
Request for Proposals

#2436

For Commercial Cannabis
Businesses: Storefront
Retail, Non-Storefront
Retail, & Microbusiness
with Storefront Retail



City of Concord
1950 Parkside Drive
Concord, CA 94519

Request for Proposals (RFP) Deadline
OPENS – October 5, 2020
CLOSES – November 19, 2020 @ 4:00 P.M.
www.cityofconcord.org/cannabis

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List of Exhibits to this Request for Proposals

- A. Exhibit A: Competitive Selection Cannabis Business (CSCB) Application
- B. Exhibit B: Evaluation Criteria and Scoring Detail
- C. Exhibit C: Trust Account Agreement Form
- D. Exhibit D: Zoning Compliance Fact Sheet
- E. Exhibit E: Limitations on City's Liability and Certifications, Assurances and Warranties
- F. Exhibit F: Commercial Cannabis Business Proposal/Application Financial Responsibility, Indemnity and Consent to Inspection Terms
- G. Exhibit G: Concord Municipal Code (CMC) Chapter 5.80 (Cannabis)
- H. Exhibit H: CMC Title 18 (Development Code)

APPLICATION INSTRUCTIONS & PROCEDURES FOR COMMERCIAL CANNABIS RETAIL AND MICROBUSINESS COMPETITIVE SELECTION PROCESS

I. INTRODUCTION

The City of Concord (“City”) is seeking proposals from commercial cannabis businesses (“Applicants”) to successfully open and responsibly operate the following types of commercial cannabis businesses: retail storefront, retail non-storefront, and microbusiness with a storefront retail component.

Through this Request for Proposal (RFP) process the City will select commercial cannabis businesses to apply for a limited number of available City Cannabis Licenses (CCL). This RFP process will result in selected Applicants securing eligibility to be invited to apply for a CCL in Concord for storefront retail, non-storefront retail, or microbusiness with a storefront retail component. No more than two proposals will be accepted from any cannabis business owner.

An invitation to apply for a CCL through this RFP process does not constitute final approval for commercial cannabis operations in Concord. All successful Applicants must thereafter apply for and receive a CCL, the appropriate land use permits (including an Administrative Use Permit and Design and Site Review approval), a State cannabis license, a City business license, building permits (including a Certificate of Occupancy), and other required regulatory approvals before commencing operations.

Pursuant to Concord Municipal Code (CMC) Chapter 5.80 (Cannabis), the following number and types of licenses may be available:

- Three (3) storefront retail licenses;
- Three (3) non-storefront retail licenses; and
- Two (2) microbusinesses with a storefront retail component.

Information and proposal materials regarding the commercial cannabis competitive selection/commercial cannabis licensing process can be found on the City’s website at www.cityofconcord.org/cannabis.

Applicants should monitor the Cannabis Regulations [webpage](#) for additional information, FAQ’s or updates. It is the responsibility of the Applicant to stay informed of this information.

II. BACKGROUND

The City is located in central Contra Costa County and is the largest city within the county with a population of 130,559 (Applied Geographic Solutions, 2018). The City of Concord is positioned at the intersection of Interstate 680 and State Route 4 and has access to the greater Bay Area with two BART stations.

On May 26, 2020, the City Council of the City of Concord adopted regulations to allow for a competitive selection process for retail (storefront and non-storefront) and microbusinesses with a storefront retail component for commercial cannabis licenses. On July 28, 2020, the City Council approved the competitive selection process framework and scoring detail.

III. SCHEDULE AND COMMUNICATIONS

The following schedule details milestone dates and times related to this RFP. All times in this table and document are listed in Pacific Time. City reserves the right to revise this schedule.

