

**COMMERCIAL CANNABIS  
INDEMNIFICATION AGREEMENT**

This Commercial Cannabis Indemnification Agreement (“Agreement”) is made and entered into effective as of \_\_\_\_\_, 20\_\_, and entered into by or between \_\_\_\_\_, a \_\_\_\_\_ (“Company”), and the CITY OF MCFARLAND, a municipal corporation (“City”). The Company and the City may be collectively referred to herein as “Parties” and individually as a “Party.”

**RECITALS**

- A.** Company is in the process of developing certain real property situated in the City of McFarland, County of Kern, State of California, hereinafter referred to as the “Subject Property” and more particularly depicted in Exhibit “A” attached hereto and incorporated herein by reference, which is generally located at \_\_\_\_\_, McFarland, CA 93250. Company desires to acquire and be issued a commercial cannabis permit(s) by and from the City for the purpose of engaging in commercial cannabis activities on the Subject Property (“Project”).
- B.** Company obtained and examined a copy of Title 19, Chapter 19.04 Commercial Cannabis Activity and pertinent provisions of the McFarland Municipal Code pertaining to zoning and business licensing and agrees to abide by and conform to all of the conditions of a commercial cannabis permit and all provisions of the McFarland Municipal Code.
- C.** Company understands and acknowledges that the approval of the commercial cannabis permit, if granted, shall in no way permit any activity contrary to the McFarland Municipal Code or any activity which is in violation of any applicable laws.
- D.** Company understands the applicant and the employees of the commercial cannabis permittee may be subject to prosecution under federal laws governing cannabis.
- E.** Company understands that the City accepts no legal liability in connection with the approval and subsequent operation of a commercial cannabis business.
- F.** The City desires to consider issuing a commercial cannabis permit pursuant to McFarland Municipal Code Chapter 19.04 to allow Company to engage in commercial cannabis activities and requires this Agreement as a precondition to issuance.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

- 1.** Nothing in this Agreement shall be construed to limit, direct, impede or influence the City’s review and consideration of the Project, whether the approval provided is ministerial or

discretionary in nature.

2. **Indemnification.** To the fullest extent permitted by law, Company shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers (“City Indemnitees”) from any and all loss, liability, fines, penalties, forfeitures, costs and damages, including but not limited to personal injury, death at any time, and property damage, and including further attorney’s fees, litigation and legal expenses incurred by the City Indemnitee or held to be the liability of the City Indemnitee (including plaintiff’s or petitioner’s attorney’s fees if awarded, in connection with the City Indemnitee’s defense of its actions in any proceeding) (collectively, “Losses”) incurred by any City Indemnitees from any and all claims, demands and actions in law or equity (collectively, a “Claim”), whether in contract, tort or strict liability, resulting from, arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement or the related Development Agreement, if any; (iii) the issuance of any entitlements to operate a commercial cannabis business; (iv) the City’s granting, issuing or approving use of this Agreement or the related Development Agreement, if any. If any portion of a claim, demand or action in law gives rise to indemnification under this Agreement, Company shall be responsible for indemnifying, holding harmless, and defending the City as to the entire claim, demand or action in law. Company’s indemnification obligations under the proceeding portions of this paragraph shall apply regardless of whether the City Indemnitees are negligent, but shall not apply to any Losses caused solely by the gross negligence or willful misconduct of any City Indemnitees.

In addition, Company shall indemnify, hold harmless and defend the City Indemnitees from any and all federal enforcement action(s) arising from or related to (i) the execution of this Agreement or the related Development Agreement, if any, (ii) the issuance of any entitlements or approvals, including any related Development Agreement, by the City to operate the Company’s commercial cannabis business. Further, Company shall indemnify, hold harmless and defend the City Indemnitees from any and all violation(s) of federal, state and/or local law by Company, its officers, officials, employees, agents, subcontractors, independent contractors and volunteers.

If Company should subcontract all or any portion of the work to be performed under this Agreement or any related Development Agreement, Company shall require each subcontractor to execute an indemnification agreement so as to indemnify, hold harmless and defend the City Indemnitees in accordance with the terms of the two prior paragraphs of this Section. Said indemnification agreement shall be executed and provided to the City prior to subcontractor performing all or any portion of the work to be performed under this Agreement or any related Development Agreement. Notwithstanding the preceding two sentences, any subcontractor who is a “design professional” as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in the two prior paragraphs of this Section, be required to indemnify, hold harmless and defend the City Indemnitees to the fullest extent allowed by law, from any and all Claims and Losses that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the

performance of this Agreement or the design professional's agreement with the Company.

