CITY OF NOVATO
CALIFORNIA

Commercial Cannabis
Business Permit

Request for Proposals

October 9, 2020
Introduction

The Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") regulates all commercial cannabis activities in the State of California. Cities may enact local laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transportation and testing within its jurisdiction.

The Novato City Council formally adopted a commercial cannabis Licensing Ordinance and Zoning Ordinance on November 12, 2019, and adopted Resolution 2019-069 which establishes the process for evaluating commercial cannabis business proposals, issuing commercial cannabis licenses and operations parameters for commercial cannabis business activities. Please review these resolutions and ordinances prior to submitting a proposal.

Available Licenses

The maximum number and types of permissible commercial cannabis businesses are listed below. The City has not previously issued any licenses so all of these are currently available.

1. Non-Store Front Retail: Unlimited
2. Testing Laboratory: Maximum of 2
3. Manufacturing: Maximum of 2
4. Indoor Cultivation: Maximum of 2
5. Microbusiness: Maximum of 3
6. Distribution: Maximum of 1 if permitted as a standalone business holding a State license type 11 only. No limit if permitted as an ancillary activity to one of the business types 1-5 (where permitted by state law.)
Selection Process

In order to operate a commercial cannabis business, Proposer(s) shall successfully complete a rigorous review process. The steps of the process are generally described as:

1. City issues a Request for Proposals to operate a Commercial Cannabis Business.

2. Verify the use is allowed at your preferred location by reviewing the zoning ordinance referenced on the preceding page or by submitting the type of commercial use and property address to planning@novato.org. Proposals must include a letter of authorization from the property owner.

3. Submission of a complete Proposal for consideration by the City.

4. Successfully complete an interview, background investigation and vetting process.

5. Achieve a score of 80% or greater from the Proposal Review Committee and be forwarded to the City Council as a finalist.

6. Be awarded a Conditional Certificate (CC) by the City Council, which grants the Proposer the privilege of applying for a Commercial Cannabis Business Permit (CCBP).

7. Apply for and secure all required land use permits, other agency licenses or authorizations and building permits and complete any required environmental review pursuant to the California Environmental Quality Act (CEQA).

8. Complete the improvements permitted under the CC and land use permits necessary to apply for and secure the CCBP.

9. Complete all other requirements precedent to the issuance of a CCBP set forth in Novato Municipal Code Section 8-11.

10. Apply for and secure the ministerial CCBP.
Community Benefit Agreements

In lieu of paying cannabis business tax, each Licensee will be required to execute a Community Benefit Agreement (CBA) with benefits generally equal to the value of a competitive tax rate. These benefits need to be detailed in your proposal and could include youth education programs, employee pay scales higher than the region, or cash payments to the City for services. Specific benefit packages must be agreed to as a condition of the Conditional Certificate. A copy of the template CBA form is attached to this RFP. Current tax rates which will be used to evaluate the proposed benefits (and expressed as percentages of gross receipts) are: Retail 3.5%, Manufacturing 2%, Distribution 1%, Microbusinesses with Retail 4%, Microbusinesses without Retail 2.5%, Indoor Cultivation 3%.

Proposal Review Process

An administrative rating system has been created which reflects the priorities of the City. The City reserves the right to reject any or all Proposals if it is determined to be in the best interest of the City, taking into account any aspect of the health, safety and/or welfare of the community.

A Proposal Review Committee (“PRC”) shall consider each Proposal and will give particular consideration to the capacity, capitalization and history of the Proposer, the community benefits proposed to be proved by the proposed commercial cannabis business and any other factors that the City, in its discretion, deems necessary to maintain and/or promote the health, safety and general welfare of the public.

The purpose of the PRC is to develop a list of qualified finalists (“Finalists”) for the various types of cannabis businesses allowed. All Proposals receiving a score of 80% or higher by the PRC will be referred to the City Council as Finalists. Any decision of the PRC to reject a Proposal or to award a Proposal score of less than 80% may be appealed to the City Council, pursuant to Novato Municipal Code Section 8-11.19.
Proposal Review Process (cont.)

The PRC reserves the right to contact any proposer if the PRC has additional questions after reviewing the Proposals and to interview any or all Proposers as the PRC finds necessary in order to provide each with an overall score.

The City will mail notices to all properties and property owners within 600-feet of the boundaries of the property upon with the commercial cannabis business is proposed, at least ten (10) days prior to consideration of the Finalists by the City Council.

Required Proposal Content

The content of each Proposal shall include the following minimum information and documents:

a. Identifying information for ownership and management, including the respective percentages of ownership.

b. Name and address of each commercial cannabis business owner and an explanation of the legal form of business ownership.

c. Description of proposed operations. A description of the nature of the proposed commercial cannabis activity and its day-to-day operations, including product types, average or expected sales amounts by product type and average or expected amount of cannabis storage and average or expected amounts of all anticipated hazardous materials. Description should also include details on how the overall business plan will comply with the local regulatory ordinance and how the Proposer(s) intends to facilitate communications with the City.
d. **Compliance with State, Regional & Local Regulations.** Proposer(s) will list all licenses or permits needed in order to operate and detail how the operation will comply with those regulations.

e. **Additional identifying information** for proposed Owners and all employees. The Proposer(s) shall submit for each commercial cannabis owner, as well as for each employee, specific personal information, including:

- Names
- Birthdates
- Addresses
- Social Security numbers
- Complete criminal history
- Relevant work history

Electronic fingerprint images and related information as required by the Chief of Police for the purpose of obtaining information as to the existence and content of a record of State or Federal convictions and arrests must also be provided. **Mandatory criminal background checks will be conducted using this information.**

f. **Security Plan.** A description and documentation of how the Proposer(s) will secure the business and premises at all times as is required under [Novato Municipal Code section 8-11.27](#).
g. Disclosure of litigation and legal proceedings. A description of any litigation in which the Proposer(s) and/or principals have been involved within the 10 years immediately preceding the date of the Proposal and a statement of whether any authorization allowing the business currently operated by the Proposer(s) or the State license authorizing the operation of such business has been revoked or suspended within the 10 years immediately preceding the date of the Proposal.

h. Emissions, Oder Control and Ventilation. A description (with plans, if available) of how facility will provide a sufficient odor absorbing ventilation and exhaust systems so that odor generated inside the facility is not detected outside the facility, anywhere on adjacent property or in public right-of-way, or within any other unit located within the same building as the cannabis facility is located. All commercial cannabis businesses must install a ventilation system that adequately controls for odor, humidity and mold.

i. Wastewater. The applicant shall demonstrate to the satisfaction of the Novato Sanitary District that sufficient wastewater capacity exists for the proposed use. To the extent the proposed use will result in agricultural or industrial discharges to the District’s wastewater system, the applicant shall provide a plan for meeting all federal, state, and local requirements for such discharges.
Water Supply. If proposed use will occupy an existing building, applicant shall demonstrate to the satisfaction of the North Marin Water District and the Novato Building Official that water usage is efficient and will not exceed that of the building’s historical entitlement and existing utility infrastructure without additional review and prior approval by the City and North Marin Water District.

If proposed use will occupy a newly constructed building, the proposed use and construction design shall include all necessary devices and processes to ensure water usage is efficient and adequate supply is available for the zone in which it is proposed.

Compliance with County Health Officials. Cannabis manufacturers, dispensaries, and delivery operations shall be subject to permit requirements and regulations, including inspections, established by the Marin County Departments of Environmental Health and Health & Human Services. All such permit requirements and regulations shall be interpreted to implement the purpose and intent of Novato Municipal Code Chapter 19, and shall not prohibit or unreasonably restrict any commercial cannabis use allowed under that Chapter.

The City Manager may eliminate this requirement after the California Department of Public Health, or applicable state agency, establishes regulations related to cannabis product safety.
Pro Forma. Three years of pro forma estimates for operation, including a discussion of the business assumptions used to develop the estimates. Example assumptions include revenue, customer volume, visits and product costs, debt service, reserves, compensation of employees, net

Startup Cost and Evidence of Sufficient Capitalization. An estimate of startup cost sufficient to, at a minimum, fund the business through the first three months of its operation. Startup cost shall include:

- Rents
- Insurance
- Fees
- Construction
- Escrow costs if acquiring property
- Tenant improvements
- Equipment and software purchases

Evidence of sufficient capital may be provided in the form of bank statements, letters of credit, and proof of loan agreements.

Community Benefit. A description of the benefits that the commercial cannabis business will provide to the local community, such as employment for residents of the City, community contributions and/or economic incentives to the City. Any community benefits that a business agrees to provide will be incorporated into the terms and conditions under which the business will operate with the City’s approval, if and when the Conditional Certificate is awarded.
Required Proposal Content (cont.)

Fees. An Administrative Review Fee Deposit as adopted by Council resolution shall be submitted to the City along with the Proposal to be used to cover the cost of all needed staff time, consultant and legal costs and other resources utilized in vetting the Proposal. The Proposer(s) shall also be responsible for reimbursing the City for any staff time and City resources, in excess of the deposit, if needed. If any monies are not expended, they shall be refunded. Proposer(s) shall be required to execute a cost recovery agreement with the City as a condition to submitting a Proposal.