Table 1: Cannabis RFP Timeline

Date	Time	Activity
October 5, 2020		RFP Issued
October 12, 2020	2:00 PM	Pre-Proposal Conference
October 26, 2020	By 5:00 PM	Addendum Issued/Posted on the Cannabis Project Webpage by City Staff (Addendum may include revisions and/or responses to RFP/Questions)
October 29, 2020	4:00 PM	Deadline for Zoning Verification Letter request and fee
November 10, 2020	4:00 PM	Final date for submitting written questions
November 16, 2020	By 5:00 PM	Final questions and answers (FAQs) posted to website
November 19, 2020	4:00 PM	<u>Proposal and Deposit Due Date</u> Submittals via on-site drop box to: City of Concord Civic Center Purchasing Division c/o Finance Department 1950 Parkside Drive Concord, CA 94519
Contact person for the RFP: Daniel Garza, Purchasing Manager Email: purchasing@cityofconcord.org		

A. PRE-PROPOSAL CONFERENCE

A remote pre-proposal conference, hosted by City of Concord staff and the City's Consultant (HdL Companies), will be held via Zoom on October 12, 2020 at 2:00 PM (Zoom link: <https://cityofconcord.zoom.us/j/95098165102?pwd=RFpIMnhmTVp3UjJUSWlqMVpDZnF1Zz09>) This will provide the opportunity for prospective Applicants interested in submitting a proposal to hear an overview of the procedures and to ask questions. The conference will be recorded and uploaded to the [City's Cannabis Regulations webpage](#).

B. SUBMITTAL DEADLINE

Request for Proposals to operate a commercial cannabis retail storefront, retail non-storefront, or microbusiness (with a retail storefront component) in the City of Concord will open on October 5, 2020 and will close at 4:00 PM. on November 19, 2020. Proposal materials and information are available on the City's website at www.cityofconcord.org/cannabis. Proposals must be submitted to the Purchasing Division prior to the deadline, following the instructions outlined in Section V (Proposal and Application Submittal Requirements). **NO LATE PROPOSALS WILL BE ACCEPTED.**

C. QUESTIONS AND COMMUNICATION

1. RFP Questions

Questions regarding this RFP must be submitted in writing via email with the referenced RFP clearly identified in the 'subject line' to the email address: purchasing@cityofconcord.org. Questions shall be received no later than **November 10, 2020 at 4:00 PM**, as specified in the above table under Section III (Schedule and Communications). Applicants shall promptly notify the Purchasing Manager in the same manner of any error, omission, or inconsistency that may be discovered during the examination of the RFP.

Any questions or comments directed to persons or addresses other than specified in the preceding sentence, or received after the deadline specified in the preceding sentence, will not be addressed. Applicant's company name, address, phone number, email address, contact person, and reference to this RFP must be included with the questions and/or comments.

Applicant shall not rely upon interpretations, corrections, or changes made in any other manner, (e.g. whether by telephone, in person, or any type of writing) other than an Addendum or Frequently Asked Questions (FAQs) posted on the City's website. All Addenda and FAQs issued will be posted on the City of Concord's website at www.cityofconcord.org/cannabis. Notifications may (but are not required to) be sent to all known Applicants by email; however, it is the Applicant's sole responsibility to ascertain that it has received all Addenda and FAQs issued for this RFP by monitoring the website.

2. Communication During RFP Process

- If you have questions or need clarifications with regards to any aspect of this RFP, you must communicate them to City staff in writing by e-mailing this address purchasing@cityofconcord.org.
- Only information posted to the [website](#) or shared with Applicants through this same e-mail account, purchasing@cityofconcord.org, is official communication from the City on this RFP process.
- Applicants are strongly requested to refrain from contacting City staff through any other means than this e-mail address. This allows City staff to monitor communications and assure all Applicants are receiving the same information.
- Should an applicant have a reason unforeseen by City staff where a phone call is necessary, an applicant may call Daniel Garza, the City's Purchasing Manager, by phone at 925-671-3219. Consultation with Mr. Garza via telephone is not official City of Concord communication on this RFP unless it is put into writing and sent from the purchasing@cityofconcord.org e-mail address.

