

REIMBURSEMENT AND INDEMNIFICATION AGREEMENT BY AND BETWEEN THE CITY OF PITTSBURG AND

_____.

THIS REIMBURSEMENT AND INDEMNIFICATION AGREEMENT
("Agreement") is made and entered into on _____, 2018, by and between the City of Pittsburg, a California municipal corporation ("City"), and _____ ("Developer"), in Pittsburg, California, with respect to the matters hereinafter stated.

1. Intent.

Developer intends to pursue one or more commercial cannabis permits in the City of Pittsburg ("Project"). Developer must obtain one or more discretionary approvals from the City for the Project and enter into a separate agreement outlining the Developer's obligations as part of the Project. The City's decision to issue discretionary approvals and enter into a separate agreement is subject to review under the Municipal Code and applicable law, as well as environmental review pursuant to the California Environmental Quality Act ("CEQA"). Pursuant to this Agreement, Developer intends to reimburse the City for these costs related to the City employees' and consultants' participation in the evaluation of the Project and any associated entitlements, approvals and analyses ("Project Evaluation"), which may include, but is not limited to, commercial cannabis permits, rezoning, subdivision of the property, or design review.

2. Reimbursement Payments.

A. Developer is willing to provide funds to the City for the Additional Project Evaluation Costs relating to the Project Evaluation.

B. The City will use the Reimbursement Payments by Developer to reimburse the City for its expenses incurred for Additional Project Evaluation Costs in providing and administering the services necessary and relating to the Project Evaluation. These services may include, but not be limited to:

- (1) Processing of requests for commercial cannabis permits, rezoning, subdivision of the property, or design review;
- (2) Preparation of an operating agreement and/or any other separate agreement deemed necessary in order to fully comply with the Pittsburg Municipal Code;
- (3) An environmental analysis in accordance with the requirements of the California Environmental Quality Act including an

assessment of potential major external impacts of the Project (such as traffic, air quality, noise, lighting, waste disposal, biological and visual impacts);

(4) An analysis of any trade secret claims related to Project documents utilized or retained by the City, including but not limited to document requests submitted by third parties; and

(5) Such other analyses or similar matters which the City may deem reasonably related to the Project Evaluation and/or Processing.

All of the analytical and processing services referenced above are referred to herein collectively as the "Project Services."

C. Developer acknowledges the Reimbursement Payments do not include any additional fees and charges required by law, ordinance or resolution to be paid to the City by Developer, such as application fees, inspection fees, and other processing fees for entitlements or permits that may be required for this Project, except those deposits to the Planning Division identified in section 3.

3. Initial Payment to the City.

Developer shall pay to the City ten thousand dollars (\$10,000.00) as an initial deposit for Additional Project Evaluation Costs.

Developer acknowledges that the nature and scope of the Project Evaluation are dependent upon factors that may be largely outside of the control of the City. Accordingly, Developer acknowledges and agrees that the amount of the initial Reimbursement Payment made by Developer to the City for deposit in the Account does not represent an estimate of the actual final costs of such services that may need to be rendered by the City in the performance of its duties under this Agreement.

4. Additional Payments to the City.

City will bill Developer on a monthly basis for reasonable expenses incurred by City Staff and/or the City Attorney for the services provided under this Agreement. The City will provide supporting documentation describing the services rendered and the time involved in each task. All bills for Additional Project Evaluation Costs with the supporting documentation shall be sent to the attention of:

Name: _____

Address: _____

If the cumulative expenses incurred by the City exceed the Initial Deposit then the Developer shall provide Additional Reimbursement Payments to cover the balance. If Developer fails to make the Reimbursement Payment(s) within thirty (30) days of receipt of the bill, or within such greater periods of time as may be provided in the notice

or as agreed upon by the Parties, then the City may direct that all work performed as Additional Project Evaluation Costs and the Project generally be suspended until Developer has made such additional Reimbursement Payment(s).

5. Authority and Obligations of the City.

Developer fully understands and agrees to each of the following:

A. City acknowledges that Developer shall only provide Reimbursement Payments for reasonable expenses incurred for Additional Project Evaluation Costs in connection with the Project Evaluation and Project Services.

B. Except as provided herein, City makes no promise, representation, or warranty, express or implied, that the City, its staff or consultants will provide the Project Services referenced in this Agreement by a certain date. Notwithstanding the foregoing, City staff and consultants will provide Project Services referenced in this Agreement in a timely manner without unreasonable delay.

C. The Reimbursement Payments under this Agreement shall in no way influence the actions of the City in respect to the review, processing or approval of agreements, permits or entitlements for the project or projects which may result from Project Services. Neither Developer nor any other person providing funding for the provision of Project Services under this Agreement shall, because of such payments under this Agreement, have any expectation as to the results of the City's review of and subsequent approval or denial of such approvals, permits, agreement or entitlements. Developer is expressly prohibited from directly or indirectly exercising any supervision or control over the work of the officers, employees, agents, and consultants used by the City to provide Project Services. This prohibition shall not be construed to preclude the City, its agents, employees and consultants from consulting with Developer concerning matters affecting the provision of Project Services under this Agreement. No promises, representations, or warranties have been made, expressly or implicitly, by the City, its officials, agents, or employees and, it is specifically agreed no person has any authority to make any such representation, promise, or warranty, to Developer or any other person that the Reimbursement Payments will in any way influence the actions of the City in respect to the approval or denial of such approvals, agreements, permits or entitlements.

6. Authority and Obligation of DEVELOPER.

Developer agrees:

A. To make timely payments for expenses incurred for Additional Project Evaluation Costs in connection with the Project Evaluation and Project Services as specified in this Agreement

B. To cooperate fully in the implementation of this Agreement including, but not limited to, allowing the City reasonable access to the Project and Project documents

for studies, analyses, and other matters relating to this Agreement.

C. To pay all City fees, assessments, and other levies which are applicable to this Project, at the rate in effect at the time the fee is paid to and accepted by the City.

D. To comply fully with all applicable City, local, regional, state, and federal rules, regulations, resolutions, ordinances, and laws, as they may exist now or in the future.

7. Amendment.

This Agreement, including any exhibits hereto, may be amended only by mutual written agreement of the parties.

8. No Agency, Joint Venture or Partnership.

City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

9. Indemnification.

A. Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement. The parties shall cooperate in defending such action or proceeding. Developer shall pay for the City's reasonable costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and reasonable attorneys' fees expended by the City in defense of any such action or proceeding, plus reasonable staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel. If the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis the City for all such court costs, attorney fees, and time referenced herein.

B. The parties agree that this Section 9 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9, which shall survive such invalidation, nullification, or setting aside.

10. Venue and Applicable Law.

Any action by any party to this Agreement shall be brought in the appropriate court of competent jurisdiction within the County of Contra Costa, State of California,

notwithstanding any other provision of law which may provide that such action may be brought in some other location. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11. Entire Agreement.

Each party acknowledges that this Agreement sets forth all covenants, promises, conditions and understanding between the parties regarding the matters set forth herein, and there are no promises, conditions, or understanding either oral or in writing between the parties other than as set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by them.

12. Effect of Waiver.

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

13. Interpretation of Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, and agreements whether oral or written. Any amendment to this Agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it will be effective. Both parties have had an equal opportunity to participate in the drafting of this Agreement. The usual construction of an agreement as to the drafting party shall not apply to this Agreement.

THE DEVELOPER

By:

CITY OF PITTSBURG

Joe Sbranti, City Manager

ATTEST:

Alice Evenson, City Clerk

APPROVED AS TO FORM:

, City Attorney