Additional information. The Proposal may also be required to include additional information and/or documents pursuant to regulations promulgated to implement and enforce the provisions of Resolution No. 2019-069.

Description of Proposed Site. The site address, description of the premises, name and address of the property owner(s) where the commercial cannabis business is proposed to be located, as well as a site plan and floor plan(s) of the proposed commercial cannabis business and evidence that the Proposer has the right to use the premises for the purpose of the applied-for cannabis business.
Consideration of Finalists

The City Council will hold a duly noticed public hearing to consider awarding Conditional Certificates to one or more Finalists. The award of Conditional Certificates shall be left to the sole discretion of the City Council.

The City Council’s award of each Conditional Certificate will be memorialized in written decisions supporting each award and identifying any additional conditions and/or agreements required by the City Council. The Council may award Conditional Certificates for each category of commercial business identified in Novato Municipal Code Section 8-11.9 in an amount no greater than the numbers assigned.

The City Council reserves the right to reject any or all Proposals and reserves the right to request and obtain additional information from any Proposer, should the City Council find such actions necessary in order for the Council to make an informed decision or otherwise act in the best interests of the health, safety and/or welfare of the City.

At any time prior to a Commercial Cannabis Business Permit being issued to any Proposer, the City Council may modify, postpone or cancel (i) any requirement applicable to any Proposer, or (ii) the entire program without any liability, obligation or commitment to any Proposer, party, firm or organization. All Proposers assume the risk that all or any part of the program, or any particular category of permit, may be cancelled or eliminated at any time prior to the Proposer being issued a Commercial Cannabis Business Permit.
Available. A copy of this RFP are available for download from the City’s Cannabis Regulations page on our website at www.novato.org.

Affirmative Action. The City affirmatively ensures that minority or women business enterprises will be afforded full opportunity to submit proposals in response to this notice and will not be discriminated against on the basis of race, religions creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.

Right to Reject. The City reserves the right to reject any and all Proposals for failure to meet the requirements contained herein, to waive any irregularities.

Delivery of Proposals. It is the Proposer’s responsibility alone to ensure that the proposal is received by the City of Novato prior to the date and hours of the deadline. Any proposals received after that hour and date shall be returned unopened. The delivery package shall be clearly marked with the name indicated on the last page of this RFP and clearly marked with the following, “Commercial Cannabis Proposal.”

Interpretation of the RFP. If the Proposer is in doubt as to the meaning of any part of this RFP, they must submit a written request (email is acceptable) for interpretation or correction direct to the person named at the end of this RFP, no less than three business days prior to the submittal deadline.

Authorization. The proposal must include a cover letter with the type of Commercial Cannabis business being proposed, the specific types of State licenses that will be necessary to operate, the proposed location of the business and must be signed by a member of the ownership team identified in the Proposal.
Request for Proposals Process & Information

**Ranking of Proposals.** The criteria that will be used to rank applications is attached to this RFP.

**Proposed Schedule.** A timetable for the selection process is summarized below. Note that these target dates are subject to change by the City.

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<th>Key Activity</th>
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<td>RFP Release</td>
<td>October 9, 2020</td>
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<tr>
<td>Deadline for Submission of Proposals</td>
<td>November 9, 2020</td>
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<tr>
<td>Evaluation by Proposal Review Committee (PRC)</td>
<td>November 10 - 20, 2020</td>
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<td>Interviews by PRC if Necessary</td>
<td>November 23, 2020</td>
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<td>Selection of Finalists by City Council</td>
<td>December 8, 2020</td>
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<tr>
<td>Notification of Award of Conditional Certificate (CC)</td>
<td>December 10, 2020</td>
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<tr>
<td>Complete all Necessary Land Use and Permitting Actions</td>
<td>Up to 2 Years from Award of CC</td>
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<tr>
<td>Complete all Necessary Requirements of Licensing or Community Benefit Agreement</td>
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<tr>
<td>Award of Commercial Cannabis Business Permit</td>
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**General Conditions:** The issuance of this RFP constitutes only an invitation to present responses. The City reserves the right, at its sole discretion, to determine whether or not any aspect of the response satisfactorily meets the criteria established in the RFP and regulatory documents. The City reserves the right to seek additional information and/or clarification from the Proposer, the right to confer with any Proposer submitting a response and the right to reject any and all responses with or without cause. In the event that the RFP is withdrawn by the City for any reason, the City shall have no liability to any respondent for any costs or expense incurred with the preparation of this RFP, however, the City will refund the application fee if the RFP is withdrawn.
Submission Instructions

Submit eight (8) hard copies in three ring binders plus one (1) electronic copy on a thumb drive of the complete proposal package, together with an application review payment in the amount of $2,615, either by mail or delivery to:

Vicki Parker
Community & Economic Development Director
vparker@novato.org
City of Novato
922 Machin Avenue
Novato, CA  94945

*Proposals must be received no later than 5:00 pm, Monday, November 9, 2020.*

Proposals delivered directly to the City of Novato shall be delivered to the Main Lobby at 922 Machin Avenue, Monday through Thursday between the hours of 9:00 am—5:00 pm. Current social distancing protocols in effect on the date of delivery will be enforced and are subject to change between the publishing of this Request for Proposals and the delivery date.

Attachments

1. Commercial Cannabis Business Operational Requirements
2. Commercial Cannabis Proposal Ranking Sheet
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Security Plans must include all of the following:

1. **Alarm System** (perimeter, fire and all other). System shall be professionally installed, maintained by a security company licensed by the State of California Bureau of Security and Investigative Services.

2. **Remote monitoring** of alarm systems by licensed security professionals.

3. **Perimeter lighting systems** (including motion sensors) for after-hours security.

4. **Perimeter security and lighting** as approved by the Police Chief and Community Development Director or designee.

5. **Prevention of individuals from remaining on the premises** of the commercial cannabis business if they are no longer engaging in an activity directly related to the permitted operations of the commercial cannabis business.

6. **Establishing limited access areas** accessible only to authorized commercial cannabis business personnel.

7. **Secured Storage.** Except for live growing plants which are being cultivated at a cultivation operation, all cannabis and cannabis products shall be stored in a secured and lacked vault or vault equivalent. All safes and vaults shall be compliant with Underwriter Laboratories burglar-resistant and fire-resistant standards. All cannabis and cannabis products, including live plants that are being cultivated, shall be kept in a manner as to prevent diversion, theft and loss.
Installing 24-hour security surveillance cameras of at least HD-quality to monitor all entrances and exits to an from the premises, all interior spaces within the commercial cannabis business which are open and accessible to the public, all interior spaces where cannabis, cash or currency is being stored for any period of time on a regular basis and all interior spaces where diversion of cannabis could reasonably occur.

All cameras shall record in color. All exterior cameras shall be in weather-proof enclosures, shall be located so as to minimize the possibility of vandalism, and shall have the capability to automatically switch to black and white in low light conditions.

The commercial cannabis business shall be responsible for ensuring that the security surveillance camera’s footage is remotely accessible by the City Manager or his/her designee(s), and that it is compatible with the City’s software and hardware.

Video recordings shall be maintained for a minimum of 90 days and shall be made available to the City Manager or his/her designee(s) upon request.

Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial cannabis business and shall be capable of enlargement via projection or other means.

Internet Protocol address information shall be provided to the Novato Police Department by the commercial cannabis business, to facilitate remote monitoring of security cameras by the Department of its designee.

Sensors shall be installed to detect entry and exit from all secure areas and shall be monitored in real time by a security company licensed by the State of California Bureau of Security and Investigative Services.

Any bars installed on the windows or doors of the commercial cannabis business shall be installed only on the interior of the building.
Any security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the City Manager or his/her designee(s), with such approval not to be unreasonably withheld. Firearms may be carried by security personnel while they are on duty if authorized by the Chief of Police.

Power outages. Each commercial cannabis business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

Entrance areas are to be locked at all times and under the control of a designated responsible party that is either (a) an employee of the commercial cannabis business, or (b) a licensed security professional.

Accounting software. Each commercial cannabis business shall have an accounting software system in place to provide point of sale data as well as audit trails or both product and cash, where applicable.

Track and trace. Each commercial cannabis business shall demonstrate to the Chief of Police, City Manager or their designees, compliance with the State’s track and trace system for cannabis and cannabis products, as soon as it is operational.

Inventory, facility and employee protection. Each commercial cannabis business shall have a professionally installed video surveillance system, access control and intrusion alarm systems designed to protect inventory, facility and employees. Each business shall have network security protocols that are certified by Underwriters Laboratories.
Commercial Cannabis Business

SECURITY MEASURES

17. **Exterior vegetation** shall be planted, altered and maintained in a fashion that precludes its use as a hiding place for persons on the premises.