IV. PROPOSAL REVIEW, SCORING AND SELECTION PROCESS

A. PHASE I: INITIAL REVIEW OF SUBMITTAL REQUIREMENTS

Proposals must be submitted in their entirety, no later than **4:00 PM on November 19, 2020**. Upon receiving a submittal, City staff will review the information using the Proposal and Application Submittal Requirements as outlined in Section V below. Proposals will be forwarded to the City's Consultant (HdL Companies) for Phase II (Criteria Evaluation and Scoring). **LATE PROPOSALS WILL NOT BE CONSIDERED.**

B. PHASE II: CRITERIA EVALUATION AND SCORING

The City's Consultant, HdL Companies, will evaluate, score and rank each proposal package based on the Evaluation Criteria and Scoring Detail (included in **Exhibit B**). Responses to Sections A through F in **Exhibit B** shall not exceed 200 pages. See **Exhibit B** for a description of the Evaluation Criteria and Scoring Detail:

Section A. Business Plan

Section B. Labor and Local Diversity Plan

Section C. Neighborhood Compatibility Plan

Section D. Community Benefits and Investments Plan

Section E. Preliminary Safety and Security Plan

Section F. Odor Control and Waste Management Plan

Applicants scoring a minimum of 80% (1,600 points out of 2,000) in Phase II will move on to Phase III of the process.

Applicants who submit incomplete proposals or fail to include all of the necessary information and/or documents required by this RFP shall be deemed ineligible to proceed to the next phase, and shall have no grounds to appeal this determination under Section VIII (Appeals) below.

C. PHASE III: ELIGIBILITY LIST

Those Applicants which meet the scoring threshold (1,600 points) will be ranked from highest to lowest by the Consultant within each license category (retail storefront, retail non-storefront, and microbusiness with retail storefront) in order to establish an eligibility list. This list will be forwarded to the City Manager, who will prepare a report for consideration by the City Council. Only the highest scoring Applicants for each of the City Cannabis License types shall proceed forward to City Council for review and interviews. Specifically, the City Manager shall forward six (6) for retail storefront proposals, six (6) for retail non-storefront proposals, and four (4) microbusinesses with a storefront retail component proposals. The City Manager has the discretion to increase the number of eligible Applicants in the event of tied scores.

Written notification of each Applicant's scores, ranking and eligibility to proceed to the Phase IV (Interviews & Final Selection) stage shall be emailed to the Applicant's designated contact person.

D. PHASE IV: INTERVIEWS & FINAL SELECTION

As determined by the City Manager, the highest-scoring proposals for each license type will be forwarded to the City Council for interviews and final selection to determine which Applicants are eligible to apply for a City Cannabis License. This final selection will occur at a public meeting where the top Applicants or finalists will have the opportunity to address and be interviewed by the City Council and answer any additional questions prior to a final decision being rendered. Applicants invited to interview with the City Council will be provided instructions for the interview process at that time.

The City reserves the right to request and obtain additional information from any candidate who advances to Phase IV. Should any of the top Applicants withdraw for any reason or be subsequently disqualified due to results of the background investigation, the City Manager has the discretion to invite the next highest-scoring Applicant from the eligibility list to participate in the Phase IV (Interviews & Final Selection) interviews.

The City Council's decision and selection following the interviews shall be considered final and not subject to further appeal to the City.

Please be advised: Being selected through the merit-based competitive selection process to apply for an available retail or microbusiness CCL does not constitute a land use entitlement and does not waive or remove the requirements of applying for a CCL, land use and design review approvals, and obtaining permits for all construction including: electrical, plumbing, fire, and any other permits, licenses, or reviews as deemed necessary by the relevant departments or governmental entities in charge of said permits. Nor does selection guarantee that the plans submitted via the RFP process meet the standards or requirements in CMC Chapter 5.80 (Cannabis) and Title 18 (Development Code) and any other permit requirements from other City departments or agencies.

V. PROPOSAL AND APPLICATION SUBMITTAL REQUIREMENTS

The information below describes the proposal process and outlines which documents are required to be filled out and submitted. Before submitting, carefully review your Proposal in its entirety to ensure that it is complete and accurate. Further information regarding the Commercial Cannabis Retail and Microbusiness Competitive Selection Process is available on the [City's Cannabis Regulations webpage](#).

