



**CITY OF OAKDALE  
CITY COUNCIL  
SPECIAL MEETING AGENDA**



*The City of Oakdale recognizes and supports the Choose Civility program, an initiative of the Stanislaus County Office of Education.*

**City Council Chambers  
277 North Second Avenue • Oakdale • CA 95361**

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**Monday, February 12, 2018**

**6:00 PM**

**City Council Chambers**

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*Welcome to your City of Oakdale City Council special meeting.*

**Your City Council are:**

**Mayor Pat Paul**

**Mayor Pro Tem Tom Dunlop**

**Council Member Cherilyn Bairos**

**Council Member J.R. McCarty**

**Council Member Richard Murdoch**

**Note:** California law prohibits the City Council from taking action on any matter that is not on the posted agenda unless it is determined to be an emergency by the Council. All items will be referred to staff for follow-up and placed on a future agenda.

- 1. Call to Order – 6:00 p.m.**
- 2. City Council Members Present/Absent**
- 3. Pledge of Allegiance**
- 4. Presentations/Acknowledgements**
- 5. Additions/Deletions**
- 6. Public Comments**

None scheduled.

*Pursuant to California Government Code Section 54954.3(a), members of the public wishing to address the Council may do so, and such comments shall be limited to the Special Meeting topic(s).*

***The items listed on tonight's agenda are duly noticed public hearings; therefore, you have the option to wait for the call for public testimony during each of the public hearings listed on tonight's agenda.***



**CITY OF OAKDALE  
CITY COUNCIL  
SPECIAL MEETING AGENDA  
Monday, February 12, 2018**

**Next City Council Resolution: 2018-017**

**Next Ordinance: 1255**

**7. Public Hearings**

7.1: Consider Approving the First Reading by Title Only and Introduction of a Proposed Ordinance of the City Council of the City of Oakdale, California: a City-Initiated Amendment to the Oakdale Municipal Code. Amending Chapter 37, Cannabis Regulations to Regulate Cannabis. In November of 2017, City Council Approved Ordinance 2017-1251 to Regulate the Following Cannabis Businesses: Cannabis Dispensaries, Cannabis Manufacturing Businesses, Cannabis Cultivation Businesses, and Cannabis Testing Laboratories. Ordinance 2017-1251 Did Not Include Regulations for Cannabis Distribution Businesses. The Proposed Ordinance Would Revise Ordinance 2017-1251, As Specified, To Also Regulate Cannabis Distribution Businesses.

Recommended Action: The First Reading by Title Only and Introduction of a Proposed Ordinance, a City-Initiated Amendment to the Oakdale Municipal Code, Amending Chapter 37, Cannabis Regulations to Regulate Cannabis. In November of 2017, City Council Approved Ordinance 2017-1251 to Regulate the Following Cannabis Businesses: Cannabis Dispensaries, Cannabis Manufacturing Businesses, Cannabis Cultivation Businesses, and Cannabis Testing Laboratories. Ordinance 2017-1251 Did Not Include Regulations for Cannabis Distribution Businesses. The Proposed Ordinance Would Revise Ordinance 2017-1251, As Specified, To Also Regulate Cannabis Distribution Businesses.

7.2: Consider Approving the First Reading by Title Only and Introduction of a Proposed Ordinance of the City Council of the City of Oakdale, California: City-Initiated Amendments to the Oakdale Municipal Code. Amending the City of Oakdale Chapter 36 (Zoning Ordinance) of the City of Oakdale's Municipal Code Sections 36-6 R-A, 36-7 R-1, 36-8 R-2/R-2-M, 36-9 R-3, 36-10 C-1, 36-11 C-C, 36-12 C-2, 36-13 L-M, AND 36-14 M-1.

Recommended Action: The First Reading by Title Only and Introduction of a Proposed Ordinance, City-Initiated Amendments to the Oakdale Municipal Code, Amending the City of Oakdale Chapter 36 (Zoning Ordinance) of the City of Oakdale's Municipal Code Sections 36-6 R-A, 36-7 R-1, 36-8 R-2/R-2-M, 36-9 R-3, 36-10 C-1, 36-11 C-C, 36-12 C-2, 36-13 L-M, AND 36-14 M-1.

7.3: Consider Approving the First Reading by Title Only and Introduction of a Proposed Ordinance of the City Council of the City of Oakdale, California: a Public Hearing to Consider a Development Agreement by And Between the City of Oakdale and JDI Farms, Inc., A California Non-Profit Mutual Benefit Corporation. The Purpose of the Public Hearing is to Discuss the Development Agreement for the Applicant's Proposed Cannabis Dispensary Business and Cannabis Microbusiness. The Cannabis Dispensary Business is Proposed to be Located at 633 Armstrong Way, in the City of



CITY OF OAKDALE  
CITY COUNCIL  
SPECIAL MEETING AGENDA  
Monday, February 12, 2018

Next City Council Resolution: 2018-017

Next Ordinance: 1255

Oakdale, County of Stanislaus, State of California, Assessor's Parcel Number 064-039-069.

*Environmental Review Status:* Pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines Relating Existing Facilities, The Cannabis Dispensary Business Project Consists of The Operation of Existing Facilities, Involving No Expansion of Use Beyond That Currently in Existence. **A Public Hearing Notice was published in the Oakdale Leader on January 31, 2018.**

JDI Farms, Inc. Also Proposes to Operate a Cannabis Microbusiness as Part of Their Single Development Agreement to Be Located At 517 Armstrong Way, Oakdale, California 95361, Assessor's Parcel Numbers 064-039-086, 064-039-087, 064-039-059, 064-039-060.

*Environmental Review Status:* Pursuant to Section 15332 Of the CEQA Guidelines Relating to In-Fill Development Projects, This Project Is Exempt From CEQA. **A Public Hearing Notice was published in the Oakdale Leader on January 31, 2018.**

Consider Approving the First Reading by Title Only and Introduction of a Proposed Ordinance of the City Council of the City of Oakdale, California; a public hearing to consider a Development Agreement by and Between the City of Oakdale and MDS Business Services, Inc., a California non-profit mutual benefit corporation. The purpose of the public hearing is to discuss the agreement and the applicants' proposed cannabis dispensary, cultivation, manufacturing, and distribution businesses. The dispensary, cultivation, manufacturing, and distribution businesses are proposed to be located at Assessor's Parcel Number 064-039-055 on Armstrong Way in the City of Oakdale.

*Environmental Review Status:* Pursuant to Section 15301 Of the California Environmental Quality Act (CEQA) Guidelines Relating Existing Facilities, The Project Consists of The Operation of Existing Facilities, Involving No Expansion of Use Beyond That Currently in Existence. **A Public Hearing Notice was published in the Oakdale Leader on January 31, 2018.**

Recommended Actions:

- 1) The First Reading by Title Only and Introduction of a Proposed Ordinance Approving a Development Agreement By and Between the City of Oakdale and JDI Farms, Inc., a California Non-Profit Mutual Benefit Corporation for a Cannabis Dispensary Business Proposed to be Located at 633 Armstrong Way, in the City of Oakdale, County of Stanislaus, State of California, Assessor's Parcel Number 064-039-069 and, a Cannabis Microbusiness as part of their Single Development Agreement to



**CITY OF OAKDALE  
CITY COUNCIL  
SPECIAL MEETING AGENDA  
Monday, February 12, 2018**

**Next City Council Resolution: 2018-017**

**Next Ordinance: 1255**

be Located at 517 Armstrong Way, Oakdale, California 95361, Assessor's Parcel Numbers 064-039-086, 064-039-087, 064-039-059, 064-039-060.

- 2) The First Reading by Title Only and Introduction of a Proposed Ordinance Approving a Development Agreement by And Between the City of Oakdale and MDS Business Services, Inc., A California Non-Profit Mutual Benefit Corporation. The Purpose of The Public Hearing Is to Discuss the Agreement and The Applicants' Proposed Cannabis Dispensary, Cultivation, Manufacturing, And Distribution Businesses. The Dispensary, Cultivation, Manufacturing, And Distribution Businesses Are Proposed to Be Located at Assessor's Parcel Number 064-039-055 on Armstrong Way in the City of Oakdale.

**8. City Manager's Report**

**9. City Council Items**

**10. Adjournment**

**The next regular meeting of the Oakdale City Council will be held Tuesday, February 20, 2018 at 7:00 p.m. in the City Council Chamber.**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Hall, 209-845-3571. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28CFR 35.102-35.104 ADA Title II).

Any documents produced by the City and distributed to a majority of the City Council regarding any item on this agenda will be made available in the City Clerk's office at City Hall located at 280 North Third Avenue, Oakdale, California.

**DECLARATION OF POSTING**

I, Kathy Teixeira, City Clerk for the City of Oakdale, certify that I caused to be posted a copy of the City of Oakdale City Council Agenda for the Special Meeting of Monday, February 12, 2018 at the City Council Chambers, 277 North Second Avenue, Oakdale, CA, 95361 on Thursday, February 8, 2018.

Dated: February 8, 2018

/s/Kathy Teixeira  
Kathy Teixeira, CMC  
City Clerk



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

**Meeting Date:** February 12, 2018

**To:** Mayor Pat Paul and Members of the City Council

**From:** Josh Mann, Senior Planner

**Reviewed by:** Jeff Gravel, Public Services Director

**Subject:** Introduction of Ordinance \_\_\_\_ Amending the Oakdale Municipal Code Related to California Cannabis Regulations: Municipal Code Text Amendment to Chapter 37 “Cannabis Regulations” to allow for Cannabis Distribution Businesses

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**I. BACKGROUND**

In November of 2017, the Oakdale City Council adopted a comprehensive draft ordinance that repealed its current ban on marijuana/cannabis related activities and proposed adding Chapter 37, Cannabis Regulations to the Municipal Code to allow regulation of cannabis businesses and regulations for state allowed home grows. Prior to the City Council formally adopting this amendment, it was discovered that “Cannabis Distribution” businesses, allowed under state law, were not included. As such, minor modifications to Chapter 37 are now being proposed to clarify that Cannabis Distribution businesses will be allowed under the City’s Cannabis Ordinance

**II. DISCUSSION**

The proposed addition will modify the City’s Cannabis Ordinance to insert “Cannabis Distribution” into the definitions portion of Chapter 37 (Cannabis Regulations) of the City’s Municipal Code. This will properly align the City’s Cannabis Ordinance with the types of cannabis related commercial activities allowable under California State Law. Changes are also being made to clarify the proper location for commercial cannabis businesses. Other “clean-up” edits, related to formatting are proposed as well.

The proposed modifications to the Chapter 37 are as follows (additions in **BOLD Red** font, deletions in ~~strike through text~~):

Sec. 37-2 Definitions.

**(e) Cannabis distribution business” means any cannabis business that, pursuant to a state cannabis license, procures, sells, or transports cannabis and cannabis products between cannabis businesses.**

**(i) Cultivation” means any activity involving the planting, growing, harvesting, processing** drying, curing, grading, or trimming of cannabis.

Sec. 37-10 Commercial Cannabis Cultivation.

(b) A cannabis cultivation business shall only be ~~allowed~~ **located** in a Limited Industrial (L-M) or Light Industrial (M-1) district as further described in Chapter 36 of the Oakdale Municipal Code.



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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Subject: Code Text Amendment of Chapter 37  
Meeting Date: February 12, 2018

Sec. 37-12 Dispensary.

- (b) A cannabis dispensary **shall only be located in a Limited Industrial (L-M) or Light Industrial (M-1) district as further described in Chapter 36 of the Oakdale Municipal Code.** ~~shall only be located in the area of the City as further described in Chapter 36 of the Oakdale Municipal Code.~~

Sec. 37-13 Cannabis Manufacturing Business.

- (b) A cannabis manufacturing business **shall only be located in a Limited Industrial (L-M) or Light Industrial (M-1) district as further described in Chapter 36 of the Oakdale Municipal Code.** ~~shall only be located in the area of the City as further described in Chapter 36 of the Oakdale Municipal Code.~~

On February 7, 2018, after discussion and deliberation, the Planning Commission moved to adopt Resolution 2018-02 recommending that the City Council approve the Code Text Amendment. The action passed on a 5-0 vote (Attachment A).

Pursuant to the Municipal Code, findings must be determined, based on evidence and testimony, that the proposed code text amendment is consistent with the Oakdale General Plan, will not be likely to cause environmental damage; and that they further the public convenience and necessity (health, safety and welfare). These findings were made by the Planning Commission.

The Code Text Amendment of Chapter 37 has been considered pursuant to the California Environmental Quality Act (CEQA) and has been determined to be exempt from review, in accordance with Section 15061(b)(3) – General Rule of the CEQA Guidelines.

**III. FISCAL IMPACT**

The costs of preparing this proposed code amendment request has been underwritten by the General Fund. The implementation of the amended development standards does not create new costs to the City, nor any affected property owners, and therefore will not result in unexpected fiscal impacts. Any potential costs as a result of future Cannabis related activities, are expected to be recovered via application fees collected from applicants.

**IV. RECOMMENDATION**

City Staff recommends that the City Council approve Ordinance \_\_\_\_ (Attachment B).

Should the City Council desire to approve the proposed code text amendment, the following motion would be appropriate:

“I move the City Council introduce and waive the first reading of Ordinance \_\_\_\_, an Ordinance of the City of Oakdale amending Oakdale Municipal Code Chapter 37, which would allow cannabis distribution businesses.”



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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**Subject: Code Text Amendment of Chapter 37  
Meeting Date: February 12, 2018**

**V. ATTACHMENTS**

Attachment A: Planning Commission Resolution 2018-02

Attachment B: Draft City Council Ordinance \_\_\_\_\_



**IN THE PLANNING COMMISSION  
OF THE CITY OF OAKDALE  
PLANNING COMMISSION RESOLUTION 2018-03**

**A RESOLUTION OF THE CITY OF OAKDALE PLANNING COMMISSION  
RECOMMENDING TO THE CITY OF OAKDALE CITY COUNCIL ADOPTION OF AN  
AMENDMENT TO THE CITY OF OAKDALE CHAPTER 36 (ZONING ORDINANCE) OF  
THE CITY OF OAKDALE'S MUNICIPAL CODE SECTIONS  
36-6 R-A, 36-7 R-1, 36-8 R-2/R-2-M, 36-9 R-3, 36-10 C-1, 36-11 C-C, 36-12 C-2,  
36-13 L-M, AND 36-14 M-1**

**THE CITY OF OAKDALE PLANNING COMMISSION DOES HEREBY RESOLVE THAT:**

**WHEREAS**, The City of Oakdale has adopted Chapter 37 Cannabis Regulations, to the Oakdale Municipal Code to regulate cannabis businesses; and

**WHEREAS**, it is necessary to modify the Zoning Ordinance to align with the regulations in Chapter 37; and

**WHEREAS**, The City has determined that the Project is subject to the California Environmental Quality Act (CEQA); and

**WHEREAS**, the Government Code Section 65855 requires that the City Council receive input and a recommendation from the Planning Commission on a Zoning Amendment that imposes any regulations listed in Section 65850; and

**WHEREAS**, the Planning Commission has reviewed the Zoning Ordinance Amendment and conducted a public hearing on February 7, 2018; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED** that the **PLANNING COMMISSION** hereby recommends to the City of Oakdale City Council adoption of an Ordinance of the City of Oakdale Amending Chapter 36 (Zoning Ordinance) of the City of Oakdale's Municipal Code Sections 36-6 "R-A" Residential-Agricultural District, Section 36-7 "R-1" Single-Family Residential Zone, Section 36-8 "R-2/R-2-M" Duplex-Residential District, Section 36-9 "R-3" Multiple-Family Residential District, Section 36-10 "C-1" Neighborhood-Commercial District, Section 36-11 "C-C" Central-Commercial District, Section 36-12 "C-2" General-Commercial District, Section 36-13 "L-M" Limited-Industrial District and Section 36-14 "M-1" Light-Industrial District as shown in the draft ordinance attached as Exhibit A and based on the following findings:

1. The City finds and determines with certainty that the amendments described in Ordinance No. XXXX is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the activity is covered under the general rule that CEQA applies to only projects, which have the potential for causing a significant effect on the environment.



**CITY OF OAKDALE**

**Planning Commission Resolution 2018-03(Continued)**

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2. The City finds and determines with certainty that the amendments described in Ordinance No. XXXX are consistent with the Goals, Policies, and Implementation Programs of the City of Oakdale General Plan.

**THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 7th DAY OF FEBRUARY, 2018, by the following vote:**

AYES:	Chiara, Havard, Kinney, Poncabare, Velasco	(5)
NOES:	None	(0)
ABSTAIN:	None	(0)
ABSENT:	None	(0)

ATTEST:

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Amy Velasco, Chairperson  
Planning Commission

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Jeff Gravel, Secretary  
Planning Commission



**IN THE CITY COUNCIL OF THE  
CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKDALE  
AMENDING CHAPTER 37, CANNABIS REGULATIONS, OF THE  
OAKDALE MUNICIPAL CODE RELATING TO CANNABIS BUSINESSES**

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and,

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and,

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and,

**WHEREAS**, in November of 2017, the City Council approved Ordinance 2017-1251 to regulate the following cannabis business: cannabis dispensaries, cannabis manufacturing businesses, cannabis cultivation businesses, and cannabis testing laboratories. Ordinance 2017-1251 did not include regulations for cannabis distribution businesses; and,

**WHEREAS**, the City Council finds that city-wide regulation of cannabis distribution businesses is proper and necessary to avoid the risks of criminal activity; and,

**WHEREAS**, the City Council of the City of Oakdale finds that this ordinance is in the best interest of the health, welfare, and safety of the public.

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

**SECTION 1:** Section 37-2 of the Oakdale Municipal Code is hereby amended to read as follows:

**Sec. 37-2 Definitions.**

- (a) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.
- (b) “Cannabis business” means any business engaged in commercial cannabis activity. “Cannabis business” does not include any of the following:
- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
  - (2) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
  - (3) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
  - (4) A residential hospice or a home health agency licensed pursuant to Chapter 8 and Chapter 8.5 of Division 2 of the Health and Safety Code.
  - (5) The cultivation, delivery, gift, or furnishing of cannabis by a qualified patient, a primary caregiver, or other person with an identification card as defined by Section 11362.7 of Health and Safety Code provided such activity complies strictly with all applicable state law, including but not limited to, Sections 11362.5 and 11362.765 of the Health and Safety Code.
- (c) “Cannabis cultivation business” means any cannabis business that, pursuant to a Type 1, Type 1A, Type 1B, Type 1C, Type 2, Type 2A, Type 2B, Type 3, Type 3A, Type 3B, Type 4, Type 5, Type 5A, Type 5B, or Type 12 state cannabis license, cultivates cannabis or cannabis products.
- (d) “Cannabis delivery business” means any cannabis business that, pursuant to a Type 10 state cannabis license, delivers, makes available, or distributes cannabis and cannabis products to a consumer.
- (d)(e) “Cannabis distribution business” means any cannabis business that, pursuant to a state cannabis license, procures, sells, or transports cannabis and cannabis products between cannabis businesses.
- (e)(f) “Cannabis for personal use” means the use or possession of cannabis that does not require a license pursuant to Chapter 1 of Division 10 of the Business and Professions Code.

Ordinance \_\_\_\_\_

Effective March 22, 2018

- ~~(f)~~(g) \_\_\_\_\_ “Cannabis manufacturing business” means any cannabis business that, pursuant to a Type 6, Type 7, or Type 12 state cannabis license manufactures cannabis or cannabis products.
- ~~(g)~~(h) \_\_\_\_\_ “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- ~~(h)~~(i) \_\_\_\_\_ “Cannabis testing laboratory” means a cannabis business that tests cannabis or cannabis products pursuant to a Type 8 state cannabis license.
- ~~(i)~~(j) \_\_\_\_\_ “Commercial cannabis activity” includes the cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis or cannabis products that requires a state license.
- ~~(j)~~(k) \_\_\_\_\_ “Commercial cannabis waste” means cannabis plants and plant materials that are discarded by a cannabis business, including but not limited to extra vegetative plants, failed clones, and harvest waste.
- ~~(k)~~(l) \_\_\_\_\_ “Cultivation” means any activity involving the planting, growing, harvesting, processing drying, curing, grading, or trimming of cannabis.
- ~~(l)~~(m) \_\_\_\_\_ “Cultivation site” means the location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occur.
- ~~(m)~~(n) \_\_\_\_\_ “Day care” means a facility, center, or home requiring a license that is issued by the State of California which provides for the care, health, safety, supervision, or guidance of a child’s social, emotional, and educational growth on a regular basis, in a place other than the child’s own home, or any facility meeting the definition of Section 1596.76 of the Health and Safety Code.
- ~~(n)~~(o) \_\_\_\_\_ “Dispensary” means any cannabis business where medicinal or adult-use cannabis or cannabis products are sold at retail to customers, pursuant to a Type 10 state cannabis license.
- ~~(o)~~(p) \_\_\_\_\_ “Group home” means any community care facility regulated and licensed by a Federal or State agency. Unlicensed community care facilities or those community care facilities the regulation of which is not otherwise preempted by State or Federal law shall not constitute group homes.
- ~~(p)~~(q) \_\_\_\_\_ “Indoor cultivation” means the cultivation of cannabis for personal use within a fully enclosed and secure structure that has a complete roof in which cannabis plants cannot be seen from any public right of way. Indoor cultivation does not include any commercial cannabis activity.
- ~~(q)~~(r) \_\_\_\_\_ “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

Ordinance \_\_\_\_\_

Effective March 22, 2018

(f)(s) \_\_\_\_\_ “Outdoor cultivation” means the cultivation of cannabis that does not meet the definition of indoor cultivation.

(s)(t) \_\_\_\_\_ “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

(t)(u) \_\_\_\_\_ “Primary caregiver” has the same meaning as that term is defined by Section 11362.7 of the Health and Safety Code.

(u)(v) \_\_\_\_\_ “Qualified patient” has the same meaning as that term is defined by Section 11362.7 of the Health and Safety Code.