18. **Emergency access and emergency evacuation plans** that are in compliance with state and local fire safety standards.

DESIGNATED SECURITY REPRESENTATIVE

Each commercial cannabis business shall identify a designated security representative/liaison to the City, who shall be reasonably available to meet with the City Manager or his/her designee(s) regarding any security related measures or any operational issues.

The designated security representative/liaison shall, on behalf of the commercial cannabis business, annually maintain a copy of the current security plan on the premises of the business, to present to the City Manager or his/her designee upon request that meets that following requirements:

1. Confirms that a designated manager will be on during business hours and will be responsible for monitoring the behavior of employees.

2. Identifies all managers of the commercial cannabis business and their contact phone numbers.

3. Confirms that first aid supplies and operational fire extinguishers are located in the service areas and the manager’s office.

4. Confirms that burglar, fire and all other alarms are operational and monitored by a licensed security company 24 hours a day, 7 days a week, and provides contact information for each licenses security company.
DESIGNATED SECURITY REPRESENTATIVE (CONT.)

5. Identifies a sufficient number of licensed, interior and exterior security personnel who will monitor individuals inside and outside the commercial cannabis business, the parking lot, and any adjacent property under the business’ control.

6. Confirms that the licensed security personnel shall regularly monitor the parking lot and any adjacent property to ensure that these areas are: (i) free of individuals loitering or causing disturbances; (ii) are cleared of employees and their vehicles one-half hour after closing.

STORAGE AND TRANSPORTATION PLAN

As part of the application and permitting process, each commercial cannabis business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all cannabis, cannabis products, any hazardous materials that may be used by the business, and any currency.

INSPECTION/AUDIT

Commercial cannabis businesses shall cooperate with the City whenever the City Manager or his/her designee(s) makes a request, with or without prior notice, to inspect or audit the effectiveness of any security plan.
NOTIFICATION

A commercial cannabis business shall notify the City Manager or his/her designee(s) within 24 hours after discovering any of the following:

1. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the City Manager or his/her designee(s).

2. Diversion, theft, loss, or any criminal activity involving the commercial cannabis business or any agent or employee of the commercial cannabis business.

3. The loss or unauthorized alteration of records related to cannabis, customers or employee or agents of the commercial cannabis business.

4. Any other breach of security.

COMPLIANCE

Compliance with these requirements shall be verified by the City Manager or his/her designee prior to commencing business operations. The City Manager or his/her designee may supplement these security requirements once operations begin, subject to review by the City Manager is requested by the business owner.
Commercial Cannabis Business

GENERAL OPERATIONAL REQUIREMENTS

GENERAL REQUIREMENTS

a. Commercial cannabis business may operate only during the hours specified in the Commercial Cannabis Business Permit (CCBP) issued by the City. No person under the age of 21 shall operate, or be issued a permit for, a commercial cannabis business of any kind.

b. No cannabis or cannabis related products or graphics depicting cannabis products shall be visible from the exterior of any property issued a CCBP, or on any of the vehicles owned or used as part of the commercial cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.

c. Each commercial cannabis business shall have in place a point-of-sale or management Inventory tracking system to track and report on all aspects of the commercial cannabis business including, but not limited to, cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City.

The commercial cannabis business shall ensure that such information is compatible with the City’s record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review and any system selected must be approved and authorized by the City Manager or his/her designee(s) prior to being used by the permittee.

d. All cannabis and cannabis products sold, distributed or manufactured shall be cultivated, manufactured and transported by licensed facilities that maintain operation in full conformance with the State and local regulations.

e. Each commercial cannabis business shall provide the City Manager or his/her designee(s) with the name, telephone number (both land line and mobile, if available) of an on-site employee or owner to whom emergency notice can be provided at any hour of the day.
SIGNAGE AND NOTICES

1. Business identification signage for a commercial cannabis business shall conform to the requirements of the City of Novato ordinance, including, but not limited to, seeking the issuance of a City sign permit.

2. No signs placed on the premises of a commercial cannabis business shall obstruct any entrance or exit to the building or any window.

3. Each entrance to a commercial cannabis business shall be visibly posted with a clear and legible notice indicating that smoking, ingesting or otherwise consuming cannabis on the premises or in the areas adjacent to the commercial cannabis business is prohibited.

4. Business identification signage shall be limited to that needed for identification only and shall not contain any logos or information that identifies, advertises or lists the services or the product offered. No commercial cannabis business shall advertise by having a person holding a sign and advertising the business to passerby, whether such person is on the premises of the commercial cannabis business or elsewhere, including, by not limited to, the public right-of-way.

5. Signage shall not depict any image of cannabis or cannabis products. No banners, flags, billboards or other prohibited signs may be used at any time.

6. In accordance with state law and regulations or as stipulated in the City of Novato regulatory permit, holders of a Commercial Cannabis Business Permit shall agree that, as an express and ongoing condition of permit issuance and subsequent renewal, the holder of the permit shall be prohibited from advertising any commercial cannabis business located in the City of Novato utilizing:

   - Billboards (fixed or mobile)
   - Bus shelter
   - Placard

   - Aircraft
   - Any other similar form of advertising

This is not intended to place limitations on the ability of a commercial cannabis business to advertise in other legally authorized forms including on the internet, in magazines or in other similar ways.
MINORS

Persons under the age of 21 years old shall not be allowed on the premises of a commercial cannabis business and shall not be allowed to serve as a driver for a mobile delivery service. It is unlawful and a violation of City regulations for any person to employ any person at a commercial cannabis business who is not at least 21 years of age.

The entrance to the commercial cannabis business shall be clearly and legibly posted with a notice that no person under the age of 21 years of age is permitted to enter upon the premises of the commercial cannabis business.

ODOR CONTROL

Odor control devices and techniques must be incorporated in all commercial cannabis businesses to ensure that odors from cannabis are not detectable off-site.

Commercial cannabis businesses must provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the commercial cannabis business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public-right-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. As such, commercial cannabis business must install and maintain the following equipment, or other equipment which the City Manager or his/her designee(s) determine is a more effective method or technology:

1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally.

2. An air system that creates negative air pressure between the commercial cannabis business’s interior and exterior, so that the odors generated inside the commercial cannabis business are not detectable on the outside of the commercial cannabis business.
HAZARDOUS MATERIALS

To the extent that the applicant intends to use any hazardous materials in its operations, the applicant must provide evidence of approval from Novato Fire Protection District and Marin County CUPA as required, identifying all hazardous materials proposed for storage, use or handling on the premises, including compressed and cryogenic gases such as carbon dioxide, nitrogen and others, and confirming a plan for safe, secure storage.

“Hazardous materials” includes any hazardous substance regulated by any federal, state or local laws or regulations intended to protect human health or the environment from exposure to such substances.

DISPLAY OF PERMIT & BUSINESS LICENSE

The original copy of the commercial cannabis business permit issued by the City and the City-issued business license shall be posted inside the commercial cannabis business in a location readily-visible to the public.

LOITERING

The owner and/or operator of a commercial cannabis business shall prohibit loitering by persons outside the facility both on the premises and within 50 feet of the premises. The cannabis business must notify the Novato Police Department if anyone continues to loiter around the building or premises after all reasonable action has been taken to remove the individual(s) and the action has failed to do so in a timely manner.

PERMITS & OTHER APPROVALS

Prior to the establishment of any commercial cannabis business or the operation of any such business, the person intending to establish a commercial cannabis business must first obtain all applicable planning, zoning, building and other applicable permits from the relevant governmental agency which be applicable to the zoning district in which the commercial cannabis business intends to establish and operate.

TRAINING STANDARDS

Each commercial cannabis operator must establish minimum training standards for all employees. The City Manager shall have the discretion to require other training for the business operations should the City identify deficiencies or non-compliance issues with City or State requirements.
A Non-Store Front Retailer License Owner and/or Operator shall only sell cannabis or cannabis products to a natural person 21 years of age or older, or a natural person 18 years of age or older who possesses a physician’s recommendation or cannabis card issued pursuant to Health and Safety Code Section 1136.71 for cannabis medical use only.

Non-Store Front Retailer (Delivery) License Owners and Operators are required to verify the age and documentation, if necessary, of each customer. If customer is under the age of 21 years old, the Owner/Operator must verify that the potential customer has a valid doctor’s recommendation or cannabis card issued pursuant to Health and Safety Code Section 11362.71. Doctor recommendations are not to be obtained or provided at the retail location.

All Retailers which conduct deliveries into or within the City of Novato shall be required to obtain a permit from the City of Novato in order to conduct retail sales regardless if they are located in the City or another jurisdiction. Out of City retailers shall obtain permits in accordance with Novato Municipal Code section 8-11.30 through 8-11.32 and operate in accordance with Section 8-11.32 and all other applicable sections of chapter 8-11.