A. SUBMITTAL INSTRUCTIONS

All proposal materials required for Phases I through IV, described in Section IV (Proposal Review, Scoring and Selection Process) section above, **MUST** be filled out and submitted in response to this RFP. Proposal submittals must include **the original and one (1) hard copy, and two (2) flash drives containing scanned copies of the signed application and proposal materials in PDF format, with clearly labeled file names corresponding to the named Exhibits organized as described in B.1, below (Submittal Organization).**

All proposals must be dropped off at the Purchasing Division located within the City of Concord Civic Center at 1950 Parkside Drive, Concord, CA 94519. There is a drop box located outside the Purchasing Division offices. If submitting a proposal prior to November 18, 2020, contact the Purchasing Division at purchasing@cityofconcord.org in advance to make an appointment. Payment must be included with all proposals.

All proposal materials shall include the following:

- 1. Competitive Selection Cannabis Business (CSCB) Application (Exhibit A):** Please complete this form and provide all of the required information and attachments. All forms must be completely filled-out and signed. Below is a checklist of all required attachments for the CSCB application:
 - A-1: Initial Deposit of \$5,000.00 for Phases I and II. Subsequent deposit(s) will be required for those Applicants that advance in the process. **Payment must be made by a certified check, cashier's check, money order, or credit card, made payable to the City of Concord (see Section VII.B Additional Phases and Payment Detail). Please note the City will not accept cash, and Phase I/II deposits are non-refundable.**
 - A-2: [Trust Account Agreement Form](#) (Exhibit C).

- A-3: Proof of property owner consent, such as a signed and notarized: Property Consent Form; Purchase Agreement, Lease Agreement; “Letter of Intent” (LOI) to lease, or proof of ownership of the subject parcel. **A maximum of three proposals will be accepted per parcel or address.**
- A-4: Limitations on City’s Liability and Certifications, Assurances and Warranties, dated and executed by authorized agent of Applicant (**Exhibit E**).
- A-5: Commercial Cannabis Business Proposal/Application Financial Responsibility, Indemnity and Consent to Inspection Terms, dated and executed by authorized agent of Applicant (**Exhibit F**).
- A-6: [Zoning Compliance Fact Sheet](#) (**Exhibit D**).
- A-7: Receipt for proof of payment for a completed [City-issued provisional background check](#) form for each owner (described below, utilize online form).
- A-8: Zoning Verification letter issued by the City. **Must be requested in advance by October 29, 2020** (described below in further detail).
- **2. Responses to Evaluation Criteria and Scoring Detail (Exhibit B):**
Please provide written responses to all Evaluation Criteria outlined in **Exhibit B**. This section shall not exceed 200 pages at 12-point font, Arial typeface. Financial documents are exclusive of the 200-page limitation.

B. DETAILED DESCRIPTIONS OF SUBMITTAL REQUIREMENTS

1. Submittal Organization

All materials and copies must be submitted in both hard copy and on a USB flash drive in a PDF format as described in Section A, above. All documents shall include page numbers. The hardcopy files shall be bound and organized with tabs. The files on the USB flash drive shall be organized as follows based on the details outlined in Section A above:

- PDF File #1 – CSCB Application with signatures
- PDF File #2 – A-1 payment (scanned copy or receipt) and A-2 (Trust Account Agreement), signed
- PDF File # 3 – A-3 proof of property owner consent
- PDF File #4 – A-4 and A-5
- PDF File #5 – A-6 and A-8
- PDF File #6 – A-7 proof of payment for all cannabis business owners, (see subsection B(2)(a) below)
- PDF File #7 – Responses to Evaluation Criteria
- PDF File #8– Proof of Capitalization: Bank statements, loan documents, promissory notes, and financial and commitment letters

2. Background Check

a. **Provisional Background Check:** Prior to submittal of a Proposal, each Owner (see definition of “Owner” in CMC 5.80.020) must undergo a criminal history background check to demonstrate they do not provide “good cause” for denial per CMC Sections 5.80.040(2) and 5.80.050(d)(2). This will consist of a provisional background check by means of an online portal available at https://hdlcompanies.formstack.com/forms/bc_concord. Upon completing the online background check form, each Applicant will be required to print an online receipt, which must be submitted with the application as proof of completion. Owners who do not meet the criminal history eligibility requirements of CMC Section 5.80.050(d)(2) will be automatically disqualified.

b. **Selection and Subsequent Live Scan Background Check:** Please be advised a Live Scan is not required as part of the RFP process, but is required after being selected and invited to apply for a City Cannabis License. Applicants selected by the City Council following the interview process, and invited to apply for a license, will be required to submit to a Live Scan as part of the license application process, prior to being issued a license.