(v)(w) \_\_\_\_\_ “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

**SECTION 2:** Section 37-10 of the Oakdale Municipal Code is hereby amended to read as follows:

**Sec. 37-10 Commercial Cannabis Cultivation.**

- (a) A cannabis cultivation business may be permitted pursuant to a development agreement and conditional use permit.
- (b) A cannabis cultivation business shall only be ~~allowed-located~~ in a Limited Industrial (L-M) or Light Industrial (M-1) districts as further described in Chapter 36 of the Oakdale Municipal Code.
- (c) A commercial cannabis cultivation business shall not cultivate outdoors anywhere within the city.
- (d) All commercial cannabis cultivation businesses shall maintain any applicable state permit, city business license, conditional use permit, and comply with all of the following:
  - (1) **Employee Permits.** Every employee or independent contractor working at a cannabis cultivation business within the city shall obtain an employee permit from the Public Services Department. The Police Department shall perform a background check before issuing an employee permit. All information submitted to the city shall be under the penalty of perjury.
  - (2) **Secure Building.** All commercial cannabis activity shall occur entirely inside of a building that is secure, locked, and fully enclosed, with a ceiling, roof, or other enclosure. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures), and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that

Ordinance \_\_\_\_\_

Effective March 22, 2018

the commercial cannabis activity cannot be seen, heard, or smelled beyond the property line.

- (3) **Security Plan.** A cannabis cultivation business shall comply with security requirements acceptable to the Police Chief on an individual project basis. The security requirements will specify at a minimum provisions for perimeter fencing plan, interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.
- (4) **Insurance.** A cannabis cultivation business shall maintain insurance in the amounts and of the types that are acceptable to the City Manager or his or her designee. The city shall be named as additional insured on all city-required insurance policies.
- (5) **Waste Management Plan.** A cannabis cultivation business shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed. If applicable, the plan shall include a description of measures to be taken relating to light bulb recycling.

**SECTION 3:** Section 37-11 of the Oakdale Municipal Code is hereby amended to read as follows:

**Sec. 37-11 Cannabis Testing Laboratory.**

- (a) A cannabis testing laboratory may be permitted pursuant to a development agreement and conditional use permit.
- (b) A cannabis testing laboratory shall only be located in Limited Industrial (L-M) or Light Industrial (M-1) districts as further described in Chapter 36 of the Oakdale Municipal Code.
- (c) A cannabis testing laboratory shall meet the accreditation criteria in the International Organization for Standardization (ISO) guidelines known as ISO 17025.
- (d) All cannabis testing laboratories shall maintain any applicable state permit, city business license, conditional use permit, and maintain compliance with all of the following:
  - (1) **Employee Permits.** Every employee or independent contractor working at a cannabis testing laboratory within the city shall obtain an employee permit from the Public Services Department. The Police Department shall perform a background check before issuing an employee permit. All information submitted to the city shall be under the penalty of perjury.
  - (2) **Secure Building.** All commercial cannabis activity shall occur entirely inside of a building that is secure, locked, and fully enclosed, with a ceiling, roof, or other enclosure. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors,

and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures, and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the commercial cannabis activity cannot be seen, heard, or smelled beyond the property line.

- (3) **Security Plan.** A cannabis testing laboratory shall comply with security requirements acceptable to the Police Chief on an individual project basis. The security requirements will specify at a minimum provisions for perimeter fencing plan, interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.
- (4) **Insurance.** A cannabis testing laboratory business shall maintain insurance in the amounts and of the types that are acceptable to the City Manager or his or her designee. The city shall be named as additional insured on all city-required insurance policies.
- (5) **Waste Management Plan.** A cannabis testing laboratory shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

**SECTION 4:** Section 37-12 of the Oakdale Municipal Code is hereby amended to read as follows:

**Sec. 37-12 Dispensary.**

- (a) Up to two (2) cannabis dispensaries may be permitted within city limits pursuant to a development agreement and conditional use permit.
- (b) A cannabis dispensary shall only be located in a Limited Industrial (L-M) or Light Industrial (M-1) district as further described in Chapter 36 of the Oakdale Municipal Code. ~~shall only be located in the area of the City as further described in Chapter 36 of the Oakdale Municipal Code.~~
- (c) A cannabis delivery business is prohibited within the city. Any commercial cannabis activity related to delivery is prohibited unless that activity is performed by a cannabis dispensary permitted by this chapter. The city reserves the right to prohibit a cannabis dispensary from performing delivery services.
- (d) All cannabis dispensaries shall obtain any applicable state permit, obtain a city business license, and maintain compliance with all of the following:
  - (1) **Employee Permits.** Every employee or independent contractor working at a cannabis dispensary within the city shall obtain an employee permit from the Public Services Department. The Police Department shall perform a background check before issuing an employee permit. All information submitted to the city shall be under the penalty of perjury.

Ordinance \_\_\_\_

Effective March 22, 2018

- (2) **Secure Building.** All commercial cannabis activity shall occur entirely inside of a building that is secure, locked, and fully enclosed, with a ceiling, roof, or other enclosure. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures, and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the commercial cannabis activity cannot be seen, heard, or smelled beyond the property line.
- (3) **Security Plan.** A cannabis dispensary shall comply with security requirements acceptable to the Police Chief on an individual project basis. The security requirements will specify at a minimum provisions for perimeter fencing plan, interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.
- (4) **Insurance.** A cannabis dispensary shall maintain insurance in the amounts and of the types that are acceptable to the City Manager or his or her designee. The city shall be named as additional insured on all city-required insurance policies.
- (5) **Waste Management Plan.** A cannabis dispensary shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

**SECTION 5:** Section 37-13 of the Oakdale Municipal Code is hereby amended to read as follows:

**Sec. 37-13 Cannabis Manufacturing Business.**

- (a) A cannabis manufacturing business may be permitted pursuant to a development agreement and conditional use permit.
- (b) A cannabis manufacturing business shall only be located in a Limited Industrial (L-M) or Light Industrial (M-1) district as further described in Chapter 36 of the Oakdale Municipal Code. ~~shall only be located in Limited Industrial (M-1) or Heavy Industrial (M-2) district.~~
- (c) All cannabis manufacturing business shall obtain any applicable state permit, obtain a city business license, and maintain compliance with all of the following:
  - (1) **Employee Permits.** Every employee or independent contractor working at a cannabis dispensary within the city shall obtain an employee permit from the Public Services Department. The Police Department shall perform a background check before issuing an employee permit. All information submitted to the city shall be under the penalty of perjury.

Ordinance \_\_\_\_

Effective March 22, 2018

- (2) **Secure Building.** All commercial cannabis activity shall occur entirely inside of a building that is secure, locked, and fully enclosed, with a ceiling, roof, or other enclosure. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures, and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the commercial cannabis activity cannot be seen, heard, or smelled beyond the property line.
- (3) **Security Plan.** A cannabis manufacturing business shall comply with security requirements acceptable to the Police Chief on an individual project basis. The security requirements will specify at a minimum provisions for perimeter fencing plan, interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.
- (4) **Insurance.** A cannabis manufacturing business shall maintain insurance in the amounts and of the types that are acceptable to the City Manager or his or her designee. The city shall be named as additional insured on all city-required insurance policies.
- (5) **Waste Management Plan.** A cannabis manufacturing business shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

**SECTION 5:** Section 37-14 of the Oakdale Municipal Code is hereby deleted in its entirety and added to read as follows:

**Sec. 37-14 Cannabis Distribution Business.**

- (d) A cannabis distribution business may be permitted pursuant to a development agreement and conditional use permit.
- (e) A cannabis distribution business shall only be located in a Limited Industrial (L-M) or Light Industrial (M-1) district as further described in Chapter 36 of the Oakdale Municipal Code.
- (f) All cannabis distribution business shall obtain any applicable state permit, obtain a city business license, and maintain compliance with all of the following:
  - (1) **Employee Permits.** Every employee or independent contractor working at a cannabis dispensary within the city shall obtain an employee permit from the Public Services Department. The Police Department shall perform a background check before issuing an employee permit. All information submitted to the city shall be under the penalty of perjury.

Ordinance \_\_\_\_

Effective March 22, 2018

- (2) **Secure Building.** All commercial cannabis activity shall occur entirely inside of a building that is secure, locked, and fully enclosed, with a ceiling, roof, or other enclosure. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures, and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the commercial cannabis activity cannot be seen, heard, or smelled beyond the property line.
- (3) **Security Plan.** A cannabis distribution business shall comply with security requirements acceptable to the Police Chief on an individual project basis. The security requirements will specify at a minimum provisions for perimeter fencing plan, interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.
- (4) **Insurance.** A cannabis distribution business shall maintain insurance in the amounts and of the types that are acceptable to the City Manager or his or her designee. The city shall be named as additional insured on all city-required insurance policies.
- (5) **Waste Management Plan.** A cannabis distribution business shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

**SECTION 6:** Article IV or Chapter 37 of the Oakdale Municipal Code is hereby amended to read as follows:

#### **Article. IV. Appeals and Enforcement.**

##### **Sec. 37-154 Appeals**

- (a) Any permit applicant may appeal any adverse action taken under this chapter to the City Council.
- (b) All appeals taken under this chapter must be taken within thirty (30) days after the adverse action by filing with the office of the City Clerk a written notice of appeal specifying the grounds thereof. An appeal shall be accompanied by a non-refundable filing fee, as established by resolution adopted by the City Council from time to time.
- (c) The City Clerk, upon the filing of such appeal and payment of an appeal fee, shall place the matter upon the agenda for the next regular meeting of the City Council occurring not earlier than five days after the filing of the appeal, and shall notify the appealing permit applicant by letter of the meeting date and place at which the appeal will be heard.

##### **Sec. 37-165 Penalties.**

- (a) Any use or condition caused, or permitted to exist, in violation of any provision of this Ordinance \_\_\_\_\_  
Effective March 22, 2018

chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Section 731 of the Code of Civil Procedure or any other remedy available to the City.

- (b) In addition to any other enforcement permitted by this chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.
- (c) Violations of this chapter shall be subject to an administrative penalty. The amount of the administrative penalty shall be five hundred dollars (\$500) for the first offense within a 12 month period, seven hundred and fifty dollars (\$750) for the second offense within a 12 month period, and one thousand dollars (\$1,000) for any subsequent offense within a 12 month period.
- (d) **Enhancements for Egregious Violations.**

- (1) In addition to any other enforcement permitted by this chapter, the city may double any administrative penalty for egregious violations of this chapter. Egregious violations include (i) the unpermitted use of volatile solvents in connection with indoor cultivation, (ii) a permittee under Article II, Regulation of Cannabis Cultivation for Personal Use, allowing a minor to consume cannabis from that permittee's indoor cultivation, (iii) for the unpermitted use of volatile solvents in connection with cannabis business, or (iv) a cannabis business allowing minors to consume or possess cannabis or cannabis products.
- (2) If a cannabis business receives four or more penalties for violating this chapter within any 12-month period, that business shall be immediately prohibited from operating within the city.
- (3) If a person receives four or more penalties for violating Article II, Regulation of Cannabis Cultivation for Personal Use, within any 12-month period, that permittee's penalty shall be doubled upon the fourth violation and each subsequent violation thereafter.

#### **Sec. 37-176 Cost Recovery.**

- (a) The city shall be entitled to recover its abatement and enforcement costs incurred in obtaining compliance with this chapter. Costs incurred by the city are recoverable even if a public nuisance, Municipal code, or other violation of law is corrected by the property owner or other responsible party.
- (b) The cost of abating a public nuisance or enforcing this chapter shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property or the responsible party. If there is more than one responsible party, each party shall be jointly and severally liable for the costs.
- (c) For purposes of this chapter, the following additional definitions shall apply:
  - (1) "Abatement costs" include the actual and reasonable costs incurred by the city to abate a public nuisance. These costs include all direct and indirect costs to the

city that result from the total abatement action, including but not limited to, investigation costs, costs to enforce the Municipal code and any applicable State or County law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include personnel costs, administrative overhead, costs for equipment such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by city.

- (2) "Enforcement costs" include all actual and reasonable costs incurred by the city to enforce compliance with the Municipal code and any applicable State, County, or city public health and safety law that are not included within abatement costs. Enforcement costs shall also include, but are not limited to, costs of fringe benefits for personnel, administrative overhead, costs of equipment, costs of materials, costs related to investigations, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Municipal code or State or County law violations, and reasonable attorneys' fees related to these activities.
- (3) "Responsible party" means a person or entity responsible for creating, causing, committing, or maintaining the violation of this chapter or State or County law.
- (4) "Subject property" means the real property that is the subject of any abatement or enforcement action by the city for which the city incurred costs and seeks recovery under this chapter.

#### **Sec. 37-187 Severability.**

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

**SECTION 7.** If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 8:** This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date or a summary of the Ordinance is published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

Ordinance \_\_\_\_

Effective March 22, 2018

The foregoing ordinance was introduced during special Council session held the 12th day of February 2018, given a second reading on the \_\_\_\_ day of \_\_\_\_\_ 2018, and upon motion by Council Member \_\_\_\_\_ moved, seconded by Council Member \_\_\_\_\_ for the adoption of said ordinance by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

\_\_\_\_\_  
Kathy Teixeira, CMC  
City Clerk

\_\_\_\_\_  
Pat Paul  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Tom Hallinan, City Attorney



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

**Meeting Date:** February 12, 2018

**To:** Mayor Pat Paul and Members of the City Council

**From:** Josh Mann, Senior Planner

**Reviewed by:** Jeff Gravel, Public Services Director

**Subject:** Introduction of Ordinance \_\_\_\_\_ Amending the Oakdale Municipal Code Related to California Cannabis Zoning Regulations: Municipal Code Text Amendment to Section 36-6 – “R-A” Residential-Agricultural District, Section 36-7 - “R-1” Single-Family Residential Zone, Section 36-8 - “R-2/R-2-M” Duplex-Residential District, Section 36-9 “R-3” Multiple-Family Residential District, Section 36-10 - “C-1” Neighborhood-Commercial District, Section 36-11 - “C-C” Central-Commercial District, Section 36-12 - “C-2” General-Commercial District, Section 36-13 - “L-M” Limited-Industrial District, and Section 36-14 - “M-1” Light-Industrial District of the Oakdale Municipal Code, Chapter 36 - Zoning, to allow for personal and commercial cannabis activities.

**I. BACKGROUND**

In November of 2017, the Oakdale City Council adopted a comprehensive draft ordinance that repealed its current ban on marijuana/cannabis related activities and proposed adding Chapter 37, Cannabis Regulations to the Municipal Code to allow regulation of cannabis businesses and regulations for state allowed home grows.

As a result, the Planning Commission conducted a public hearing on November 15, 2017 to review a Zoning Ordinance Amendment that would have aligned the activities described in Chapter 37 with various sections of Chapter 36 of the City’s Zoning Ordinance. Prior to the City Council formally adopting this amendment, it was discovered that “Cannabis Distribution” businesses, allowed under state law, were not included. As such, minor modifications to Chapter 37 are concurrently being made to clarify that Cannabis Distribution businesses will be allowed under the City’s Cannabis Ordinance. Therefore, amendments to Chapter 36 are necessary to reflect these modifications.

All other sections of Chapter 36 will remain unchanged under this amendment.

**II. DISCUSSION**

The proposed amendment will modify the City’s Zoning Ordinance to address the recent addition of Chapter 37 (Cannabis Regulations) to the City’s Municipal Code. The amendment to the zoning ordinance will address two distinct areas: 1) Commercial cannabis sales and activities within the Limited Industrial (L-M) and Light Industrial (M-1) zoning districts; and 2) the cultivation of cannabis for personal use, indoors and within a residence.

The appropriate locations for commercial cannabis activities, within the L-M and M-1 zoning districts, can be found in the attached maps (see Attachment C & D).



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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Subject: Code Text Amendment 2017-18  
Meeting Date: February 12, 2018

The proposed modifications to the Limited Industrial (L-M) and Light Industrial (M-1) zoning districts are as follows (additions in **BOLD RED** font):

SECTION 36-13 "L-M" LIMITED INDUSTRIAL

36-13.5 Conditional Uses.

- J. Cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, and dispensary, as defined in Section 37-2.**

**Permits to establish a cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, or dispensary shall be located in the area highlighted on the attached maps**

SECTION 36-14 "M-1" LIGHT INDUSTRIAL

36-14.5 Conditional Uses.

- F. Cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, and dispensary, as defined in Section 37-2.**

**Permits to establish a cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, or dispensary shall be located in the area highlighted on the attached maps**

The proposed modifications to the zoning districts which allow residential uses are as follows (additions in **BOLD RED** font):

SECTION 36-6 "R-A" RESIDENTIAL AGRICULTURAL DISTRICT

36-6.3 Principal Uses.

- G. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

SECTION 36-7 "R-1" SINGLE FAMILY RESIDENTIAL ZONE

36-7.3 Principal Uses.

- M. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

SECTION 36-8 "R-2/R-2-M" DUPLEX RESIDENTIAL DISTRICT

36-8.3 Principal Uses.

- M. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

SECTION 36-9 "R-3" MULTIPLE FAMILY RESIDENTIAL DISTRICT

36-9.3 Principal Uses.

- N. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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Subject: Code Text Amendment 2017-18  
Meeting Date: February 12, 2018

SECTION 36-10 "C-1" NEIGHBORHOOD COMMERCIAL

36-10.3 Principal Uses.

- F. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

SECTION 36-11 "C-C" CENTRAL COMMERCIAL

36-11.3 Principal Uses.

- F. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

SECTION 36-12 "C-2" GENERAL COMMERCIAL

36-12.3 Principal Uses.

- H. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

On February 7, 2018, after discussion and deliberation, the Planning Commission moved to adopt Resolution 2018-03 recommending that the City Council approve the Code Text Amendment. The action passed on a 5-0 vote (Attachment A).

Pursuant to the Municipal Code, findings must be determined, based on evidence and testimony, that the proposed code text amendment is consistent with the Oakdale General Plan, will not be likely to cause environmental damage; and that they further the public convenience and necessity (health, safety and welfare). These findings were made by the Planning Commission.

The amendment has been considered pursuant to the California Environmental Quality Act (CEQA) and has been determined to be exempt from review, in accordance with Section 15061(b)(3) – General Rule of the CEQA Guidelines.

**III. FISCAL IMPACT**

The costs of preparing this proposed code amendment request has been underwritten by the General Fund. The implementation of the amended development standards does not create new costs to the City, nor any affected property owners, and therefore will not result in unexpected fiscal impacts. Any potential costs as a result of future Cannabis related activities, are expected to be recovered via application fees collected from applicants.

**IV. RECOMMENDATION**

City Staff recommends that the City Council approve Ordinance \_\_\_\_\_ (Attachment B).

Should the City Council desire to approve the proposed code text amendment, the following motion would be appropriate:

"I move the City Council introduce and waive the first reading of Ordinance \_\_\_\_\_, an Ordinance of the City of Oakdale amending Section 36-6 – Residential-Agricultural District, Section 36-7 - Single-Family Residential Zone, Section 36-8 - Duplex-Residential District, Section 36-9 Multiple-Family Residential District, Section 36-10 – Neighborhood-Commercial District, Section 36-11 – Central-Commercial District, Section 36-12 – General-Commercial District, Section 36-13 – Limited-Industrial District and Section 36-14



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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**Subject: Code Text Amendment 2017-18  
Meeting Date: February 12, 2018**

– Light-Industrial District of the Oakdale City Code, Chapter 36 - Zoning, to allow for personal and commercial cannabis activities.”

**V. ATTACHMENTS**

Attachment A: Planning Commission Resolution 2018-03

Attachment B: Draft City Council Ordinance \_\_\_\_\_

Attachment C: Cannabis Cultivation, Distribution, Manufacturing & Testing Map

Attachment D: Dispensary Map



**IN THE PLANNING COMMISSION  
OF THE CITY OF OAKDALE  
PLANNING COMMISSION RESOLUTION 2018-03**

**A RESOLUTION OF THE CITY OF OAKDALE PLANNING COMMISSION  
RECOMMENDING TO THE CITY OF OAKDALE CITY COUNCIL ADOPTION OF AN  
AMENDMENT TO THE CITY OF OAKDALE CHAPTER 36 (ZONING ORDINANCE) OF  
THE CITY OF OAKDALE'S MUNICIPAL CODE SECTIONS  
36-6 R-A, 36-7 R-1, 36-8 R-2/R-2-M, 36-9 R-3, 36-10 C-1, 36-11 C-C, 36-12 C-2,  
36-13 L-M, AND 36-14 M-1**

**THE CITY OF OAKDALE PLANNING COMMISSION DOES HEREBY RESOLVE THAT:**

**WHEREAS**, The City of Oakdale has adopted Chapter 37 Cannabis Regulations, to the Oakdale Municipal Code to regulate cannabis businesses; and

**WHEREAS**, it is necessary to modify the Zoning Ordinance to align with the regulations in Chapter 37; and

**WHEREAS**, The City has determined that the Project is subject to the California Environmental Quality Act (CEQA); and

**WHEREAS**, the Government Code Section 65855 requires that the City Council receive input and a recommendation from the Planning Commission on a Zoning Amendment that imposes any regulations listed in Section 65850; and

**WHEREAS**, the Planning Commission has reviewed the Zoning Ordinance Amendment and conducted a public hearing on February 7, 2018; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED** that the **PLANNING COMMISSION** hereby recommends to the City of Oakdale City Council adoption of an Ordinance of the City of Oakdale Amending Chapter 36 (Zoning Ordinance) of the City of Oakdale's Municipal Code Sections 36-6 "R-A" Residential-Agricultural District, Section 36-7 "R-1" Single-Family Residential Zone, Section 36-8 "R-2/R-2-M" Duplex-Residential District, Section 36-9 "R-3" Multiple-Family Residential District, Section 36-10 "C-1" Neighborhood-Commercial District, Section 36-11 "C-C" Central-Commercial District, Section 36-12 "C-2" General-Commercial District, Section 36-13 "L-M" Limited-Industrial District and Section 36-14 "M-1" Light-Industrial District as shown in the draft ordinance attached as Exhibit A and based on the following findings:

1. The City finds and determines with certainty that the amendments described in Ordinance No. XXXX is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the activity is covered under the general rule that CEQA applies to only projects, which have the potential for causing a significant effect on the environment.