Operating hours of the Non-Store Front Retailer shall be limited to the hours of 8:00am through 10:00pm, seven days a week.
Prior to commencing operations, a Non-Store Front Retailer must provide the following information to the City:

a. Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver cannabis or cannabis products.

b. The year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for any and all vehicles that will be used to deliver cannabis goods.

c. Proof of insurance as required in Novato Municipal Code Section 8-11.25 for any and all vehicles being used to deliver cannabis goods.

d. The licensee shall provide the City with the information required in writing for any new vehicle that will be used to deliver cannabis goods prior to using the vehicle to deliver cannabis goods.

e. The licensee shall provide the city with any changes in writing within 30 calendar days.
Testing Labs shall be required to conduct all testing in a manner pursuant to Business and Professions Code Section 26100 and shall be subject to state and local law. Each Testing Lab shall be subject to additional regulations as determined from time to time as City regulations and State laws and regulations develop and change.

Testing labs shall conduct all testing in a manner consistent with general requirements for competence of testing and calibrations activities, including sampling using verified methods.

All cannabis testing laboratories performing testing shall obtain and maintain ISO/IEC 17025 accreditation as required by the Bureau of Cannabis Control.

Testing labs shall destroy any harvest batch whose testing sample indicates noncompliance with health and safety standards required by the bureau unless remedial measures can bring the cannabis or cannabis products into compliance with quality standards as specified by law and implemented by the bureau.

Each operator shall ensure that a testing laboratory employee takes the sample of cannabis or cannabis products from the distributor’s premises for testing required by state law and that the testing laboratory employee transports the sample to the testing laboratory.

Except as provided by state law, a testing laboratory shall not acquire or receive cannabis or cannabis products except from a licensee in accordance with state law, and shall not distribute, sell or dispense cannabis or cannabis products from the licensed premises from which the cannabis or cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

A testing laboratory may receive and test samples of cannabis or cannabis products from a qualified patient or primary caregiver only if the qualified patient or primary caregiver presents the qualified patient’s valid physician’s recommendation for cannabis for medicinal purpose. A testing lab shall not certify samples from a qualified patient or primary caregiver for resale or transfer to another party or licensee.

All tests performed by a testing laboratory for a qualified patient or primary caregiver shall be recorded with the name of the qualified patient or primary caregiver and the amount of the cannabis or cannabis related products received.
Edibles and other Cannabis product; Sale or Distribution of Edible and other Cannabis Products

a. Only manufacturers possessing a State License Type 6, 7, N or P are permitted to establish and operate a manufacturing site in the City.

b. Facilities may use non-volatile processes such as heat, screens, presses, steam distillation, ice water, ethanol, and other methods without employing solvents or gases to creating keef, hashish, bubble hash or infused dairy butter, or oils or fats derived from natural sources.

c. Facilities may use volatile solvents allowed under State licensing requirements only after demonstrating compliance or the ability to comply with all Federal, State and Local requirements for hazardous materials, use, storage and handling.
Distribution activities are allowed as both a stand-alone and as an ancillary activity to another locally permitted commercial cannabis activity such as manufacturing or cultivation. All Distribution activities require a license from the State which allows a licensee to transport cannabis goods between licenses, to arrange for testing of cannabis goods, and to conduct the quality assurance review of cannabis goods to ensure compliance with all packaging and labeling requirements. A licensed distributor may only distribute cannabis goods, cannabis accessories and licensees' branded merchandise or promotional materials.

A distributor shall not distribute non-cannabis good or non-cannabis accessories at a licensed premise. For the purpose of this section, non-cannabis goods are any goods that do not meet the definition of cannabis goods as defined in Section 5000(c) of the California Code of Regulations.

After taking physical possession of a cannabis goods batch, the distributor shall contact a testing laboratory and arrange for a laboratory employee to come to the distributor’s licensed premises to select a representative sample for laboratory testing.

A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor’s premises.

The distributor shall ensure that the batch size from which the sample is taken meets the requirements of state law, specifically the testing provisions with the California Code of Regulations.

A distributor or an employee of the distributor shall be physically present to observe the laboratory employee obtain the sample of cannabis goods for testing and shall ensure that the increments are taken from throughout the batch. The sampling shall be video-recorded, and the recording kept available to the state and local authorities for a minimum of 180 days, pursuant to Section 5305 of the California Code of Regulations.

A distributor shall not transport cannabis or cannabis products to a licensed retail facility until and unless it has verified that the cannabis or cannabis products have been tested and certified by a testing lab as being in compliance with state health and safety requirements pursuant to Sections 5705, 5710 and 6714 of the California Code of Regulations.
COMMERCIAL CULTIVATION REQUIREMENTS

This section applies to all commercial cannabis cultivation uses and activities, including but not limited to indoor cultivation environments and associated drying, curing, grading and trimming facilities. Cannabis cultivation does not include operations that manufacture cannabis products such as oils, tincture or edibles, which are classified separately.

Outdoor or mixed light cultivation is prohibited. The cultivation of cannabis for commercial use may only occur within a fully enclosed structure which can be secured against entry.

All cultivation activities shall at all times comply with the maximum canopy sizes of their State and local licenses and permits.

Structures and areas where cannabis is processed, dried, aged, stored, trimmed, packaged or weighed, and areas where equipment is stored and washed, shall be limited to the on-site cultivation use only.

Cultivation activities shall utilize measures to reduce water use to the maximum extent practical. Operators shall ensure practices are followed which eliminate overwatering or runoff, or other water waste.

The best lighting technology resulting in lowered energy use which is readily available to this industry shall be used for artificial lighting of the canopy.

Cultivation uses that provide access to the public, including but not limited to employees, vendors, contractors or business partners shall meet Novato Municipal Code requirements for accessibility, including accessible parking, accessible path of travel, restrooms and washing facilities.
MICROBUSINESS REQUIREMENTS

a. Storefront retail activities as a component of a microbusiness is prohibited.

b. All activities of a microbusiness shall comply with the requirements of individual constituent activities as required in Sections 300 through 900 of Resolution 2019-069.
Commercial Cannabis Business Permit

Proposal Rating Sheet

<table>
<thead>
<tr>
<th>Points Key</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Not Complete</td>
</tr>
<tr>
<td>1-3</td>
<td>Below Average</td>
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<tr>
<td>4-6</td>
<td>Average</td>
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<tr>
<td>6-8</td>
<td>Above Average</td>
</tr>
<tr>
<td>9-10</td>
<td>Exceptional</td>
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<table>
<thead>
<tr>
<th>Business Name:</th>
<th>License Type:</th>
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<table>
<thead>
<tr>
<th>Rater Name:</th>
<th>Date:</th>
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<td></td>
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</table>

A maximum of ten points may be awarded in each category.

<table>
<thead>
<tr>
<th>Description of Proposed Operations</th>
<th>Points</th>
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</thead>
<tbody>
<tr>
<td>Proposer(s) provides a description of the nature of the proposed commercial cannabis activity and its day-to-day operations, including:</td>
<td></td>
</tr>
<tr>
<td>• Product types</td>
<td></td>
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<tr>
<td>• Average or expected amount of cannabis storage</td>
<td></td>
</tr>
<tr>
<td>• Average or expected amounts of all anticipated hazardous materials.</td>
<td></td>
</tr>
<tr>
<td>• Average or expected sales amounts by product type</td>
<td></td>
</tr>
<tr>
<td>Description should also include details on how the overall business plan will comply with the local regulatory ordinance and how the Proposer (s) intends to facilitate communications with the City.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance with State, Regional &amp; Local Regulations</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposer(s) provides a description of the specific State License(s) or permits they plan to obtain; applicant describes how the business will meet the State licensing requirements as well as applicable regulations from other State, regional and local agencies such as Regional Water Quality Control Board and County Environmental Health.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Security Plan</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposer(s) provides a description and documentation of how the Proposer(s) will secure the business and premises at all times as is required under Novato Municipal Code section 8-11.27.</td>
<td></td>
</tr>
</tbody>
</table>
4. **Emissions, Oder Control and Ventilation**

Proposer(s) provides a description (with plans, if available) of how facility will provide a sufficient odor absorbing ventilation and exhaust systems so that odor generated inside the facility is not detected outside the facility, anywhere on adjacent property or in public right-of-way, or within any other unit located within the same building as the cannabis facility is located.

All commercial cannabis businesses must install a ventilation system that adequately controls for odor, humidity and mold.

5. **Water Supply**

If proposed use will occupy an existing building, Proposer(s) demonstrates that water usage is efficient and will not exceed that of the building’s historical entitlement and existing utility infrastructure without additional review and prior approval by the City and North Marin Water District.

If proposed use will occupy a newly constructed building, the proposed use and construction design includes all necessary devices and processes to ensure water usage is efficient and adequate supply is available for the zone in which it is proposed.

6. **Wastewater**

The Proposer(s) demonstrates that sufficient wastewater capacity exists for the proposed use. To the extent the proposed use will result in agricultural or industrial discharges to the Novato Sanitary District’s wastewater system, the applicant provides a plan for meeting all federal, state, and local requirements for such discharges.

