected hazardous or toxic materials shall be recycled or disposed of through a registered waste hauler to an approved site. **(Initial Study Mitigation Measure HAZ-3)**
4. Industrial Waste shall not be disposed of on-site without review or permit from the Environmental Health Division or the Regional Water Quality Control Board. **(Initial Study Mitigation Measure HAZ-4)**
5. Hazardous Waste must be handled according to all Hazardous Waste Control Laws. Any generation of a hazardous waste must be reported to Lake County Environmental Health within thirty days. **(Initial Study Mitigation Measure HAZ-5)**
6. All equipment shall be maintained and operated in a manner that minimizes any spill or leak of hazardous materials. Hazardous materials and contaminated soil shall be stored, transported, and disposed of in a manner that is consistent with applicable local, state and federal regulations.
7. All employees and/or staff members shall be properly trained in and utilize Personnel Protective Equipment in accordance with all federal, state and local regulations regarding handling any biological and/or chemical agents.

8. Hazardous waste must be handled according to all Hazardous Waste Control and Generator regulations. Waste shall not be disposed of on-site without review or permits from EHD, the California Regional Water Control Board, and/or the Air Quality Board. Collected hazardous or toxic waste materials shall be recycled or disposed of through a registered waste hauler to an approved site legally authorized to accept such material.

J. NOISE

1. All construction activities including engine warm-up shall be limited to weekdays and Saturday, between the hours of 7:00am and 7:00pm to minimize noise impacts on nearby residents. ***(Initial Study Mitigation Measure NOI-1)***
2. Permanent potential noise sources such as, generators used for power shall be designed and located to minimize noise impacts to surrounding properties. ***(Initial Study Mitigation Measure NOI-2)***
3. During construction noise levels shall not exceed 65 decibels within fifty (50) feet of any dwellings or transient accommodations between the hours of 7:00 AM and 6:00 PM. This threshold can be increased by the Building Inspector or City Engineer have approved an exception in accordance with Section 5-4.4(b)(1) of the City Code. An exception of up to 80 decibels may be approved within one hundred (100) feet from the source during daylight hours. Project is expected to result in less than significant impacts with regards to noise and vibration. ***(Initial Study Mitigation Measure NOI-3)***

K. TRANSPORTATION & TRAFFIC

1. Improvements shall be made to the project access off of Highway 53 as required by the California Department of Transportation (Caltrans). Encroachment permit shall be secured from Caltrans and verification of this permit submitted to the City prior to the City approving a building permit for the project. All access improvements shall be made to comply with the Caltrans Encroachment Permit prior to occupancy of any new development for the project as approved by the City. ***(Initial Study Mitigation Measure TRAN-1)***
2. The applicant shall comply with the State of California Weights and Measures requirements found in the California Food and Agriculture Code, California Code of Regulations, and the California Business and Professions Code.
3. All access roads, yards and parking areas shall be properly maintained for life of the project to prevent a source of contamination where cannabis products are handled or transported.

L. TIMING & MITIGATION MONITORING

1. **Prior to this use permit becoming, valid, effective or operative**, until the Development Agreement has been reviewed and approved by the City Council.
2. If the approved use permit is not established within one (1) year of the date of approval or such longer time as may be stipulated as a condition of approval, the use permit shall expire.
3. If a structure(s) or associated site development authorized by use permit is not issued building permits (if building permits are required) within three (3) years of the date of approval, the use permit shall expire.

4. **Upon written request received prior to expiration**, the Community Development Director may grant renewals of use permit approval for successive periods of not more than one (1) year each.
 - *Approvals of such renewals shall be in writing and for a specific period.*
 - *Renewals may be approved with new or modified conditions upon a finding that the circumstances under which the use permit was originally approved have substantially changed.*
 - *Renewal of a use permit shall not require public notice or hearing unless the renewal is subject to new or modified conditions. In order to approve a renewal, the Community Development Director must make the findings required for initial approval.*
5. Cannabis Business Conditional Use Permit Application UP 11-20 (Cultivation), UP 12-20 (Processing), UP 13-20 (Distribution) and Cannabis Business/Regulatory Permit has been made in accordance with Section 18-43 of the Municipal Code, Zoning Regulations, which refers to Commercial Cannabis Uses.
6. The Planning Commission may revoke or modify the use permit in the future if the Commission finds that the use to which the permit allows is detrimental to health, safety, comfort, general welfare of the public; constitutes a public nuisance; if the permit was obtained or is being used by fraud; and/or if one or more the conditions upon which a permit was granted are in noncompliance or have been violated. Applicant shall be notified of potential violations of the use permit prior to action taken by the Planning Commission.
7. Said Use Permits shall be subject to revocation or modification by the Planning Commission if the Commission finds that there has been:
 - a. *Noncompliance with any of the foregoing conditions of approval; or*
 - b. *The Planning Commission finds that the use for which this permit is hereby granted is so exercised as to be substantially detrimental to persons or property in the neighborhood of the use. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to the City of Clearlake Municipal Code. 15.*
8. All conditions are necessary to protect the general health, safety and welfare of the public. If any condition of this entitlement is held to be invalid by a court, the whole entitlement shall be invalid. The Planning Commission specifically declares that it would not have approved this entitlement unless all of the conditions herein are held as valid.

PASSED AND ADOPTED on this 17th day of May 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chairman, Planning Commission

ATTEST: _____

City Clerk - Planning Commission

RESOLUTION NO. PC 2021-14

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CLEARLAKE, CALIFORNIA RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT DA 2021-02 FOR JOEY GUSTUFSON FOR THE PROPERTY LOCATED AT 2560 HIGHWAY 53, CLEARLAKE, CALIFORNIA, APN: 010-048-050

WHEREAS, DEVELOPER owns the real property located at 2560 Highway 53, identified as Assessor's Parcel Number 010-048-050 ("Property") that is the subject of this agreement; and

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, the Property is located within the City's I, Industrial, and CB, Commercial Cannabis Business Zoning Districts and subject to the land use controls of the City's Municipal Code; and

WHEREAS, DEVELOPER intends to operate a cannabis business on the Property including Cultivation, Manufacturing and Distribution, and has received approval of related activities; and

WHEREAS pursuant to Sections 5-20 and 18-43 of the Municipal Code, a development agreement for the commercial cannabis business is required; and

WHEREAS, DEVELOPER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with Sections 5.20 and 18-43 of the Municipal Code and Section 68564, et seq. of the Government Code and the rules and regulations of CITY; and

WHEREAS, the Planning Commission has considered this Development Agreement (DA 2021-02 at a duly noticed public hearing.

NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF CLEARLAKE ("PLANNING COMMISSION") HEREBY FINDS AND RESOLVES AS FOLLOWS:

SECTION 1. The property located at, At 2560 Hwy. 53, Clearlake, California, APN: 010-048-050 legally described by Assessor's Parcel Number 040-043-34 ("Project Site" and/or "Property").

SECTION 2. The applicant has requested CITY to enter into a development agreement and proceedings have been taken in accordance with Section 68564, et seq. of the Government Code and the rules and regulations of CITY.

SECTION 3. On May 17, 2021 the Planning Commission of the City of Clearlake held a duly noticed public hearing at which interested persons had the opportunity to testify and at which the Planning Commission considered the Development Agreement.

SECTION 4. The development agreement proposed herein is consistent with the General Plan of the City of Clearlake in that the Potential Activity consist of a cannabis micro-business which is authorized in the zone subject to obtaining conditional use permits from the Planning Commission.

SECTION 5. Conditional Use Permits (CUP 11-20, 12-20, and 13-20) approved by the Planning Commission for a cannabis business permit is not operational until Development Agreement 2021-02 has been approved City Council and executed by the City and the Developer.

SECTION 6. The Planning Commission therefore recommends to the City Council to adopt Development Agreement DA 2021-02 attached hereto as Exhibit 1.

SECTION 7. If any section, division, sentence, clause, phrase or portion of this resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

The Secretary shall attest to the adoption of this resolution and shall forward a copy to the applicant, and any person requesting the same.

PASSED AND ADOPTED on this of 17 day of May, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson, Planning Commission

ATTEST:

City Clerk, Planning Commission

Exhibit: 1- Development Agreement DA 2021-01

RECORDING REQUESTED BY
AND WHEN RECORDED MAILTO:

City of Clearlake
14050 Olympic Dr.
Clearlake, CA 95422
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §27383

DEVELOPMENT AGREEMENT (DA 2021-04)

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this <insert date> day of <insert month>, 2021 (the "Execution Date"), by and between the **CITY OF CLEARLAKE, a California municipal corporation** ("City") and **Green Growth Solutions LLC.**, ("Owner"). City and Owner are sometimes referenced together herein as the "Parties." In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a "Party." The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

- A. The State of California enacted California Government Code Sections 65864 *et seq.* ("Development Agreement Statutes") to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the developer, and to meet certain public purposes of the local government.
- C. Owner currently holds a lease for approximately 10,000 square foot prefabricated metal building for processing, trimming, curing, drying and distributing cannabis; 20,000 square foot indoor space to be used for cannabis cultivation, and 36,000 square feet of hybrid greenhouse space with light deprivation (two structures, 18,000 square feet each) located at 2560 Highway 53 (further described as assessor parcel number 010-048-05), City of Clearlake,

County of Lake, State of California (the “Site”).

- D. Owner intends to operate a cannabis facility and operation. All such cannabis facilities shall operate in accordance with the California State Compassionate Use Act (Health & Safety Code § 11362.5) (“CUA”), the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7 et seq.) (“MMPA”), and the 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General (the “AG Guidelines”), and Senate Bill 94, the Medicinal and Adult Use of Cannabis Regulation and Safety Act (“MAUCRSA”), creating a unified regulatory structure for adult use and medical cannabis, and all regulations promulgated by the responsible state agencies to implement MAUCRSA (collectively the “California Cannabis Laws”). Prior to operating a cannabis facility, Owner shall be required to obtain use and cannabis business regulatory permits from the City for the facility and operations.
- E. Ultimately, Owner intends to obtain state licenses issued pursuant to MAUCRSA to operate cannabis facilities at the Site, once such licenses are being issued.
- F. Owners presently intend to develop and open a cannabis operation on the Site consistent with the California Cannabis Laws and Project Approvals (known as the “Project”).
- G. Owner applied to City for a development agreement and will subsequently need to obtain special use permits and regulatory permits for the Project. This Agreement, and the special use and regulatory permits, when and if issued by the City, shall collectively be referred to as “Project Approvals”.
- H. The Project will maintain inventory of cannabis and cannabis products under the California Cannabis Laws.
- I. The City adopted Ordinance No’s. 200-2017 and 201-2017 permitting Cannabis Delivery Only Dispensaries and Cannabis Businesses (as those terms are defined in the applicable city ordinances) in strict compliance with the applicable California Cannabis Laws regulating delivery only dispensaries and cannabis cultivation, manufacturing, processing, and distribution under certain conditions and provisions.
- J. City and Owner have agreed that, as a condition of allowing the Project, as defined herein, and due to the unique circumstances of the proposed Project, Owner shall pay to the City a semi-annual fee based on the gross revenue of the operations, and an annual Facility Fee, as hereinafter defined, which fees shall abate if and when the City adopts a tax on Cannabis Delivery Only Dispensaries and Cannabis Businesses.
- K. All procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 *et seq.*, and the CEQA Guidelines, Title 14 of the California Code of Regulations, Chapter 3, §15000 *et seq.* have been satisfied as has gone through an Environmental Analysis (Initial Study) and a proposed Mitigated Negative Declaration has been adopted. All potential environmental impacts have been reduced to less than significant with the incorporated mitigation measures.
- L. City has given public notice of its intention to adopt this Agreement and has conducted public

hearings thereon pursuant to California Government Code §65867. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses, and programs specified in City's General Plan, zoning code and municipal ordinances.

- M. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City and the Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety and welfare are best served by entering into this obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement, *i.e.*, assuring Owner that it will enjoy the development rights.
- N. The City agrees that Owner's land use entitlements for the Project shall vest for the term of this Agreement as described below.
- O. After conducting a duly noticed hearing on **<insert date>**, in conjunction with certain amendments and additions to the City's Municipal Code, the Planning Commission of the City reviewed, considered and approved the Project and recommended approval of the execution of this Agreement to the City Council. The Planning Commission found the Project: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized zoning code; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.
- P. After conducting a duly noticed hearing on **<insert date>**, in conjunction with amendments and additions to the City's Municipal Code creating an allowable use, appropriate zoning, and comprehensive regulations for the proposed use, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project: consistent with the objectives, policies, general land uses, and programs specified in the general plan; compatible with the uses authorized in the zoning code; is in conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Clearlake and its residents.

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

AGREEMENT

1. **Binding Effect of Agreement.** The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Site as described in **Exhibit A (Legal Description)** and shown in **Exhibit B (Site Lease/Map)** and incorporates by reference all Development Approvals approved by the City for the Site. Except as otherwise provided in Section 15 of this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Site. In order to provide continued notice thereof, the Parties will record this Agreement with the Lake County Recorder. The word “Owner” as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Site. Should the size or orientation of any Site component specified above be changed in minor respects, *e.g.*, changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties and their successors shall remain as provided herein.