**CITY OF OAKDALE**

**Planning Commission Resolution 2018-03(Continued)**

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2. The City finds and determines with certainty that the amendments described in Ordinance No. XXXX are consistent with the Goals, Policies, and Implementation Programs of the City of Oakdale General Plan.

**THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 7th DAY OF FEBRUARY, 2018,** by the following vote:

AYES:	Chiara, Havard, Kinney, Poncabare, Velasco	(5)
NOES:	None	(0)
ABSTAIN:	None	(0)
ABSENT:	None	(0)

ATTEST:

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Amy Velasco, Chairperson  
Planning Commission

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Jeff Gravel, Secretary  
Planning Commission



**IN THE CITY COUNCIL OF THE  
CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKDALE  
AMENDING THE CITY OF OAKDALE CHAPTER 36 (ZONING ORDINANCE) OF  
THE CITY OF OAKDALE'S MUNICIPAL CODE SECTIONS  
36-6 R-A, 36-7 R-1, 36-8 R-2/R-2-M, 36-9 R-3, 36-10 C-1, 36-11 C-C,  
36-12 C-2, 36-13 L-M, AND 36-14 M-1**

**WHEREAS**, The City of Oakdale has adopted Chapter 37 Cannabis Regulations, to the Oakdale Municipal Code to regulate cannabis businesses; and

**WHEREAS**, it is necessary to modify the Zoning Ordinance to align with the regulations in Chapter 37; and

**WHEREAS**, said Code Text Amendment has been reviewed in accordance with the California Environmental Quality Act (CEQA) to determine the potential of significant effects on the environment caused by adoption and implementation of said ordinance amendments; and,

**WHEREAS**, said amendment is consistent with the City's 2015 General Plan; and,

**WHEREAS**, the Code Text Amendment has been processed consistent with Section 36-23 of the Municipal Code; and,

**WHEREAS**, the Oakdale Planning Commission held a duly noticed public hearing on February 7, 2018 considered staff recommendations for approval and adopted Planning Commission Resolution 2018-03, recommending that the City Council make the requisite findings, including the environmental determination that the proposed code text amendment will not have an effect on the environment, and then adopt the proposed code text amendment as proposed.

**THE CITY COUNCIL OF THE CITY OF OAKDALE, CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** *Chapter 36, Zoning, of the City of Oakdale Municipal Code is hereby amended to read as follows:*

**SECTION 36-6 "R-A" RESIDENTIAL AGRICULTURAL DISTRICT**

**36-6.3 Principal Uses.**

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the R-A Zones, only for the following uses, plus such other uses as the Planning Commission may deem to be similar and not detrimental to the public health, safety, and welfare. All uses shall be subject to the property development standards in Section 36-6.6.



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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- A. Single family dwelling of not less than 900 square feet.
- B. Mobile homes, certified under the National Construction and Safety Standards Act of 1974, placed on permanent foundation and subject to the provisions of Section 36-18.24.
- C. Accessory buildings such as garages, carports, storage sheds and the storage of one unoccupied recreational vehicle and one trailer.
- D. Second residential unit subject to the provisions of Section 36-18.22, and Site Plan Review, Section 36-19.
- E. State licensed Small Family Day-Care Homes, six or fewer children as defined by the California State Health and Safety Code are allowed outright. State licensed Large Family Day Care Homes, seven (7) to twelve (12) children are allowed subject to the provisions of Section 36-18.26.
- F. The growing of fruit and nut trees, vine crops, and horticultural stock primarily for noncommercial activities (i.e., production of food or fiber for personal use and consumption).
- G. Home occupations as defined in Section 36-2.2 (67) with one sign of not over two (2) square feet, indicating the name of the occupant and the home occupation, and affixed flat on the front of the residence, and subject to the conditions in Section 36-18.21.
- H. Reserved.
- I. Parks owned and operated by a governmental agency.
- J. Storm drainage basins serving residentially zoned property.
- K. Cemeteries, crematories, and mausoleums.
- L. Transitional and Supportive Housing, as defined in Section 36-2.2 (117(a) and 116.1, respectfully)
- M. Employee Housing with a maximum of thirty-six (36) beds in a group quarters or 12 units or spaces as defined in Section 36-2.2 (50(b))
- N. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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**SECTION 36-7 "R-1" SINGLE FAMILY RESIDENTIAL ZONE**

36-7.3 Principal Uses.

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the R-1 Districts, only for the following uses, plus such other uses as the Planning Commission may deem to be similar and not detrimental to the public health, safety, and welfare. All uses shall be subject to the property development standards in Section 36-7.6.

- A. One (1) single family dwelling of not less than 900 square feet.
- B. Mobile homes, certified under the National Construction and Safety Standards Act of 1974, placed on permanent foundation and subject to the provisions of Section 36-18.24.
- C. Storm drainage basins serving residentially zoned property.
- D. Second residential unit subject to the provisions of Section 36-18.22, and Site Plan Review, Section 36-19.
- E. Zero lot line construction for residential construction: Dwellings are permitted subject to Site Plan Review in Section 36-19 based on the following conditions:
  1. That the dwellings constructed on the zero lot line shall be on adjacent lots and be of common wall type construction, or on a single lot provided that a maintenance easement has been secured from the property owner adjacent to the "zero lot line."
  2. The parcel size upon which the common wall and single dwellings are constructed shall each be at least 2,500 s.f. in area.
  3. The dwelling unit(s) on each lot, including required covered parking, shall not exceed fifty (50%) percent at ground floor level of total area of each lot.
  4. One of the required parking spaces for each dwelling unit on each lot shall be covered.
  5. The minimum side yard requirements shall be five (5) feet or twenty (20%) percent of the lot frontage, whichever is greater.
  6. Except as provided by this Section, all other requirements of the Code of the City of Oakdale shall apply to zero lot line common wall construction, and single lot with a maintenance easement.

{CW051300.5}

Ordinance \_\_\_\_\_

Effective March 22, 2018



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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- F. State licensed Small-Family Day-Care Homes, as defined by the California State Health and Safety Code are allowed outright. State licensed Large-Family Day-Care Homes, as defined by the California State Health and Safety Code are allowed subject to the provisions of Section 36-18.26.
- G. Parks owned and operated by a governmental agency.
- H. The growing of fruit and nut trees, vine crops, and horticulture stock for personal use.
- I. Signs subject to the provisions of Section 36-26.
- J. Home occupations as defined in Section 36-2.2 (67) with one sign of not over two (2) square feet, indicating the name of the occupant and the home occupation, and affixed flat on the front of the residence, and subject to the conditions in Section 36-18.21.
- K. Transitional and Supportive Housing as defined in Section 36-2.2 (117(a) and 116.1, respectfully).
- L. Employee Housing for six (6) or fewer workers as defined in Section 36-2.2 (50(b)).
- M. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

**SECTION 36-8 "R-2/R-2-M" DUPLEX RESIDENTIAL DISTRICT**

36-8.3 Principal Uses.

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the R-2/R-2-M Districts, only for the following uses, plus such other uses as the Planning Commission may deem to be similar and not detrimental to the public health, safety, and welfare. All uses shall be subject to the property development standards in Section 36-8.6.

- A. One (1) single family dwelling of not less than nine hundred (900) square feet.
- B. Mobile homes, certified under the National Construction and Safety Standards Act of 1974, placed on permanent foundation and subject to the provisions of Section 36-18.24.
- C. Two (2) single family dwellings or a duplex on a single lot.



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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- D. Second residential unit built in conjunction with a single family dwelling and subject to the provisions of Section 36-18.22, and Site Plan Review, Section 36-19.
  
- E. Zero lot line construction for residential construction: Dwellings are permitted subject to Site Plan Review in Section 36-19 based on the following conditions:
  - 1. That the dwellings constructed on the zero lot line shall be on adjacent lots and be of common wall type construction, or on a single lot provided that a maintenance easement has been secured from the property owner adjacent to the "zero lot line."
  - 2. The parcel size upon which the common wall and single dwellings are constructed shall each be at least 2,500 s.f. in area.
  - 3. The dwelling unit(s) on each lot, including required covered parking, shall not exceed fifty (50%) percent at ground floor level of total area of each lot.
  - 4. One of the required parking spaces for each dwelling unit on each lot shall be covered.
  - 5. The minimum side yard requirements shall be a five (5) feet or twenty (20%) percent of the lot frontage, whichever is greater.
  - 6. Except as provided by this Section, all other requirements of the Code of the City of Oakdale shall apply to zero lot line common wall construction, and single lot with a maintenance easement.
  
- F. Storm drainage basins serving residential areas.
  
- G. State licensed Small-Family Day-Care Homes, as defined by the California Health and Safety Code are allowed outright. State licensed Large-Family Day-Care Homes, as defined by the California Health and Safety Code are allowed subject to the provisions of Section 36-18.26.
  
- H. Parks owned and operated by a governmental agency.
  
- I. The growing of fruit and nut trees, vine crops, and horticulture stock for personal use.
  
- J. Signs subject to the provisions of Section 36-26.



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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- K. Home occupations as defined in Section 36-2.2 (67) with one sign of not over 2 square feet, indicating the name of the occupant and the home occupation, and affixed flat on the front of the residence, and subject to the conditions in Section 36-18.21.
- L. Transitional and Supportive Housing as defined in Section 36-2.2 (117(a) and 116.1, respectfully).
- M. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

**SECTION 36-9 "R-3" MULTIPLE FAMILY RESIDENTIAL DISTRICT**

36-9.3 Principal Uses.

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the R-3 Districts, only for the following uses, plus such other uses as the Planning Commission may deem to be similar and not detrimental to the public health, safety, and welfare. All uses shall be subject to the property development standards in Section 36-9.6.

- A. One (1) single-family dwelling of not less than 900 square feet.
- B. Mobile homes, certified under the National Construction and Safety Standards Act of 1974, placed on permanent foundation and subject to the provisions of Section 36-18.24.
- C. Two (2) single family dwellings or a duplex on a single lot.
- D. Multiple-family dwelling units up to, but not exceeding Section 36-9.6 I, Unit Density.
- E. Second residential unit built in conjunction with a single family dwelling and subject to the provisions of Section 36-18.22, and Site Plan Review, Section 36-19.
- F. Zero lot line construction for residential construction: Dwellings are permitted subject to Site Plan Review in Section 36-19 based on the following conditions:
  - 1. That the dwellings constructed on the zero lot line shall be on adjacent lots and be of common wall type construction, or on a single lot provided that a maintenance easement has been secured from the property owner adjacent to the "zero lot line."



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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2. The parcel size upon which the common wall and single dwellings are constructed shall each be at least 2,500 s.f. in area.
  3. The dwelling unit(s) on each lot, including required covered parking, shall not exceed fifty (50%) percent at ground floor level of total area of each lot.
  4. One of the required parking spaces for each dwelling unit on each lot shall be covered.
  5. The minimum side yard requirements shall be a five (5) feet or twenty (20%) percent of the lot frontage, whichever is greater.
  6. Except as provided by this Section, all other requirements of the Code of the City of Oakdale shall apply to zero lot line common wall construction, and single lot with a maintenance easement.
- G. Storm drainage basins serving residential areas.
- H. State licensed Small-Family Day-Care Homes, as defined by the California State Health and Safety Code are allowed outright. State licensed Large-Family Day-Care Homes, as defined by the California State Health and Safety Code are allowed subject to the provisions of Section 36-18.26.
- I. Parks owned and operated by a governmental agency.
- J. Signs subject to the provisions of Section 36-26.
- K. Home occupations as defined in Section 36-2.2 (67) with one sign of not over 2 square feet, indicating the name of the occupant and the home occupation, and affixed flat on the front of the residence, and subject to the conditions in Section 36-18.21.
- L. Reserved.
- M. Transitional and Supportive Housing as defined in Section 36-2.2 (117(a) and 116.1, respectfully).
- N. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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**SECTION 36-10 "C-1" NEIGHBORHOOD COMMERCIAL**

36-10.3 Principal Uses.

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the C-1 Districts only for the following uses. All uses shall be subject to the property development standards in Section 36-10.6.

- A. Any locally oriented business or service establishment, such as but not limited to a grocery store, fruit or vegetable stores, bake shop, drug store, financial institutions, barber and beauty shop, cleaners, laundry pickup stations, laundromats, business or professional offices and the like supplying commodities or performing services for residents of the neighborhood.
- B. Restaurant, cafe, and soda fountain, not including entertainment or dancing, or sale of liquor, beer and other alcoholic beverages by the glass, or for consumption on the premises.
- C. Commercial parking lots for passenger vehicles.
- D. Any other retail business or service establishment which is determined by Planning Commission Resolution to be of the same general character as the above permitted retail business or service uses.
- E. Parks owned and operated by a governmental agency.
- F. Emergency Shelters as defined in Section 36-2.2 (50(a))
- G. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

**SECTION 36-11 "C-C" CENTRAL COMMERCIAL**

36-11.3 Principal Uses.

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the C-C District only for the following uses subject to the property development standards in Section 36-11.6.

- A. Hotels and motels, grocery stores and farmer's markets, drug stores, department stores, sporting goods stores, retail shops, specialty shops such as antiques and specialty clothing, restaurants and sidewalk cafes, theatres, and art galleries.
- B. Public buildings such as museums and historical centers, schools and educational facilities.



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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- C. Professional offices, information centers and organization offices, transit stops and stations, medical offices and first aid stations, banks, merchants deposit facilities, and automated teller.
- D. Any other uses determined by the Planning Commission to fit the theme, approach, and objectives of the Downtown Oakdale Commercial Center Design Guidelines and which will not impair the present or potential use of adjacent properties.
- E. Park zoned and operated by governmental agency.
- F. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

**SECTION 36-12 "C-2" GENERAL COMMERCIAL**

36-12.3 Principal Uses.

Buildings, structures, and land shall be used, and buildings and structures shall be erected, structurally altered, or enlarged in the C-2 Districts only for the following uses subject to the property development standards in Section 36-12.6.

- A. Any use permitted as a principal use in a C-1 and C-C District.
- B. New and used automobile lots, boat and trailer sales and rental establishments, automobile service stations.
- C. Restaurants and drive-in restaurants.
- D. Public or commercial recreation facilities, and amusement/entertainment centers, such as swimming pools, bowling alleys, etc.
- E. Any other retail business or service establishment determined by Planning Commission Resolution to be consistent with the purpose of this Section and which will not impair the present or potential use of adjacent properties.
- F. Major Retail Development, as defined in Section 36.2.2.87(a), may be permitted after first obtaining a planned development permit pursuant to Section 36-23.30, and subject to the Major Retail Development Standards in Section 36-23.35 P. and Q.
- G. Major Retail Development located in a zoning district which has been adopted through the Specific Plan Process may be permitted with a Major Use Permit and is subject to the Major Retail Development Standards in Section 36-23.35 P, and Q.



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

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- H. Cultivation of cannabis for personal use as defined and regulated by Chapter 37.**

**SECTION 36-13 "L-M" LIMITED INDUSTRIAL**

36-13.5 Conditional Uses.

The following uses may be permitted in the L-M Districts subject to a Use Permit provided for in Section 36-20.

- A. Public and quasi-public uses appropriate to serve the L-M District.
- B. Retail commercial uses, such as restaurants and service stations, appropriate in and necessary to serve the L-M District.
- C. Caretakers residence, one unit not to exceed twelve hundred square feet for industrial uses of one acre minimum lot area.
- D. Airports.
- E. Industrial operations which include enameling, lacquering, rubber coating, electric or hotdip plating, which will not become offensive because of the creation of vapors, dust, odors or noise inherent to the business, which in the opinion of the Planning Commission is excessive.
- F. Dray, freight or truck yards and railroad terminals.
- G. Chemical plants.
- H. Any other light industrial establishment determined by the Planning Commission by resolution to be consistent with the purpose of this sections and which will not impair the present or potential use of adjacent properties.
- I. Manufacturing biodegradable soap detergents. (Ord. No. 929, § 1, 1988.)
- J. Cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, and dispensary, as defined in Section 37-2.**

**Permits to establish a cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, or dispensary shall be located in the area highlighted on the attached maps.**



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

**SECTION 36-14 "M-1" LIGHT INDUSTRIAL**

36-14.5 Conditional Uses.

The following uses may be permitted in the M-1 Districts subject to a Use Permit provided for in Section 36-20.

- A. Public and quasi-public uses appropriate to serve the M-1 District.
- B. Retail commercial uses, such as restaurants and service stations, appropriate in and necessary to serve the M-1 District.
- C. Caretakers residence, one unit not to exceed twelve hundred square feet for industrial uses of one acre minimum lot area.
- D. Airports.
- E. Any other light industrial establishment determined by the Planning Commission by resolution to be consistent with the purpose of this sections and which will not impair the present or potential use of adjacent properties.
- F. Cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, and dispensary, as defined in Section 37-2.**

**Permits to establish a cannabis cultivation business, cannabis manufacturing business, cannabis distribution business, cannabis testing laboratory, or dispensary shall be located in the area highlighted on the attached maps**

**SECTION 2:** This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date.

The foregoing ordinance was introduced during special Council session held the 12th day of February 2018, given a second reading on the \_\_\_\_\_ day of \_\_\_\_\_ 2018, and upon motion by Council Member \_\_\_\_\_ moved, seconded by Council Member \_\_\_\_\_ for the adoption of said ordinance by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:  
ABSTAINED: COUNCIL MEMBERS:



**IN THE CITY COUNCIL  
OF THE CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE \_\_\_\_\_**

ATTEST:

SIGNED:

\_\_\_\_\_  
Kathy Teixeira, CMC  
City Clerk

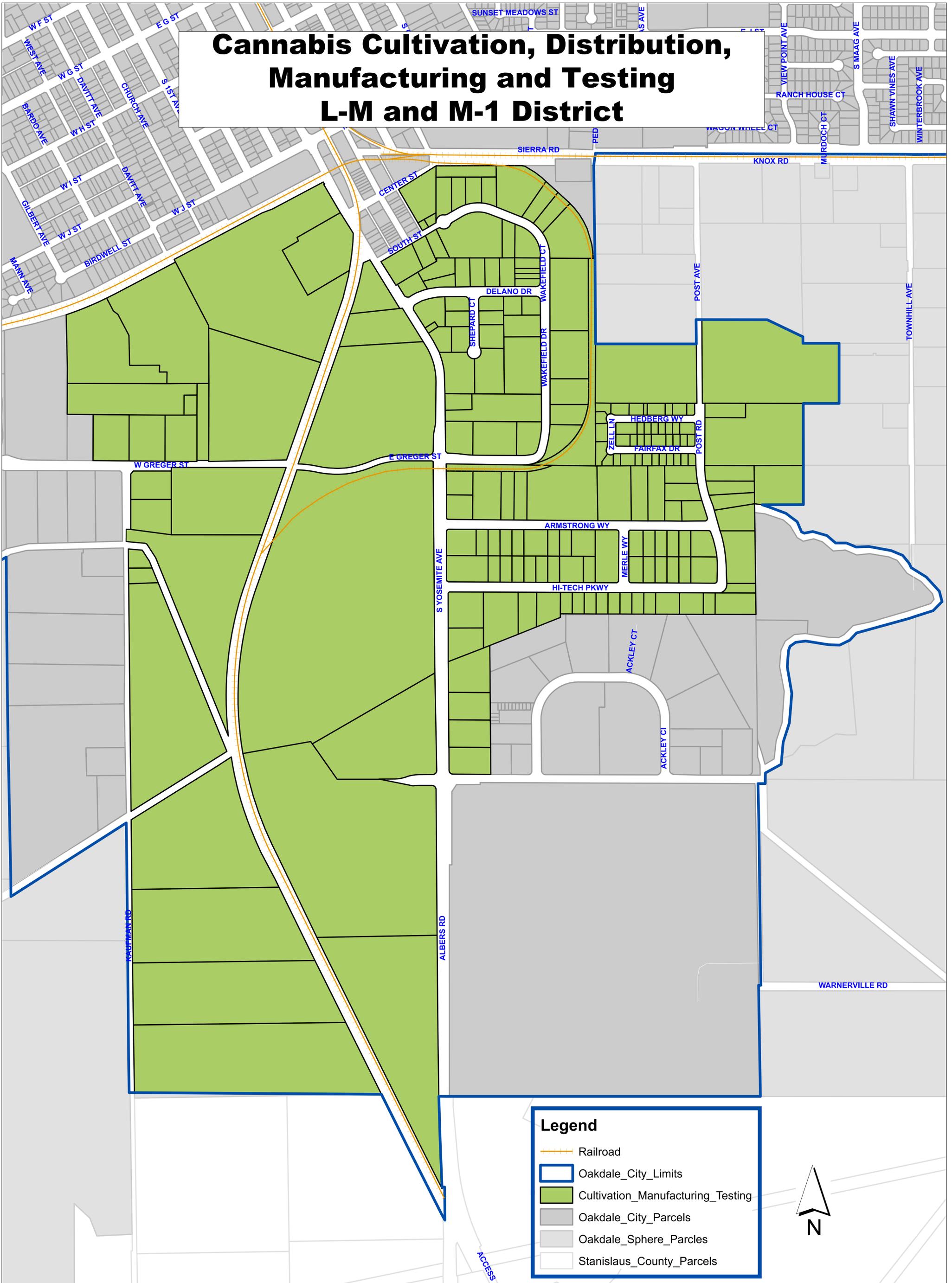
\_\_\_\_\_  
Pat Paul, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Tom Hallinan, City Attorney