3. Zoning Verification Letter (ZVL)

Prior to submitting a Proposal (Phase I), an Applicant must obtain a Zoning Verification Letter (ZVL) from the Planning Division. To secure this ZVL, an Applicant must make a written request specifying the intended use of the property, type of cannabis license sought (e.g. storefront retail, non-storefront retail, or microbusiness with a storefront retail component), and the proposed property location.

For the ZVL request, please include the following (at minimum) in a PDF or MS Word document:

- Name of primary contact;
- Email address and phone number of primary contact;
- Payment of \$543.24 per Assessor’s Parcel Number (APN);
- Address and APN(s) of proposed site;
- Type of cannabis license being sought;
- List of sensitive uses within 250 feet of property (measured property line to property line), if any. A list of known sensitive uses identified by the City through business license records is posted on the [cannabis webpage](#), however it is up to the Applicant to verify if there are any additional sensitive uses within 250 feet of the property; and
- Any additional land use related questions you would like researched as part of your letter.

A Zoning Verification Letter request shall be submitted to the Planning Division no later than 4:00 PM on October 29, 2020 and requires up to 10 business days for processing (from the time the request and payment is received). If you would like to submit a Zoning Verification Letter request, please follow the directions listed above and email

your request to zoning@cityofconcord.org (subject line: Cannabis RFP ZVL) or mail the request and materials to:

City of Concord
Planning Division—Cannabis ZVL
1950 Parkside Drive (MS, 53)
Concord, CA 94519

If you choose to submit via email, you will be contacted by a Planner regarding the payment process once your request is received. The issuance of a ZVL does not constitute written evidence of permission given by the City or any of its officials to operate a cannabis business, nor does it establish a “permit” within the meaning of the Permit Streamlining Act, nor does it create an entitlement under the Development or Building Code.

C. MINOR ERRORS, OMISSIONS, AND AMENDMENTS

After the submittal period has been closed at 4:00 PM on November 19, 2020, Applicants will not be allowed to make amendments to their proposals or to supplement their proposals, except as otherwise specifically permitted in these procedures or as authorized in writing by the City. Substantive evaluations of the proposals will occur during Phase II (Criteria Evaluation and Scoring) and if a minor error or omission is found, the City will notify Applicants by email. Minor errors or omissions include missing signatures or dates, scanning or other clerical errors, or as determined by the Community Development Director. Minor errors or omissions that can be corrected will not cause the proposal to be rejected. Proposals will be rejected if required components are missing and Applicants will be notified via email.

VI. SELECTION AND SUBSEQUENT APPROVALS

If invited to apply for a CCL for a retail storefront, non-storefront, or microbusiness with a retail storefront component by the City Council through this competitive process, the selected cannabis business must apply for and receive issuance of the following, prior to the business being approved to operate in the City of Concord:

- A City Cannabis License: The CCL application form is located on the [City's website](#). A cannabis storefront retailer, non-storefront retailer, or microbusiness with storefront retail component can only apply using the license application form after being interviewed, selected, and invited to apply by the City Council through the competitive selection process.
- Land Use Permit Approvals:
 - Administrative Permit (AP) approval, a discretionary land use permit is required for the proposed cannabis use.
 - Design and Site Review approval, required for site and exterior improvements.
- Building Permit issuance and Final Certificate of Occupancy.
- State cannabis license.
- Business license. Information regarding City of Concord business licenses may found at <https://cityofconcord.org/378/Business-Licenses>.

The above-described approvals are separate applications for license and permit approvals that may only be applied for following selection by the City Council at the conclusion of Phase IV (Interviews and Final Selection).