2. **Relationship of the Parties.** It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Owners will be deemed to be the agent of the other for any purpose whatsoever. City and Owners hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owners joint ventures or partners.

3. **Term.** Except as otherwise specified herein, the term of this Agreement (the “Term”) is 3 years from the date the Owner begins commercial operation at the Project Site (“Operation Date”). The Operation Date shall be no later than 12 months following the Execution Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided.

3.1 **Term Extension – Third Party Issues.** Notwithstanding the Parties’ expectation that there will be no limit or moratorium upon the Project’s development or the issuance of building or other development related permits (a “Development Limitation”) during the Term, the Parties understand and agree that various third parties may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by Owner.

3.1.1 **Litigation.** Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project’s development, or third party- initiated litigation having the actual effect of delaying the Project’s development. This extension period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2 **Government Agencies.** Any delay arising from or related to the act(s) or omission(s) any third-party governmental agency, quasi-public entity or public utility, and

beyond the reasonable control of Owner.

3.1.3 Force Majeure. Any delay resulting from riot, war, acts of terrorism, an event during the Term creating radioactive or toxic/hazardous contamination, a catastrophic earthquake, flood, fire or other physical natural disaster, excluding weather conditions regardless of severity, strikes or industrial disputes at national level effecting development involved personnel not employed by Owner, their subcontractors or suppliers and effecting an essential portion of the Project's development, excluding any industrial dispute that is specific to development taking place as a part of the Project.

3.2 Term Extensions. The Term of this Agreement will be extended for seven additional years upon a determination of the City Council, by way of resolution of the City Council acted on at a regularly scheduled meeting, that both of the conditions listed in subparts 3.2.1 and 3.2.2 below have been fully satisfied and the Owner is in full compliance:

3.2.1. No Default by Owner. Owner shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Owner did in fact default as to this Agreement, upon notice from City, that Owner did cure said default during the period to cure provided herein to City's satisfaction.

3.2.2 Finding of Community Compatibility. The City Council shall review the operations of Owner prior to granting an extension of the term of this Agreement and make a finding that the Project, notwithstanding that the Project activities may not be in precise technical compliance with the issued regulatory permit and special use permit, continue to be compatible with surrounding land uses and are not detrimental to the public health, safety and general welfare.

3.2.3. Mutual Agreement of Parties. In addition to the process listed above for a seven-year term extension, this Agreement's Term may be extended by mutual agreement of the Parties and formal amendment of this Agreement.

3.3 Termination of Agreement. Upon the termination of this Agreement, either by expiration or otherwise, Owner shall have no right to engage in the Project activities at the Project Site, except as may otherwise be allowed by City ordinance, law or separate development agreement.

4. Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

4.1. Certified Report. "Certified Report" shall mean a detailed document prepared by Owner on a form acceptable to the City's Director of Finance to report to the City the gross receipts of the Project's operations and sales, as defined herein, in the Project during each semi-annual period starting January 1 and July 1 of each calendar year. Each Certified Report shall be certified as true and correct by a duly authorized officer of Owner.

4.2. Development Approvals. "Development Approvals" means the land use entitlements approved by the City for the development of site improvements and buildings on the Site which define the permitted uses of the property, the density or intensity of use, and the

maximum height and size of proposed buildings.

4.3. Production Fee. "Production Fee" shall mean a semi-annual fee remitted to the City by Owner based on the Gross Receipts of its Project operations, as defined below, in the amount of 5% of gross sales from operations.

4.4. Certification of Non-Income Tax Exemption. Owner certifies that Owner is not income tax exempt under State or Federal Law and that Owner will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board.

4.5. Facility Fee. Facility Fee shall mean an annual fee remitted to the City by Owner in the amount of \$2 per gross square foot of the entire Project facility. The Facility Fee shall be paid annually, starting July 1st of each year. A late fee of 5% of the amount due shall be added to any payment 5 days past due. Fees later than 30 days past due will constitute a breach subject to Section 20 of this agreement.

4.6. Semi-Annual Production Fee. The semi-annual Production Fee will be due no later than July 30th for the preceding period of January 1st through June 30th and no later than January 31st for the preceding period of July 1st through December 31st. A late fee of 5% of the amount due shall be added to any payment 30 days past due.

4.7. "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Project. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

4.7.1. The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

4.7.2. Other than as provided in this Agreement, taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Developer is paying any fee or providing any improvement pursuant to this Agreement.

4.7.3. The control and abatement of nuisances;

4.7.4. The granting of encroachment permits and the conveyance of rights and interests which provides for the use of, access to or the entry upon public property, as may be approved by mutual agreement between Developer and City; and

4.7.5. The exercise of the power of eminent domain.

4.8. “Existing Land Use Regulations” means all Land Use Regulations in effect as of the approval date of this Agreement, including the Project Approvals.

4.9. “Gross Receipts” means 5% (five percent) for 1) wholesale and retail sales of cannabis products by Owner to third parties.

5. Fee Payments by Owner. In consideration of City’s entering into this Agreement and authorizing the development and operation of the Project, the requirements for City services created by the Project, the City insuring Owner’s compliance with this Agreement, California Cannabis Laws and the City’s municipal ordinances, throughout the Term of this Agreement, Owner shall make the following payments to City:

5.1. Production Fee Payments by Owner. Semi-annual payments of the Production Fee by Owner to the City as specified in Section 7 herein. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement, but the Production Fee under this Agreement shall cease if any City-wide tax is imposed specifically on Cannabis cultivation.

5.2. Facility Fee Payments by Owner. Annual payments of the Facility Fee by Owner to the City. The obligations of Owner under this Section shall survive the expiration or any earlier termination of this Agreement, but the Facility Fee shall cease if any City-wide tax is imposed specifically on Cannabis cultivation.

5.3. Sales Tax Point of Sale. Owner agrees that Clearlake will be designated as the point of sale for all operations, as allowed by law.

6. Community Participation. Owner agrees to participate in the community as a good corporate citizen and sponsor events and organizations that improve the community.

6.1. Clearlake Chamber of Commerce. Owner agrees to immediately apply for membership in the Clear Lake Chamber of Commerce and, if accepted, maintain an annual membership in good standing.

7. Payment Procedures. The following payment procedures shall apply during the operation of the Project:

7.1. Remittance of Production Fee/Certified Reports. Within thirty (30) calendar days following the end of each semi-annual period during the Term of this Agreement, Owner shall submit the Certified Report to the City’s Finance Director and a payment for the Production Fee for that Operational Period as identified in the Certified Report. Owner shall pay Production Fees to the City on a semi-annual basis without exception. Any material misstatement or misrepresentation in the Certified Report and any failure to pay Production Fees when due shall constitute events of default by Owner subject to the default provisions of this Agreement.

7.2. Maintenance of Records. Owner shall maintain complete records of their operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by Tenants and/or any operator of the

facility. Owner shall maintain such records in a form and location reasonably accessible to the City, following reasonable notice to Owner and/or any operator, for a period of at least five (5) calendar years following Owner's submission of the Certified Report to which the records apply.

7.3. Audit. Within ninety (90) calendar days following the end of each semi-annual payment term, the City may conduct an audit or arrange for a third-party independent audit, at Owner's expense, of Owner records regarding Certified Reports and the Production Fees. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to Owner, and shall reasonably attempt to schedule the audit so as to reduce the impact on Tenants' operations as much as is feasible. Owner shall cooperate with the City in completing the audit. If the audit reveals that Owner has underpaid the Production Fee, Owner shall pay such underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance in addition to all costs of the audit, including city staff time and outside consultants. If the audit reveals that the Owner has overpaid any amount of the Production Fee, City shall provide written notification to Owner and shall credit such amount against Owner's subsequent semi-annual payment of Production Fees.

8. Covenants of Owner. During the Term of this Agreement, Owner hereby covenants and agrees with the City as follows:

8.1. Implementation. Owner shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to all applicable laws, this Agreement, the Project Approvals and the Municipal Code.

8.2. Enhanced Design Requirement. Owner shall submit a design plan for the building and site, for review and approval by the Planning Director, which shall incorporate at a minimum upgraded fencing and landscaping improvements consistent with the Community Character and Design Policies in the City's General Plan.

8.3. Maintain & Operate Project. Owner shall maintain and operate the Project on the Site throughout the Term of this Agreement, in accordance with the Project Approvals and all City, and State laws.

8.4. Hold Harmless. Owner shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from the Project, this Agreement, the approval of the Project, and the activities of Owner, their members, officers, employees, agents, contractors, invitees and any third parties on the Site, from and against any challenges to the validity of this Agreement or other Project Approvals. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

9. Covenants of City. During the Term of this Agreement, City hereby covenants and agrees with Owner as follows:

9.1. Expeditious Services. City shall process applications and address questions and concerns raised by Owner representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon Owner's request, or if, in an exercise of City's own discretion, City staff determines that it cannot comply with this section, City shall expeditiously engage the services of private contract planners, plan checkers or inspectors ("Private Contractors") to perform such services as may be necessary to assist in processing the project plans as described herein. Compensation of such Private Contractors shall be at Owner's sole cost and expense, inclusive of any administrative cost to City of integrating services by Private Contractors into the project's development processing. Owner shall pay such costs and expenses of Private Contractors via reimbursement to City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors.

9.2 Vested Rights. During the Term of this Agreement, Owner shall have the vested right and entitlement to develop and operate the Project in accordance with the Existing Land Use Ordinances, in addition to any Cannabis Cultivation Operating Standards adopted by the City Council, which may be amended at the City's discretion. Parties acknowledge that neither the City nor the Owner can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Owner shall have the vested right to develop the Project in such order and at such rate and at such times as Owner deems appropriate in the exercise of its business judgment, provided that Owner is in compliance with the Project Approvals.

9.3 Building Permits and Other Approvals and Permits. Subject to (a) Owner's compliance with this Agreement, the Project Approvals the Existing Land Use Ordinances, the Building Ordinances, and Operating Standards; and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to Owner promptly upon application therefore all necessary use permits, building permits, occupancy certificates, regulatory permits, licenses and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

9.4 Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Existing Land Use Ordinances, but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable.

10. Effect of Agreement.

10.1 Grant of Right. This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants to Owner the right and entitlement to develop the Project and use the land

pursuant to specified and known criteria and rules as set forth in the Project Approvals and Existing Land Use Ordinances, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

10.2 Binding on City/Vested Right of Owner. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether taken by ordinance or resolution of the City Council, by referendum, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, the Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development of the Project as set forth in the Project Approvals and the Existing Land Use Ordinances, and the timing provisions of Section 3, and the City has entered into this in order to secure the public benefits conferred upon it hereunder which are essential to alleviate current and potential problems in the City and to protect the public health, safety and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

10.3 Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions and specifications (collectively "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall not apply to the Project Site or Project. The Parties, however, acknowledge that the City's approval of this Agreement and the City Approvals are legislative actions subject to referendum.

10.3.1 Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing or sequencing of development affecting subdivision maps, building permits, or other Subsequent Approvals shall apply to the Project. Owner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or to impose any other limitation that may affect the Project.

10.3.2

11. Specific Criteria Applicable to Development of the Project.

11.1 Applicable Ordinances. Except as set forth in the Project Approvals and subject to the provisions of Section 10.2 below, the Existing Land Use Ordinances shall govern the development of the Site hereunder and the granting or withholding of all permits or approvals required to develop the Site; provided, however, that (a) Owner shall be subject to all changes in processing, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and charges are of general application and are not imposed solely with respect to the Project Site, (b) Owner shall abide by the Building Ordinances in effect at the time of such applications, (c) Development Impact Fees to be paid by Owner shall be those in effect at the time permits are issued subject to those fees, and (d) development shall be consistent with current Operating Standards.

11.2 Amendment to Applicable Ordinances. Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project if,

and only if (i) it is consented to in writing by Owner in Owner's sole and absolute discretion; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) it is required by changes in State or Federal law; (iv) it consists of changes in, or new fees permitted by, Section 4.1; or (v) it is otherwise expressly permitted by this Agreement. The Parties anticipate that the City shall subsequently adopt Operating Standards that govern this type of use, which Regulations, and any amendments thereto, shall apply to the Project.

11.3 Applicability of Zoning Amendments. In the event that the City zoning ordinance is amended by the City in a manner which provides more favorable site development standards for the Project Site or any part thereof than those in effect as of the Effective Date, Owner shall have the right to notify the City in writing of its desire to be subject to all or any such new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council, such new standards shall become applicable to the Project. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project as provided above, but Owner may notify City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project.

12. Permitted Delays, Supersedure by Subsequent Laws.

12.1 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Owner and City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, any referendum elections held on the Enacting Ordinance, or the Land Use Ordinances, or any other ordinance effecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "Laws"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Owner, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

12.2 Supersedure of Subsequent Laws or Judicial Action.

12.2.1 The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after

enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Owner and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

13. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Owner. It is anticipated due to the term of this Agreement that refinements to the approvals may be appropriate with respect to the details of performance of the City and the Owner. To the extent allowable by law, the Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any operating Memoranda hereunder without further City Council action.