DRAFT

# Cannabis Cultivation, Distribution, Manufacturing and Testing L-M and M-1 District

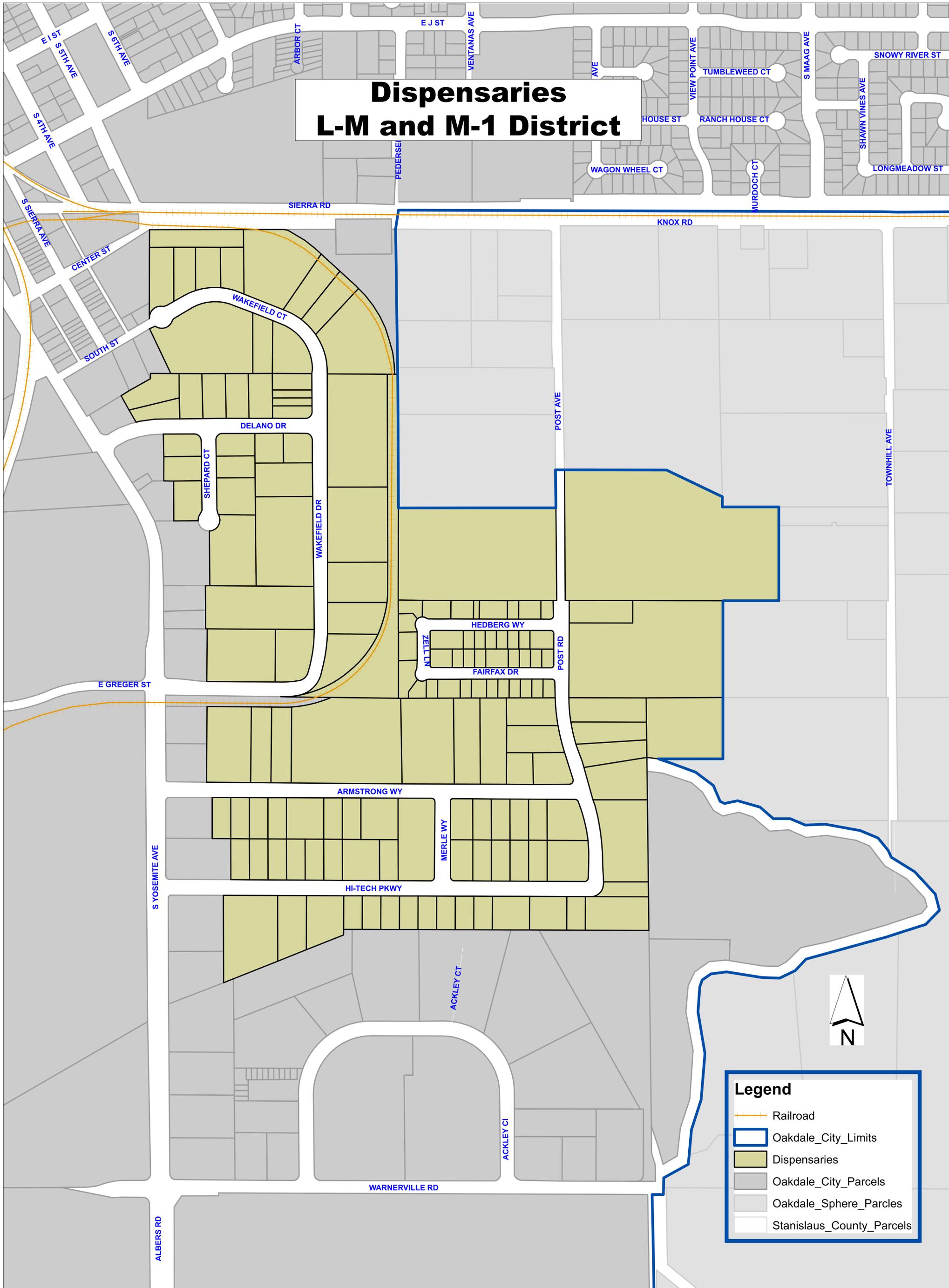


**Legend**

- Railroad
- Oakdale\_City\_Limits
- Cultivation\_Manufacturing\_Testing
- Oakdale\_City\_Parcels
- Oakdale\_Sphere\_Parcels
- Stanislaus\_County\_Parcels



# Dispensaries L-M and M-1 District



**Legend**

- Railroad
- Oakdale\_City\_Limits
- Dispensaries
- Oakdale\_City\_Parcels
- Oakdale\_Sphere\_Parcles
- Stanislaus\_County\_Parcels



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

**Date:** February 12, 2018  
**To:** Mayor Pat Paul and Members of the City Council  
**From:** Douglas White, Deputy City Attorney  
**Subject:** Cannabis Business Development Agreements.

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## **I. BACKGROUND**

On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643), collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA established the state’s first licensing system for commercial medicinal cannabis activity by qualified patients and their primary care givers. MCRSA also preserved local control of these businesses by requiring that a medicinal cannabis business obtain a local permit in order to operate.

In November of 2016, the voters of California approved Proposition 64, entitled the “Control, Regulate and Tax Adult Use of Marijuana” (“AUMA”). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence.

On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which combined MCRSA and AUMA to create a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in their jurisdiction.

## **II. DISCUSSION**

On May 15, 2017, the Oakdale City Council (“City Council”) approved circulation of a request for proposals (“RFP”) for the Oakdale Cannabis Business Pilot Program. The purpose of the RFP was to gauge the level of interest from the cannabis industry and the viability of regulating cannabis businesses in the City of Oakdale (“City”).

The City accepted proposals for all license types, including dispensary (and associated delivery services), commercial indoor cultivation, manufacturing (volatile and non-volatile), distribution, and testing facilities. The development agreements described below are a result of the RFP and subsequent negotiations between City staff and the business operators.



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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**Subject: Cannabis Development Agreements  
Meeting Date: February 12, 2018**

In compliance with recently enacted state law, on November 20, 2017, the City Council approved Ordinance 2017-1251 to allow and regulate cannabis businesses pursuant to a development agreement and a use permit. The RFP was a useful tool in assisting the City Council and City staff in developing Ordinance 2017-1251.

**A. JDI Farms**

The City seeks to enter into a development agreement with JDI Farms, a California non-profit mutual benefit corporation (“JDI”). JDI proposes to operate a cannabis dispensary business and a microbusiness. JDI plans to locate the cannabis dispensary business at 633 Armstrong Way, Oakdale, California 95361 (County of Stanislaus Assessor’s Parcel Number 064-039-069).

JDI plans to locate the microbusiness at 517 Armstrong Way, Oakdale, California 95361 (County of Stanislaus Assessor’s Parcel Numbers 064-039-086, 064-039-087, 064-039-059, 064-039-060). JDI has an agreement to purchase the property.

The major elements of the development agreement are summarized below:

- The term of the agreement is three (3) years.
- JDI proposes the operation of a cannabis dispensary business and a microbusiness.
- JDI would pay a one-time law enforcement cannabis impact fee of Fifty Thousand Dollars (\$50,000) to pay for additional law enforcement services related to the agreement.
- The microbusiness would be vertically integrated and engage in commercial cannabis cultivation, manufacturing, and distribution.
- The project would provide JDI with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. JDI seeks to offset these impacts through a monthly Public Benefit payment.
- For the microbusiness, JDI will pay to the City a Public Benefit of:
  - Ten Thousand Dollars (\$10,000) or five percent (5%) of gross receipts from operations, whichever is greater, each month for throughout the term.
- For the cannabis dispensary business, JDI will pay to the City a Public Benefit of:
  - Fifteen Thousand Dollars (\$15,000) or five percent (5%) of gross receipts from operations, whichever is greater, each month for the first twelve (12) months following the issuance of a major use permit.
  - Twenty-Five Thousand Dollars (\$25,000) or five percent (5%) of gross receipts from operations, whichever is higher, for months thirteen (13) through twenty-four (24).



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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**Subject: Cannabis Development Agreements  
Meeting Date: February 12, 2018**

- Forty Thousand Dollars (\$40,000) or five percent (5%) of gross receipts from operations, whichever is higher, thereafter through the end of the term.

**B. MDS Business Services**

The City seeks to enter into a development agreement with MDS Business Services, Inc., a California nonprofit mutual benefit company (“MDS”). MDS currently proposes to operate a cannabis dispensary business. The cannabis dispensary business would be located at 570 Armstrong Way, Oakdale, CA 95361 (Assessor’s Parcel Number 048-042-006). MDS has an agreement to lease the property, and the property owner is aware of and agrees to the project operating on the site.

The major elements of the development agreement are summarized below:

- The term of the agreement is three (3) years.
- MDS currently proposes the operation of a cannabis dispensary business. MDS plans to also operate a cannabis cultivation, distribution, and manufacturing business at a later date.
- MDS would pay a one time Law Enforcement cannabis impact fee of Fifty Thousand Dollars (\$50,000) to pay for additional law enforcement services related to the agreement.
- The project would provide MDS with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. MDS seeks to offset these impacts through a monthly Public Benefit payment.
- For the cannabis dispensary business, MDS will pay to the City a Public Benefit of:
  - Fifteen Thousand Dollars (\$15,000) or five percent (5%) of gross receipts from operations, whichever is greater, each month for the first twelve (12) months following the issuance of a major use permit.
  - Twenty-Seven Thousand Five Hundred Dollars (\$27,500) or five percent (5.5%) of gross receipts from operations, whichever is higher, for months thirteen (13) through twenty-four (24).
  - Forty-Three Thousand Dollars (\$43,000) or five percent (5%) of gross receipts from operations, whichever is higher, thereafter through the end of the term.
- For the any other cannabis business, MDS will pay to the City a Public Benefit of:
  - Eighty Thousand Dollars (\$8,000) or five percent (5%) of gross receipts from operations, whichever is greater, each month for throughout the term.



**CITY OF OAKDALE  
CITY COUNCIL STAFF REPORT**

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**Subject: Cannabis Development Agreements  
Meeting Date: February 12, 2018**

**III. ENVIRONMENTAL**

JDI's cannabis dispensary business project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines section 15301, applicable to existing facilities involving no expansion of the facility.

JDI's microbusiness project is categorically exempt from CEQA pursuant to section 15332, title 14 of the California Code of Regulations applicable to infill development on a site of less than five (5) acres within city limits, is substantially surrounded by urban uses, has no value as habitat for endangered rare, or threatened species, is adequately served by necessary utilities and public services and has no foreseeable significant adverse impacts.

MDS' project is categorically exempt from the provisions of CEQA, pursuant to CEQA Guidelines section 15301, applicable to existing facilities involving no expansion of the facility.

**IV. FISCAL IMPACT**

Each development agreement would provide the respective applicant with substantial private benefits and impose burdens upon City infrastructure, services, and neighborhoods. The City and each applicant seek to offset these impacts through a monthly payment classified as a "Public Benefit" amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the project on the community. The Public Benefit imposed on each applicant is specifically tailored to address the estimated burdens resulting from each project.

**V. RECOMMENDATION**

City Staff recommends that the City Council approve each ordinance for each cannabis development agreement.

**VI. ATTACHMENTS**

Attachment A: JDI Development Agreement

Attachment B: City Council Ordinance \_\_\_ Approving A Development Agreement By and Between the City and JDI

Attachment C: MDS Development Agreement

Attachment D: City Council Ordinance \_\_\_ Approving A Development Agreement By and Between the City and MDS



**IN THE PLANNING COMMISSION  
OF THE CITY OF OAKDALE  
PLANNING COMMISSION RESOLUTION 2018-004**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OAKDALE,  
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO  
APPROVE A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF  
OAKDALE AND JDI FARMS INC., A CALIFORNIA NON-PROFIT MUTUAL BENEFIT  
CORPORATION**

**THE CITY OF OAKDALE PLANNING COMMISSION DOES HEREBY  
RESOLVE THAT:**

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

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

**WHEREAS**, the City adopted Oakdale Municipal Code Chapter 36-23.20 et seq., authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

**WHEREAS**, Oakdale Municipal Code section 36-23.22 requires a written application with specified data to be submitted to the Oakdale Community Development Director for consideration of any development agreement. JDI Farms submitted an application to the Oakdale Community Development Director for consideration of a development agreement for a cannabis business; and

**WHEREAS**, intends to improve, develop, and use real property to operate a cannabis dispensary (the "Dispensary Project") and cannabis microbusiness (the



**CITY OF OAKDALE**

**Planning Commission Resolution 2018-004**

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“Microbusiness Project”) within the City in strict compliance with MAUCRSA and Oakdale Municipal Code Chapter 37.

**WHEREAS**, JDI Farms has an agreement to lease that certain real property located at 633 Armstrong Way, Oakdale, CA, identified as Stanislaus County Assessor’s Parcel Number 064-039-069 (the “Dispensary Property”). Developer intends to operate the Dispensary Project on the Dispensary Property.

**WHEREAS**, JDI Farms also has an agreement to purchase and develop that certain real property located at 517 Armstrong Way, Oakdale, CA, identified as Stanislaus County Assessor’s Parcel Numbers 064-039-086, 064-039-087, 064-039-059, and 064-039-060 (the “Microbusiness Property”). JDI Farms intends to operate the Microbusiness Project on the Microbusiness Property.

**WHEREAS**, City and JDI Farms seek to enter into a development agreement for the Dispensary Project and the Microbusiness Project (the “Development Agreement”) pursuant to Government Code section 65864 et seq. and all applicable local and state laws; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on February 7, 2018, to consider the Development Agreement and make recommendations to the City Council; and

**WHEREAS**, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code section 21000 et seq.; California Code of Regulations, title 14, section 15000 et seq.).

**WHEREAS**, the Dispensary Project site is categorically exempt from CEQA pursuant to section 15301 of title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

**WHEREAS**, the Microbusiness Project site is categorically exempt from CEQA pursuant to section 15332 of title 14 of the California Code of Regulations applicable to in-fill development projects of no more than five (5) acres substantially surrounded by urban uses; and

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

**WHEREAS**, the Planning Commission finds that the Ordinance is in the best interest of the health, welfare, and safety of the public.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City hereby recommends by this Resolution that the City Council adopt the proposed Ordinance to approve the Development Agreement between the City and JDI Farms, a California non-profit mutual benefit corporation.



**CITY OF OAKDALE**  
**Planning Commission Resolution 2018-004**

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**THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 7TH DAY OF  
FEBRUARY 2018.**

AYES:	Chiara, Havard, Kinney, Poncabare, Velasco	(5)
NOES:	None	(0)
ABSENT:	None	(0)
ABSTAIN:	None	(0)

Signed:

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Amy Velasco, Chairperson  
Planning Commission

Attest:

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Jeff Gravel, Secretary  
Planning Commission



**IN THE CITY COUNCIL OF THE  
CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKDALE APPROVING  
A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF OAKDALE AND  
JDI FARMS INC., A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION**

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

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

**WHEREAS**, the City adopted Oakdale Municipal Code Chapter 36-23.20 *et seq.*, authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

**WHEREAS**, Oakdale Municipal Code section 36-23.22 requires a written application with specified data to be submitted to the Oakdale Community Development Director for consideration of any development agreement. JDI Farms submitted an application to the Oakdale Community Development Director for consideration of a development agreement for a cannabis business; and

**WHEREAS**, JDI Farms, Inc. intends to improve, develop, and use real property to operate a cannabis dispensary (the "Dispensary Project") and cannabis microbusiness (the "Microbusiness Project") within the City in strict compliance with MAUCRSA and Oakdale Municipal Code Chapter 37; and

**WHEREAS**, JDI Farms has an agreement to lease that certain real property located at 633 Armstrong Way, Oakdale, CA, identified as Stanislaus County Assessor's Parcel Number 064-039-069 (the "Dispensary Property"). JDI intends to operate the Dispensary Project on the Dispensary Property; and

**WHEREAS**, JDI Farms, Inc. also has an agreement to purchase and develop that certain real property located at 517 Armstrong Way, Oakdale, CA, identified as Stanislaus County Assessor's Parcel Numbers 064-039-086, 064-039-087, 064-039-059, and 064-039-060 (the "Microbusiness Property"). JDI Farms, Inc. intends to operate the Microbusiness Project on the Microbusiness Property; and

**WHEREAS**, the City and JDI Farms, Inc. seek to enter into a development agreement for the Dispensary Project and the Microbusiness Project (the "Development Agreement") pursuant to Government Code section 65864 et seq. and all applicable local and state laws; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on February 7, 2018, to consider the Development Agreement and make recommendations to the Oakdale City Council ("City Council"); and

**WHEREAS**, on February 12, 2018, and February 28, 2018, the City Council held duly noticed public hearings to consider the Development Agreement; and

**WHEREAS**, the City Council, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City's General Plan and all other applicable standards and ordinances of the City.
2. In accordance with Government Code section 65864 et seq., the City Council finds that the Development Agreement:
  - a. Is consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan and any applicable specific plan;

Ordinance XXXX  
Effective \_\_\_\_\_ XX, 2018

- b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole;
- c. Will not adversely affect the orderly development of property or the preservation of property values;
- d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and
- e. Contains a legal description of the property.

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

**SECTION 1.** The City Council approves a Development Agreement by and between JDI Farms Inc., a California nonprofit mutual benefit corporation, and the City for the development of the Dispensary Project and the Microbusiness Project, and instructs the City Manager to execute the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

**SECTION 2.** The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement; or as otherwise required pursuant to the terms of the Development Agreement

**SECTION 3.** Notice of the public hearing on the proposed Development Agreement was published in the Oakdale Leader and Modesto Bee, newspapers of general circulation, printed and published in the City, and notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

**SECTION 4.** Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 et seq.; California Code of Regulations, title 14, section 15000 et seq.).

The Dispensary Project site is categorically exempt from CEQA pursuant to section 15301 of title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility.

The Microbusiness Project site is categorically exempt from CEQA pursuant to section 15332 of title 14 of the California Code of Regulations, applicable to in-fill development projects of no more than five (5) acres substantially surrounded by urban uses.

**SECTION 5.** If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section,

Ordinance XXXX  
Effective \_\_\_\_\_ XX, 2018

subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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

The foregoing Ordinance was introduced at a meeting of the City Council held on the 12th day of February 2018, by \_\_\_\_\_, who moved its introduction, which motion being duly seconded by \_\_\_\_\_. Said Ordinance was given a second reading at a regular meeting of the City Council held on the 20th day of February 2018, and after such reading, \_\_\_\_\_ moved its adoption, seconded by \_\_\_\_\_, and said Ordinance was thereupon adopted by the following roll call vote:

AYES:	COUNCIL MEMBERS:	None	(0)
NOES:	COUNCIL MEMBERS:	None	(0)
ABSENT:	COUNCIL MEMBERS:	None	(0)
ABSTAINED:	COUNCIL MEMBERS:	None	(0)

ATTEST:

SIGNED:

\_\_\_\_\_  
Kathy Teixeira, CMC  
City Clerk

\_\_\_\_\_  
Pat Paul, Mayer

APPROVED AS TO FORM:

\_\_\_\_\_  
Tom Hallinan, City Attorney

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

City of Oakdale  
280 N. Third Ave  
Oakdale, CA 95361  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §6103

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ (\_\_\_\_) day of \_\_\_\_\_, 2018, by and between the **CITY OF OAKDALE**, a California municipal corporation ("City") and **JDI Farms**, a California nonprofit mutual benefit corporation ("Developer"). City and Developer 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 October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local

{CW051837.1}

jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use real property to operate a Cannabis Dispensary (the "Cannabis Dispensary Project") and a cannabis microbusiness (the "Microbusiness Project"), in strict accordance with California Cannabis Laws, and the Municipal Code of the City of Oakdale, as each may be amended from time to time.
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City adopted Oakdale Municipal Code Section 36-23.20 *et seq.*, ("City Development Agreement Ordinance") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. Oakdale Municipal Code section 36-23.22 requires a written application with specified data be submitted to the Department of Planning for consideration of any development agreement.
- H. Developer submitted an application to the City Department of Planning for consideration of a development agreement for two cannabis businesses.
- I. Developer has an agreement to lease that certain real property located at 633 Armstrong Way in the City of Oakdale, County of Stanislaus, State of California, Assessor's Parcel Number 064-039-069, of which Developer intends to improve approximately thirty-nine hundred (3,900) square feet of space (the "Cannabis Dispensary Site") to operate the Cannabis Dispensary, more particularly described in the Location Map attached hereto as **Exhibit A** ("Cannabis Dispensary Location Map").
- J. Developer also has an agreement to purchase and develop that certain real property located at 517 Armstrong Way in the City of Oakdale, identified as Stanislaus County Assessor's Parcel Numbers 064-039-086, 064-039-087, 064-039-059, and 064-039-060 (the "Microbusiness Site"), more particularly described in the Location Map attached hereto as **Exhibit A** attached hereto ("Microbusiness Location Map").

{CW051837.1}

Developer intends to improve approximately twenty thousand (20,000) square feet of space, as provided on the Microbusiness Location Map attached hereto as **Exhibit A**, and operate the Microbusiness Project on the Microbusiness Site.

- K. Government Code section 65865 and Oakdale Municipal Code section 36-23.22 require that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- L. Developer has leased the Cannabis Business Site for the purpose of carrying out the Cannabis Dispensary Project. A copy of the lease is attached hereto as **Exhibit B**, within satisfaction of the requirement of Oakdale Municipal Code Chapter 37 and the City Development Agreement Ordinance. The legal owner of the Cannabis Dispensary Site is aware of, and agrees to, the Cannabis Dispensary Project operating at the Cannabis Dispensary Site.
- M. Developer has purchased the Microbusiness Site for the purpose of carrying out the Microbusiness Project. A copy of the grant deed to the Microbusiness Site is attached hereto as **Exhibit C**, within satisfaction of the requirement of Oakdale Municipal Code Chapter 37 and the City Development Agreement Ordinance.
- N. On February 7, 2018, the Oakdale Planning Commission ("Planning Commission") adopted Resolution No. \_\_\_\_\_ recommending the Oakdale City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.
- O. On \_\_\_\_\_, 2018, the City Council adopted Ordinance No. \_\_\_\_\_ to revise Oakdale Municipal Code Chapter 37 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- P. Government Code section 65867.5 and Oakdale Municipal Code section 36-23.24 requires the Planning Commission hold a public hearing to review an application for a development agreement.
- Q. On February 7, 2018, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.
- R. On February 7, 2018, the Planning Commission recommended the City Council adopt Ordinance No. 2018-\_\_\_\_\_, which would allow Developer to operate the Cannabis Dispensary Project and Microbusiness Project at the respective site.
- S. On \_\_\_\_\_, pursuant to Government Code section 65867.5 and the City Development Agreement Ordinance, and following a duly noticed and conducted

{CW051837.1}

public hearing, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2018-\_\_\_\_\_.