7. **Pro Forma**

The Proposer(s) provides three years of pro forma estimates for operation, including a discussion of the business assumptions used to develop the estimates.

Example assumptions include revenue, customer volume, visits and product costs, debt service, reserves, compensation of employees, net income and profit, equipment costs, utility costs, and other operation and maintenance costs.
8. **Startup Cost and Evidence of Sufficient Capitalization**

Proposer(s) provides an estimate of startup cost sufficient to, at a minimum, fund the business through the first three months of its operation and includes (1) rent, (2) insurance, (3) fees, (4) construction, (5) escrow costs if acquiring property, (6) tenant improvements, (7) equipment and software purchases.

Evidence of sufficient capital may be provided in the form of bank statements, letters of credit, and proof of loan agreements.

9. **Community Benefit**

Proposer(s) provides a description of the benefits that the commercial cannabis business will provide to the local community, such as employment for residents, community contributions and/or economic incentives to the City.

10. **Description of Proposed Site**

Proposer(s) provides the site address, description of the premises, name and address of the property owner(s) where the commercial cannabis business is proposed to be located, as well as a site plan and floor plan(s) of the proposed commercial cannabis business and evidence that the Proposer has the right to use the premises for the purpose of the applied-for cannabis business.

**Local Business Bonus**: An additional 5 points will be awarded to Proposer(s) who are Novato residents.

In order to qualify for this bonus, the Proposer, if a single individual, must be a current resident of Novato and must have resided within the City for the consecutive 12 months immediately preceding the date the Proposer’s Proposal is submitted to the City; and, if an organization, at least 50% of the ownership of or controlling interest in, the organization must be held or exercised by an individual or individuals who are current residents of Novato and must have resided within the City for the consecutive 12 months immediately preceding the date the Proposer’s Proposal is submitted to the City.

“Organization” means a firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for profit entity, and includes the plural as well as the singular number.
Recording Requested By:
City of Novato

When Recorded Return to:
City Clerk
City of Novato
922 Machin Avenue
Novato, CA  94945

______________________________________________________________
Space Above For Recorder’s Use
[Recording fee exempt per Gov’t Code section 6103]

APN: __________________________

PUBLIC BENEFIT AND INDEMNIFICATION AGREEMENT BETWEEN
THE CITY OF NOVATO AND __________________________

PUBLIC BENEFIT AND INDEMNIFICATION AGREEMENT
THIS PUBLIC BENEFIT AND INDEMNIFICATION AGREEMENT (this “Agreement”) is made and entered into this _______________ (___) day of __________________, 2020 by and between the CITY OF NOVATO, a municipal corporation of the State of California (“City”), and ________________________ a ___________________ (“Applicant”).

City and ___________ may be referred to herein individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. On ____________, the Novato City Council adopted Ordinance No. ________ which permits and regulates the establishment and operation of cannabis businesses in the City. Said Ordinance also created a process whereby persons (“Proposers”) desirous of opening and operating cannabis businesses may apply for the approvals and entitlements necessary to the establishment and operation of cannabis businesses in the City and have those Proposals acted upon by the City pursuant to procedures specified in the Ordinance.

B. Pursuant to Ordinance No_______, the City Manager and/or his designee has adopted procedures and regulations implementing said Ordinance and based thereon has issued a Request for Proposals dated ________, inviting Proposers to submit Proposals to the City for review and action. The Applicant timely submitted a Proposal pursuant to and in response to said Request for Proposals in which the Applicant requested permission from the City to establish and operate a ______________________ at ____________________, Novato, CA (“Site” or “Subject Property”). The Applicant’s Proposal was vetted by the Proposal Review Committee (PRC), which recommended to the City Council that the City Council grant the Applicant a Conditional Certificate, subject to certain terms and conditions. By Resolution No. ____________, the City Council awarded ___________a Conditional Certificate authorizing it to seek issuance of a CCBP (defined below), subject to certain conditions. ___________’s proposed ____________, as conditioned by City Council Resolution No. ____________, is hereinafter referred to as “_____________”

C. Under said Ordinance, and specifically, Novato Municipal Code (“NMC”) §______________, ____________was required to include in its Proposal a description of the community benefits it was willing to offer to the City and its citizens for the opportunity to open and operate a ______________ in the City. In addition, “any community benefits that a commercial cannabis business agrees to provide shall be incorporated into the terms and conditions under which the commercial cannabis business will operate with the City’s approval, if and when the Conditional Certificate is awarded. Said agreement may take the form of a written agreement and/or conditions of approval. Such terms and conditions shall be in addition to the requirements of this chapter.” Id.

D. ______________’s Proposal included a description of such community benefits and this Agreement is being entered into to memorialize that commitment. This Agreement and its terms and conditions are incorporated into the conditions of approval made part of the
Conditional Certificate granted to the Applicant. Additionally, this Agreement and its terms and conditions shall be incorporated into any Commercial Cannabis Business Permit issued to the Applicant, and the Applicant’s breaches of this Agreement shall be deemed violations of said Conditional Certificate and the Commercial Cannabis Business Permit (“CCBP”).

E. Additionally, pursuant to NMC §________, and as a condition precedent to issuance of a CCBP to the Applicant, the Applicant is required to enter into an agreement in a form approved by the City Attorney which indemnifies the City for certain liabilities and imposes insurance obligations on the Applicant. In part, this Agreement satisfies the requirements specified in Section ________.

F. The ____________ is an allowed use in the _______ zoning district, and the ____________, as proposed and conditioned in the City Council’s Resolution No. _____ awarding _______ a Conditional Certificate to operate a ___________ at the Site, complies with Ordinance No. _____ and the regulations promulgated thereunder.

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

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Exhibits. The following “Exhibits” are attached to and incorporated into this Agreement:

Exhibit A. ____________’s Proposal
Exhibit B. Resolution awarding Conditional Certificate, with Conditions of Approval
Exhibit C. Notice of Non-Performance Penalty
Exhibit D. Notice of Termination
Exhibit E. Assignment and Assumption Agreement

Section 1.2. Definitions. In this Agreement, unless the context otherwise requires, capitalized terms have the same meaning as set forth in Ordinance No. 14-21.

Section 1.3. ____________ is a Private Undertaking. The Parties agree that Applicant’s ____________ for which the Conditional Certificate was issued and for which this Agreement is being entered is a private business and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent of the ____________.
Section 1.4. *Effective Date of Agreement*. This Agreement shall become effective upon the date that a CCBP for the said __________ is issued to the Applicant (the “Effective Date”).

Section 1.5. *Amendment of Agreement*. Except as otherwise provided herein, this Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council has expressly authorized the City Manager to approve Minor Amendments to this Agreement (i.e., change of notice address), after notification of the City Council. Major Amendments to this Agreement shall be subject to the approval of the City Council. After consulting with the City Attorney, the City Manager shall have sole discretion to determine if a proposed amendment is Minor or Major. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.6. *Recordation of Agreement*. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days after the Effective Date.

Section 1.7. *Condition of Approval*. This Agreement and its terms and conditions are deemed a condition of approval, applicable to the Conditional Certificate, CCBP and any other entitlement, license and/or permit granted or issued to Applicant pertinent to the __________ and shall be enforceable as such a condition of approval. Furthermore, Applicant’s compliance with, implementation of and the fulfillment of all the promises, obligations, conditions and covenants made by Applicant in its Proposal (*Exhibit A*) and/or imposed upon Applicant under the Resolution awarding Conditional Certificate, with Conditions of Approval (*Exhibit B*) shall be deemed obligations of __________ under this Agreement. And __________’s failure to comply with, implement or fulfill same shall be deemed a breach under this Agreement.

ARTICLE 2

OPERATING CONDITIONS

Section 2.1. *Compliance with Operating Conditions*. Applicant shall operate the __________ on the Site pursuant to the terms and conditions set forth in the Operating Conditions as specified in NMC Chapter ________, *Exhibit A* and *Exhibit B* (and if there is a conflict between any of these documents, the more stringent or burdensome condition or provision shall apply). Applicant agrees that failure to comply with the Operating Conditions shall constitute a material default under this Agreement and shall be independent grounds for revocation of the CCBP and for termination of this Agreement.

ARTICLE 3

PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 3.1. *Additional Processing Fees and Charges*. Applicant shall pay to City (i) those processing, inspection, plan checking, enforcement and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any...
post-Effective Date increases in such fees and charges) and (ii) all costs and expenses incurred by City (including recording fees, publishing fees, noticing costs, staff time (at the fully burdened rate), consultant and attorney fees and costs) for processing applications (for other than this Agreement and its related Proposal, Conditional Certificate and CCBP) and requests for building permits, inspections, other permits, approvals and actions, estoppel certificates and for monitoring compliance with or enforcing any permits or licenses issued or approvals granted to the Applicant, conducting any reviews required under Ordinance No. ______ or under the conditions of approval imposed by the City on the granting of a Conditional Certificate or CCBP or any other approval pertinent to ____________’s ____________, and for conducting audits or monitoring the performance of any conditions (each a “Ministerial Fee” and collectively, the “Ministerial Fees”).