14. CEQA. All procedures of the California Environmental Quality Act ("CEQA"), California Public Resources Code §21000 *et seq.*, and the CEQA guidelines, Title 14 of the California Code of Regulations, chapter 3, §15000 *et seq.* have been satisfied based on the Project being categorically exempt.

15. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City's municipal code, inclusive of such California and International Codes as have been adopted in accord therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

16. Assignment and Transfer of Rights. Except as otherwise provided in this Section, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all

successors-in-interest of the Parties and constitute covenants that run with the Site. Owner, for itself, its heirs, distributes, executors, administrators, legal representatives, successors and assigns, shall not, at any time during the Term, assign, convey, lease, sell or otherwise transfer all or any portion of its rights under this Agreement ("Assignable Rights") to a third party, a subordinate entity, or a related entity (make an "Assignment") without the prior written consent of City in each instance, which consent may be withheld in City's sole discretion. Any assignment in violation of this Section will be void. No permitted assignee of this Agreement may further assign this Agreement without City's prior written consent.

17. Review for Compliance.

17.1 Periodic Review. Pursuant to CGC §65865.1, City shall engage in an annual review this Agreement, on or before the anniversary of the date of execution, in order to ascertain Owner's good faith compliance with its terms (the "Periodic Review"). In the event City fails to formally conduct such annual review, Owner shall be deemed to be in full compliance with the Agreement.

18. Amendment or Cancellation. This Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties or in the manner provided in CGC §65865.1 or CGC §65868 and subsection 3.2 above.

18.1 Provide Notice. Provide the other Party with written notice of such State or Federal law or regulation, a copy of such law or regulation and a statement identifying how such law regulation conflicts with the provisions of this Agreement.

18.2 Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such applicable Federal or State law or regulation. If the Parties cannot agree on a manner or method to comply with such Federal or State law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

19. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by telecopier or facsimile ("Fax") machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Clearlake
14050 Olympic Drive
Clearlake CA 95422 Attention: City Manager

With copy to: Jones & Mayer, City Attorney 8150 Sierra College Blvd., Suite 190
Roseville California 95661 Attention: Ryan R. Jones, Esq.

If to Owner: Joseph Gustafson
(Green Growth Solutions LLC.,) PO BOX 208
 Lower Lake, CA 95457

Notices sent in accordance with this Section shall be deemed delivered upon the: **(a)** date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); **(b)** date of actual receipt (if personally delivered by other means); **(c)** date of transmission (if sent by email or telecopier, so long as sender receives actual confirmation that the transmission was received); or **(d)** date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

20. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, Owner shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Owner's rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Owner that specifies the nature of such default. If such default is not cured by Owner within sixty (60) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, Owner fails to commence to cure the default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate Owner's rights under this Agreement. Default by any Assignee or Owner's successor in interest shall affect only that portion of the Site owned by such Assignee or successor, and shall not cancel or diminish in any way Owner's rights with respect to any portion of the Site not owned by such Assignee or successor. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by Owner against City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

21. Entire Agreement. This Agreement and the Exhibits herein contain the entire integrated agreement among the Parties. The Parties intend that this Agreement state their agreement in full to each and every one of its provisions. Any prior agreements, understandings, promises, negotiations or representations respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, are agreed by all Parties to be null and void.

22. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is

held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. Attorneys' Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law. Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

25. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of approval.

26. Authority to Execute. All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

27. Estoppel Certificate. City shall, at any time and from time to time within ten (10) days after receipt of written notice from Owner so requesting, execute, acknowledge and deliver to Owner a statement in writing: **(a)** certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and **(b)** acknowledging that there are no uncured defaults on the part of Owner hereunder or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Site. Upon Owner's written request, City shall issue a certificate of performance evidencing completion of any of Owner's obligation(s) under this Agreement.

28. Encumbrances on Real Property.

28.1 Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Site or any portion thereof or any improvements thereon then owned by such person with

any mortgage, deed of trust or other security device ("Mortgage") securing financing with respect to the Site or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Site or any portion thereof or any improvements thereon and its successors and assigns ("Mortgagee") shall be entitled to the following rights and privileges.

28.2 Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Owner may request certain interpretations and modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments.

28.3 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Site or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

28.4 Mortgagee Not Obligated. Notwithstanding the provisions of Section 26.2, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder, or to guarantee such performance, except that to the extent that Mortgagee opts to receive the benefits of the Agreement, including the right to operate, any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Site or any portion thereof. Uncured monetary defaults will terminate the Agreement and Mortgagee's right to operate.

28.5 Written Notice of Default. Each Mortgagee shall be entitled to receive written notice from City of any default by Owner under this Agreement, if such default is not cured within thirty (30) days, provided such Mortgagee has delivered a written request to City for such notice. Each Mortgagee shall have a further right, but not the obligation, to cure such default for a period of thirty (30) days after receipt of such notice of default. Any non-curable defaults of Owner of any obligation owed solely to City arising prior to Mortgagee's acquisition of title to the Site or any portion thereof shall be waived; provided, however, the non-payment of money shall not be deemed a non-curable default.

29. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and, subject to City's written consent, their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

30. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in the Superior Court of Lake County, California.

31. Mutual Covenants. The covenants contained herein, including those contained in the Recitals herein, are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

32. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement ("Successors"). Furthermore, the rights and remedies, together with the benefits and burdens of this Agreement of each Party to this Agreement shall be coextensive with those of its Successors. All provisions of this Agreement shall be enforceable as equitable servitude's and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Site: (a) is for the benefit of and is a burden upon every portion of the Site; (b) runs with the Site and each portion thereof; and, (c) is binding upon each Party and each Successor during ownership of the Site or any portion thereof. From and after recordation of this Agreement, the Agreement shall impute notice to all persons and entities in accord with the recording laws of this State.

33. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement.

34. Waiver. Failure by a Party to insist upon the strict performance of any of this Agreement's provisions by the other party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

35. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

36. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

37. Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

38. Jointly Drafted. It is agreed among the parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

39. Independent Legal Counsel. Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

40. Further Cooperation. The parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

41. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

"CITY"

CITY OF CLEARLAKE, CA a California
Municipal Corporation

Date: _____, 2021

By: _____

Mayor

Attest:

By: _____

City Clerk

Approved as to form:

Jones & Mayer

By: _____

Ryan R. Jones, Esq.

City Attorney

"OWNER"

Joseph Gustafson (owner)

DATE: _____, 2021.

BY: _____

Joseph Gustafson (owner)

Green Growth Solutions LLC.

EXHIBIT A
LEGAL DESCRIPTION

To be inserted later

EXHIBIT B
SITE LEASE/MAP

To be inserted later

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California: _____

County of _____.

On _____, before me,

Here insert name and title of the officer

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.

Notary Public Seal

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing

paragraph is true and correct. This form complies with current California statutes regarding notary wording and if needed, should be completed, and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law. State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment. Date of acknowledgment must be the date the document signer(s) personally appeared which must also be the same date the acknowledgment is completed.

Witness my hand and official seal.

- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e., he/she/it!ly, is /ar6) or circling the correct form. Failure to correctly indicate this information may lead to rejection of document recording.

Notary Public Signature

- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
- Indicate title or type of attached document, number of pages and date.
- Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e., CEO, CFO, Secretary).

Attachment 3
Project Business and Operations Plan

Applicant Contact Information:

Joseph M. Gustafson
 PO BOX 208
 Lower Lake, CA
 95457
 707-350-0270

Gusto2000.JG@gmail.com

Project Location:

2560 Highway 53
 Clearlake, CA
 010-048-050

PROJECT DESCRIPTION

Joseph Gustafson, Gustafson Farms LLC, is apply for a Use Permit to cultivate, manufacture, process and distribute commercial cannabis within the State of California. The 15.37 acre vacant property is currently improved by an existing well. The following proposed structures include the following:

- 10,000 square feet prefabricated metal facility is for processing, trimming, curing, drying and distributing cannabis
- 20,000 square feet indoor cannabis cultivation
- 36,000 square feet in total gross floor area in cannabis cultivation within hybrid greenhouses with light deprivation

The processing facility will consist of 3 rooms used for processing, drying, and curing mature cannabis.

AIR QUALITY PLAN*1.0. Air Quality Setting, Potential Impacts, and Mitigation*

The project is in the Lake County Air Basin. The Lake County Air Quality Management District (LCAQMD) regulates air quality in Lake County. The U.S. Environmental Protection Agency (EPA) sets acceptable levels for seven air pollutants, and then determines — with the help of states and local air districts — where those standards are or are not met. Lake County currently meets the EPA's health standards for five of those pollutants: carbon monoxide; nitrogen dioxide; sulfur dioxide; lead; and coarse particulates. For the other two — ground-level ozone and fine particulate pollution — Lake County is considered to be a part of a regional non-attainment area.

The volume of solid waste generated at a typical cultivation site of 1 to 2 acres is estimated below on a peak daily basis and an annual basis, in pounds.

Estimated Solid Waste Generation Per Typical Cannabis Operation Site

Estimated Solid Waste Generation Per Typical Cultivation Site

	Annual Basis (pounds per year)	Peak daily (pounds per day)
Paper	20	1
Glass	10	<1
Metal	10	<1
Electronics	1	n/a
Plastic	100	10
Organics	2,000	100
Inerts*	10	1
Household hazardous waste	1	n/a
Special waste	1	n/a
Mixed residue	10	1

* Inert waste is waste which is neither chemically nor biologically reactive and will not decompose. Examples are sand and concrete.

6.0. Waste Collection, Storage, and Disposal

At least one solid waste bin will be located at each cultivation site and at any processing facility.

Waste bins will consist of trash cans (20 or 35 gallon) with lids or roll-off dumpsters with lids. These solid waste containers should not be used to dispose Cannabis green waste.

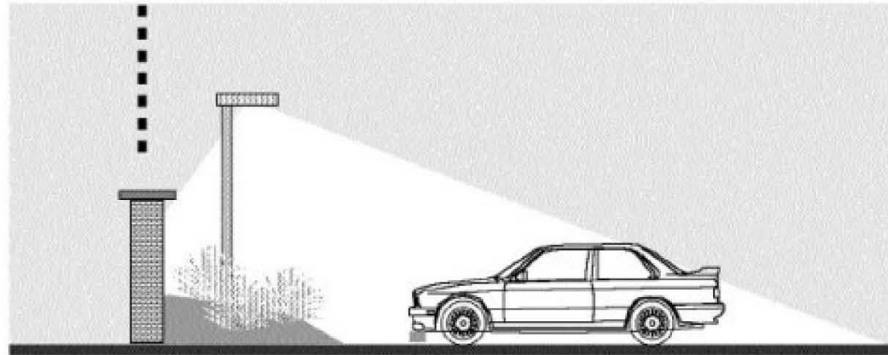
Recyclables will be segregated from solid waste and stored in bins. At weekly intervals, staff should transfer them by truck in trash cans, with tight lids or plastic garbage bags and tarped loads and deposit them in an appropriate recycling facility. Recyclables such as scrap metal, glass, metal and plastic containers, can be conveniently unloaded at a recycling drop-off center (a Lake County Integrated Waste Management facility or private facility). Cardboard and newspaper may be recycled or mixed in with other composting materials.

Yard waste, green waste, and other compostable materials will be segregated from the solid waste and shredded and composted onsite to produce mulch or to be used as a soil amendment, or deposited at an appropriate transfer facility. Non-cannabis compost and recyclable wood can be dropped off at any compost facility where it is processed as new compost/humus. Household toxic materials will be segregated from the solid waste and disposed of at a Lake County Integrated Waste Management facility.

130.34.020 Outdoor Lighting Standards

All outdoor lighting shall be located, adequately shielded, and directed such that no direct light falls outside the property line, or into the public right-of-way as illustrated in Figure 130.34.020.1 (Light Source Not Directly Visible Outside Property Perimeter).

Figure 130.34.020.1 - Light Source Not Directly Visible Outside Property Perimeter



Property Line

Source: Dark Sky Society

5.5. Fencing

The cultivation site will be enclosed with a sturdy fence. The posts should be set in the ground and should be made of steel tubing (at least 3" diameter) or wood posts (at least 4" diameter). Terminal posts should be set in concrete or otherwise anchored to prevent leaning under the tension of stretched fence panels. Post interval should not exceed 10 feet. A top horizontal rail should be installed between each post interval. Fence panels should consist of metal mesh "cyclone" fabric or welded wire mesh. Barbed wire or razor wire is prohibited from use on the top rails. If required by the County, opaque screening will be added; this may consist of plastic slats for cyclone fencing or plastic woven fabric (e.g., wind screens).

Each fenced cultivation compound will have at least 1 locking swing gate. The gate will typically consist of metal tube frame and the paneling will be the same as described above. The gate should be large enough for a service vehicle to ingress/egress. The gate will be secured with a metal padlock. Keys or lock combinations should be controlled by the Security Officer. It is recommended that vegetation screening be planted to obscure views of the cultivation facilities from public roads.