- T. This Agreement is entered into pursuant to the Development Agreement Statute and the Oakdale Municipal Code.
- U. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) create a physical environment that is consistent with and complements City's goals and visions; (iii) protect natural resources from adverse impacts; (iv) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; and (vi) reduce the economic risk of development of the Site to both City and Developer.
- V. The Parties intend, through this Agreement, to allow Developer to develop and operate the Cannabis Dispensary Project and Microbusiness Project in accordance with the terms of this Agreement.
- W. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with the Oakdale Municipal Code for the approval of this Agreement.

**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. Findings.** City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

**Section 1.2. Recitals.** The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

{CW051837.1}

**Section 1.3. Exhibits.** The following “Exhibits” are attached hereto and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Cannabis Dispensary and Potential Microbusiness Location Map
Exhibit B	Cannabis Dispensary Site Deed
Exhibit C	Microbusiness Site Lease
Exhibit D	Notice of Non-Performance Penalty
Exhibit E	Indemnification Agreement
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

**Section 1.4. Definitions.** In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional Licenses” has the meaning set forth in Section 2.4.
- (c) “Adult-use cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or older in California pursuant to the California Cannabis Laws.
- (d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) “Application” means the application for a development agreement required by Oakdale Municipal Code section 36-36.22.
- (f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.
- (g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.
- (h) “Authorized License” has the meaning set forth in Section 2.3.
- (i) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Oakdale Municipal Code.

{CW051837.1}

(j) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA (as defined below), the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable laws that may be enacted or approved.

(k) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.

(l) “Cannabis Business Pilot Program” means the cannabis business program established and authorized by Oakdale Municipal Code Chapter 37.

(m) “Cannabis Dispensary Site” has the meaning set forth in Recital I.

(n) “Cannabis Dispensary” means a business that engages in Commercial Cannabis Activity, as defined below, related to the retail sale and delivery of cannabis or cannabis products pursuant to a Type 10 license.

(o) “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(p) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines, as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(q) “City” means the City of Oakdale, a municipal corporation having general police powers.

(r) “City Council” means the City of Oakdale City Council, as described in Oakdale Municipal Code Section 1-2.

{CW051837.1}

(s) "City Development Agreement Ordinance" has the meaning set forth in Recital F.

(t) "City Manager" means the City Manager of the City of Oakdale, or his or her designee, as described in Oakdale Municipal Code Section 2-4.

(u) "Charged Party" has the meaning set forth in Section 8.1.

(v) "Charging Party" has the meaning set forth in Section 8.1.

(w) "Commercial Cannabis Activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of cannabis or a cannabis product that requires a state license pursuant to MAUCRSA.

(x) "Conditional Use Permit" means a conditional use permit issued by City pursuant to Oakdale Municipal Code Section 36-23.24.

(y) "CUA" means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(z) "Developer" means JDI Farms, a California nonprofit mutual benefit corporation. Developer also has the meaning set forth in Section 6.1.

(aa) "Development Agreement Statute" has the meaning set forth in Recital E.

(bb) "Exhibits" has the meaning set forth in Section 1.3.

(cc) "Gross Receipts from Operations" means total revenue actually received or receivable from operation of the Cannabis Dispensary Project and Microbusiness Project, including: all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;

{CW051837.1}

2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payment required under Section 4.2, all sales of cannabis products through the Cannabis Dispensary Project and Microbusiness Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

**(dd)** "Indemnification Agreement" has the meaning set forth in Section 6.3.

**(ee)** "Major Amendment" means an amendment that shall have a material effect on the terms of this Agreement. A Major Amendment also has the meaning set forth in Section 2.4. Major Amendments shall require approval by the City Council.

**(ff)** "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

**(gg)** "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*, as may be amended from time to time.

**(hh)** "MCRSA" has the meaning set forth in Recital A.

**(ii)** "Microbusiness" means a business that engages in Commercial Cannabis Activity pursuant to a Type 12 license.

**(jj)** "Microbusiness Site" has the meaning set forth in Recital J.

**(kk)** "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

**(ll)** "Minor Amendment" means a clerical amendment to this Agreement that shall not materially affect the terms of this Agreement and any amendment described as minor herein. A Minor Amendment also has the meaning set forth in Section 1.7.

**(mm)** "Mortgage" has the meaning set forth in Article 7.

{CW051837.1}

- (nn) “Non-Performance Penalty” has the meaning set forth in Section 4.3.
- (oo) “Notice of Non-Performance Penalty” has the meaning set forth in Section 4.3.
- (pp) “Notice of Termination” has the meaning set forth in Section 9.1.
- (qq) “Planning Commission” means the City of Oakdale Planning Commission, as established by Oakdale Municipal Code Section 2-27.
- (rr) “Processing Costs” has the meaning set forth in Section 1.11.
- (ss) “Project” means the Cannabis Dispensary Project and the Microbusiness Project collectively, as those terms are defined in Recital D.
- (tt) “Project Litigation” has the meaning set forth in Section 10.7.
- (uu) “Public Benefit” has the meaning set forth in Section 4.2.
- (vv) “Public Benefit Amount” has the meaning set forth in Section 4.2.
- (ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.
- (xx) “State Cannabis Regulations” means the regulations promulgated by the State Licensing Authority pursuant to the California Cannabis Laws.
- (yy) “State Taxing Authority” has the meaning set forth in Section 4.2.
- (zz) “Subsequent City Approvals” has the meaning set forth in Section 3.1.
- (aaa) “Term” has the meaning set forth in Section 1.7.
- (bbb) “Type 10 license” or “Retailer” means a state license issued by the Bureau pursuant to the California Cannabis Laws for the retail sale of cannabis and cannabis products.
- (ccc) “Type 12 license” or “Microbusiness” means a state license issued by a State Licensing Authority pursuant to the California Cannabis Laws relating to cannabis cultivation, manufacturing, and distribution.

**Section 1.5. Project is a Private Undertaking.** The Parties agree that the Cannabis Dispensary Project and Microbusiness Project are private developments 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 Developer, the Cannabis Dispensary Project, or Microbusiness Project.

**Section 1.6. Effective Date of Agreement.** This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the "Effective Date").

**Section 1.7. Term.**

**(a) Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is required, directed, or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for no longer than one calendar (1) year (the "Tolling Period"). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling period exceeds one (1) calendar year to comply with federal or state law.

**(b) Developer Tolling or Termination.** Developer may not temporarily halt or terminate this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement or by mutual agreement of the Parties.

**Section 1.8. Priority of Enactment.** In the event of a conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (d) Conditional Use Permit, (e) Indemnification Agreement, and (f) Subsequent City Approvals.

**Section 1.9. Amendment of Agreement.** This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major

Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

**Section 1.10. Recordation of Development Agreement.** The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Dispensary Site and the Microbusiness Site within ten (10) business days of the Effective Date.

**Section 1.11. Funding Agreement for Processing Costs.** Developer has deposited Twenty-Five Thousand Dollars (\$25,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, and consultant and attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Cannabis Dispensary Project and Microbusiness Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may terminate this Agreement.

(b) **Accounting.** Developer may request, and City shall issue within a reasonable time not to exceed thirty (30) days, an accounting and written acknowledgement of Processing Costs paid to City.

**Section 1.12. Law Enforcement Cannabis Impact Fee.** Developer shall pay Fifty Thousand Dollars (\$50,000) to City due with the first installment of the Cannabis Dispensary Public Benefit, as specified in Section 4.2, to pay for additional law enforcement services related to this Agreement.

## **ARTICLE 2 DEVELOPMENT OF PROPERTY**

**Section 2.1. Vested Right of Developer.** During the Term, in developing the Dispensary Site and the Microbusiness Site consistent with the Cannabis Dispensary Project and Microbusiness Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

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**Section 2.2. Vested Right to Develop.** In accordance with Section 2.1, Developer shall have the vested right to develop and use the Cannabis Dispensary Project and Microbusiness Project consistent with this Agreement, the Conditional Use Permit, and Subsequent City Approvals.

**Section 2.3. Permitted Uses and Development Standards.** Developer shall be authorized to develop, construct, and use the Dispensary Site for Commercial Cannabis Activity consistent with the following license type:

Type 10	Retailer
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Developer shall be authorized to develop, construct, and use the Microbusiness Site for Commercial Cannabis Activity consistent with the following license type, provided that Developer shall not engage in the retail sale of cannabis or cannabis products:

Type 12	Microbusiness
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The Retailer and Microbusiness license types shall be collectively referred to as the “Authorized License”.

Developer shall be permitted to use each site consistent with the related Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Type 10 license or the Type 12 license to Developer, Developer shall immediately cease Commercial Cannabis Activity and any other operations on the respective site. Developer shall also, within thirty (30) days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority’s denial or rejection of any license. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Dispensary Site, the Microbusiness Site, the Cannabis Dispensary Project, and the Microbusiness Project.

**Section 2.4. Major Amendment to Permitted Uses.** Developer may request to add to the Authorized Licenses additional license types once that license is applied for or obtained from the appropriate State Licensing Authority (the “Additional Licenses”).

**Section 2.5. Conditional Use Permit.** Prior to commencing operation of any Commercial Cannabis Activity on the Dispensary Site or the Microbusiness Site, Developer shall obtain a Conditional Use Permit and any applicable Subsequent City

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Approvals for each location. Developer shall be required to comply with all provisions of the Oakdale Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Oakdale Municipal Code or issue rules or administrative guidelines associated with implementation of the Cannabis Business Pilot Program or Developer's obligation to strictly comply with the same.

**Section 2.6. Subsequent Entitlements, Approvals, and Permits.** Successful implementation of the Cannabis Dispensary Project and the Microbusiness Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. The exercise of this discretion is not prohibited or limited in any way by this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

**(a) Contemplated City Rules and Guidelines.** City anticipates issuing additional rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. City may establish requirements that are identical to or place a higher standard of care as existing provisions of the California Cannabis Laws, State Cannabis Regulations, or any amendments thereto. City reserves the right to adopt additional categories of rules or guidelines that are not listed in this section as part of the Cannabis Business Pilot Program. Developer shall comply with any and all administrative guidelines adopted by City that govern or pertain to the Cannabis Dispensary Project or the Microbusiness Project.

**Section 2.7. Initiatives and Referenda.** If any City ordinance, rule or regulation, or addition to the Oakdale Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such Oakdale Municipal Code changes shall not be applied to the Dispensary Site, the Microbusiness Site, the Cannabis Dispensary Project, or the Microbusiness Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

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**Section 2.8. Regulation by Other Government Entities.** Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Cannabis Dispensary Project or the Microbusiness Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

**Section 2.9. Developer's Right to Rebuild.** Developer may renovate portions of the Dispensary Site or the Microbusiness Site any time within the Term of this Agreement consistent with the Oakdale Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Cannabis Dispensary Project and Microbusiness Project by this Agreement.

**Section 2.10. Changes in California Building Standards Codes.** Notwithstanding any provision of this Agreement to the contrary, development of the Cannabis Dispensary Project or the Microbusiness Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

**Section 2.11. Changes Mandated by Federal or State Law.** The Dispensary Site, Microbusiness Site, the Cannabis Dispensary Project, and the Microbusiness Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Oakdale Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Cannabis Business Pilot Program. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Oakdale Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to

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process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Cannabis Dispensary Project and Microbusiness Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

**Section 2.12. Health and Safety Emergencies.** In the event that any future public health and safety emergencies arise with respect to the Cannabis Dispensary Project or the Microbusiness Project contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Cannabis Dispensary Project and Microbusiness Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency in a way that does not have a material adverse impact on the Cannabis Dispensary Project and Microbusiness Project, City may select an option which, in its discretion, minimizes, so far as reasonably possible, the impact on development and use of the Cannabis Dispensary Project or the Microbusiness Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

### **ARTICLE 3 ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS**

**Section 3.1. Subsequent City Approvals.** City shall permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement, the Oakdale Municipal Code, and any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Dispensary Site or the Microbusiness Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Oakdale Municipal Code, and any applicable state law.

**Section 3.2. Timely Processing.** City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

**Section 3.3. Cooperation Between City and Developer.** Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with

permitting or licensing jurisdiction over the Cannabis Dispensary Project and Microbusiness Project.

**Section 3.4. Further Consistent Discretionary Actions.** The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Dispensary Site or the Microbusiness Site as contemplated by the Parties in this Agreement.

**ARTICLE 4  
PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT**

**Section 4.1. Processing Fees and Charges.** Developer shall pay to City those processing, inspection, plan checking, 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) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

**Section 4.2. Public Benefit.**

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the "Public Benefit"). In consideration of the foregoing, for the Cannabis Dispensary Project Developer shall remit to City as follows (the "Cannabis Dispensary Public Benefit"):

Effective Date	No Cannabis Dispensary Public Benefit Due.
First (1 <sup>st</sup> ) Business Day of 1 <sup>st</sup> Month Following Issuance of the Conditional Use Permit.	\$15,000 or 5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 1 Amount</u> ").
1 <sup>st</sup> Business Day of the Thirteenth (13 <sup>th</sup> ) Month Following Issuance of the Conditional Use Permit.	\$25,000 or 5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 2 Amount</u> ").

{CW051837.1}

1 <sup>st</sup> Business Day of the Twenty-fifth (25 <sup>th</sup> ) Month Following Issuance of the Conditional Use Permit Through the End of the Term.	\$40,000 or 5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 3 Amount</u> ").
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(b) Collectively, these tier amounts shall be known as the "Cannabis Dispensary Public Benefit Amount".

(c) For the Microbusiness Project, Developer shall remit to City as follows (the "Microbusiness Public Benefit Amount"):

Effective Date	No Microbusiness Public Benefit Amount Due.
First (1 <sup>st</sup> ) Business Day of 1 <sup>st</sup> Month Following Issuance of the Conditional Use Permit.	\$10,000 or 5% of Gross Receipts from Operations each month, whichever is greater.

(d) Collectively, the Cannabis Dispensary Public Benefit Amount and the Microbusiness Public Benefit Amount shall be known as the "Public Benefit Amount".

(e) Developer 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 Receipts from Operations of the Cannabis Dispensary Project and Microbusiness Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

**Section 4.3. Reporting.** Developer shall provide City with copies of any reports provided to a State Licensing Authority within forty-five (45) days of that submission.

Any failure or refusal of Developer to provide any statement or report to City, the State Taxing Authority, or any other State 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 the revocation or suspension of the Conditional Use Permit.

**Section 4.4. Records.** Developer 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 and the applicable State Cannabis Regulations. All records required by this Section shall be maintained and made available for City's

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examination and duplication (physical or electronic) at the Dispensary Site or the Microbusiness Site or at an alternate facility as approved in writing by the City Manager or his or her designee.

**Section 4.5. Penalty.** Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, 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 Developer fails to make any payment when due, as required by this Agreement, including 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 Developer a “Notice of Non-Performance Penalty,” attached hereto as **Exhibit D**. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) days following delivery of the Notice of Non-Performance Penalty.

**Section 4.6. Interest on Unpaid Non-Performance Penalty.** If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) days following delivery of the Notice of Non-performance Penalty.

**Section 4.7. Protections from City Tax.** Notwithstanding Section 4.2, for the Term of this Agreement, Developer shall be exempt from any City tax, including a business license tax, on commercial cannabis businesses. Notwithstanding the foregoing, Developer and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Stanislaus, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement).

## **ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES**

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods and the existing level of service of City infrastructure and services to accommodate for the Cannabis Dispensary Project and Microbusiness Project.

## **ARTICLE 6 INSURANCE AND INDEMNITY**

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**Section 6.1. Insurance.** Developer shall require all persons doing work on the Cannabis Dispensary Project and Microbusiness Project, including its contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 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.** Developer shall maintain commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

**(i)** Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, 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 insured.

**(ii)** Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

**(iii)** Contain standard separation of insured provisions.

**(b) Automotive Liability Insurance.** Developer shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

**(i)** Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, 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 City, its officials, employees, agents, and representatives.

**(iii)** Contain standard separation of insured provisions.

**(c) Workers’ Compensation Insurance.** Developer shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s employees employed at or on the Cannabis Dispensary Project and Microbusiness Project and, should any of the work be subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such

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employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Cannabis Dispensary Project and Microbusiness Project is not protected under any workers' compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, 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) for each accident shall be maintained by Developer.

**Section 6.2. Other Insurance Requirements.** Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed 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 materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) 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 to the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written 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 6.3. Indemnity.** To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Cannabis Dispensary Project and Microbusiness Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals. Developers shall execute the indemnification agreement ("Indemnification Agreement") attached hereto as **Exhibit E**.

**Section 6.4. Failure to Indemnify; Waiver.** Failure by Developer to indemnify City, when required by this Agreement and the Indemnification Agreement, shall constitute a

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material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Cannabis Dispensary Project and Microbusiness Project, or any portion thereof, and a waiver of Developer's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

**Section 6.5. Waiver of Damages.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer and, therefore, Developer hereby waives all claims for damages against City for breach of this Agreement. Developer further acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed. Developer further acknowledges that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard.

## **ARTICLE 7 MORTGAGEE PROTECTION**

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Dispensary Site or the Microbusiness Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Dispensary Site or the Microbusiness Site or Project, 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. City agrees to not unreasonably withhold its authorization.

## **ARTICLE 8**

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## DEFAULT

### Section 8.1. General Provisions.

(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) 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) days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, and give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Cannabis Dispensary Project and Microbusiness Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 within thirty (30) days from the expiration of the ten (10) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party 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) days

or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice. An extension of the 10-day cure period may be given by mutual consent of the Parties.

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

**Section 8.2. Annual Review.** City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Cannabis Dispensary Project and Microbusiness Project's performance, at least seven (7) days prior to such periodic review. Developer shall be entitled to appeal a determination of City or the City Manager to the City Council. Any appeal must be filed within ten (10) days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or the City Council, as applicable. The reasonable cost for City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

**Section 8.3. Estoppel Certificates.**

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

(b) At Developer'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 Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Dispensary Site, Microbusiness Site, Cannabis Dispensary Project, or the Microbusiness Project subject to this Agreement.

**Section 8.4. 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 Developer shall not be obligated to proceed with or complete the Cannabis Dispensary Project and Microbusiness Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer.

**Section 8.5. Cumulative Remedies of Parties.** In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 9.1(c) of this Agreement.

**Section 8.6. Forced 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, terrorism, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than 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.

**Section 8.7. Appeals.** Developer may appeal any adverse decision or action of City pursuant to Oakdale Municipal Section 36-23.29.

## **ARTICLE 9 TERMINATION**

**Section 9.1. Termination Upon Completion of Development.** This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the “Notice of Termination” attached hereto as **Exhibit F**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

**Section 9.2. Effect of Termination on Developer's Obligations.** Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Dispensary Site or the Microbusiness Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

**Section 9.3. 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 9.4. Survival After Termination.** The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, Section 10.10, 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 10 OTHER GENERAL PROVISIONS**

**Section 10.1. Assignment and Assumption.** Developer 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 the Dispensary Site or the Microbusiness Site or Project, subject to or a part of this Agreement, 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 the corporate and business entities of Developer 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 10.1, City and Developer shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit G**.

**Section 10.2. 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 Dispensary Site or the Microbusiness Site or Project, 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

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covenant herein to act or refrain from acting is for the benefit of or a burden upon the Cannabis Dispensary Project and Microbusiness Project, as appropriate, runs with the Dispensary Site or the Microbusiness Site, and is binding upon Developer.

**Section 10.3. Notices.** Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (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 Oakdale  
280 N. Third Ave  
Oakdale, California 95361  
Attention: City Manager

and

Churchwell White LLP  
1414 K Street, 3<sup>rd</sup> Floor  
Sacramento, California 95814  
Attention: Douglas L. White, Esq.

If to Developer: JDI Farms, Inc.  
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and:

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**Section 10.4. Governing Law and Binding Arbitration.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Sacramento, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services (“JAMS”). Judgment on the award may be entered in any court having jurisdiction thereof.

**Section 10.5. Invalidity of Agreement / Severability.** If this Agreement in its entirety is determined by an arbitrator or court of competent jurisdiction 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 an arbitrator or court of competent jurisdiction 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, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. 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 10.6. Cumulative Remedies.** In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. 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, Developer agrees that Developer may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom

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the right to recover any fees or charges paid by Developer in excess of those permitted hereunder.

**Section 10.7. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Cannabis Dispensary Project and Microbusiness Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer 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. Developer shall pay all litigation fees 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 Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

**Section 10.8. 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 Dispensary Site or the Microbusiness Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Dispensary Site or the Microbusiness Site, and all rights and interests of such person in the Dispensary Site or the Microbusiness Site shall be subject to the terms, requirements, and provisions of this Agreement.

**Section 10.9. Statute of Limitations and Laches.** City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

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**Section 10.10. Joint and Several Liability.** Developer 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 Party shall also constitute a breach of this Agreement by the other Party. Developer agrees that City may impose a lien and seek foreclosure on any parcel of the Dispensary Site or the Microbusiness Site due to any default by Developer.

**Section 10.11. Change in State Regulations.** In no event shall Developer operate the Cannabis Dispensary Project and Microbusiness Project in violation of the Agreement, or State Cannabis Regulations, as may be amended from time to time.

**Section 10.12. Standard Terms and Conditions.**

(a) **Venue.** Venue for all legal proceedings shall be the JAMS Resolution Center in Sacramento, California.

(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, constitutes 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 Dispensary Site, Microbusiness Site, Cannabis Dispensary Project, or the Microbusiness Project.

(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.

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

**(h) Term Includes Extensions.** All references to the Term of this Agreement shall include any extensions of such Term.