VII. FEES AND DEPOSITS

Applicants will be required to submit a specific deposit amount applicable to each Phase of the process. The appropriate deposit amount will be collected at the beginning of each Phase. All costs associated with processing the proposal through the phase will be deducted from the corresponding deposit, including staff time, consultant time, and materials. Applicants are advised that they may be required to pay additional amounts as required for the sole purpose of the City's completion of the proposal review process.

A. PHASE VII FEE AND ADDITIONAL SUBMITTAL DEPOSITS

The initial deposit required at the time of Proposal submittal is \$5,000.00 (non-refundable), based on anticipated staff and consultant time associated with Phase I and Phase II. A separate fee for the provisional background check is \$300.00 per owner and will be paid via the online portal prior to submittal of the proposal. The fee for the Live Scan, to be paid at the end of the process by successful Applicants invited to apply for a City Cannabis License, is \$97.00 per person (this should not be included with the proposal).

Proof of a request for a provisional background check (the receipt from the online portal) along with the City-issued Zoning Verification Letter (ZVL), must be included with the Proposal. The ZVL fee is \$543.24 per parcel number to be paid at time of request as outlined in Section V (Proposal and Application Submittal Requirements), subsection B.3. Per the RFP requirements, the submittal and fee shall be received no later than October 29, 2020 at 4:00 PM.

B. ADDITIONAL PHASES AND PAYMENT DETAIL

The deposit requirement for each Phase is as follows:

Table 2: Deposit Schedule by Phase

Phase	Deposit
Phase I/II	\$5,000 (non-refundable)
Phase III	\$4,000
Phase IV	\$3,000
Appeal	\$3,000

Payment must be made by a certified check, cashier's check, money order, or credit card payment, made payable to the City of Concord. A separate payment is required for each proposal submitted.

1. Instructions to pay by credit card:

- A. Enter www.cityofconcord.org/CCPayments into a web browser and complete the requested information.
- B. Select “Other” under Bill Type.
- C. In the Bill ID # / Case Number field, type “Cannabis RFP #2436 Deposit”.
- D. In the Bill Description field, type “Deposit for [name of the cannabis business entity] at [proposed address and unit number].”
- E. Applicants must attach a copy of the credit card receipt to the RFP when submitting at the drop box.

VIII. APPEALS

Appeals will be available for Applicants who are not included on the Eligibility List (Phase III) based on their scores and ranking. A written appeal may be submitted via e-mail to the City Manager’s office (cityclerk@cityofconcord.org) within ten (10) days after the City has issued its notification that the Applicant is not included in the Eligibility List. The written appeal must specify the grounds for appeal, listed below. Applicants who are denied inclusion on the Eligibility List based on the determination that the Applicant failed to timely provide a complete proposal or adhere to the requirements of this RFP are NOT eligible for appeal.

A. GROUNDS FOR APPEAL

- 1. Deviation from the City’s published Competitive Selection Application Instructions and Procedures that materially and adversely affected the applicant by altering the outcome of the City’s decision on the Applicant’s proposal. Examples of appealable deviations are:
 - a. Failure on the part of the City to provide appropriate notification regarding changes to the process via website postings and/or email to the Applicant prior to the time of the Applicant’s submittal.
 - b. Failure on the part of the City to provide an Applicant an equal opportunity to modify a proposal, where that opportunity was provided to other applicants.
- 2. The scoring of one or more portions of the Applicant’s proposal was not justified based on the information presented in the submittal, or due to a material error or omission on the part of the entity scoring the proposal submittal.
 - a. Any appeal must be supported by evidence that the Applicant presented the relevant information with completeness and in the appropriate section of the proposal. Information presented in the proposal that is incomplete in nature, or that is relevant to a question posed by the City in the Application Instructions and Procedures but appears in the incorrect section, even if complete, shall be grounds for the dismissal of the appeal.