WASTE MANAGEMENT**6.0. Solid Waste Sources and Volumes**

The following light pollution abatement measures will be implemented, as applicable:

- *Shielded directional flood lighting aimed so that direct glare is not visible from adjacent properties and not exceeding the allowed lumen output*
- *Ensuring that mixed-light or indoor growing facilities are fully shielded, and that no light escapes from these facilities.*

The following best management practices will be implemented, as applicable (IDA 2020):

- *LEDs and compact fluorescents (CFLs) can help reduce energy use and protect the environment, but only warm-colored bulbs should be used.*
- *Dimmers, motion sensors and timers can help to reduce average illumination levels and save even more energy.*
- *Outdoor lighting fixtures that shield the light source to minimize glare and light trespass help prevent light pollution.*
- *Switching to LED lighting allows for reduced illuminance without compromising visibility.*
- *Turn off unnecessary indoor lighting – particularly in empty office buildings at night.*
- *Avoid blue lights at night. Blue-rich white light sources are also known to increase glare and compromise human vision, especially in the aging eye. These lights create potential road safety problems for motorists and pedestrians alike. In natural settings, blue light at night has been shown to adversely affect wildlife behavior and reproduction. IDA recommends that only warm light sources be used for outdoor lighting. This includes Low-pressure Sodium (LPS), High-pressure Sodium (HPS) and low-color-temperature LEDs.*

The video management software shall be capable of integrating cameras with door alarms. The video surveillance system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. The video surveillance system shall be capable of supporting remote access by the permittee. To the extent reasonably possible, all video surveillance cameras shall be installed in a manner that prevents intentional obstruction, tampering with, and/or disabling. The system should also have a failure notification system.

Areas that shall be recorded on the video surveillance system include, but are not limited to, the following:

- 1) The perimeter of the cannabis cultivation site, cannabis nursery, processing facility, and distribution facility*
- 2) Areas where cannabis or cannabis products are weighed, packed, stored, quarantined, loaded and/or unloaded for transportation, prepared, or moved within the premises;*
- 3) Areas where cannabis is destroyed;*
- 4) Limited-access areas;*
- 5) Security rooms;*
- 6) Areas containing surveillance-system storage devices, in which case, at least one camera shall record the access points to such an area; and*
- 7) The interior and exterior of all entrances and exits to the cannabis cultivation sites and cannabis nursery including all buildings where cannabis or cannabis products are weighed, packed, stored, quarantined, loaded and/or unloaded for transportation, prepared, or moved within the premises.*

All recording shall be located in secure rooms or areas of the premises in an access and environment-controlled environment which is separate from the room where the computer and monitoring equipment is located. All surveillance recordings shall be kept on the applicant's recording device or other approved location for a minimum of 30 days. Data transfer will be by coax cable or by Wi-Fi router. Power supplies shall be self-contained, such as solar arrays and batteries.

5.4. Lighting

Adequate perimeter lighting must be installed inside and around the exterior of the premises and maintained in working order. An Outdoor Lighting Plan should include the following:

- diagrams that identify all lighting on the lot (bulb type, wattage, lumens, sensors, etc.).*
- security lighting should consist primarily of motion-sensor lights and avoid adverse impacts on properties surrounding the lot on which the cannabis activity is located.*
- Any outdoor lighting used for the illumination of parking areas and/or loading areas, and/or for security, shall be fully shielded and directed downward.*
- Lighting is typically prohibited in hoop structures.*

Personnel will be granted access within the premises to only those areas necessary to complete job duties, and to those time frames specifically scheduled for completion of job duties. There will be supervision of tasks or processes with a high potential for diversion (including the loading and unloading of cannabis transportation vehicles). Supervision may include video surveillance and/or the requirement that the Security Officer or their designee be present.

An employee training program should be established to train staff in:

- *Burglary prevention*
- *Employee loss prevention*
- *Armed robbery prevention, security breaches, and response*
- *Protocols for storage of large amounts of currency and/or cannabis*
- *Cannabis laws and employee responsibilities*
- *Identification and management of color-coded identification card and appropriate access areas*
- *Application and Live Scan process and procedures*
- *Policies for handling employees that do not wear identification cards on premise*
- *Inspection procedures for compliance checks and license renewals*
- *Escort policy for non-employee, or contractor visits*
- *Identification of limited access areas*

5.2. Alarm System

The alarm system should be maintained by a licensed company with central monitoring capabilities. The alarm should contain a panic activation for onsite employees. A responsible person should be required to respond within 30 minutes upon request.

5.3. Video Surveillance

Each cannabis operation facility will have a comprehensive digital video surveillance system. Each camera will likely have the following specifications or closely related:

- *minimum resolution of 1080 pixels*
- *digitally record continuously 24 hours per day and at a minimum of 30 frames per second, color.*
- *exterior cameras shall be waterproof, I-66 minimum.*
- *interior cameras shall be moisture proof.*
- *display the current date and time of recorded events*
- *interior cameras shall have motion sensors that activates the camera when motion is detected.*
- *sufficient lighting shall be provided to illuminate the camera's field of vision*
- *thermal (infra-red) motion sensing technology shall be use for perimeter fencing.*

- Only authorized vehicles are allowed in operational areas.
- Do not bring backpacks or other unnecessary storage devices that might complicate the theft control program. Lockers will be provided for personal items.
- Do not enter restricted areas unless authorized to do so.

The cultivation operation is accessed by private gravel roads; the entrances will be secured with a metal bar gate and padlock and subject to video surveillance.

The cultivation operations are closed to the public. Visitation is only allowed when specific permission is granted. All staff, all suppliers, all product transporters, and all visitor must sign the log in / log out sheet. Signage will be posted that states that the operational areas have restricted access and are closed to the public. The signage will not advertise the presence of Cannabis products.

5.1. Staff Training and Theft and Loss Control

The County requires an inventory system to track Cannabis material and personnel handling the material. This requirement will be fulfilled by following the requirements of the CalCannabis Licensing Program, which creates a Track-and Trace System. Sections 8401 through 8405 (quoted in part) state:

“The Department shall establish a track-and-trace system for unique identifiers of cannabis and nonmanufactured cannabis products, which all licensees shall use. Each licensee shall report in the track-and-trace system the disposition of immature and mature plants, as required by Section 8402 of this Chapter, and nonmanufactured cannabis products on the licensed premises and any transfers associated with commercial cannabis activity between licensees.

- 1. The licensee is responsible for the accuracy and completeness of all data and information entered into the track-and- trace system. Data entered into the track-and-trace system is assumed to be accurate and can be used to take enforcement action against the licensee if not corrected.*
- 2. Attempts to falsify or misrepresent data or information entered into the track-and-trace system is a violation and subject to enforcement.*
- 3. Each licensee shall use the track-and-trace system for recording all applicable commercial cannabis activities. Each licensee shall do all of the following activities: i) Establish an account in the track-and-trace system prior to engaging in any commercial cannabis activities associated with their license and maintain an active account while licensed;*
ii) Designate at least one of the owners or the responsible party named in the application to be

For this cultivation site, the Track-And-Trace System Administrators are:

Property maintenance will follow Best Management Practices. The following CASQA Industrial and Commercial Handbook BMP Fact Sheets are applicable:

- *BG-40 Landscape Maintenance*
- *SC-41 Building & Grounds Maintenance*
- *SC-40: Contaminated or Erodible Areas*
- *SC-43 Parking Area Maintenance*
- *SC-44 Drainage System Maintenance*

SECURITY PLAN

5.0. General Security Measures

General security measures will consist of the following:

- *A security plan, updated as needed*
- *staff screening process*
- *personnel rules and responsibilities (to be incorporated into an employee handbook in the future)*
- *physical barriers, including signage, road gates, security fencing with locked gates, and commercial-grade locks on all interior doors*
- *an alarm system that can notify security personnel and record incidents where physical barriers have been breached; • theft and loss control program*
- *video surveillance system.*

Any complaints or problems associated with the operation of the commercial cultivation establishment will be directed to the assigned security officer. The security officer should make every good faith effort to encourage neighborhood residents to call the designated security officer to resolve operating problems, if any, before any calls or complaints are made to the County. The security officer should maintain a record of all complaints and resolution of complaints and provide a tally and summary of issues the annual Performance Review Report. The staff screening process is described in the business operation subsection of this Plan.

Personnel rules and responsibilities are as follows:

- *Obey the rules of the security plan*
- *Sign in when entering the facility (or property) and sign out when exiting the facility (or property)*
- *Report suspicious activity*
- *Do not carry any weapons*
- *Do not engage in lengthy conversation with the public or respond directly to complaints:
direct all such concerns to the security officer.*

BUSINESS OPERATION PLANS

4.1. Staff Screening Process

The staff screening process will consist, at a minimum of: criminal reports / background checks; in-person interviews; and the requirement that all applicants must provide a comprehensive resume and contact info of several references. Staff should wear identification badges.

4.2. Hours of Operation

The business operation hours are:

- *Monday, from 8 a.m. to 5 p.m. ➤ Tuesday, from 8 a.m. to 5 p.m.*
- *Wednesday, from 8 a.m. to 5 p.m.*
- *Thursday, from 8 a.m. to 5 p.m.*
- *Friday, from 8 a.m. to 5 p.m.*
- *Saturday, from 8 a.m. to 5 p.m.*
- *Sunday, from 8a.m. to 5 p.m.*

4.2.1. Other Information

Measures that will be taken to minimize or offset the carbon footprint from operational activities are:

- *energy-saving measures (see Energy Usage subsection)*
- *water-saving measures*
- *solid waste reduction measures (see Waste Management subsection)*
- *air emissions reduction measures (see Air Quality Management subsection)*
- *proper site selection, use of existing contours instead of mass grading*
- *cultivation of fast-growing plants, which remove carbon dioxide from the air and fix it in plant biomass*

4.3. Groundskeeping

Good housekeeping measures will be implemented. The grounds will be inspected at least once per day and any litter picked up. Trash containers will be emptied when full. Roads will be maintained so that significant erosion does not occur. This may include wetting dusty roads, armoring with gravel, roadbase, or asphalt, patching holes, and maintaining drainage features such as water bars, culverts and side ditches. Weeds and grasses will be controlled by mulching or by cutting with a lawnmower or line trimmer. Drainage ditches and swales will regularly mowed and cleaned, including the removal of litter, debris, and sediment. Containers and ditches will be drained so that mosquitos do not breed. Areas inside cultivation compounds can be graveled or paved to prevent foot-borne filth. Live traps may be deployed to remove rodents from operational areas. Disposable coveralls (e.g. Tyvek) can be used to increase sanitation levels and reduce vectoring of mites and other pests.

- *use of solar power where electricity is needed, and use of high-efficiency storage batteries, such as lithium-ion*
- *use of passive solar energy techniques such as proper site selection, overhanging eaves, tree canopy cover, walls with high thermal inertia, etc.*
- *use of LED lights or other high-efficiency lighting*
- *use of ambient light whenever possible*
- *use of highly insulative materials to reduce energy needed for structure heating and cooling*
- *use of electric vehicles or bicycles instead of combustion-powered vehicles, whenever possible*
- *use of hand tools instead of power tools*

All new buildings, alterations, additions, and commercial buildings in California must comply with the Building Energy Efficiency Standards according to Title 24, Part 6 of California Code of Regulation.

3.3. Alternative Energy Sources

Solar Photovoltaic Systems (Solar PV), convert sunlight into usable electricity. Solar panels use sunlight to generate electricity, and inverters convert that electricity from variable direct current (DC) to alternating current (AC) at the correct voltage, frequency, and phase needed to tie into the facility's electrical infrastructure and the larger electrical grid.

The conceptual solar power system planned for each cultivation area will consist of an array of solar panels, an inverter, control panel, and batteries. For a typical 1-acre outdoor garden, we assume a power requirement of 5 kW hours/day, primarily to pump well water, mix nutrients in tanks, and operate security systems. The following assumptions were made: each solar panel produces 250 watts of power with a full sun input of 6 hours per day; this equates to 1 kWh/day (Solar-Estimate.org). Thus, at least 5 panels will be needed.

Small wind turbine systems can be installed alone or in conjunction with solar photovoltaic systems. The small size and variability of energy produced by these systems makes them most applicable for supplementing another power source. The amount of energy small wind turbines can provide depends on the site, size and height of the turbine, but small wind systems for commercial buildings typically generate 20 kilowatts to 100 kilowatts. To determine the amount of wind energy available at a site, installing an anemometer for at least 12 months prior to system purchase is recommended.

3.4. Monitoring Program

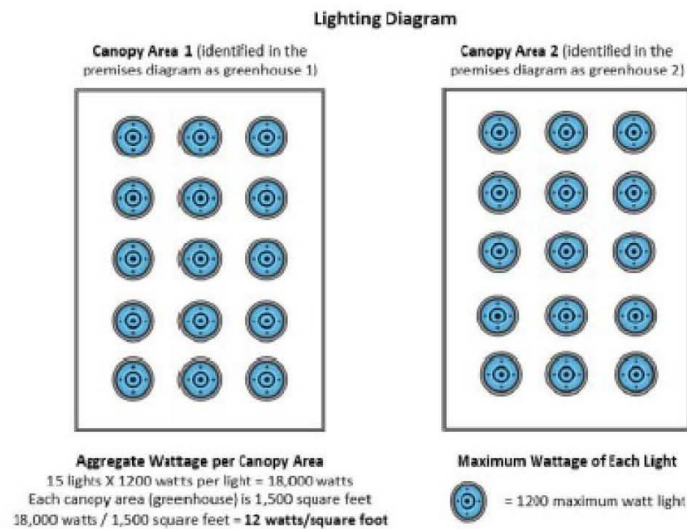
Energy consumption should be monitored and metered data stored. Energy consumption will be metered using Electric Meters (KWh Meters) for alternating current and DC meters that measure power in ampere-hours. The meters are included in the controllers / inverters that are part of the solar power system.