Section 3.1.1. New Taxes. Any subsequently enacted city-wide taxes applicable to the ____________ shall be a liability owed and payable by the Applicant provided that: (1) the application of such taxes to the Site is prospective; and (2) the amount paid by Applicant as and for the Public Benefit Fee (defined below) shall operate as a credit against the Applicant’s liability for such taxes.

Section 3.1.2. Assessments. Nothing herein shall be construed to relieve the Site from assessments levied against it by the City pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Site.

Section 3.1.3. Vote on Future Assessments and Fees. In the event that any assessment, fee or charge which is applicable to the Site is subject to Article XIIID of the Constitution and Applicant do not return its ballot, Applicant agrees, on behalf of itself and its successors, that the City may count Applicant’s ballot as affirmatively voting in favor of such assessment, fee or charge.

Section 3.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Applicant that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Applicant intends to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Applicant (the “Public Benefit”). In consideration of the foregoing and for the benefits and entitlements conferred upon the Applicants by virtue of a CCBP being granted to the Applicant, the Applicant shall make the contributions required by this Section (“Public Benefit Fee”). Unless agreed to in writing, approved by the City Council, Applicant expressly agrees that it shall pay the Public Benefit Fee as long as the ____________ remains in existence and/or Commercial Cannabis Activities are conducted on the Site. Such obligation shall survive the expiration of this Agreement.

(b) Applicant shall pay the City __% of the annual gross sales (“gross sales”) derived from and/or generated or earned as a result of the ____________’s operations, paid quarterly. Each said payment shall be paid such that the City receives and has in its possession the payment within fifteen (15) calendar days following the end of each quarter. For purposes of this Agreement, the quarters end on March 31, June 30, September 30 and December 31, of each year. Notwithstanding the foregoing to the contrary, in the event and at the time that the annual
gross sales derived from and/or generated or earned as a result of the __________’s operations equal ________ dollars ($________), the Public Benefit Fee shall increase to ___% of the annual gross sales derived from and/or generated or earned as a result of the __________’s operations. For purposes of this Section 3.2, annual sales shall be calculated based on a calendar year from January 1 through December 31. In addition, the ___% Public Benefit Fee shall be triggered at any time (“___% Trigger Date”) during the first calendar year during which the __________’s Commercial Cannabis Activities generate or earn $________, measured from January 1 to the date during that year when gross sales equal $________. And during that first year in which gross sales first equal $________, the ___% Public Benefit Fee shall apply to the gross sales generated or earned after the ___% Trigger Date. Moreover, once the ___% Public Benefit Fee is so triggered, it shall remain the percentage upon which the Public Benefit Fee shall be calculated for as long as the __________ is in existence and/or Commercial Cannabis Activities are conducted on the Site irrespective of the amount of gross sales derived from and/or generated or earned as a result of the Site’s Commercial Cannabis Activities.

(c) City shall receive quarterly reports, including California State Board of Equalization, California Department of Tax and Fee Administration and other tax reporting statements filed by Applicant, and will have the right to audit the __________. These reports shall be delivered to the City at the same time they are delivered to taxing authorities.

(d) Applicant shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee Administration, or either’s successor agency (the “State Taxing Authority”) for sales tax purposes showing the true and correct amount of gross revenue derived from the __________ during the applicable time period. Applicant shall provide a copy of the most recent such statement to City concurrently with the Public Benefit Fee amount.

Section 3.3 Reporting.

Applicant shall provide City with copies of any reports provided to a state cannabis licensing agency at the same time and contemporaneously with the report’s submission to the state agency. Any failure or refusal of Applicant to provide any statement or report to City, a State Taxing Authority, or any other state cannabis licensing authority as required within the time required, or to pay such sums due hereunder when the same are due and payable in accordance with the provisions of this Agreement, may constitute full and sufficient grounds for (i) the revocation or suspension of the Applicant’s CCBP and/or Business License and/or (ii) the termination of this Agreement.

Section 3.4 Records. Applicant shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code, the State Cannabis Regulations and as required under the Operating Conditions. All records required by this Section shall be maintained and made available for City’s examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee.
Section 3.5 Audit. Notwithstanding any other audit requirements specified in this Agreement, the Operating Conditions, the Conditional Certificate, the CCBP or state law, Applicant shall allow the City Manager or a designee unrestricted access to all books, records, facilities, activities, and all audio and video tapes pertaining to the operations of the __________, except for records that are protected from disclosure under HIPAA. Any information obtained by the City pursuant to this Section which constitutes patient records (not otherwise protected by HIPAA), reveals security measures or constitutes financial records pertinent to the operation of the __________ shall be deemed confidential in character and shall not be subject to public inspection except as necessary in connection with the enforcement of the provisions of this Agreement, the conditions of approval of the Conditional Certificate and/or CCBP or otherwise required by state law. In the event that the City receives a request under the California Public Records Act which requests access to records, books and/or tapes maintained by the City which pertain to the __________ and/or the financial condition of the __________, the City shall immediately provide a copy of said request to Applicant and confer with Applicant as to whether the requested records should be disclosed. If the Applicant determines that certain records should not be disclosed and the City acquiesces in the Applicant’s wishes, the Applicant shall indemnify and defend (with counsel reasonably acceptable to the City) the City from any and all damages, expenses, costs, and fees (including attorney’s fees incurred by the City and/or awarded against the City), claims and liabilities of any sort arising out of the City’s refusal to disclose the requested records.

Section 3.6 Penalty. Applicant acknowledges that to ensure proper compliance with the terms of the Agreement and any applicable laws, City must engage in costly compliance review, audits, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Applicant fails to make any payment when due as required by this Agreement, including but not limited to the Public Benefit amount, City may impose a “Non-Performance Penalty.” A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Applicant a “Notice of Non-Performance Penalty,” in the form attached hereto as Exhibit C. Payment of the Non-Performance Penalty and the full amount of the past due payment shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

Section 3.7 Interest on Unpaid Non-Performance Penalty. If Applicant fails to pay the Non-Performance Penalty and the amount of the past due payment within said fifteen (15) calendar days, then, in addition to the amount of the Non-Performance Penalty and the amount of the past due payment, Applicant shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the amount of the Non-Performance Penalty and the past due payment, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty until paid.

ARTICLE 4

APPLICANT’S WARRANTIES AND REPRESENTATIONS
Applicant and if there are more than one Applicant, and each of them, and each of their members, shareholders, owners, officers and directors represent and warrant:

(a) that as of the Effective Date of this Agreement Applicant and its members entering into this Agreement are all: (i) duly organized and validly existing under the laws of the State of California; (ii) qualified and authorized to do business in the State of California and have duly complied with all requirements pertaining thereto; and (iii) in good standing and have all necessary powers under the laws of the State of California to own or lease property and in all other respects enter into and perform the undertakings and obligations of this Agreement;

(b) that no approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by Applicant and its members, except as to the Authorized Licenses and as have been obtained;

(c) that the execution and delivery of this Agreement and the performance of the obligations of Applicant hereunder have been duly authorized by all necessary actions and approvals required under any articles or bylaws for the Applicant’s corporation;

(d) that this Agreement is lawful, fully compliant with all federal, state and local laws and regulations and a valid obligation of Applicant and its members enforceable in accordance with its terms. Applicant waives any and all claims that it may have which assert a contrary position;

(e) that nothing in the Site lease or in any related agreements, including but not limited to any agreements relating to the formation and management of Applicant, will interfere with or prevent the Applicant from entering into this Agreement or from fully complying with the terms and conditions of this Agreement;

(f) that the only “owner” – as that term is defined in Chapter 5.29 of the Novato Municipal Code, in applicable state law and/or in the regulations adopted by the California Bureau of Cannabis Control (e.g., 16 Cal. Code Regs. secs 5002, 5003, 5004) – of the ____________ is ____________ Health Corporation; and

(g) that at the time the CCBP is applied for and at the time it is issued, if it is issued, the only owner of the ____________ is and shall be ____________ Health Corporation.

ARTICLE 5
INSURANCE AND INDEMNITY

Section 5.1. Insurance. Applicant shall require all persons doing work on the ____________, including its contractors and subcontractors (collectively, “Awardee” for purposes of this Article
5 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) **General Liability Insurance.** Awardee shall maintain commercial general liability at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one (1) or more persons, property damage and personal injury with limits of not less than five million dollars ($5,000,000.00) on an occurrence, combined single limit basis. The commercial general liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, and shall specify that insurance coverage afforded to the City shall be primary. Said policy shall name the City, its officers, its elected and appointed boards, commissions, councils, agents, consultants, volunteers, representatives and employees as additional insureds (“Additional Insureds”) by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds and cover the Additional Insureds as respects (aa) liability arising out of activities performed by or on behalf of the Developer, (bb) products and completed operations of the Awardee, (cc) premises owned or used by the Awardee, and (dd) autos owned, leased, hired or borrowed by the Awardee.