3. **Reimbursement.** Company and its successors in interest agrees to and shall reimburse the City for any and all costs and expenses, including reasonable attorneys' fees and costs and all court and filing fees arising from the City's approval of Company's commercial cannabis permit, the City's approval of Company's operation of a commercial cannabis business or facility(ies), this Agreement, or any related Development Agreement.
4. **Selection of Attorney.** The City shall have the right to select counsel, or, if City does not wish to select counsel, approve any counsel selected by Company and said approval shall not be unreasonably withheld. Company shall reimburse the City for any and all of the City's costs, including any attorney and staff time, to determine the suitability of the attorney or attorneys selected by the City or proposed by the Company.
5. **Review of Briefs and Filings.** Notwithstanding the foregoing, the City shall have final approval of all briefs, pleadings, proposed settlements, filings, etc., submitted on behalf of the City in any litigation related to the defense of this matter. Company shall reimburse the City for the City Attorney's Office review time at the current "Third Party Reimbursable Billing" rate.
6. **Insurance.** Throughout the life of this Agreement, Company shall pay for and maintain in full force and effect insurance as required by State law and as set forth in this Agreement per the limits and provisions set forth below:
  - a. **Commercial General Liability:** Company shall obtain, pay for and maintain in effect during the life of this Agreement, a policy of commercial general liability insurance issued by an insurance company rated not less than "A-VII" in Best Insurance Rating Guide and admitted to do business in California, on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000.00 per occurrence.
  - b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Company has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000.00 per accident for bodily injury and property damage.
  - c. **Bond: Subject to authorization by the McFarland Municipal Code,** in the alternative to maintaining Commercial General Liability, Company shall post a bond with the City, in a form subject to approval by the City Attorney, in the amount of \$1,000,000.00.
  - d. **Failure to Maintain Required Insurance:** Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement, the Commercial Cannabis Permit, and any related Development Agreement, and Company agrees to the same. **Subject to authorization by the McFarland**

**Municipal Code**, prior to terminating this Agreement, the Commercial Cannabis Permit, the and/or any related Development Agreement for failure to maintain the required insurance, the City may provide Company with written notice of its intent to terminate unless the City receives proof Company obtained the required insurance within seven (7) days from the date upon the notice. If Company fails to timely provide proof of the required insurance, Company shall immediately cease all business activity, including but not limited to cultivation, harvesting, manufacturing, transporting and/or delivering cannabis or cannabis products. Failure to immediately cease all business activity shall subject Company to the penalties, enforcement and cost recovery provisions established within the McFarland Municipal Code.

- e. **Policies:** All of the policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by the City or its officers, employees or agents may apply in excess of, and not contribute with Company's insurance. Company and the insurer are deemed hereof to waive all rights of subrogation and contribution they may have against the City, its officials, officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.
  - f. **Use of Property:** No use of the Subject Property pursuant to the Commercial Cannabis Permit, this Agreement or any related Development Agreement shall commence until the Company has provided the City with Certificates of Insurance, copy of the full policy and/or any additional materials evidencing the above insurance coverages and said insurance is approved by the City.
  - g. **Duty:** The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies or coverage limits are applicable.
  - h. **Subcontractor:** If Company should subcontract all or any portion of the services to be performed under this Agreement, Company shall require each subcontractor to comply with the terms and conditions of this Agreement.
7. **Future Approvals.** Nothing in this Agreement obligates the City or any other governmental entity to grant final approval of any matter referring or relating to the Commercial Cannabis Permit, operation of a commercial cannabis business(es) or facility(ies), and/or this Agreement or any related Development Agreement, nor does it obligate the City to pursue or defend any claims, demands or action in law or equity, nor does it otherwise limit the City's authority to resolve any such claim, demand or action.
8. **Attorneys' Fees.** If any party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and costs.

**9. Enforcement Remedies.** Company's sole remedy is to bring a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity to enforce this Agreement or claims for entitlement(s) related to the Subject Property against the City.

**10. Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:                      City of McFarland  
    Attn: City Manager  
    401 W. Kern Avenue  
    McFarland, CA 93250

If to Company:                      **(Insert Contact Information)**

**11. Waiver.** The waiver by a party of any breach shall not be construed to be a continuing waiver of any subsequent breach. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

**12. Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be the Superior Court of California, County of Kern.

**13. Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

**14. Interpretation.** The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any Party, but rather by construing the terms in accordance with their general accepted meaning.

**15. Amendments and Modifications.** This Agreement may be modified only by written instrument duly authorized and executed by all Parties herein.

**16. Recitals.** All provisions and Recitals within this Agreement shall be considered part of this contract and carry the same weight, force and effect as any other terms and conditions herein.

- 17. Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement shall constitute a separate agreement from any Project approval, and that if any Project approval, in part or in whole, is revoked, invalidated, rendered null or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.
- 18. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.
- 19. Knowing and Voluntary Agreement.** The parties to this Agreement acknowledge and agree that each of them has had a full and fair opportunity to carefully read and review the terms and provisions of this Agreement and consult with their own attorney concerning the meaning and effect of this Agreement. By executing this Agreement, each of the parties hereto represents, acknowledges, and agrees that such party carefully read and fully understands all the provisions of this Agreement, and that they are knowingly and voluntarily entering into this Agreement and signing it of their own free will.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement on the day and year first above written.

CITY OF MCFARLAND,  
A municipal corporation

Name of Entity,  
A \_\_\_\_\_

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

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

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

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

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM  
HODGES LAW GROUP

\*Attach Notary Acknowledgments. If signing for an entity, bylaws, resolutions, or other documents may be required to establish authority to sign on behalf of the entity

By: \_\_\_\_\_  
Nathan M. Hodges, City Attorney

**EXHIBIT A - SUBJECT PROPERTY**

**EXHIBIT "A"**  
**Legal Description**