For the outdoor cultivation operation, a small solar-powered electrical system may be installed to power low voltage items such as security cameras, and water pumps for drawing groundwater and mixing liquid fertilizers into the irrigation systems.

All new buildings, alterations, additions, and commercial buildings in California must comply with the Building Energy Efficiency Standards according to Title 24, Part 6 of California Code of Regulation. Energy compliance documentation is typically required at the building permit application phase. The following online resource can be used to calculate energy usage and conservation measures: <http://www.energy.ca.gov/title24/orc/>. Also refer to the 2016 Building Energy Efficiency Standards for Residential and Non-Residential Buildings.

CalCannabis has this example of a Cannabis facility lighting diagram:

EXAMPLE PLAN



Sample diagram of cannabis lighting plan

3.2. Energy Conservation Measures

A comprehensive list of energy conservation measures is available in the volume by Denver Public Health and Environment (2018)—Cannabis Environmental Best Management Practices. A combination of the following energy conservation measures may be employed at this operation:

- *Powerful fans could be installed to guide air flow in the opposite direction.*
- *Alterations to atmospheric controls (temperature, air exchange, humidity) using dehumidifier, HVAC system, and/or fans.*
- *A high-pressure atomizing system could be installed on the perimeter. This system generates a water vapor (aerosol) that binds with the volatile compounds from Cannabis (terpenes) and makes them heavier, and then they drop out of the air.*
- *Biofiltration is a technology in the research phase that uses filters made of an organic medium such as wood chips that are inoculated with bacteria and consume odorous molecules. Biofiltration may be successful at treating biodegradable VOCs, but it requires a large footprint and careful operation control.*

Odor absorbing neutralizers: use oils and liquids from plant compounds and mist them into the exhaust air at cultivation facilities to neutralize odorous VOCs. Contact your odor control supplier about the effectiveness of VOC reduction as it will vary (20%-90%) by product and contact time.

Masking and counteractive agents: use of chemical odor control technologies that are misted at the cultivation facility's exhaust. The use of these agents may be subject to air quality regulations.

An ozone generator. Ozone destroys volatile compounds upon contact. Ozone generators: are mostly used for sanitization purposes and have also been used in industrial settings to control strong odors. These generators are harmful to humans and can damage or destroy crops because they are a direct emission source of ozone pollution, therefore ozone generators are not recommended as a best practice for odor control (Denver Dept. of Health and Environment 2018).

Charcoal (or activated carbon) filtration is an effective odor neutralizer for indoor cultivation operations. Air is mechanically drawn through the charcoal filters, then the Cannabis chemicals are bound to the carbon, and then clean air is expelled from the greenhouse.

ENERGY USAGE PLAN

3.1. Energy Calculations

The proposed project is a mixture will be full sun/outdoor cultivation, mixed light, and indoor cultivation. The property will likely be provided by solar power energy source, however, PG&E is likely proposed depending on feasibility. Use of electricity provided by PG&E for indoor cannabis cultivation may require a commercial/agricultural account. When indoor cultivation operations are initiated, this Energy Use subplan should be updated, and energy calculations performed. Approximately (16) 1,000-watt fixtures will be installed across the two greenhouses (approximately under 25 watts per square foot).

If necessary, an odor monitoring program will be implemented. Odor measurements will be recorded at each monitoring station. Odor data can be taken at the property boundary, the nearest road, or the nearest house. Measurements can be taken upwind and downwind of the odor source in order to characterize the odor plume line. Using a field olfactometer (e.g. Nasal Ranger Field Olfactometer, St. Croix Sensory), the odor strength will be measured as Dilution to Threshold (D/T) ratios, a dimensionless measure of odor concentration. Other odor parameters will be recorded, including descriptions of the odor's character, intensity, and offensiveness, and weather conditions.

2.3. Odor Mitigation

Cannabis cultivation, especially during the flowering phase, generates volatile compounds (terpenes) that some people find objectionable. No significant odor impacts are anticipated from this cultivation operation, due to the small size of the cultivation operation, the setbacks from roads and property lines, and wind dilution/dispersal effects.

If odors become problematic, odor mitigation must be implemented. The cultivation operation should be analyzed to determine the source of odor emission and any concentrating effects. Mitigation can include some combination of the following administrative controls and engineering controls.

2.3.1. Administrative Controls

When the facility is constructed and operational, this section should describe activities such as building management responsibilities (e.g., isolating odor-emitting activities from other areas of the buildings through closing doors and windows). This section should describe the organizational responsibilities and the roles of the staff members who will be trained about odor control; the specific administrative and engineering activities that the training will encompass; and the frequency, duration, and format of the training (e.g., 60 minute in-person training of X staff, including the importance of closing doors and windows and ensuring exhaust and filtration systems are running as required). This section should include a description of the records that will be maintained (e.g., records of purchases of replacement carbon, performed maintenance tracking, documentation and notification of malfunctions, scheduled and performed training sessions, and monitoring of administrative and engineering controls). Any examples of facility recordkeeping forms should be included as appendices to this plan.

2.3.2. Engineering Controls

If odors become problematic, engineering controls may need to be implemented. The cultivation operation should be analyzed to determine the source of odor emission and any concentrating effects. Mitigation can include some combination of the following:

- *Windscreens could be erected that could partially contain odors within the cultivation compound.*

marked for limited speed to control dust. Dusty road segments will be armored with gravel, roadbase, or asphalt. A road maintenance program will be implemented. On tilled earth and stockpiles, fugitive dust can be controlled by wetting the soil with a mobile water tank and hose, or by delaying ground disturbing activities until site conditions are not windy. Water applications may be concentrated during the late summer and early fall months, when soils have the lowest moisture content or when winds are severe. BMP Fact Sheets WE-1: Wind Erosion Control and NS-1: Water Conservation Practices will be implemented to provide dust control and prevent discharges from dust control activities and water supply equipment. Water application rates will be minimized as necessary to prevent runoff and ponding and water equipment leaks will be repaired immediately. During windy conditions (forecast or actual wind conditions of 25 miles per hour or greater), dust control may be applied to disturbed areas, including haul roads, to adequately control wind erosion. BMP Factsheet WM-3: Stockpile Management will be implemented using silt fences and plastic covers to prevent wind dispersal of sediment from stockpiles. The minimum amount of water should be used: refer to BMP Factsheet NS-1: Water Conservation Practices.

ODOR CONTROL PLAN

2.1. Odor Complaint / Response

Prior to cultivation and operation of the project business, a member of the staff will be assigned to handle any odor complaint and will respond accordingly with management.

These individual(s) are responsible for responding to odor complaints 24 hours per day/seven (7) days a week, including holidays.

Property owners and residents of property within a 1,000 foot radius of the Cannabis facility should be provided with the contact information of the individual(s) responsible for responding to odor complaints. This facility will develop policies and procedures describing the actions to be taken when an odor complaint is received, including the training provided to the responsible party on how to respond to an odor complaint. When an odor complaint is received, it will be forwarded to the manager responsible for odor control. The complaint will be logged, including time and type of complaint, the location of the odor reception, and contact info of the person making the complaint. The incident will be investigated and the problem identified. The manager will visit the site or facility in question and determine any deficiencies in the odor control system (where applicable) and identify remedies. These remedies should be implemented immediately. The manager will prepare a written response and send it by certified mail to the person who made the complaint. The correspondence should acknowledge the complaint, describe the incident, and identify what remedial actions were taken. Each odor complaint will be logged in a master odor complaint log book.

2.2. Odor Monitoring Program

“Section 8315 would reduce the current levels of GHG emissions produced in the state from indoor cultivation to meet the state’s GHG reduction target (specifically, to assist in achieving the SB 32 goal of reducing statewide GHG emissions to 40 percent below 1990 levels by December 31, 2030). The measure requires that the energy provided must be from any combination of the following sources: (a) on-grid power with 42 percent renewable sources; (b) on-site zero-net-energy renewable sources providing 42 percent of power; or (c) purchase of carbon offsets for any portion of power above 58 percent not from renewable sources; (d) the cultivator must demonstrate that the equipment used is 42 percent more energy efficient compared to standard equipment, using 2014 as a baseline year. The implementation of these measures would reduce the current baseline energy demand and associated GHG emissions for cannabis cultivation in the state.” (CDFA 2017)

Construction and operational emissions indicate incremental contributions to greenhouse gasses from power consumption inside greenhouses. The CDFA CalCannabis Program concluded that small indoor cannabis cultivation operations would not contribute significantly to greenhouse gas emissions because of the requirement to achieve the State’s greenhouse gas emissions targets, as explained in the following excerpt:

“Licensees under the Proposed Program would also be required to comply with environmental protection measures established in Section 8313 and Section 8315 of the proposed regulations. These measures would potentially reduce criteria air pollutant emissions associated with cannabis cultivation compared to the baseline by prohibiting the use of diesel generators other than for backup power, and by requiring that indoor cultivators achieve the state’s greenhouse gas emissions reduction targets by utilizing renewable sources for their electrical power needs, purchasing carbon offsets, and/or use efficient equipment. For these reasons, licensed cannabis cultivation under the Proposed Program is generally not anticipated to conflict with or obstruct implementation of an applicable air quality plan, and/or violate any air quality standard or contribute substantially to an existing or projected air quality violation.” (CDFA 2017)

Air quality permits from the LCAQMD may be necessary to operate these proposed facilities if regulated machines or equipment are used. For cannabis operations, examples would be the constant use of electricity generators or large HVAC units, such as might be needed for indoor (greenhouse) operations. LCAQMD permits may be necessary to construct or operate the project as currently designed because fans and HVAC will be used in the greenhouses. Any LCAQMD permits obtained should be listed in this plan.

1.1. Dust Management

Cultivation operations may generate fugitive dust emissions through ground-disturbing activities such as ground tilling, uncovered soil or compost piles, and vehicle or truck trips on unpaved roads. The following are mitigation measures that can be used to control dust. Staff should be informed of speed limits and dust pollution. The roadways may be clearly

Applicant Contact Information:

Joseph M. Gustafson
 PO BOX 208
 Lower Lake, CA
 95457
 707-350-0270

Gusto2000.JG@gmail.com

Project Location:

2560 Highway 53
 Clearlake, CA
 010-048-050

PROJECT DESCRIPTION

Joseph Gustafson, Gustafson Farms LLC, is apply for a Use Permit to cultivate, manufacture, process and distribute commercial cannabis within the State of California. The 15.37 acre vacant property is currently improved by an existing well. The following proposed structures include the following:

- 10,000 square feet prefabricated metal facility is for processing, trimming, curing, drying and distributing cannabis
- 20,000 square feet indoor cannabis cultivation
- 36,000 square feet in total gross floor area in cannabis cultivation within hybrid greenhouses with light deprivation

The processing facility will consist of 3 rooms used for processing, drying, and curing mature cannabis.