(b) **Automotive Liability Insurance.** Awardee shall maintain business automobile liability insurance and comprehensive automobile liability insurance (owned, non-owned, hired) providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence, combined single limit basis for bodily injury, including death, of one (1) or more persons, property damage and personal injury with limits of not less than five million dollars ($5,000,000.00). Such insurance shall also: (i) name City, its elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds; (ii) be primary with respect to any insurance or self-insurance programs covering the Additional Insureds; (iii) contain standard separation of insured provisions.

(c) **Workers’ Compensation Insurance.** Awardee shall take out and maintain during the life of this Agreement, workers’ compensation insurance for all of Awardee’s employees employed at, for or on the ____________, and in the case any of the work is subcontracted, Awardee shall require any subcontractor similarly to provide workers’ compensation insurance for such subcontractor’s employees, unless such employees are covered by the protection afforded by Awardee. In case any class of employee engaged in work on or for the ____________ is not protected under any workers’ compensation law, Awardee shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Awardee hereby indemnifies City for any damage resulting from failure of Awardee, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers’ compensation insurance with statutory limits and employer’s liability insurance with limits of not less than One Million Dollars ($1,000,000) each accident shall be maintained. Worker’s compensation insurance shall be endorsed to waive all rights of the insurer to subrogation against the Additional Insureds.
Section 5.2. Other Insurance Requirements. Awardee shall do all of the following:

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

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

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

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the termination of this Agreement.

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

Section 5.3. Indemnity.

(a) Subject to Section 9.7, Awardee agrees to indemnify, defend (at Awardee’s sole cost and with counsel reasonably acceptable to the City), and hold City and the Additional Insureds, harmless from any and all claims, costs, damages, injuries, expenses (including without limitation any and all costs and expenses for attorneys, experts and litigation) and liability of any sort arising out of: (i) any actions or omissions by Awardee or Awardee’s contractors, subcontractors, agents, volunteers or employees in connection with the construction, improvement, or operation of the ___________; (ii) Awardee’s performance or non-performance under this Agreement, (iii) Awardee’s breaches of this Agreement, (iv) the City’s approval of this Agreement (except for any claims Awardee may have against the City for City’s breach of this Agreement), (v) the City’s compliance or non-compliance with the California Environmental Quality Act or any other law applicable to the approval, processing and implementation of the Proposal, Conditional Certificate, CCBP, ___________ and/or this Agreement, (vi) Applicant’s violation of any law, ordinance or regulation, whether or not there is concurrent or passive negligence on the part of the Additional Insureds, and regardless of the City’s approval of the CCBP and/or this Agreement, (vii) the City’s issuance of the CCBP, (viii) the City’s decision to approve the operation of the ___________, (ix) the process used by the City in making its decision, or (x) the alleged violation of any federal, state or local laws by the ___________ commercial cannabis business or any of its Owners, officers, employees or agents.
(b) Subject to Section 9.7, Awardee shall reimburse the City for all costs and expenses, including but not limited to, legal fees and costs and court costs, which the City incurs or may be required to pay (to third parties, for example) as a result of any legal challenge related to the City’s approval of the Proposal, Conditional Certificate and/or CCBP, or related to the City’s approval of a Commercial Cannabis Activity occurring at, on or from the Site. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed on Awardee hereunder; provided, however, that any fees and costs incurred by the City Attorney in participating in said defense shall be reimbursed to the City by Awardee.

(c) Awardee indemnifies the City for any liability, cost, expense, including attorney’s fees, incurred by the City in enforcing Sections 5.3 and/or 9.7. This Section 5.3 shall survive termination of this Agreement for any reason.

ARTICLE 6

MORTGAGEE PROTECTION

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof subsequent to the execution and recording of this Agreement; provided, however, that notwithstanding the foregoing, the City and __________ stipulate that this Agreement shall be automatically subordinated and junior to any lien of any deed of trust or mortgage (“Mortgage”) that may be subsequently executed and recorded on the Site and shall execute all documents reasonably required by the owner of the Site and/or its lender in furtherance thereof; provided further, however, that notwithstanding the foregoing, no such subordination and its cognate documents may, in any way, (i) alter, modify or amend any of the terms or conditions set forth in this Agreement and/or (ii) prevent or impede the performance of __________ or the City hereunder or make __________’s or the City’s performance hereunder more difficult. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and terminate upon the transfer of any interest in the Site or __________, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing.

ARTICLE 7

DEFAULT


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

(b) After expiration of the ten (10) calendar day period, if such default has not been
cured or is not in the process of being diligently cured in the manner set forth in the notice, or if
the breach cannot reasonably be cured within ten (10) calendar days, the Charging Party may, at
its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to
terminate this Agreement.

(c) Evidence of default may arise in the course of scheduled reviews of this
Agreement. If the Applicant determine that the City is in default following the completion of
scheduled review, Applicant may give written notice of termination of this Agreement,
specifying in the notice the alleged nature of the default and potential actions to cure said default
where appropriate. If the alleged default is not cured in ten (10) calendar days or within such
longer period specified in the notice or the City is not diligently pursuing a cure or if the breach
cannot reasonably be cured within the period or the City waives its right to cure such alleged
default, this Agreement may be terminated by the Applicant by giving written notice. If the City
determines the Applicant to be in default or to have otherwise failed to comply with this
Agreement in good faith, the City may modify or terminate this Agreement.

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

Section 7.2. Review.

(a) The City may, on or before the anniversary of the Effective Date, review the
extent of good faith, substantial compliance of Applicant with the terms of this Agreement. The
burden of proof by substantial evidence of compliance is upon the Applicant. City shall deposit
in the mail or fax to Applicant a copy of all staff reports and, to the extent practical, related
exhibits concerning this Agreement or the Applicant’s performance, at least seven (7) calendar
days prior to the public hearing at which time the City Council shall conduct said review.
Applicant shall be permitted an opportunity to be heard orally or in writing regarding its
performance under this Agreement before the City Council.

(b) City does not waive any claim of defect or breach in performance by Applicant
if, following periodic review pursuant to this Section 7.2 hereof, City does not propose to modify
or terminate this Agreement. Applicant waives any claim of defect or breach in performance by
City, which Applicant knew or could have known in the exercise of due diligence at the time of
such periodic review, by not raising such matter during the periodic review process.

(c) Failure of City to conduct a review shall not constitute a waiver by City of its
rights to otherwise enforce the provisions of this Agreement nor shall Applicant have or assert
any defense to such enforcement by reason of any such failure to conduct a review.
Section 7.3. Estoppel Certificates.

(a) City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Applicant, Applicant’s lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is or is not in full force and effect, that there are or are not any breaches or defaults under the Agreement, and that the Agreement has or has not been modified or terminated and is or is not enforceable in accordance with its terms and conditions.

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

Section 7.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Applicant shall not be obligated to proceed with or complete the ____________, and shall constitute grounds for termination or cancellation of this Agreement by Applicant.

Section 7.5. Remedies for Breach. City and Applicant acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the Recitals hereof. City and Applicant agree that to determine a sum of money which would adequately compensate either party for choices they have made which would be foreclosed should the ____________ not be completed and/or operated pursuant to and as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Applicant agree that in the event of a breach of this Agreement the only remedies available to the non-breaching party shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs, or (4) termination of this Agreement or, at the option of CITY in the event of breach by Applicant, termination of the rights of Applicant under this Agreement and/or under the CCBP. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either party. This exclusion on damages shall not preclude actions by a party to enforce payments of monies due, or the performance of obligations requiring the expenditures of money, under the terms of this Agreement as set forth in subsections (a) through (b), below, of this Section 7.5. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Monetary recovery may be had only for the following:

(a) payments required to be made or measures required to be undertaken within specified times under this Agreement, the CCBP and/or the conditions of approval associated with the CCBP; and

(b) any other payments of funds then due and owing by Applicant to City.
Section 7.6. Enforced Delay, Extension of Times of Performance. Delays in performance by either Party shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 8
TERMINATION

Section 8.1. Termination. Upon termination of this Agreement, City shall promptly record a notice of such termination in substantial conformance with the “Notice of Termination” attached hereto as Exhibit D, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 8.2. Effect of Termination on Applicant’s Obligations. Subject to Section 8.4, termination of this Agreement shall eliminate (i) all rights of Applicant under the Agreement and the CCBP and (ii) any further obligation of Applicant to comply with this Agreement. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Applicant to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination, but only to the extent such remedies or damages are permitted hereunder.