In the case of an appeal, the City Manager will appoint a Hearing Officer to consider the appeal and conduct an appeal hearing, with the target of having the hearing scheduled within fourteen (14) days after receipt of the appeal. Once a hearing on the appeal has taken place, the Hearing Officer shall issue a written decision on the appeal within five (5) days of the hearing date. The Hearing Officer’s decision shall be considered final and not

subject to further appeals. If an appellant is successful, the new score will be applied and if equal to or higher than the already selected applicants to be invited to interview with City Council, they too will be interviewed by the City Council during Phase IV (Interviews & Final Selection), prior to final selection. No previously selected applicants will be displaced from Phase IV (Interviews & Final Selection).

IX. ADDITIONAL TERMS AND CONDITIONS

A. CITY'S RESERVATION OF RIGHTS

The City reserves the right to waive minor defects in the proposal as described in Section V.C above. The City reserves the right to reject any proposals with cause as described in this RFP. The City reserves the right to reject all proposals without cause. The City may modify, postpone, or cancel the request for proposal without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to request and obtain additional information from any candidate submitting a proposal. Late or incomplete proposals WILL BE REJECTED. Furthermore, a proposal RISKS BEING REJECTED for the following reasons:

- It is not fully responsive to this request for proposal.
- It contains excess or extraneous material not called for in the request for proposal or in response to the Evaluation Criteria, or exceeds 200 pages within PDF format.
- The issuance of the City Cannabis License at the proposed location would be inconsistent with State law, CMC Chapter 5.80, CMC Title 18, or other applicable CMC sections.

B. CALIFORNIA PUBLIC RECORDS ACT, CONFIDENTIAL/PROPRIETARY INFORMATION.

All documents submitted in response to this RFP will become the property of the City, and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. Any confidential or propriety information as defined by the California Public Records Act ("Confidential Information") must be enclosed in a separate folder or envelope clearly marked as "CONFIDENTIAL/PROPRIETARY INFORMATION" and submitted with the rest of the Proposal. Proposal submittals where **all** information is so marked will be disregarded and made available pursuant to the CPRA. However, Applicant (by virtue of submitting its Proposal or any Confidential Information) acknowledges that City has not made any representations or warranties that Confidential Information is exempt from disclosure under Applicable Laws.

If City's City Attorney, in his or her discretion, determines that release of Confidential Information is required by Applicable Laws, including pursuant to order of a court of competent jurisdiction, City shall notify the applicable Applicant of City's intent to release Confidential Information. Applicant shall have five (5) calendar days after the date of City's notice ("Objection Period") to deliver to City a written objection notice which includes (1) justification for non-disclosure of all or any portion of the requested Confidential Information, and (2) legally binding confirmation of Applicant's indemnity and release obligations as set forth in this section ("Objection Notice"). City may release the Confidential Information if (i) City does not timely receive an Objection Notice, (ii) a final and non-appealable order by a court of competent jurisdiction requires City to release Confidential Information, or (iii) the City's City Attorney, in his or her discretion, upon review of the Objection Notice, determines that it does not satisfy the requirements set forth in this section or

that the requested Confidential Information is not exempt from disclosure under the Applicable Laws. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Applicable Laws, City may redact, delete, or otherwise segregate the Confidential Information that will not be released from the portion to be released, and may key by footnote or other reference to the appropriate justification for not disclosing the unreleased Confidential Information. Applicant shall defend, indemnify and hold harmless City and its officers, officials, employees, volunteers, agents, attorneys, and representatives (collectively, "Indemnitees") from and against any and all Claims arising out of or in any way connected with disclosure or non-disclosure of any Confidential Information. "Claim" or "Claims" means any and all present and future liabilities, claims, demands, obligations, grievances, judgments, orders, injunctions, causes of action, assessments, losses, costs, damages, fines, penalties, expenses, suits or actions of every name, kind, description and nature (including attorneys' fees and costs), whether brought forth on account of damages, injuries to or death of any person or damage to property, known or unknown, and whether now existing or hereafter arising, including all costs, attorney's fees, expenses and liabilities incurred in the defense of any of the foregoing or any action or proceeding brought thereon.

By signing the submittal, Applicant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with any Confidential Information. Applicant aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

As such relates to this Section, Applicant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.