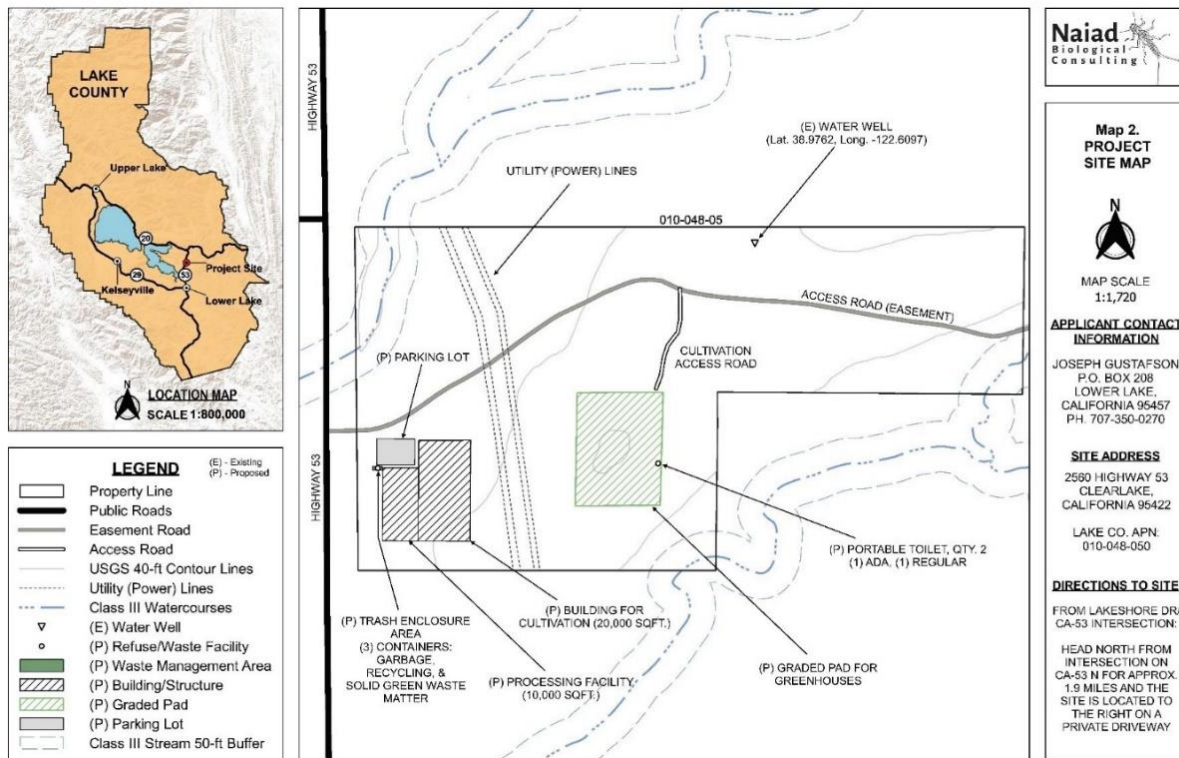
AIR QUALITY PLAN*1.0. Air Quality Setting, Potential Impacts, and Mitigation*

The project is in the Lake County Air Basin. The Lake County Air Quality Management District (LCAQMD) regulates air quality in Lake County. The U.S. Environmental Protection Agency (EPA) sets acceptable levels for seven air pollutants, and then determines — with the help of states and local air districts — where those standards are or are not met. Lake County currently meets the EPA's health standards for five of those pollutants: carbon monoxide; nitrogen dioxide; sulfur dioxide; lead; and coarse particulates. For the other two — ground-level ozone and fine particulate pollution — Lake County is considered to be a part of a regional non-attainment area.

Waste will be transported to an appropriate licensed facility by cultivation operation staff using personal vehicles or be hauled by a private waste-hauling contractor, such as Waste Management, Inc., or C & S Waste Solutions. The licensed waste-hauler that is used at this facility is: Quackenbush Mountain Resource Recovery and Compost Facility, 16520 Davis Street, Clearlake

- *Management/Ownership will provide a secure and functional trash and recycling enclosure constructed and approved by the City of Clearlake and the Lake County Waste Solutions Transfer Station and Recycling Center.*
- *There will be 3 containers within a secure and functional enclosure for trash, recycling, and solid green waste matter.*
- *All solid green waste matter will be chipped and composted onsite.*
- *Any material that is deemed hazardous will be treated as hazardous waste and disposed of properly according to county and city code.*

Attachment 4 - Site Exhibits

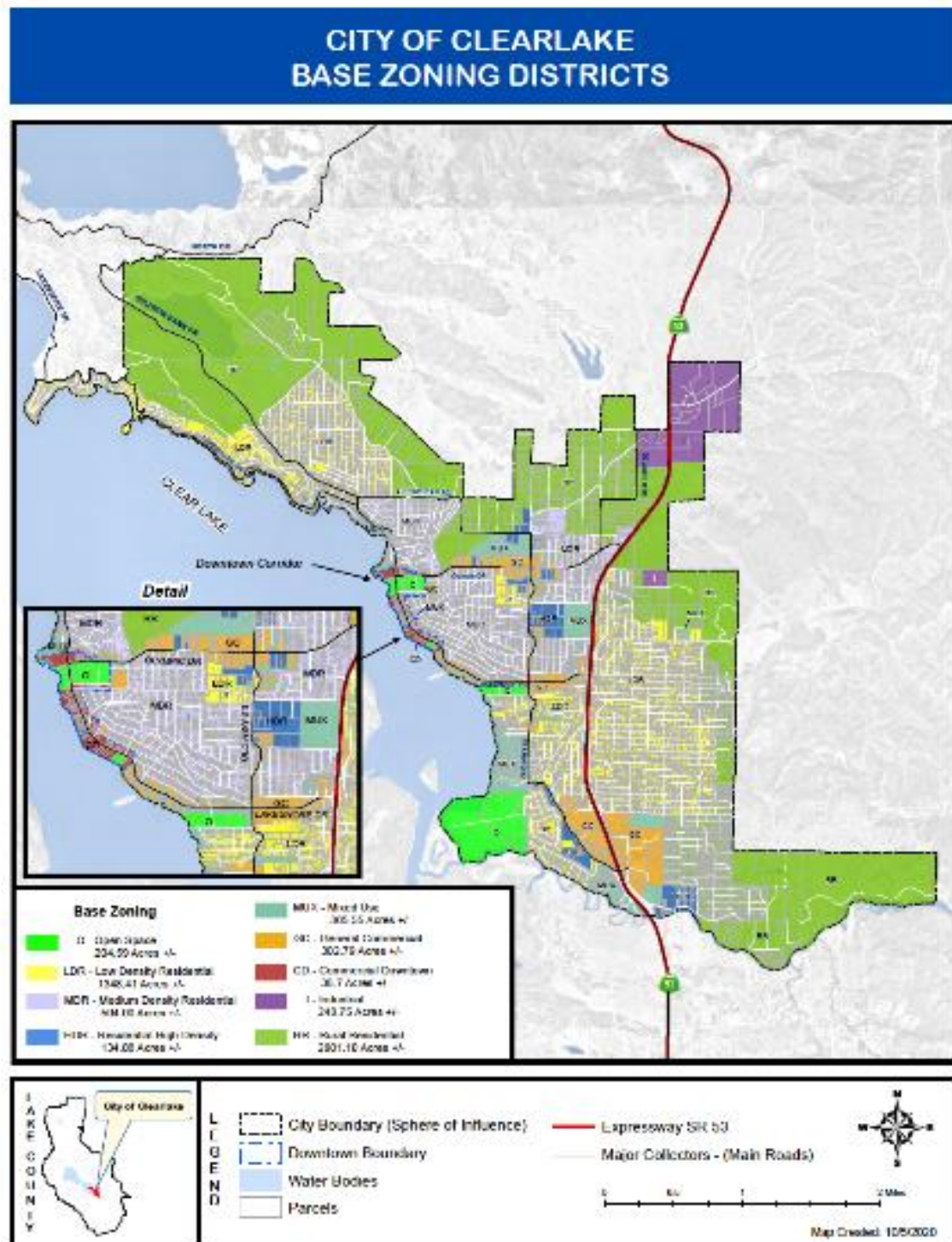






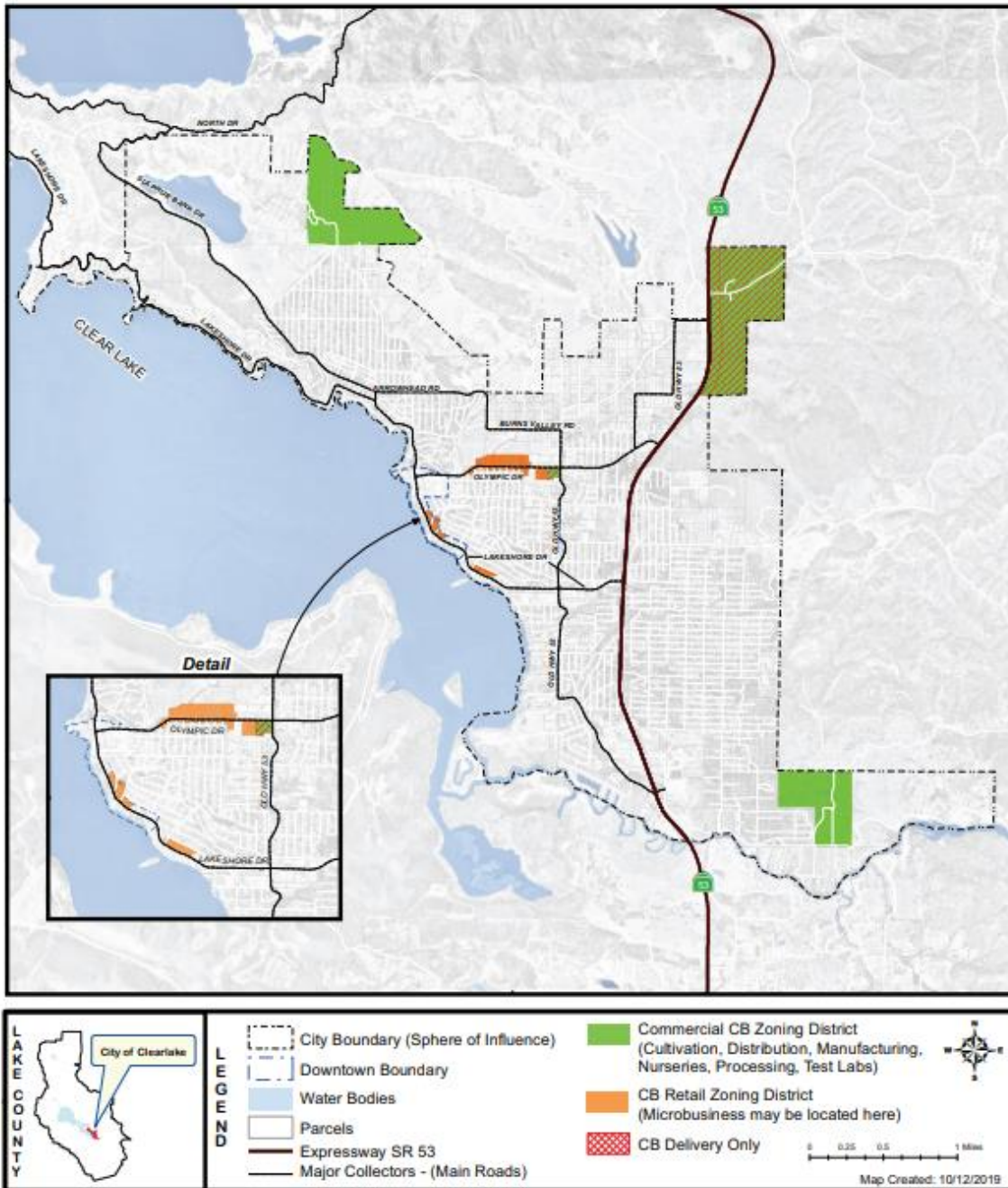


Attachment 5: Zoning Maps



Commercial Cannabis Business Combining Zoning District

Cultivation, Distribution, Manufacturing, Nurseries, Processing, Test Labs
CB Retail and Delivery Only



Attachment 6: Environmental Documents (Mitigated Negative Declaration & Initial Environmental Study IS 2021-01)

Posted on City of Clearlake website 5/14/2021 under “Current Planning”
(<https://www.clearlake.ca.us/397/Planning-Department>)

**CITY OF CLEARLAKE
ORDINANCE NO. 255-2021
AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
APPROVING A DEVELOPMENT AGREEMENT (DA 2021-03) WITH
GREEN GROWTH SOLUTIONS, LLC FOR PROPERTY LOCATED AT 2560 HIGHWAY 53, CLEARLAKE, CA,
FURTHER DESCRIBED AS ASSESSOR'S PARCEL NUMBER 010-048-05-000**

WHEREAS, the State of California enacted California Government Code Sections 65864, etc. to authorize municipalities to enter into Development Agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction; and

WHEREAS, Green Growth Solutions, LLC., represented by Joseph Gustafson, (OWNER) who intends to operate commercial cannabis businesses at subject property, located at 2560 Highway 53); City of Clearlake, County of Lake, State of California ("Site") that is the subject of this agreement; and

WHEREAS, the OWNER presently intends to develop a Commercial Cannabis Operation (*Cultivation, Processing and Distribution*) on the site consistent with the California Cannabis Laws, the City's Municipal Code, and Project Approvals (known as the "Project"); and

WHEREAS, the Planning Commission of the City of Clearlake approved Conditional Use Permit Application to allow a Commercial Cannabis Operation (*Cultivation, Processing and Distribution*) on May 17th, 2021 and;

NOW THEREFORE, the City Council of the City of Clearlake does hereby ordain as follows:

SECTION 1. After conducting duly noticed hearings before the City Council on June 3rd and June 17th 2021 and, and after independent review and consideration, the City Council approves the execution of the Development Agreement, hereby adopted as Exhibit A to this Ordinance.

SECTION 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3. Execution. The Mayor shall sign, and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED this 17th day of June 2021.

AYES:

NOES:

ABSENT OR NOT VOTING:

Dirk Slooten, Mayor

Attest:

Melissa Swanson, City Clerk

Exhibit A: Development Agreement 2021-03

**RECORDING REQUESTED BY
AND WHEN RECORDED MAILTO:**

**City of Clearlake
14050 Olympic Dr.
Clearlake, CA 95422
Attention: City Clerk**

**SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §27383**

DEVELOPMENT AGREEMENT (DA 2021-03)

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this

17th day of July 2021 (the “Execution Date”), by and between the **CITY OF CLEARLAKE, a California municipal corporation** (“City”) and **Green Growth Solutions LLC., Represented by Joseph Gustafson, (“Owner”)**. City and Owner are sometimes referenced together herein as the “Parties.” In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a “Party.” The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

- A. The State of California enacted California Government Code Sections 65864 *et seq.* (“Development Agreement Statutes”) to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the developer, and to meet certain public purposes of the local government.