Section 8.3. Effect of Termination on City’s Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 8.4. Survival After Termination. Notwithstanding anything to the contrary stated herein, the rights and obligations of the Parties set forth in this Section 8.4, Article 3, Section 5.3, Section 9.3, Section 9.4, Section 9.5, Section 9.6, Section 9.7, Section 9.10, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 9
OTHER GENERAL PROVISIONS

Section 9.1. Assignment and Assumption.
(a) Applicant shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of this Agreement, the Conditional Certificate, CCBP, Business License, Site, or ______________, to any person, firm, corporation, or entity during the term of this Agreement without the advance written consent of the City Manager. This assignment prohibition applies to any owner of the ______________, including the corporate and business entities of Applicant that are a Party to this Agreement. Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 9.1., City and Applicant shall execute an “Assignment and Assumption Agreement” in the form attached hereto as Exhibit E.

(b) The consent of City to any assignment shall not be unreasonably withheld, provided the proposed assignee (“Successor”) can demonstrate its ability to perform and complete the obligations of Applicant under this Agreement, as determined by objective standards of financial capability, creditworthiness and experience required for such performance. The City shall have the right to compel the Successor to disclose all documents, information and other material which, in the City’s reasonable discretion, may establish or tend to establish that the proposed Successor meets the standards specified hereinafore, including but not limited to: (i) all of the terms of the proposed assignment and copies of the documents evidencing the assignment; (ii) current financial statements of the proposed Successor certified by the Successor’s accountant or financial officer; (iii) an executed estoppel certificate signed by the Applicant, and (iv) such other information as the City may reasonably require. No assignment shall be permitted as long as Applicant is in default hereunder. No later than thirty (30) calendar days after the City receives the materials submitted by the Successor, the City shall deliver to the Applicant and Successor a written determination whether the submitted materials are complete. If the City’s written determination is not delivered within said thirty (30) day period, the submission shall be deemed complete. If within said thirty (30) day period, the City delivers a notice to the Applicant and Successor that the submitted materials are incomplete, the Successor shall have thirty (30) calendar days to submit the necessary, additional information and after timely submittal thereof, the City shall have thirty (30) calendar days within which to, again, deliver notice to the Applicant and Successor whether the submitted materials are complete. If the Successor does not submit additional materials within thirty (30) calendar days after receiving the City’s determination of incompleteness, it shall be conclusively deemed that the Applicant have withdrawn their request for consent to the assignment in question. Not later than forty-five (45) days after the Successor’s submittal is determined or deemed complete, the City Manager shall accept or reject the proposed assignment. Whether or not the City shall grant consent, Applicant shall pay the City’s review and processing costs, as well as any reasonable legal fees incurred by the City, within thirty days after written request by the City. If the City consents to an assignment, this Agreement shall be deemed to have been amended to provide: (1) that Successor shall be acknowledged by City to be the Applicant hereunder; (2) that Successor shall assume all obligations of Applicant hereunder; (3) Applicant shall remain jointly and severally responsible with the Successor for all of the Applicant’s obligations hereunder; and (4) the Successor shall provide evidence that it has obtained the requisite insurance.
Notwithstanding anything to the contrary stated in Section 9.1(b), above, in the event that there is more than one Applicant and one of the Applicants wishes or is required (by other, separate agreement) to assign all of its rights and obligations hereunder to the another Applicant, the City Manager shall consent to said assignment provided that: (i) all breaches or defaults by Applicant extant hereunder at the time of the requested assignment are fully cured to the reasonable satisfaction of the City Manager; (ii) the Applicant which is to be assigned (the “Applicant Assignee”) all of the rights of the other Applicant hereunder (the “Applicant Assignor”) shall provide satisfactory evidence to the City Manager that the Applicant Assignee has the background, experience and financial backing to competently and successfully operate the _____________’s Commercial Cannabis Activities at the Site (or has arranged for a suitable person or entity with the requisite background and financial standing to so operate the _____________, which said person or entity shall be subject to the reasonable approval of the City Manager); (iii) the Assignee Applicant shall assume all obligations of Applicant hereunder; (iv) the Assignor Applicant shall remain jointly and severally responsible with the Applicant Assignee for all of the Applicant’s obligations hereunder; (v) the Applicant Assignee shall provide evidence that it has obtained the requisite insurance; and (vi) the Applicant Assignor and Applicant Assignee execute and deliver to the City Manager the “Assignment and Assumption Agreement” in the form attached hereto as Exhibit E.

Section 9.2. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site (but only to the extent the provision(s) are expressly made applicable to the owner of the Site) or the _____________, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the _____________, as appropriate, runs with the Site, and is binding upon Applicant.

Section 9.3. Notices. Any notice or communication required hereunder between City and Applicant must be in writing, and may be given either personally, by facsimile or email (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by email or facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party’s email device or facsimile machine, as the case may be. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days
written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:

City of Novato
922 Machin Avenue, Novato, CA 94553-2395
Fax 415-899-8216
Email address: __________________
Attention: City Manager

and the Novato City Attorney

Jeffrey Walter
670 W. Napa St. | Suite F
Sonoma, CA 95476; Fax (707)996-9603; Email address: __________________

If to Owner:

________________

Section 9.4. Governing Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

Section 9.5. Invalidity of Agreement / Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, this Agreement shall automatically terminate as of the date of final entry of judgment or as of the date that the statute becomes effective, respectively. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 9.6 Remedies Limited. City and Applicant may institute legal or equitable proceedings as set forth in Section 7.5, above. The prevailing party in any such action shall be entitled to reasonable attorneys’ fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Applicant agrees that Applicant may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Applicant in excess of those permitted hereunder.
Section 9.7. Third Party Legal Challenge.

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

(b) Nothing in this Agreement shall prohibit the City from participating in the defense of any ______________ Litigation. In the event that the City requests that Applicant defend the City in connection with any ______________ Litigation, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the matter in which the defense is conducted, and (iii) approve any and all settlements, which approvals shall not be unreasonably withheld by the City.

(c) The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the Applicant in the defense of ______________ Litigation. If the City chooses to have counsel of its own defend any ______________ Litigation where the Applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City. Notwithstanding the foregoing, if the City Attorney's office participates in the defense, all City Attorney fees and costs shall be paid by the Applicant.

(d) The Applicant also agree to so indemnify the City for all costs incurred in additional investigation or study, or for supplementing, redrafting, revising or amending any document (e.g. an EIR, Zoning Code, etc.) if such is made necessary by the ______________ Litigation and if the Applicant desires approvals from the City which are conditioned on the approval of said documents.

(e) In the event the City must initiate proceedings to enforce the above indemnification obligations of the Applicant, the Applicant shall indemnify the City for the City's costs, fees and expenses incurred in any such proceedings.

Section 9.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the
Site, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, but only to the extent the provision(s) was made expressly applicable to the owner of the Site, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 9.9. *Intentionally left blank.*

Section 9.10. *Joint and Several Liability.* Applicant and all its owners (as defined in 16 Code Cal. Regs. sections 5003, 5004) (“Owner”) shall be jointly and severally liable for any amount due under this Agreement, and any breach of this Agreement or failure to pay by one Owner shall also constitute a breach of this Agreement by the other Owner(s).

Section 9.11. *Standard Terms and Conditions.*

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

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

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

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

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

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

(g) *Mandatory and Permissive.* “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.
(h) Intentionally left blank.

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

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

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

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

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

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

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

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

(q) Recitals. The Recitals are incorporated herein by this reference.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Applicant and City as of the Effective Date of the Agreement, as defined above.
CITY OF NOVATO, a California Municipal Corporation

By: __________________________
Name: __________________________
Title: __________________________

ATTEST:

By: __________________________ Laura McDowall, City Clerk

Approved to as Form

By: __________________________ Dated: _________________
Jeffrey Walter, City Attorney

APPLICANT

____________________________________

By: __________________________
Name: __________________________
Title: __________________________

By: __________________________
Name: __________________________
Title: __________________________

Approved as to form:

___________________________________ Dated: _________________
Name: __________________________
Attorney’s Firm: __________________________
Parties represented by Attorney: __________________________

SITE OWNER’S CONSENT AND REPRESENTATIONS

The undersigned agrees to and represents and warrants the following:
1. that it is the sole, fee simple owner of the Site;
2. that it has leased the Site to ___________ and that establishment and operation of the ___________ consistent with this Agreement and its Exhibits are expressly permitted under said lease;
3. that the undersigned consents to the establishment and operation of the ___________ consistent with this Agreement and its Exhibits;
4. that the undersigned consents to the terms and conditions of this Agreement, but only to the extent the terms and/or conditions are made applicable to the owner of the Site;
5. that the undersigned consents to the recordation of this Agreement to be made part of and as against the chain of title to the Site; and
6. that the undersigned is not an owner or individual with a financial interest within the meaning of 16 Cal. Code Regs. sections 5003 and 5004.

NAME, A CALIFORNIA ________________________

By: _______________________________
Name: ____________________________
Title: Managing Member

By: _______________________________
Name: ____________________________
Title: ______________________________

Approved as to form:

_________________________________  Dated: ______________________
Name:
Attorney for _______________________, A California ________________

[CITY, ___________ AND SITE OWNER SIGNATURES NOTARIZED WITH STANDARD FORM ACKNOWLEDGMENT]