**(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 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.** 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.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

**“CITY”**

**“DEVELOPER”**

Date: \_\_\_\_\_, 2018

Date: \_\_\_\_\_, 2018

CITY OF OAKDALE, CA  
a California Municipal Corporation

JDI Farms, a California nonprofit mutual  
benefit corporation

By: \_\_\_\_\_  
Bryan Whitemyer  
City Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Kathy Teixeira  
City Clerk

Approved to as Form

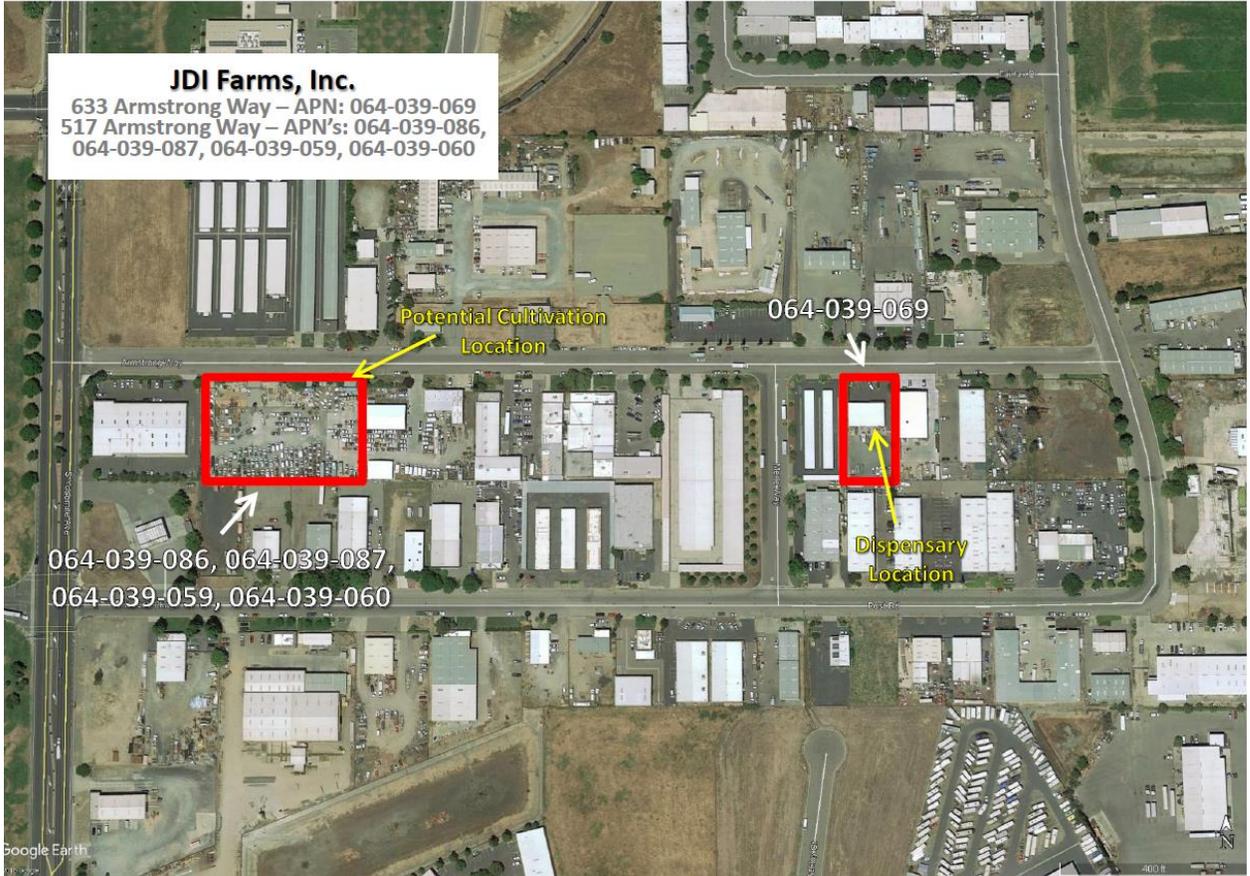
By: \_\_\_\_\_  
Thomas P. Hallinan  
City Attorney





**Exhibit A**

**Cannabis Dispensary and Potential Microbusiness Location Map**



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**Exhibit B**  
**Cannabis Dispensary Site Lease**

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**Exhibit C**

**Microbusiness Lease / Rental Agreement**

**RESIDENTIAL LEASE/RENTAL AGREEMENT**

**PARTIES:**  
**LANDLORD:** CARY HAHN; 600 Walnut Woods Ct., Modesto, CA 95356  
**TENANT(S)** JDI FARMS; 1631 Fig Ave., Patterson, CA 95363  
**PROPERTY ADDRESS:** 517 Armstrong Way, Oakdale, CA 95361

1. **RENTAL AMOUNT:** Beginning January 1, 2018 TENANT agrees to pay LANDLORD the sum of **\$5,000.00** per month in advance on the 1<sup>st</sup> day of each calendar month. Said rental payment shall be delivered by TENANT to LANDLORD or his designated agent to the following location: **600 Walnut Woods Ct., Modesto, CA 95363**. Rent must be actually received by LANDLORD, or designated agent, in order to be considered in compliance with the terms of this agreement.
2. **TERM:** The premises are leased on the following lease term: **January 1, 2018 until January 1, 2021**.
3. **SECURITY DEPOSITS:** TENANT shall deposit with landlord the sum of **\$5,000.00** as a security deposit to secure TENANT'S faithful performance of the terms of this lease.
4. **INITIAL PAYMENT:** TENANT shall pay the first month rent of **\$5,000.00** and the security deposit in the amount of **\$5,000.00** for a total of **\$10,000.00**. Said payment shall be made in the form of cash or cashier's check and is all due prior to occupancy.
5. **SUBLETTING OR ASSIGNING:** TENANT agrees not to assign or sublet the premises or any part thereof, without first obtaining written permission from LANDLORD.
6. **UTILITIES:** TENANT shall pay for all utilities and/or services supplied to the premises.
7. **CONDITION OF PREMISES:** TENANT acknowledges that the premises have been inspected. TENANT agrees to pay for all upgrades and construction to property.
8. **ALTERATIONS:** TENANT will make a necessary alterations in compliance with State and City requirements. TENANT will construct necessary utility improvements in compliance with all applicable codes.
9. **TENANT ACTIVITIES:** LANDLORD agrees and acknowledges TENANT intends to use property to conduct a cannabis retail business in accordance with the State of California and City of Oakdale regulations.
10. **LANDLORD'S RIGHT OF ENTRY:** LANDLORD may enter and inspect the premises during normal business hours and upon reasonable advance notice of at least 24 hours to TENANT. In addition LANDLORD has all right to enter pursuant to Civil Code Section 1954. TENANT agrees that in such event that TENANT for any reason must vacate due to no fault of his own, TENANT will be compensated by a corresponding reduction in rent or direct payment for those many days that TENANT was temporarily displaced.
11. **REPAIRS BY LANDLORD:** Where a repair is the responsibility of the LANDLORD, TENANT must notify LANDLORD with a written notice stating what item needs servicing or repair. TENANT must give LANDLORD a reasonable opportunity to service or repair said item. TENANT acknowledges that rent will not be withheld unless a written notice has been served on LANDLORD giving LANDLORD a reasonable time to fix said item within the meaning of Civil Code Section 1942. Under no circumstances may TENANT withhold rent unless said item constitutes a substantial breach of the warrantee of habitability as stated in Code of Civil Procedure Section 1174.2.
12. **INSURANCE:** TENANT must maintain a property insurance policy to cover any losses sustained to TENANT'S personal property or vehicle.

**Exhibit D**

**Notice of Non-Performance Penalty**

DATE: \_\_\_\_\_, 2018

PARTIES: CITY OF OAKDALE, a California municipal corporation  
280 N. Third Ave  
Oakdale, California 95361

JDI Farms, Inc., a California nonprofit mutual benefit corporation  
\_\_\_\_\_  
\_\_\_\_\_

**THIS NOTICE OF NON-PERFORMANCE PENALTY** (“Penalty Notice”) is being executed by the City of Oakdale, a California municipal corporation (“City”), with reference to the following.

- A. By Instrument No. \_\_\_\_\_, which was recorded in the Official Records of Stanislaus County, California, on \_\_\_\_\_, 2018, City recorded a development agreement between City and \_\_\_\_\_, dated \_\_\_\_\_, 2018 (the “Development Agreement”), relating to the development and operation of a cannabis dispensary and microbusiness.
- B. Pursuant to Section 4.2 of the Development Agreement, Developer agrees to pay to City a Public Benefit on the first business day of each month during the term of the Development Agreement.
- C. On \_\_\_\_\_, 20\_\_, the Public Benefit was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts (“Penalty”). As of \_\_\_\_\_, 20\_\_, the past due amount equals \$ \_\_\_\_\_. The Penalty owed by Developer equals \$ \_\_\_\_\_ (“Penalty Amount”).
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice (“Penalty Due Date”).

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- F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then, in addition to the Penalty Amount specified in subdivision (D), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum (“Penalty Interest Payment”), computed from the Penalty Due Date specified in subdivision (E). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of \_\_\_\_\_, 20\_\_\_\_, the Penalty Interest Payment amount equals \$\_\_\_\_\_.
- G. Nothing contained herein shall constitute a waiver of City’s future claims for the Public Benefit, Penalty, or interest on the Penalty.

**NOW, THEREFORE,** City hereby provides Developer the Penalty Notice required by Section 4.5 of the Development Agreement. This Penalty Notice shall be effective upon notice pursuant to Section 10.3 of the Development Agreement.

CITY OF OAKDALE,  
a California municipal corporation

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

**Exhibit E**

**INDEMNITY AGREEMENT FOR  
LAND USE ENTITLEMENT PROCESSING**

**THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING** (“Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_ 2018, (“Effective Date”) by and between the City of Oakdale, a municipal corporation, (“City”) and JDI Farms, Inc., a California non-profit mutual benefit corporation (collectively, “Applicant”). City and Applicant may be referred to herein individually as a “Party” or collectively as the “Parties”. There are no other parties to this Agreement.

**RECITALS**

A. In 1996, the people of the state of California approved Proposition 215, the Compassionate Use Act of 1996 (“CUA”). The CUA enables seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted Senate Bill 420, entitled the Medical Marijuana Program (“MMP”), which authorizes qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.

B. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

C. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”). AUMA legalizes the cultivation, commercial sale, and possession of recreational cannabis for adults age 21 and older.

D. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction.

E. On December 7, 2017, California state cannabis licensing authorities issued emergency regulations that apply to AUMA and MAUCRA and further regulate businesses engaged in commercial cannabis activity.

F. Oakdale Municipal Code (“O.M.C.”) Chapter 37 authorizes cannabis businesses to operate within the City under specified restrictions pursuant to a Cannabis Pilot Program.

G. Applicant intends to improve, develop, and use real property to operate a cannabis dispensary (the “Dispensary Project”) and cannabis microbusiness (the “Microbusiness Project”) within the City in strict compliance with MAUCRSA and O.M.C. chapter 37.

H. Applicant has an agreement to lease that certain real property located at 633 Armstrong Way in the City of Oakdale, identified as Stanislaus County Assessor’s Parcel Number 064-039-069 (the “Dispensary Property”). Applicant intends to improve approximately 3,900 hundred (3,900) square feet of space and operate the Dispensary Project on the Dispensary Property.

I. Applicant also has an agreement to purchase and develop that certain real property located at 517 Armstrong Way in the City of Oakdale, identified as Stanislaus County Assessor’s Parcel Numbers 064-039-086, 064-039-087, 064-039-059, and 064-039-060 (the “Microbusiness Property”). Applicant intends to improve approximately twenty thousand (20,000) square feet of space and operate the Microbusiness Project on the Microbusiness Property.

J. The Dispensary Project and the Microbusiness Project shall be referred to collectively as the “Project”.

K. As a condition of approval of the Land Use Entitlements, City has required Applicant to enter into this Agreement.

L. It is in the public interest for City and Applicant to enter into this Agreement, as Applicant will benefit from City’s processing of the Project.

M. Applicant desires to enter into this Agreement to fulfill a condition of approval of the Project, which is a prerequisite for construction of the Project.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the promises, covenants and agreements set

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forth below, the Parties agree as follows:

**Section 1. Recitals.** The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 19 of this Agreement, Sections 1 through 19 shall prevail.

**Section 2. Applicant’s Indemnification Obligations.**

**2.1. Indemnification for Land Use Entitlements.** To the fullest extent permitted by law, Applicant shall indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, and volunteers (collectively, “City’s Agents”) from any and all liability arising out of a claim, action, or proceeding against the City, or City’s Agents, to attack, set aside, void, or annul, an approval concerning the Land Use Entitlements by reason of the action or inaction of City, or City’s Agents. Applicant’s duty to indemnify and hold harmless shall not extend to any claim, action or proceeding arising from the gross negligence or willful misconduct of City, or City’s Agents.

Applicant’s obligations under this Agreement to indemnify City shall apply to any claim, lawsuit or challenge against City brought against the Project, specifically including, but not limited to, any legal challenge based on the California Environmental Quality Act, codified in California Public Resources Code section 21000 et seq.; actions or proceedings brought to challenge the validity of environmental documents prepared in conjunction with the approval of the Project or Land Use Entitlements, or the requirements of any other federal, state, or local laws, including, but not limited to, general plan, specific plan, and zoning requirements.

**2.2. Tender of Defense.** Upon receiving notice of a claim and pursuant to Article 6 of the Land Use Entitlements, Applicant shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys’ fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City’s counsel in defending such an action. Regardless of whether Applicant chooses to defend City pursuant to Section 6.4 of the Land Use Entitlements, City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter.

**2.3. Deposit for Costs.** Applicant shall make a refundable deposit to the City within thirty (30) days of written notification from the City (“Cost Deposit”), to cover the estimated fees and costs associated with the City’s defense of any claim, action or proceeding. Applicant shall make any and all additional payments to City to replenish the Cost Deposit within thirty (30) days of written notice from City.

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**2.4. Failure to Indemnify; Waiver.** Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of the Land Use Entitlements, which shall entitle City to all remedies available under law including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of the Land Use Entitlements. Applicant's failure to indemnify City shall be a waiver by Applicant of any right to proceed with the Project, or any portion thereof, and a waiver of Applicant's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of the Land Use Entitlements, or City's failure to defend any claim, action or proceeding based on Applicant's failure to indemnify City.

**2.5. Satisfaction of Judgment.** With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses or liabilities which Applicant has indemnified City against, Applicant shall pay and satisfy any judgment, award, settlement or decree that may be rendered or agreed against City and City's Agents arising out of any final, non-appealable judicial or administrative action.

**2.6. Payment of Costs and Fees.** Applicant's obligations under this Agreement to defend and indemnify City shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against City, or all settlement costs which arise out of City's processing or approval of the Project.

**2.7. Continuing Obligation.** Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, Applicant may be released from such obligations if Applicant obtains City's prior written consent to such transfer, which consent shall not be unreasonably withheld.

**Section 3. City's Obligations.** City shall notify Applicant of any claim, action or proceeding within ten (10) business days of receiving service of any claim, action or proceeding. If City fails to notify Applicant of any claim, action, or proceeding, Applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless City. City shall have and retain, in its sole discretion, the right to not participate in the defense of any claim, action, or proceeding. At its sole discretion, the City may participate at its own expense in the defense, but such participation shall not relieve Applicant of any obligation imposed by this Agreement.

**Section 4. Notice.** Any notice or communication required hereunder between City and Applicant must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 5. Modification of Agreement.** This Agreement may be supplemented, amended, or modified only by a writing signed by the City and Applicant.

**Section 6. Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the action and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

**Section 7. Agreement is Voluntary.** The Parties acknowledge that they have entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement. This Agreement incorporates the entire understanding of the Parties and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its contents and legal effect.

**Section 8. Time of Essence.** Time is of the essence for this Agreement, and each section contained within this Agreement is made and declared to be a material, necessary, and essential part of this Agreement.

**Section 9. Severability of Agreement.** If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

**Section 10. Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement, and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**Section 11. Noninterference.** No Party will do anything to interfere with or inhibit the ability of the other to comply with their respective obligations under the terms of this Agreement.

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**Section 12. Ambiguities.** Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

**Section 13. Headings.** The headings in this Agreement are included for convenience only, and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

**Section 14. Necessary Acts and Further Assurances.** The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. The Parties will act in good faith to carry out the intent of this Agreement.\_

**Section 15. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.

**Section 16. Venue.** Venue for all legal proceedings shall be in the Superior Court of California, in and for the County of Stanislaus.\_

**Section 17. Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**Section 18. Waiver.** No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.\_

**Section 19. Counterparts.** This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the Parties have executed this Agreement on the day, month and year first above written.

**APPLICANT**

**CITY**

JDI Farms, a California non-profit mutual benefit corporation

City of Oakdale, a California municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Bryan Whitemyer, City Manager

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_

Thomas P. Hallinan, City Attorney

**Exhibit F**

**Notice of Termination**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Oakdale  
280 N. Third Ave  
Oakdale, CA 95361  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §  
6103

**NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT**

DATE: \_\_\_\_\_, 2018

PARTIES: CITY OF OAKDALE, a California municipal corporation  
280 N. Third Ave  
Oakdale, California 95361

JDI Farms, Inc., a California nonprofit mutual benefit corporation  
\_\_\_\_\_  
\_\_\_\_\_

**THIS NOTICE OF TERMINATION AND RELEASE** (the "Release") is being executed by the City of Oakdale, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. \_\_\_\_\_, which was recorded in the Official Records of Stanislaus County, California, on \_\_\_\_\_, 2018, City recorded a development agreement between City and \_\_\_\_\_, dated \_\_\_\_\_, 2018 (the "Development Agreement"), relating to the development and operation of a cannabis dispensary and microbusiness.

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- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires three (3) years from \_\_\_\_\_, 2018, on \_\_\_\_\_, 2020.
- C. Pursuant to Section 9.1 of the Development Agreement, once terminated, the Development Agreement has no further force or effect, unless otherwise set forth in the Development Agreement.

**NOW, THEREFORE,** City hereby terminates, cancels, and otherwise releases Developer and Developer's heirs, executives, administrators, successors, and assigns from their obligations in the Development Agreement on this \_\_\_\_ (day) of \_\_\_\_ (month), 2020, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF OAKDALE,  
a California municipal corporation

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

**Exhibit G**

**Assignment and Assumption Agreement**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Oakdale  
280 N. Third Ave  
Oakdale, CA 95361  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §  
6103

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between JDI Farms, Inc., a California nonprofit mutual benefit corporation ("Assignors"), and \_\_\_\_\_ ("Assignee").

**RECITALS**

A. On \_\_\_\_\_, 2018, Assignor and the City of Oakdale (the "City") entered into that certain agreement entitled "Development Agreement by and between the City of Oakdale, a municipal corporation of the State of California, \_\_\_\_\_, a California nonprofit mutual benefit corporation," relating to the improvement, development, and use of real property to operate a cannabis dispensary business and microbusiness (the "Development Agreement"), originally recorded upon Stanislaus County Assessor's Parcel Number \_\_\_\_\_ (the "Property").

B. Section 10.1 of the Development Agreement prohibits the sale, assignment, or transfer by Assignor of any portion of Assignor's interests, rights, or titles described in that section of the Development Agreement ("Assignable Rights") to a third party without prior written approval by the City Manager of the City of Oakdale (the "City Manager").

C. Assignor intends to assign, and Assignee intends to assume, the Assignable Rights under the Development Agreement.

D. In accordance with the terms of the Development Agreement, Assignor has provided to the City Manager a written request for consent to assignment. The City Manager has received the information he or she deems appropriate and consulted with the City Attorney for the

{CW051837.1}

purpose of determining that Assignee is a qualified applicant for purposes of the foregoing terms of the Development Agreement. This Agreement is intended to meet the requirements Section 10.1 of the Development Agreement for an Assignment and Assumption Agreement, and is executed with the consent of the City Manager as contemplated in the Development Agreement.

**NOW, THEREFORE,** Assignor and Assignee hereby agree as follows:

1. The foregoing Recitals are true and incorporated herein by this reference as though set forth in full.
2. Assignor hereby assigns to Assignee all of the Assignable Rights of Assignor under the Development Agreement.
3. Assignee hereby assumes all of the burdens and obligations of Assignor under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Property and Assignable Rights. It is the express intention of Assignor and Assignee that, upon the execution of this Agreement, Assignee shall become substituted for Assignor as the “Developer” under the Development Agreement.
4. This Agreement shall take effect and be binding only upon the City Manager’s consent to and approval of the Agreement.
5. Assignee represents and warrants that it has reviewed and is familiar with the terms and conditions of the Development Agreement. Assignee acknowledges that the Assignable Rights are as set forth in Section 10.1 of the Development Agreement, and the duties of Assignor thereunder and the duties of Assignee hereunder, as between Assignee and City, shall be without reference to any underlying agreements or understandings that may exist between Assignee, Assignor, or any other party with respect to the subject matter hereof, and that City is not party to such other agreements.
6. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

**IN WITNESS HEREOF,** the parties hereto have executed this Agreement as of the day and year first above written.

*[Signatures on the following page]*

{CW051837.1}

**ASSIGNOR/ DEVELOPER:**

JDI Farms, a California nonprofit mutual  
benefit corporation

\_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE**

\_\_\_\_\_, a  
California \_\_\_\_\_

By: \_\_\_\_\_

**AGREED TO AND ACCEPTED:**

CITY OF OAKDALE  
a California municipal corporation

\_\_\_\_\_  
City Manager

DRAFT



**IN THE PLANNING COMMISSION  
OF THE CITY OF OAKDALE  
PLANNING COMMISSION RESOLUTION 2018-005**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
OAKDALE RECOMMENDING THAT THE CITY COUNCIL ADOPT AN  
ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT BY AND  
BETWEEN THE CITY OF OAKDALE AND MDS BUSINESS SERVICES, INC.,  
A CALIFORNIA NON-PROFIT MUTUAL BENEFIT CORPORATION**

**THE CITY OF OAKDALE PLANNING COMMISSION DOES HEREBY  
RESOLVE THAT:**

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

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

**WHEREAS**, the City adopted Oakdale Municipal Code Chapter 36-23.20 et seq., authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

**WHEREAS**, Oakdale Municipal Code section 36-23.22 requires a written application with specified data to be submitted to the Oakdale Community Development Director for consideration of any development agreement. MDS Business Services, Inc. submitted an application to the Oakdale Community Development Director for consideration of a development agreement for a cannabis business; and



**CITY OF OAKDALE**  
**Planning Commission Resolution 2018-005**

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**WHEREAS**, MDS Business Services, Inc. intends to improve, develop, and use real property to operate a cannabis dispensary (the “Project”) within the City in strict compliance with MAUCRSA and Oakdale Municipal Code Chapter 37; and

**WHEREAS**, MDS Business Services, Inc. has an agreement to lease that certain real property located at 570 Armstrong Way, Oakdale, CA identified as Stanislaus County Assessor’s Parcel Number 064-039-055 (the “Property”). MDS intends to operate the Project on the Property; and

**WHEREAS**, City and MDS Business Services, Inc. seek to enter into a development agreement for the Project (the “Development Agreement”) pursuant to Government Code section 65864 et seq. and all applicable local and state laws; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on February 7, 2018, to consider the Development Agreement and make recommendations to the City Council; and

**WHEREAS**, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code section 21000 et seq.; California Code of Regulations, title 14, section 15000 et seq.); and

**WHEREAS**, the Project site is categorically exempt from CEQA pursuant to section 15301 of title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

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

**WHEREAS**, the Planning Commission finds that the ordinance is in the best interest of the health, welfare, and safety of the public;

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City hereby recommends by this Resolution that the City Council adopt the proposed Ordinance to approve the Development Agreement between the City and MDS Business Services, a California non-profit mutual benefit corporation.

**THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 7TH DAY OF FEBRUARY 2018.**

AYES: Chiara, Havard, Kinney, Poncabare, Velasco (5)  
NOES: None (0)  
ABSENT: None (0)  
ABSTAIN: None (0)



**CITY OF OAKDALE**  
**Planning Commission Resolution 2018-005**

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Signed:

\_\_\_\_\_  
Amy Velasco, Chairperson  
Planning Commission

Attest:

\_\_\_\_\_  
Jeff Gravel, Secretary  
Planning Commission



**IN THE CITY COUNCIL OF THE  
CITY OF OAKDALE  
STATE OF CALIFORNIA  
ORDINANCE XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKDALE APPROVING A  
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF OAKDALE AND MDS  
BUSINESS SERVICES, INC., A CALIFORNIA NONPROFIT MUTUAL BENEFIT  
CORPORATION**

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

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

**WHEREAS**, the City adopted Oakdale Municipal Code Chapter 36-23.20 et seq., authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

**WHEREAS**, Oakdale Municipal Code section 36-23.22 requires a written application with specified data to be submitted to the Oakdale Community Development Director for consideration of any development agreement. MDS Business Services, Inc. ("MDS") submitted an application to the Oakdale Community Development Director for consideration of a development agreement for a cannabis business; and

**WHEREAS**, MDS intends to improve, develop, and use real property to operate a cannabis dispensary (the "Project") within the City in strict compliance with MAUCRSA and Oakdale Municipal Code chapter 37; and

**WHEREAS**, MDS has an agreement to lease that certain real property located at 570 Armstrong Way, Oakdale, CA, identified as Stanislaus County Assessor's Parcel Number 064-039-055 (the "Property"). MDS intends to operate the Project on the Property; and

**WHEREAS**, City and MDS seek to enter into a development agreement for the Project and the (the "Development Agreement") pursuant to Government Code section 65864 et seq. and all applicable local and state laws; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on February 7, 2018, to consider the Development Agreement and make recommendations to the Oakdale City Council ("City Council"); and

**WHEREAS**, on February 12, 2018, and February 28, 2018, the City Council held duly noticed public hearings to consider the Development Agreement; and

**WHEREAS**, the City Council, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds after due study, deliberation, and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City's General Plan and all other applicable standards and ordinances of the City.
2. In accordance with Government Code section 65864 et seq., the City Council finds that the Development Agreement:
  - a. Is consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan and any applicable specific plan;
  - b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole;
  - c. Will not adversely affect the orderly development of property or the preservation of property values;
  - d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and

Ordinance XXXX  
Effective \_\_\_\_\_ XX, 2018

- e. Contains a legal description of the property.

**NOW, THEREFORE THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council approves a Development Agreement by and between MDS Inc., a California nonprofit mutual benefit corporation, and the City for the development of the Project and instructs the City Manager to execute the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

**SECTION 2.** The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement, or as otherwise required pursuant to the terms of the Development Agreement.

**SECTION 3.** Notice of the public hearing on the proposed Development Agreement was published in the Oakdale Leader and Modesto Bee, newspapers of general circulation, printed and published in the City, and notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

**SECTION 4.** Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 et seq.; California Code of Regulations, title 14, section 15000 et seq.).

The Project site is categorically exempt from CEQA pursuant to section 15301 of title 14 of the California Code of Regulations, applicable to existing facilities involving no expansion of the facility.

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

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

The foregoing Ordinance was introduced at a meeting of the City Council held on the 12th day of February 2018, by \_\_\_\_\_, who moved its introduction, which motion being duly seconded by \_\_\_\_\_. Said Ordinance was given a second reading at a regular meeting of the City Council held on the 20th day of February 2018, and after such reading, \_\_\_\_\_ moved its adoption, seconded by \_\_\_\_\_, and said Ordinance was thereupon adopted by the following roll call vote:

Ordinance XXXX  
Effective \_\_\_\_\_ XX, 2018

AYES: COUNCIL MEMBERS: None (0)  
NOES: COUNCIL MEMBERS: None (0)  
ABSENT: COUNCIL MEMBERS: None (0)  
ABSTAINED: COUNCIL MEMBERS: None (0)

ATTEST:

SIGNED:

\_\_\_\_\_  
Kathy Teixeira, CMC  
City Clerk

\_\_\_\_\_  
Pat Paul, Mayer

APPROVED AS TO FORM:

\_\_\_\_\_  
Tom Hallinan, City Attorney

Ordinance XXXX  
Effective \_\_\_\_\_ XX, 2018

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

City of Oakdale  
280 N. Third Ave  
Oakdale, CA 95361  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §6103

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ (\_\_\_\_) day of \_\_\_\_\_, 2018, by and between the **CITY OF OAKDALE**, a California municipal corporation ("City"), and **MDS Business Services, Inc.**, a California nonprofit mutual benefit corporation ("Developer"). City and Developer 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 October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use real property to operate a Cannabis Dispensary, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4, and the Municipal Code of the City of Oakdale, as each may be amended from time to time (the "Project").
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City adopted Oakdale Municipal Code Section 36-23.20 *et seq.* ("City Development Agreement Ordinance") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. Oakdale Municipal Code section 36-23.22 requires a written application with specified data be submitted to the City Department of Planning for consideration of any development agreement.
- H. Developer submitted an application to the City Department of Planning for consideration of a development agreement for a cannabis business.
- I. Developer has an agreement to lease that certain real property located at 570 Armstrong Way, in the City of Oakdale, County of Stanislaus, State of California, Assessor's Parcel Number 064-039-055, of which Developer intends to improve (the "Site"), more particularly described in the location map attached hereto as **Exhibit A**.
- J. Government Code section 65865 and Oakdale Municipal Code section 36-23.22 require that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- K. Developer has leased the Site for the purpose of carrying out the Project. A copy of the lease is attached hereto as **Exhibit B**, within satisfaction of the requirement of Oakdale Municipal Code Chapter 37. The legal owner of the Site is aware of, and agrees to, the Project operating at the Site.
- L. On February 7, 2018, the Oakdale Planning Commission ("Planning Commission") adopted Resolution No. \_\_\_\_\_ recommending the Oakdale City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.

- M. On \_\_\_\_\_, 2018, the City Council adopted Ordinance No. \_\_\_\_\_ to revise Oakdale Municipal Code Chapter 37 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- N. Government Code section 65867.5 and Oakdale Municipal Code section 36-23.24 require the Planning Commission hold a public hearing to review an application for a development agreement.
- O. On February 7, 2018, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.
- P. On February 7, 2018, the Planning Commission recommended the City Council adopt Ordinance No. 2018-\_\_\_\_\_, which would allow Developer to operate the Project at the Site.
- Q. On \_\_\_\_\_, pursuant to Government Code section 65867.5 and the City Development Agreement Ordinance, and following a duly noticed and conducted public hearing, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2018-\_\_\_\_\_.
- R. This Agreement is entered into pursuant to the Development Agreement Statute and the Oakdale Municipal Code.
- S. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) create a physical environment that is consistent with and complements City's goals and visions; (iii) protect natural resources from adverse impacts; (iv) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; and (vi) reduce the economic risk of development of the Site to both City and Developer.
- T. The Parties intend, through this Agreement, to allow Developer to develop and operate the Project in accordance with the terms of this Agreement.
- U. The City Council has determined that this Agreement is consistent with City's General Plan and has conducted all necessary proceedings in accordance with the Oakdale Municipal Code for the approval of this Agreement.

**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. Findings.** City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

**Section 1.2. Recitals.** The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

**Section 1.3. Exhibits.** The following "Exhibits" are attached hereto and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Location Map
Exhibit B	Site Lease
Exhibit C	Notice of Non-Performance Penalty
Exhibit D	Indemnification Agreement
Exhibit E	Notice of Termination
Exhibit F	Assignment and Assumption Agreement

**Section 1.4. Definitions.** In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) "Additional Insureds" has the meaning set forth in Section 6.1.
- (b) "Additional Licenses" has the meaning set forth in Section 2.4.
- (c) "Additional Licenses Public Benefit Amount" has the meaning set forth in Section 4.2.
- (d) "Adult-use cannabis" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or older in California pursuant to the California Cannabis Laws.
- (e) "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.

(f) “Application” means the application for a development agreement required by Oakdale Municipal Code section 36-36.22.

(g) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.

(h) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(i) “Authorized License” has the meaning set forth in Section 2.3.

(j) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(k) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Oakdale Municipal Code.

(l) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA (as defined below), the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable laws that may be enacted or approved.

(m) “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.

(n) “Cannabis Business Pilot Program” means the cannabis business program established and authorized by Oakdale Municipal Code Chapter 37.

(o) “Cannabis Dispensary” means a business that engages in Commercial Cannabis Activity, as defined below, related to the retail sale and delivery of cannabis or cannabis products pursuant to a Type 10 license.

(p) “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not

limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

**(q)** “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines, as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

**(r)** “City” means the City of Oakdale, a municipal corporation having general police powers.

**(s)** “City Council” means the City of Oakdale City Council, as described in Oakdale Municipal Code Section 1-2.

**(t)** “City Development Agreement Ordinance” has the meaning set forth in Recital F.

**(u)** “City Manager” means the City Manager of the City of Oakdale, or his or her designee, as described in Oakdale Municipal Code Section 2-4.

**(v)** “Charged Party” has the meaning set forth in Section 8.1.

**(w)** “Charging Party” has the meaning set forth in Section 8.1.

**(x)** “Commercial Cannabis Activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of cannabis or a cannabis product that requires a state license pursuant to MAUCRSA.

**(y)** “Major Use Permit” means a Major Use Permit issued by City pursuant to Oakdale Municipal Code Chapter 36.

**(z)** “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

**(aa)** “Developer” means MDS Business Services Inc. Developer also has the meaning set forth in Section 6.1.

**(bb)** “Development Agreement Statute” has the meaning set forth in Recital C.

**(cc)** “Exhibits” has the meaning set forth in Section 1.3.

**(dd)** “Gross Receipts from Operations” means total revenue actually received or receivable from operation of the Project, including: all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed whether or not such act or service is done as part of or in connection with the sale of materials, goods,

wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payment required under Section 4.2, all sales of cannabis products through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

**(ee)** "Indemnification Agreement" has the meaning set forth in Section 6.3.

**(ff)** "Major Amendment" means an amendment that shall have a material effect on the terms of this Agreement. A Major Amendment also has the meaning set forth in Section 2.4. Major Amendments shall require approval by the City Council.

**(gg)** "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

**(hh)** "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*, as may be amended from time to time.

**(ii)** "MCRSA" has the meaning set forth in Recital A.

**(jj)** "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

**(kk)** "Minor Amendment" means a clerical amendment to this Agreement that shall not materially affect the terms of this Agreement and any amendment described as minor herein. A Minor Amendment also has the meaning set forth in Section 1.7.

- (ll) “Mortgage” has the meaning set forth in Article 7.
- (mm) “Non-Performance Penalty” has the meaning set forth in Section 4.3.
- (nn) “Notice of Non-Performance Penalty” has the meaning set forth in Section 4.3.
- (oo) “Notice of Termination” has the meaning set forth in Section 9.1.
- (pp) “Planning Commission” means the City of Oakdale Planning Commission, as established by Oakdale Municipal Code Section 2-27.
- (qq) “Processing Costs” has the meaning set forth in Section 1.11.
- (rr) “Project” has the meaning set forth in Recital D.
- (ss) “Project Litigation” has the meaning set forth in Section 10.7.
- (tt) “Public Benefit” has the meaning set forth in Section 4.2.
- (uu) “Public Benefit Amount” has the meaning set forth in Section 4.2.
- (vv) “Site” has the meaning set forth in Recital G.
- (ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.
- (xx) “State Cannabis Regulations” means the regulations promulgated by the State Licensing Authority pursuant to the California Cannabis Laws.
- (yy) “State Taxing Authority” has the meaning set forth in Section 4.2.
- (zz) “Subsequent City Approvals” has the meaning set forth in Section 3.1.
- (aaa) “Term” has the meaning set forth in Section 1.7.
- (bbb) “Type 10 license” or “Retailer” means a state license issued by the Bureau pursuant to the California Cannabis Laws for the retail sale of cannabis and cannabis products.

**Section 1.5. Project is a Private Undertaking.** The Parties agree that the Project is a private development 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 Developer or the Project.

**Section 1.6. Effective Date of Agreement.** This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the "Effective Date").

**Section 1.7. Term.** The "Term" of this Agreement is three (3) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement

**(a) Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is required, directed, or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for no longer than one (1) calendar year (the "Tolling Period"). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling period exceeds one (1) calendar year to comply with federal or state law.

**(b) Developer Tolling or Termination.** Developer may not temporarily halt or terminate this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement or by mutual agreement of the Parties.

**Section 1.8. Priority of Enactment.** In the event of a conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (d) Major Use Permit, (e) Indemnification Agreement, and (f) Subsequent City Approvals.

**Section 1.9. Amendment of Agreement.** This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

**Section 1.10. Recordation of Development 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 of the Effective Date.

**Section 1.11. Funding Agreement for Processing Costs.** Developer has deposited Twenty-Five Thousand Dollars (\$25,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, and consultant and

attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

**(a) Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may terminate this Agreement.

**(b) Accounting.** Developer may request, and City shall issue within a reasonable time not to exceed thirty (30) days, an accounting and written acknowledgement of Processing Costs paid to City.

**Section 1.12. Law Enforcement Cannabis Impact Fee.** Developer shall pay Fifty Thousand Dollars (\$50,000) to City due with the first installment of the Cannabis Dispensary Public Benefit, as specified in Section 4.2, to pay for additional law enforcement services related to this Agreement.

## ARTICLE 2 DEVELOPMENT OF PROPERTY

**Section 2.1. Vested Right of Developer.** During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

**Section 2.2. Vested Right to Develop.** In accordance with Section 2.1, Developer shall have the vested right to develop and use the Project consistent with this Agreement, the Major Use Permit, and Subsequent City Approvals.

**Section 2.3. Permitted Uses and Development Standards.** Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license type (the "Authorized License"):

Type 10	Retailer
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Developer shall be permitted to use the Site consistent with the Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized

License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, Developer shall immediately cease Commercial Cannabis Activity on the Site. Developer shall also, within thirty (30) days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Major Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

**Section 2.4. Major Amendment to Permitted Uses.** Developer may request to add to the Authorized License additional license types once that license is applied for or obtained from the appropriate State Licensing Authority (the "Additional Licenses"):

Type _____	
Type _____	

**Section 2.5. Major Use Permit.** Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain a Major Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Oakdale Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Oakdale Municipal Code or issue rules or administrative guidelines associated with implementation of the Cannabis Business Pilot Program or Developer's obligation to strictly comply with the same.

**Section 2.6. Subsequent Entitlements, Approvals, and Permits.** Successful implementation of the Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Major Use Permit. The exercise of this discretion is not prohibited or limited in any way by this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

**(a) Contemplated City Rules and Guidelines.** City anticipates issuing additional rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. City may establish requirements that are identical to or place a higher standard of care as existing provisions of the California Cannabis Laws,

State Cannabis Regulations, or any amendments thereto. City reserves the right to adopt additional categories of rules or guidelines that are not listed in this section as part of the Cannabis Business Pilot Program. Developer will be required to comply with any and all administrative guidelines adopted by City that govern or pertain to the Project.

**Section 2.7. Initiatives and Referenda.** If any City ordinance, rule or regulation, or addition to the Oakdale Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Major Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such Oakdale Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

**Section 2.8. Regulation by Other Government Entities.** Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

**Section 2.9. Developer's Right to Rebuild.** Developer may renovate portions of the Site any time within the Term of this Agreement consistent with the Oakdale Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

**Section 2.10. Changes in California Building Standards Codes.** Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

**Section 2.11. Changes Mandated by Federal or State Law.** The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Oakdale Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Cannabis Business Pilot Program. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Oakdale

Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

**Section 2.12. Health and Safety Emergencies.** In the event that any future public health and safety emergencies arise with respect to the Project contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency in a way that does not have a material adverse impact on the Project, City may select an option which, in its discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

### **ARTICLE 3 ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS**

**Section 3.1. Subsequent City Approvals.** City shall permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement, the Oakdale Municipal Code, and any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Oakdale Municipal Code, and any applicable state law.

**Section 3.2. Timely Processing.** City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

**Section 3.3. Cooperation Between City and Developer.** Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

**Section 3.4. Further Consistent Discretionary Actions.** The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Site as contemplated by the Parties in this Agreement.

**ARTICLE 4**

**PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT**

**Section 4.1. Processing Fees and Charges.** Developer shall pay to City those processing, inspection, plan checking, 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) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

**Section 4.2. Public Benefit.**

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the "Public Benefit"). In consideration of the foregoing, for the Project, Developer shall remit to City as follows:

Effective Date	No Public Benefit Due.
First (1 <sup>st</sup> ) Business Day of 1 <sup>st</sup> Month Following Issuance of the Major Use Permit.	\$15,000 or 5.5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 1 Amount</u> ").
1 <sup>st</sup> Business Day of the Thirteenth (13 <sup>th</sup> ) Month Following Issuance of the Major Use Permit.	\$27,500 or 5.5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 2 Amount</u> ").

1 <sup>st</sup> Business Day of the Twenty-fifth (25 <sup>th</sup> ) Month Following Issuance of the Major Use Permit Through the End of the Term.	\$43,000 or 5.5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 3 Amount</u> ").
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(b) Collectively, these tier amounts shall be known as the "Project Public Benefit Amount".

(c) If Developer obtains any Additional Licenses, Developer shall remit to City as follows ("Additional Licenses Public Benefit Amount"):

Effective Date	No Additional Licenses Public Benefit Amount Due.
First (1 <sup>st</sup> ) Business Day of 1 <sup>st</sup> Month Following Issuance of the Major Use Permit.	\$8,000 or 8% of Gross Receipts from Operations each month, whichever is greater.

The Additional Licenses Public Benefit Amount shall be the total due from Developer for any and all Additional Licenses.

(d) Collectively, the Project Public Benefit Amount and the Additional Licenses Public Benefit Amount shall be known as the "Public Benefit Amount."

(e) Developer 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 Receipts from Operations of the Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

**Section 4.3. Reporting.** Developer shall provide City with copies of any reports provided to a State Licensing Authority within forty-five (45) days of that submission.

Any failure or refusal of Developer to provide any statement or report to City, the State Taxing Authority, or any other State 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 the revocation or suspension of the Major Use Permit.

**Section 4.4. Records.** Developer 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 and the applicable State Cannabis Regulations. 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 4.5. Penalty.** Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, 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 Developer fails to make any payment when due, as required by this Agreement, including 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 Developer a “Notice of Non-Performance Penalty,” attached hereto as **Exhibit C**. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) days following delivery of the Notice of Non-Performance Penalty.

**Section 4.6. Interest on Unpaid Non-Performance Penalty.** If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) days following delivery of the Notice of Non-performance Penalty.

**Section 4.7. Protections from City Tax.** Notwithstanding Section 4.2, for the Term of this Agreement, Developer shall be exempt from any City tax, including a business license tax, on commercial cannabis businesses. Notwithstanding the foregoing, Developer and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Stanislaus, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement).

## **ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES**

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods and the existing level of service of City infrastructure and services to accommodate for the Project.

## **ARTICLE 6 INSURANCE AND INDEMNITY**

**Section 6.1. Insurance.** Developer shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 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.** Developer shall maintain commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

**(i)** Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, 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 insured.

**(ii)** Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

**(iii)** Contain standard separation of insured provisions.

**(b) Automotive Liability Insurance.** Developer shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

**(i)** Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, 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 City, its officials, employees, agents, and representatives.

**(iii)** Contain standard separation of insured provisions.

**(c) Workers’ Compensation Insurance.** Developer shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s employees employed at or on the Project and, should any of the work be subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, 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) for each accident shall be maintained by Developer.

**Section 6.2. Other Insurance Requirements.** Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed 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 materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) 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 to the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written 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 6.3. Indemnity.** To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Major Use Permit, or Subsequent City Approvals. Developers shall execute the indemnification agreement ("Indemnification Agreement") attached hereto as **Exhibit D**.

**Section 6.4. Failure to Indemnify; Waiver.** Failure by Developer to indemnify City, when required by this Agreement and the Indemnification Agreement, shall constitute a material breach of this Agreement and of any applicable Major Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable Major Use Permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Major Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

**Section 6.5. Waiver of Damages.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer and, therefore, Developer

hereby waives all claims for damages against City for breach of this Agreement. Developer further acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed. Developer further acknowledges that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard.