- C. Owner currently holds multiple Conditional Use Permits, approved by the Planning Commission for a commercial cannabis, including: approximately 10,000 square foot prefabricated metal building for processing, trimming, curing, drying and distributing cannabis; 20,000 square foot indoor space to be used for cannabis cultivation, and 36,000 square feet of hybrid greenhouse space with light deprivation (two structures, 18,000 square feet each) located at 2560 Highway 53 (further described as assessor parcel number 010-048-05), City of Clearlake, County of Lake, State of California (the “Site”).
- D. Owner intends to operate a cannabis facility and operation. All such cannabis facilities shall operate in accordance with the California State Compassionate Use Act (Health & Safety Code § 11362.5) (“CUA”), the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7 et seq.) (“MMPA”), and the 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General (the “AG Guidelines”), and Senate Bill 94, the Medicinal and Adult Use of Cannabis Regulation and Safety Act (“MAUCRSA”), creating a unified regulatory structure for adult use and medical cannabis, and all regulations promulgated by the responsible state agencies to implement MAUCRSA (collectively the “California Cannabis Laws”). Prior to operating a cannabis facility, Owner shall be required to obtain use and cannabis business regulatory permits from the City for the facility and operations.
- E. Ultimately, Owner intends to obtain state licenses issued pursuant to MAUCRSA to operate cannabis facilities at the Site, once such licenses are being issued.
- F. Owners presently intend to develop and open a cannabis operation on the Site consistent with the California Cannabis Laws and Project Approvals (known as the “Project”).
- G. Owner applied to City for a development agreement and will subsequently need to obtain special use permits and regulatory permits for the Project. This Agreement, and the special use and regulatory permits, when and if issued by the City, shall collectively be referred to as “Project Approvals”.
- H. The Project will maintain inventory of cannabis and cannabis products under the California Cannabis Laws.
- I. The City adopted Ordinance No’s. 200-2017 and 201-2017 permitting Cannabis Delivery Only Dispensaries and Cannabis Businesses (as those terms are defined in the applicable city ordinances) in strict compliance with the applicable California Cannabis Laws regulating delivery only dispensaries and cannabis cultivation, manufacturing, processing, and distribution under certain conditions and provisions.
- J. City and Owner have agreed that, as a condition of allowing the Project, as defined herein, and due to the unique circumstances of the proposed Project, Owner shall pay to the City a semi-annual fee based on the gross revenue of the operations, and an annual Facility Fee, as hereinafter defined, which fees shall abate if and when the City adopts a tax on Cannabis Delivery Only Dispensaries and Cannabis Businesses.

- K. All procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 *et seq.*, and the CEQA Guidelines, Title 14 of the California Code of Regulations, Chapter 3, §15000 *et seq.* have been satisfied as has gone through an Environmental Analysis (Initial Study 2021-01) and a proposed Mitigated Negative Declaration has been adopted. All potential environmental impacts have been reduced to less than significant with the incorporated mitigation measures.
- L. City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code §65867. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses, and programs specified in City’s General Plan, zoning code and municipal ordinances.
- M. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City and the Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety and welfare are best served by entering into this obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement, *i.e.*, assuring Owner that it will enjoy the development rights.
- N. The City agrees that Owner’s land use entitlements for the Project shall vest for the term of this Agreement as described below.
- O. After conducting a duly noticed hearing on **May 17, 2021** in conjunction with certain amendments and additions to the City’s Municipal Code, the Planning Commission of the City reviewed, considered and approved the Project and recommended approval of the execution of this Agreement to the City Council. The Planning Commission found the Project: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized zoning code; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.
- P. After conducting a duly noticed hearing on **June 17, 2021** in conjunction with amendments and additions to the City’s Municipal Code creating an allowable use, appropriate zoning, and comprehensive regulations for the proposed use, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project: consistent with the objectives, policies, general land uses, and programs specified in the general plan; compatible with the uses authorized in the zoning code; is in conformity with good land use practices; will not be detrimental to the health, safety and

general welfare of the City; and is in the best interest of the City of Clearlake and its residents.

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

AGREEMENT

1. **Binding Effect of Agreement.** The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Site as described in **Exhibit A (Legal Description)** and shown in **Exhibit B (Site Lease/Map)** and incorporates by reference all Development Approvals approved by the City for the Site. Except as otherwise provided in Section 15 of this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Site. In order to provide continued notice thereof, the Parties will record this Agreement with the Lake County Recorder. The word “Owner” as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Site. Should the size or orientation of any Site component specified above be changed in minor respects, *e.g.*, changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties and their successors shall remain as provided herein.

2. **Relationship of the Parties.** It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Owners will be deemed to be the agent of the other for any purpose whatsoever. City and Owners hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owners joint ventures or partners.

3. **Term.** Except as otherwise specified herein, the term of this Agreement (the “Term”) is 3 years from the date the Owner begins commercial operation at the Project Site (“Operation Date”). The Operation Date shall be no later than 12 months following the Execution Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided.

3.1 **Term Extension – Third Party Issues.** Notwithstanding the Parties’ expectation that there will be no limit or moratorium upon the Project’s development or the issuance of building or other development related permits (a “Development Limitation”) during the Term, the Parties understand and agree that various third parties may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by Owner.

3.1.1 Litigation. Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project's development, or third party-initiated litigation having the actual effect of delaying the Project's development. This extension period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2 Government Agencies. Any delay arising from or related to the act(s) or omission(s) any third-party governmental agency, quasi-public entity or public utility, and beyond the reasonable control of Owner.

3.1.3 Force Majeure. Any delay resulting from riot, war, acts of terrorism, an event during the Term creating radioactive or toxic/hazardous contamination, a catastrophic earthquake, flood, fire or other physical natural disaster, excluding weather conditions regardless of severity, strikes or industrial disputes at national level effecting development involved personnel not employed by Owner, their subcontractors or suppliers and effecting an essential portion of the Project's development, excluding any industrial dispute that is specific to development taking place as a part of the Project.

3.2 Term Extensions. The Term of this Agreement will be extended for seven additional years upon a determination of the City Council, by way of resolution of the City Council acted on at a regularly scheduled meeting, that both of the conditions listed in subparts 3.2.1 and 3.2.2 below have been fully satisfied and the Owner is in full compliance:

3.2.1. No Default by Owner. Owner shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Owner did in fact default as to this Agreement, upon notice from City, that Owner did cure said default during the period to cure provided herein to City's satisfaction.

3.2.2 Finding of Community Compatibility. The City Council shall review the operations of Owner prior to granting an extension of the term of this Agreement and make a finding that the Project, notwithstanding that the Project activities may not be in precise technical compliance with the issued regulatory permit and special use permit, continue to be compatible with surrounding land uses and are not detrimental to the public health, safety and general welfare.

3.2.3. Mutual Agreement of Parties. In addition to the process listed above for a seven-year term extension, this Agreement's Term may be extended by mutual agreement of the Parties and formal amendment of this Agreement.

3.3 Termination of Agreement. Upon the termination of this Agreement, either by expiration or otherwise, Owner shall have no right to engage in the Project activities at the Project Site, except as may otherwise be allowed by City ordinance, law or separate development agreement.

4. Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

4.1. Certified Report. “Certified Report” shall mean a detailed document prepared by Owner on a form acceptable to the City’s Director of Finance to report to the City the gross receipts of the Project’s operations and sales, as defined herein, in the Project during each semi-annual period starting January 1 and July 1 of each calendar year. Each Certified Report shall be certified as true and correct by a duly authorized officer of Owner.

4.2. Development Approvals. “Development Approvals” means the land use entitlements approved by the City for the development of site improvements and buildings on the Site which define the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings.

4.3. Production Fee. “Production Fee” shall mean a semi-annual fee remitted to the City by Owner based on the Gross Receipts of its Project operations, as defined below, in the amount of 5% of gross sales from operations.

4.4. Certification of Non-Income Tax Exemption. Owner certifies that Owner is not income tax exempt under State or Federal Law and that Owner will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board.

4.5. Facility Fee. Facility Fee shall mean an annual fee remitted to the City by Owner in the amount of \$2 per gross square foot of the entire Project facility. The Facility Fee shall be paid annually, starting July 1st of each year. A late fee of 5% of the amount due shall be added to any payment 5 days past due. Fees later than 30 days past due will constitute a breach subject to Section 20 of this agreement.

4.6. Semi-Annual Production Fee. The semi-annual Production Fee will be due no later than July 30th for the preceding period of January 1st through June 30th and no later than January 31st for the preceding period of July 1st through December 31st. A late fee of 5% of the amount due shall be added to any payment 30 days past due.

4.7. “Land Use Regulations” shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Project. “Land Use Regulations” do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

4.7.1. The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

4.7.2. Other than as provided in this Agreement, taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land

(e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Developer is paying any fee or providing any improvement pursuant to this Agreement.

4.7.3. The control and abatement of nuisances;

4.7.4. The granting of encroachment permits and the conveyance of rights and interests which provides for the use of, access to or the entry upon public property, as may be approved by mutual agreement between Developer and City; and

4.7.5. The exercise of the power of eminent domain.

4.8. “Existing Land Use Regulations” means all Land Use Regulations in effect as of the approval date of this Agreement, including the Project Approvals.

4.9. “Gross Receipts” means 5% (five percent) for 1) wholesale and retail sales of cannabis products by Owner to third parties.

5. Fee Payments by Owner. In consideration of City’s entering into this Agreement and authorizing the development and operation of the Project, the requirements for City services created by the Project, the City insuring Owner’s compliance with this Agreement, California Cannabis Laws and the City’s municipal ordinances, throughout the Term of this Agreement, Owner shall make the following payments to City:

5.1. Production Fee Payments by Owner. Semi-annual payments of the Production Fee by Owner to the City as specified in Section 7 herein. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement, but the Production Fee under this Agreement shall cease if any City-wide tax is imposed specifically on Cannabis cultivation.

5.2. Facility Fee Payments by Owner. Annual payments of the Facility Fee by Owner to the City. The obligations of Owner under this Section shall survive the expiration or any earlier termination of this Agreement, but the Facility Fee shall cease if any City-wide tax is imposed specifically on Cannabis cultivation.

5.3. Sales Tax Point of Sale. Owner agrees that Clearlake will be designated as the point of sale for all operations, as allowed by law.

6. Community Participation. Owner agrees to participate in the community as a good corporate citizen and sponsor events and organizations that improve the community.

6.1. Clearlake Chamber of Commerce. Owner agrees to immediately apply for membership in the Clear Lake Chamber of Commerce and, if accepted, maintain an annual membership in good standing.

7. Payment Procedures. The following payment procedures shall apply during the operation of the Project:

7.1. Remittance of Production Fee/Certified Reports. Within thirty (30) calendar days following the end of each semi-annual period during the Term of this Agreement, Owner shall submit the Certified Report to the City's Finance Director and a payment for the Production Fee for that Operational Period as identified in the Certified Report. Owner shall pay Production Fees to the City on a semi-annual basis without exception. Any material misstatement or misrepresentation in the Certified Report and any failure to pay Production Fees when due shall constitute events of default by Owner subject to the default provisions of this Agreement.

7.2. Maintenance of Records. Owner shall maintain complete records of their operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by Tenants and/or any operator of the facility. Owner shall maintain such records in a form and location reasonably accessible to the City, following reasonable notice to Owner and/or any operator, for a period of at least five (5) calendar years following Owner's submission of the Certified Report to which the records apply.

7.3. Audit. Within ninety (90) calendar days following the end of each semi-annual payment term, the City may conduct an audit or arrange for a third-party independent audit, at Owner's expense, of Owner records regarding Certified Reports and the Production Fees. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to Owner, and shall reasonably attempt to schedule the audit so as to reduce the impact on Tenants' operations as much as is feasible. Owner shall cooperate with the City in completing the audit. If the audit reveals that Owner has underpaid the Production Fee, Owner shall pay such underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance in addition to all costs of the audit, including city staff time and outside consultants. If the audit reveals that the Owner has overpaid any amount of the Production Fee, City shall provide written notification to Owner and shall credit such amount against Owner's subsequent semi-annual payment of Production Fees.

8. Covenants of Owner. During the Term of this Agreement, Owner hereby covenants and agrees with the City as follows:

8.1. Implementation. Owner shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to all applicable laws, this Agreement, the Project Approvals and the Municipal Code.

8.2. Enhanced Design Requirement. Owner shall submit a design plan for the building and site, for review and approval by the Planning Director, which shall incorporate at a minimum upgraded fencing and landscaping improvements consistent with the Community Character and Design Policies in the City's General Plan.

8.3. Maintain & Operate Project. Owner shall maintain and operate the Project on the Site throughout the Term of this Agreement, in accordance with the Project Approvals and all City, and State laws.