## **ARTICLE 7 MORTGAGEE PROTECTION**

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Site or Project, 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. City agrees to not unreasonably withhold its authorization.

## **ARTICLE 8 DEFAULT**

### **Section 8.1. General Provisions.**

**(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) 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) days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, and give notice of its intent to terminate this Agreement pursuant to Government Code section

65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Major Use Permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 within thirty (30) days from the expiration of the ten (10) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party 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) days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice. An extension of the 10-day cure period may be given by mutual consent of the Parties.

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

**Section 8.2. Annual Review.** City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) days prior to such periodic review. Developer shall be entitled to appeal a determination of City or the City Manager to the City Council. Any appeal must be filed within ten (10) days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or the City Council, as applicable. The reasonable cost for City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

### **Section 8.3. Estoppel Certificates.**

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

(b) At Developer'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 Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

**Section 8.4. 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 Developer shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer.

**Section 8.5. Cumulative Remedies of Parties.** In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 9.1(c) of this Agreement.

**Section 8.6. Forced 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, terrorism, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than 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.

**Section 8.7. Appeals.** Developer may appeal any adverse decision or action of City pursuant to Oakdale Municipal Section 36-23.29.

## **ARTICLE 9 TERMINATION**

**Section 9.1. Termination Upon Completion of Development.** This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the

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

**Section 9.2. Effect of Termination on Developer’s Obligations.** Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

**Section 9.3. 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 9.4. Survival After Termination.** The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, Section 10.10, 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 10 OTHER GENERAL PROVISIONS**

**Section 10.1. Assignment and Assumption.** Developer 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 the Site or Project, subject to or a part of this Agreement, 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 the corporate and business entities of Developer 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 10.1, City and Developer shall execute an “Assignment and Assumption Agreement” in the form attached hereto as **Exhibit F**.

**Section 10.2. 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 or Project, 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 Project, as appropriate, runs with the Site, and is binding upon Developer.

**Section 10.3. Notices.** Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (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 Oakdale  
280 N. Third Ave  
Oakdale, California 95361  
Attention: City Manager

and Churchwell White LLP  
1414 K Street, 3<sup>rd</sup> Floor  
Sacramento, California 95814  
Attention: Douglas L. White, Esq.

If to Developer: MDS Business Services, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 10.4. Governing Law and Binding Arbitration.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Sacramento, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services (“JAMS”). Judgment on the award may be entered in any court having jurisdiction thereof.

**Section 10.5. Invalidity of Agreement / Severability.** If this Agreement in its entirety is determined by an arbitrator or court of competent jurisdiction 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 an arbitrator or court of competent jurisdiction 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, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. 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 10.6. Cumulative Remedies.** In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. 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, Developer agrees that Developer 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 Developer in excess of those permitted hereunder.

**Section 10.7. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, “Project Litigation”), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer 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. Developer shall pay all litigation fees 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 Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

**Section 10.8. 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, 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 10.9. Statute of Limitations and Laches.** City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

**Section 10.10. Joint and Several Liability.** Developer 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 Party shall also constitute a breach of this Agreement by the other Party. Developer agrees that City may impose a lien and seek foreclosure on any parcel of the Site due to any default by Developer.

**Section 10.11. Change in State Regulations.** In no event shall Developer operate the Project in violation of the Agreement, or State Cannabis Regulations, as may be amended from time to time.

**Section 10.12. Standard Terms and Conditions.**

(a) **Venue.** Venue for all legal proceedings shall be the JAMS Resolution Center in Sacramento, California.

**(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, constitutes 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 Project.

**(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) Term Includes Extensions.** All references to the Term of this Agreement shall include any extensions of such Term.

**(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 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.** 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.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

**"CITY"**

**"DEVELOPER"**

Date: \_\_\_\_\_, 2018

Date: \_\_\_\_\_, 2018

CITY OF OAKDALE, CA  
a California Municipal Corporation

MDS Business Services Inc., a  
California nonprofit mutual benefit  
corporation

By: \_\_\_\_\_  
Bryan Whitemyer  
City Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Kathy Teixeira  
City Clerk

Approved to as Form

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

DRAFT

**California All-Purpose Acknowledgment**

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

State of California )  
 )  
County of \_\_\_\_\_ )

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

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

Witness my hand and official seal.

\_\_\_\_\_  
(Signature)

(Seal)

**California All-Purpose Acknowledgment**

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

State of California )  
 )  
County of \_\_\_\_\_ )

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

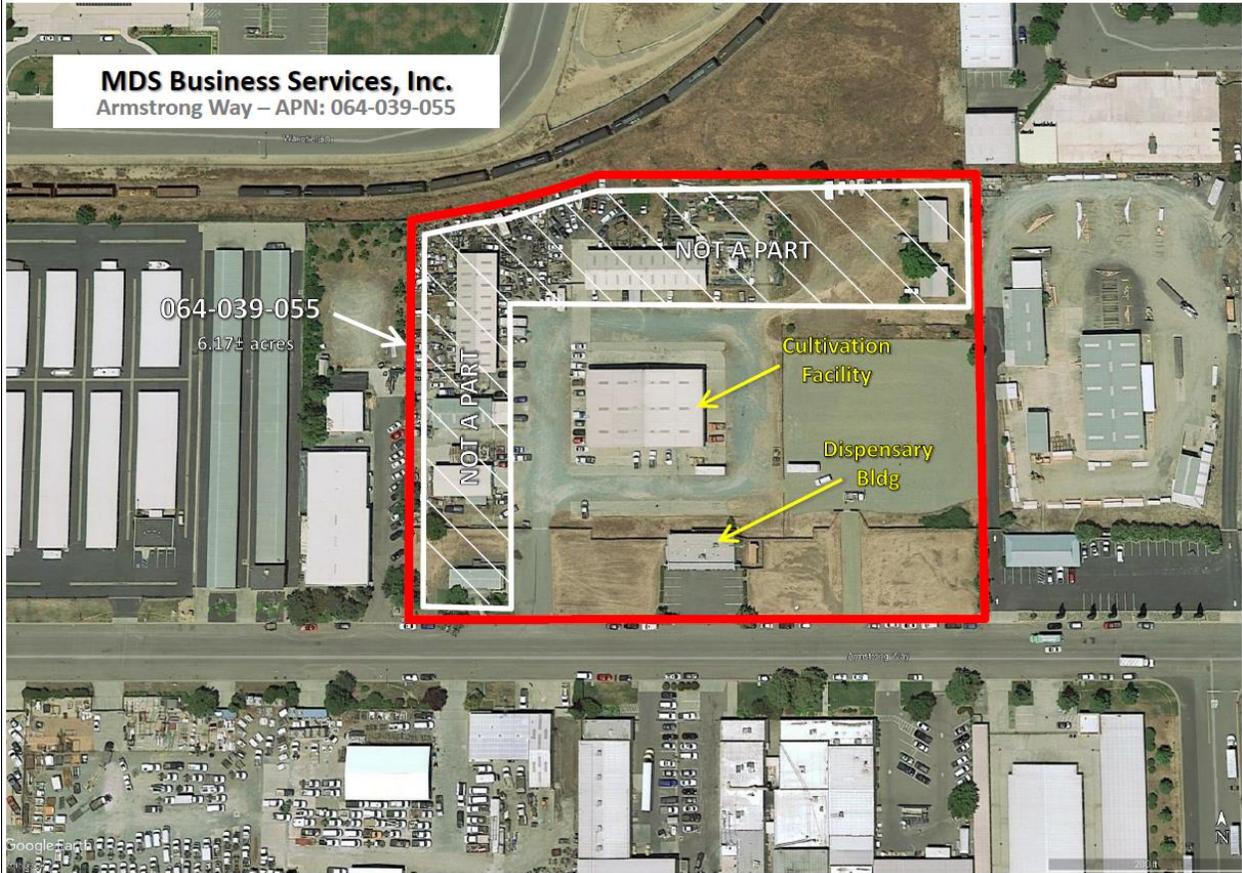
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
(Signature)

(Seal)

**Exhibit A**  
**Location Map**



**Exhibit B**  
**Site Lease**

DRAFT

**Exhibit C**

**Notice of Non-Performance Penalty**

DATE: \_\_\_\_\_, 20\_\_

PARTIES: CITY OF OAKDALE, a California municipal corporation  
280 N. Third Ave  
Oakdale, California 95361

MDS Business Services, Inc., a California nonprofit mutual benefit corporation

\_\_\_\_\_, CA \_\_\_\_\_

**THIS NOTICE OF NON-PERFORMANCE PENALTY** (“Penalty Notice”) is being executed by the City of Oakdale, a California municipal corporation (“City”), with reference to the following.

- A. By Instrument No. \_\_\_\_\_, which was recorded in the Official Records of Stanislaus County, California, on \_\_\_\_\_, 2018, City recorded a development agreement between City and \_\_\_\_\_, dated \_\_\_\_\_, 2018 (the “Development Agreement”), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Section 4.2 of the Development Agreement, Developer agrees to pay to City a Public Benefit on the first business day of each month during the term of the Development Agreement.
- C. On \_\_\_\_\_, 20\_\_, the Public Benefit was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts (“Penalty”). As of \_\_\_\_\_, 20\_\_, the past due amount equals \$ \_\_\_\_\_. The Penalty owed by Developer equals \$ \_\_\_\_\_ (“Penalty Amount”).
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice (“Penalty Due Date”).

- F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then, in addition to the Penalty Amount specified in subdivision (D), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum (“Penalty Interest Payment”), computed from the Penalty Due Date specified in subdivision (E). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of \_\_\_\_\_, 20\_\_\_\_, the Penalty Interest Payment amount equals \$\_\_\_\_\_.
- G. Nothing contained herein shall constitute a waiver of City’s future claims for the Public Benefit, Penalty, or interest on the Penalty.

**NOW, THEREFORE**, City hereby provides Developer the Penalty Notice required by Section 4.5 of the Development Agreement. This Penalty Notice shall be effective upon notice pursuant to Section 10.3 of the Development Agreement.

CITY OF OAKDALE,  
a California municipal corporation

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

## Exhibit D

### INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

**THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING** (“Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_ 2018, (“Effective Date”) by and between the City of Oakdale, a municipal corporation, (“City”) and MDS Business Services, Inc., a California non-profit mutual benefit corporation (collectively, “Applicant”). City and Applicant may be referred to herein individually as a “Party” or collectively as the “Parties”. There are no other parties to this Agreement.

#### RECITALS

A. In 1996, the people of the state of California approved Proposition 215, the Compassionate Use Act of 1996 (“CUA”). The CUA enables seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted Senate Bill 420, entitled the Medical Marijuana Program (“MMP”), which authorizes qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.

B. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

C. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”). AUMA legalizes the cultivation, commercial sale, and possession of recreational cannabis for adults age 21 and older.

D. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction.

E. On December 7, 2017, California state cannabis licensing authorities issued emergency regulations that apply to AUMA and MAUCRA and further regulate businesses engaged in commercial cannabis activity.

F. Oakdale Municipal Code (“O.M.C.”) Chapter 37 authorizes cannabis businesses to operate within the City under specified restrictions pursuant to a Cannabis Pilot Program.

G. Applicant intends to improve, develop, and use real property to operate a cannabis dispensary (the “Project”) within the City in strict compliance with MAUCRSA and O.M.C. Chapter 37.

H. Applicant has an agreement to lease that certain real property located at 570 Armstrong Way in the City of Oakdale, identified as Stanislaus County Assessor’s Parcel Number 064-039-055 (the “Property”), shown on **Exhibit A** attached hereto (“Property Description”). Developer intends to improve and operate the Project on the Property.

I. As a condition of approval of the Land Use Entitlements, City has required Applicant to enter into this Agreement.

J. It is in the public interest for City and Applicant to enter into this Agreement, as Applicant will benefit from City’s processing of the Project.

K. Applicant desires to enter into this Agreement to fulfill a condition of approval of the Project, which is a prerequisite for construction of the Project.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the promises, covenants and agreements set forth below, the Parties agree as follows:

**Section 1. Recitals.** The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 19 of this Agreement, Sections 1 through 19 shall prevail.

**Section 2. Applicant’s Indemnification Obligations.**

**2.1. Indemnification for Land Use Entitlements.** To the fullest extent permitted by law, Applicant shall indemnify, and hold City harmless and its agents, elected and appointed officials, officers, employees, and volunteers (collectively, “City’s Agents”) from any and all liability arising out of a claim, action, or proceeding against City, or City’s Agents, to attack, set aside, void, or annul, an approval concerning the Land Use Entitlements by reason of the action or inaction of City, or City’s Agents. Applicant’s duty to indemnify and hold harmless shall not extend to any claim, action or proceeding arising from the gross negligence or willful misconduct of City, or City’s Agents.

Applicant’s obligations under this Agreement to indemnify City shall apply to any claim, lawsuit

or challenge against City brought against the Project, specifically including, but not limited to, any legal challenge based on the California Environmental Quality Act, codified in California Public Resources Code section 21000 et seq.; actions or proceedings brought to challenge the validity of environmental documents prepared in conjunction with the approval of the Project or Land Use Entitlements, or the requirements of any other federal, state, or local laws, including, but not limited to, general plan, specific plan, and zoning requirements.

**2.2. Tender of Defense.** Upon receiving notice of a claim and pursuant to Article 6 of the Land Use Entitlements, Applicant shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. Regardless of whether Applicant chooses to defend City pursuant to Section 6.4 of the Land Use Entitlements, City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter.

**2.3. Deposit for Costs.** Applicant shall make a refundable deposit to City within thirty (30) days of written notification from City ("Cost Deposit"), to cover the estimated fees and costs associated with City's defense of any claim, action or proceeding. Applicant shall make any and all additional payments to City to replenish the Cost Deposit within thirty (30) days of written notice from City.

**2.4. Failure to Indemnify; Waiver.** Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of the Land Use Entitlements, which shall entitle City to all remedies available under law including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of the Land Use Entitlements. Applicant's failure to indemnify City shall be a waiver by Applicant of any right to proceed with the Project, or any portion thereof, and a waiver of Applicant's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of the Land Use Entitlements, or City's failure to defend any claim, action or proceeding based on Applicant's failure to indemnify City.

**2.5. Satisfaction of Judgment.** With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses or liabilities which Applicant has indemnified City against, Applicant shall pay and satisfy any judgment, award, settlement or decree that may be rendered or agreed against City and City's Agents arising out of any final, non-appealable judicial or administrative action.

**2.6. Payment of Costs and Fees.** Applicant's obligations under this Agreement to defend and indemnify City shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against City, or all settlement costs which arise out of City's processing or approval of the Project.

**2.7. Continuing Obligation.** Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise

transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, Applicant may be released from such obligations if Applicant obtains City's prior written consent to such transfer, which consent shall not be unreasonably withheld.

**Section 3. City's Obligations.** City shall notify Applicant of any claim, action or proceeding within ten (10) business days of receiving service of any claim, action or proceeding. If City fails to notify Applicant of any claim, action, or proceeding, Applicant shall not, thereafter, be responsible to defend, indemnify, or hold City harmless. City shall have and retain, in its sole discretion, the right to not participate in the defense of any claim, action, or proceeding. At its sole discretion, City may participate at its own expense in the defense, but such participation shall not relieve Applicant of any obligation imposed by this Agreement.

**Section 4. Notice.** Any notice or communication required hereunder between City and Applicant must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Oakdale  
1 Plaza  
Oakdale, California 95363  
Attention: City Clerk

With copy to City of Oakdale  
1 Plaza

Oakdale, California 95363  
Attn: City Manager  
kirwin@ci.Oakdale.ca.us

and

Churchwell White, LLP  
1414 K Street, 3rd Floor  
Sacramento, California 95814  
Attention: Douglas L. White, Esq.  
doug@churchwellwhite.com

If to Applicant:

MDS Business Services, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 5. Modification of Agreement.** This Agreement may be supplemented, amended, or modified only by a writing signed by City and Applicant.

**Section 6. Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the action and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

**Section 7. Agreement is Voluntary.** The Parties acknowledge that they have entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement. This Agreement incorporates the entire understanding of the Parties and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its contents and legal effect.

**Section 8. Time of Essence.** Time is of the essence for this Agreement, and each section contained within this Agreement is made and declared to be a material, necessary, and essential part of this Agreement.

**Section 9. Severability of Agreement.** If a court or an arbitrator of competent jurisdiction

holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

**Section 10. Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement, and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**Section 11. Noninterference.** No Party will do anything to interfere with or inhibit the ability of the other to comply with their respective obligations under the terms of this Agreement.

**Section 12. Ambiguities.** Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

**Section 13. Headings.** The headings in this Agreement are included for convenience only, and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

**Section 14. Necessary Acts and Further Assurances.** The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. The Parties will act in good faith to carry out the intent of this Agreement.

**Section 15. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.

**Section 16. Venue.** Venue for all legal proceedings shall be in the Superior Court of California, in and for the County of Stanislaus.

**Section 17. Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**Section 18. Waiver.** No covenant, term, or condition, or the breach thereof, shall be deemed

waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

**Section 19. Counterparts.** This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

[SIGNATURE PAGE TO FOLLOW]

DRAFT

IN WITNESS THEREOF, the Parties have executed this Agreement on the day, month and year first above written.

**APPLICANT**

MDS Business Services, Inc., a California non-profit mutual benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**CITY**

City of Oakdale, a California municipal corporation

By: \_\_\_\_\_

Bryan Whitemyer, City Manager

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

APPROVED AS TO FORM:

By: \_\_\_\_\_

Thomas P. Hallinan, City Attorney

DRAFT

**Exhibit E**

**Notice of Termination**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Oakdale  
280 N. Third Ave  
Oakdale, CA 95361  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §  
6103

**NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT**

DATE: \_\_\_\_\_, 20

PARTIES: CITY OF OAKDALE, a California municipal corporation  
280 N. Third Ave  
Oakdale, California 95361

MDS Business Services, Inc., a California nonprofit mutual benefit corporation  
\_\_\_\_\_  
\_\_\_\_\_, CA

**THIS NOTICE OF TERMINATION AND RELEASE** (the "Release") is being executed by the City of Oakdale, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. \_\_\_\_\_, which was recorded in the Official Records of Stanislaus County, California, on \_\_\_\_\_, 2018, City recorded a development agreement between City and \_\_\_\_\_, dated \_\_\_\_\_, 2018 (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires three (3) years from \_\_\_\_\_, 2018, on \_\_\_\_\_, 2020.

C. Pursuant to Section 9.1 of the Development Agreement, once terminated, the Development Agreement has no further force or effect, unless otherwise set forth in the Development Agreement.

**NOW, THEREFORE,** City hereby terminates, cancels, and otherwise releases Developer and Developer's heirs, executives, administrators, successors, and assigns from their obligations in the Development Agreement on this \_\_\_\_ (day) of \_\_\_\_ (month), 2020, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF OAKDALE,  
a California municipal corporation

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

**Exhibit F**

**Assignment and Assumption Agreement**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Oakdale  
280 N. Third Ave  
Oakdale, CA 95361  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §  
6103

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between MDS Business Services Inc., a California nonprofit mutual benefit corporation ("Assignors"), and \_\_\_\_\_ ("Assignee").

**RECITALS**

A. On \_\_\_\_\_, 2018, Assignor and the City of Oakdale (the "City") entered into that certain agreement entitled "Development Agreement by and between the City of Oakdale, a municipal corporation of the State of California, MDS Business Services Inc., a California nonprofit mutual benefit corporation," relating to the improvement, development, and use of real property to operate a cannabis dispensary business (the "Development Agreement"), originally recorded upon Stanislaus County Assessor's Parcel Number 064-039-055 (the "Property").

B. Section 10.1 of the Development Agreement prohibits the sale, assignment, or transfer by Assignor of any portion of Assignor's interests, rights, or titles described in that section of the Development Agreement ("Assignable Rights") to a third party without prior written approval by the City Manager of the City of Oakdale (the "City Manager").

C. Assignor intends to assign, and Assignee intends to assume, the Assignable Rights under the Development Agreement.

D. In accordance with the terms of the Development Agreement, Assignor has provided to the City Manager a written request for consent to assignment. The City Manager has received the information he or she deems appropriate and consulted with the City Attorney for the purpose of determining that Assignee is a qualified applicant for purposes of the foregoing terms of the Development Agreement. This Agreement is intended to meet the requirements Section 10.1 of the Development Agreement for an Assignment and Assumption Agreement, and is executed with the consent of the City Manager as contemplated in the Development Agreement.

**NOW, THEREFORE,** Assignor and Assignee hereby agree as follows:

1. The foregoing Recitals are true and incorporated herein by this reference as though set forth in full.
2. Assignor hereby assigns to Assignee all of the Assignable Rights of Assignor under the Development Agreement.
3. Assignee hereby assumes all of the burdens and obligations of Assignor under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Property and Assignable Rights. It is the express intention of Assignor and Assignee that, upon the execution of this Agreement, Assignee shall become substituted for Assignor as the “Developer” under the Development Agreement.
4. This Agreement shall take effect and be binding only upon the City Manager’s consent to and approval of the Agreement.
5. Assignee represents and warrants that it has reviewed and is familiar with the terms and conditions of the Development Agreement. Assignee acknowledges that the Assignable Rights are as set forth in Section 10.1 of the Development Agreement, and the duties of Assignor thereunder and the duties of Assignee hereunder, as between Assignee and City, shall be without reference to any underlying agreements or understandings that may exist between Assignee, Assignor, or any other party with respect to the subject matter hereof, and that City is not party to such other agreements.
6. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

**IN WITNESS HEREOF,** the parties hereto have executed this Agreement as of the day and year first above written.

*[Signatures on the following page]*

**ASSIGNOR/ DEVELOPER:**

MDS Business Services Inc., a California  
nonprofit mutual benefit corporation

\_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE**

\_\_\_\_\_, a  
California \_\_\_\_\_

By: \_\_\_\_\_

**AGREED TO AND ACCEPTED:**

CITY OF OAKDALE  
a California municipal corporation

\_\_\_\_\_  
City Manager

DRAFT