8.4. Hold Harmless. Owner shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including,

without limitation, consequential damages), claims and liabilities arising from the Project, this Agreement, the approval of the Project, and the activities of Owner, their members, officers, employees, agents, contractors, invitees and any third parties on the Site, from and against any challenges to the validity of this Agreement or other Project Approvals. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

9. Covenants of City. During the Term of this Agreement, City hereby covenants and agrees with Owner as follows:

9.1. Expeditious Services. City shall process applications and address questions and concerns raised by Owner representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon Owner's request, or if, in an exercise of City's own discretion, City staff determines that it cannot comply with this section, City shall expeditiously engage the services of private contract planners, plan checkers or inspectors ("Private Contractors") to perform such services as may be necessary to assist in processing the project plans as described herein. Compensation of such Private Contractors shall be at Owner's sole cost and expense, inclusive of any administrative cost to City of integrating services by Private Contractors into the project's development processing. Owner shall pay such costs and expenses of Private Contractors via reimbursement to City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors.

9.2 Vested Rights. During the Term of this Agreement, Owner shall have the vested right and entitlement to develop and operate the Project in accordance with the Existing Land Use Ordinances, in addition to any Cannabis Cultivation Operating Standards adopted by the City Council, which may be amended at the City's discretion. Parties acknowledge that neither the City nor the Owner can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Owner shall have the vested right to develop the Project in such order and at such rate and at such times as Owner deems appropriate in the exercise of its business judgment, provided that Owner is in compliance with the Project Approvals.

9.3 Building Permits and Other Approvals and Permits. Subject to (a) Owner's compliance with this Agreement, the Project Approvals the Existing Land Use Ordinances, the Building Ordinances, and Operating Standards; and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to Owner promptly upon application therefore all necessary use permits, building permits, occupancy certificates, regulatory permits, licenses and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

9.4 Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Existing Land Use Ordinances,

but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable.

10. Effect of Agreement.

10.1 Grant of Right. This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants to Owner the right and entitlement to develop the Project and use the land pursuant to specified and known criteria and rules as set forth in the Project Approvals and Existing Land Use Ordinances, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

10.2 Binding on City/Vested Right of Owner. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether taken by ordinance or resolution of the City Council, by referendum, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, the Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development of the Project as set forth in the Project Approvals and the Existing Land Use Ordinances, and the timing provisions of Section 3, and the City has entered into this in order to secure the public benefits conferred upon it hereunder which are essential to alleviate current and potential problems in the City and to protect the public health, safety and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

10.3 Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions and specifications (collectively "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall not apply to the Project Site or Project. The Parties, however, acknowledge that the City's approval of this Agreement and the City Approvals are legislative actions subject to referendum.

10.3.1 Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing or sequencing of development affecting subdivision maps, building permits, or other Subsequent Approvals shall apply to the Project. Owner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or to impose any other limitation that may affect the Project.

11. Specific Criteria Applicable to Development of the Project.

11.1 Applicable Ordinances. Except as set forth in the Project Approvals and subject to the provisions of Section 10.2 below, the Existing Land Use Ordinances shall govern the development of the Site hereunder and the granting or withholding of all permits or approvals required to develop the Site; provided, however, that (a) Owner shall be subject to all changes in processing, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and

charges are of general application and are not imposed solely with respect to the Project Site, (b) Owner shall abide by the Building Ordinances in effect at the time of such applications, (c) Development Impact Fees to be paid by Owner shall be those in effect at the time permits are issued subject to those fees, and (d) development shall be consistent with current Operating Standards.

11.2 Amendment to Applicable Ordinances. Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project if, and only if (i) it is consented to in writing by Owner in Owner's sole and absolute discretion; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) it is required by changes in State or Federal law; (iv) it consists of changes in, or new fees permitted by, Section 4.1; or (v) it is otherwise expressly permitted by this Agreement. The Parties anticipate that the City shall subsequently adopt Operating Standards that govern this type of use, which Regulations, and any amendments thereto, shall apply to the Project.

11.3 Applicability of Zoning Amendments. In the event that the City zoning ordinance is amended by the City in a manner which provides more favorable site development standards for the Project Site or any part thereof than those in effect as of the Effective Date, Owner shall have the right to notify the City in writing of its desire to be subject to all or any such new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council, such new standards shall become applicable to the Project. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project as provided above, but Owner may notify City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project.

12. Permitted Delays, Supersedure by Subsequent Laws.

12.1 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Owner and City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, any referendum elections held on the Enacting Ordinance, or the Land Use Ordinances, or any other ordinance effecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "Laws"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Owner, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

12.2 Supersedure of Subsequent Laws or Judicial Action.

12.2.1 The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Owner and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

13. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Owner. It is anticipated due to the term of this Agreement that refinements to the approvals may be appropriate with respect to the details of performance of the City and the Owner. To the extent allowable by law, the Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any operating Memoranda hereunder without further City Council action.

14. CEQA. All procedures of the California Environmental Quality Act ("CEQA"), California Public Resources Code §21000 *et seq.*, and the CEQA guidelines, Title 14 of the California Code of Regulations, chapter 3, §15000 *et seq.* have been satisfied based on the Project being categorically exempt.

15. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City's municipal code, inclusive of such California and International Codes as have been adopted in accord therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

16. Assignment and Transfer of Rights. Except as otherwise provided in this Section,

the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants that run with the Site. Owner, for itself, its heirs, distributes, executors, administrators, legal representatives, successors and assigns, shall not, at any time during the Term, assign, convey, lease, sell or otherwise transfer all or any portion of its rights under this Agreement (“Assignable Rights”) to a third party, a subordinate entity, or a related entity (make an “Assignment”) without the prior written consent of City in each instance, which consent may be withheld in City’s sole discretion. Any assignment in violation of this Section will be void. No permitted assignee of this Agreement may further assign this Agreement without City’s prior written consent.

17. Review for Compliance.

17.1 Periodic Review. Pursuant to CGC §65865.1, City shall engage in an annual review this Agreement, on or before the anniversary of the date of execution, in order to ascertain Owner’s good faith compliance with its terms (the “Periodic Review”). In the event City fails to formally conduct such annual review, Owner shall be deemed to be in full compliance with the Agreement.

18. Amendment or Cancellation. This Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties or in the manner provided in CGC §65865.1 or CGC §65868 and subsection 3.2 above.

18.1 Provide Notice. Provide the other Party with written notice of such State or Federal law or regulation, a copy of such law or regulation and a statement identifying how such law regulation conflicts with the provisions of this Agreement.

18.2 Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such applicable Federal or State law or regulation. If the Parties cannot agree on a manner or method to comply with such Federal or State law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

19. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by telecopier or facsimile (“Fax”) machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Clearlake
14050 Olympic
Drive
Clearlake CA 95422
Attention: City Manager

With copy to: Jones & Mayer, City Attorney

8150 Sierra College Blvd., Suite 190
 Roseville California 95661
 Attention: Ryan R. Jones, Esq.

If to Owner:

Green Growth Solutions LLC.
 PO BOX 208
 Lower Lake, CA
 95457

Notices sent in accordance with this Section shall be deemed delivered upon the: **(a)** date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); **(b)** date of actual receipt (if personally delivered by other means); **(c)** date of transmission (if sent by email or telecopier, so long as sender receives actual confirmation that the transmission was received); or **(d)** date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

20. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, Owner shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Owner's rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Owner that specifies the nature of such default. If such default is not cured by Owner within sixty (60) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, Owner fails to commence to cure the default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate Owner's rights under this Agreement. Default by any Assignee or Owner's successor in interest shall affect only that portion of the Site owned by such Assignee or successor, and shall not cancel or diminish in any way Owner's rights with respect to any portion of the Site not owned by such Assignee or successor. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by Owner against City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

21. Entire Agreement. This Agreement and the Exhibits herein contain the entire integrated agreement among the Parties. The Parties intend that this Agreement state their agreement in full to each and every one of its provisions. Any prior agreements, understandings, promises, negotiations or representations respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, are agreed by all Parties to be null and void.

22. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. Attorneys' Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

25. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of approval.

26. Authority to Execute. All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

27. Estoppel Certificate. City shall, at any time and from time to time within ten (10) days after receipt of written notice from Owner so requesting, execute, acknowledge and deliver to Owner a statement in writing: **(a)** certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and **(b)** acknowledging that there are no uncured defaults on the part of Owner hereunder or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Site. Upon Owner's written request, City shall issue a certificate of performance evidencing completion of any of Owner's obligation(s) under this Agreement.

28. Encumbrances on Real Property.

28.1 Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Site or any portion thereof or any improvements thereon then owned by such person with any mortgage, deed of trust or other security device ("Mortgage") securing financing with respect to the Site or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Site or any portion thereof or any improvements thereon and its successors and assigns ("Mortgagee") shall be entitled to the following rights and privileges.

28.2 Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Owner may request certain interpretations and modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments.

28.3 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Site or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

28.4 Mortgagee Not Obligated. Notwithstanding the provisions of Section 26.2, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder, or to guarantee such performance, except that to the extent that Mortgagee opts to receive the benefits of the Agreement, including the right to operate, any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Site or any portion thereof. Uncured monetary defaults will terminate the Agreement and Mortgagee's right to operate.

28.5 Written Notice of Default. Each Mortgagee shall be entitled to receive written notice from City of any default by Owner under this Agreement, if such default is not cured within thirty (30) days, provided such Mortgagee has delivered a written request to City for such notice. Each Mortgagee shall have a further right, but not the obligation, to cure such default for a period of thirty (30) days after receipt of such notice of default. Any non-curable defaults of Owner of any obligation owed solely to City arising prior to Mortgagee's acquisition of title to the Site or any portion thereof shall be waived; provided, however, the non-payment

of money shall not be deemed a non-curable default.

29. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and, subject to City's written consent, their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

30. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in the Superior Court of Lake County, California.

31. Mutual Covenants. The covenants contained herein, including those contained in the Recitals herein, are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

32. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement ("Successors"). Furthermore, the rights and remedies, together with the benefits and burdens of this Agreement of each Party to this Agreement shall be coextensive with those of its Successors. All provisions of this Agreement shall be enforceable as equitable servitude's and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Site: (a) is for the benefit of and is a burden upon every portion of the Site; (b) runs with the Site and each portion thereof; and, (c) is binding upon each Party and each Successor during ownership of the Site or any portion thereof. From and after recordation of this Agreement, the Agreement shall impute notice to all persons and entities in accord with the recording laws of this State.

33. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement.

34. Waiver. Failure by a Party to insist upon the strict performance of any of this Agreement's provisions by the other party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

35. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

36. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required

by Government Code Section 65868.5.

37. Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

38. Jointly Drafted. It is agreed among the parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

39. Independent Legal Counsel. Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

40. Further Cooperation. The parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

41. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

“CITY”

CITY OF CLEARLAKE, CA a California
Municipal Corporation

Date: _____, 2021

By: _____

Mayor

Attest:

By: _____

City Clerk

Approved as to form:

Jones & Mayer

By: _____

Ryan R. Jones, Esq.

City Attorney

“OWNER”

Green Growth Solutions LLC. (owner)

DATE: _____, 2021.

BY: _____

EXHIBIT A
LEGAL DESCRIPTION

To be inserted later

EXHIBIT B
SITE LEASE/MAP

To be inserted later

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

Attachment B – Development Agreement Ordinance

State of California: _____

County of _____.

On _____, before me, _____

Attachment B – Development Agreement Ordinance

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.

Notary Public Seal

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.

Instructions for Completing this form: This form complies with current California statutes regarding notary wording and if needed, should be completed, and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law. State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment. Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.

- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e., he/she/it!6y, is /ar6) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.

Here insert name and title of the officer

CITY OF CLEARLAKE

CITY COUNCIL STAFF REPORT

MEETING OF: June 3, 2021

Agenda Item No.

Subject: Consideration of rejection of bids for demolition of structures located at 14525 Lakeshore Drive Clearlake, CA 95422 **Date:** 05/27/21

Reviewed & Approved:

From: Lee Lambert- Code Enforcement Supervisor

Recommended Action: Reject all bids for the demolition of all structures at 14525 Lakeshore Drive.

ISSUE STATEMENT AND DISCUSSION:

The City advertised a Notice Inviting Bids for the demolition of all structures located at 14525 Lakeshore Drive. The notice was advertised in online media outlet, on the city website, and sent out to various plan holder rooms.

The City opened bids on 05/27/21 from the following contractors:

<u>Contractor</u>	<u>Base Bid</u>
Chernoh Excavating Inc.	\$53,439.00
Resource Environmental Inc.	\$83,000.00

The Lowest Responsive Bidder was Resource Environmental Inc. at \$83,000.00. A second bid was submitted by Chernoh Excavating Inc. however not all required documents were submitted prior to opening.

Chernoh Excavating Inc. bid was determined to be non-responsive as the required bid bond or security were not included with the bid submittal.

We are recommending rejecting all bids at this point. We only received one valid bid. We will immediately rebid this project.

Staff recommends that the Council reject all bids and alternates and re-bid.

FINANCIAL AND/OR POLICY IMPLICATIONS:

There are no policy or financial implications with this recommendation.