
CITY OF PATTERSON PLANNING COMMISSION AGENDA
REGULAR MEETING
THURSDAY, JULY 13, 2023, AT 7:00 P.M.
City Council Chambers
1 Plaza, Patterson, California

To minimize the spread of the COVID-19 virus, this hybrid meeting will be held in accordance with certain requirements of the Ralph M. Brown Act and the Federal Americans with Disabilities Act. If you would like to attend the Planning Commission meeting in person, it is strongly recommended to wear a face covering and maintain appropriate social distancing.

MEMBERS OF THE PUBLIC MAY PARTICIPATE IN THE MEETING IN PERSON OR VIA TELECONFERENCE BY CALLING 1-669-900-6833, MEETING ID: 701 906 1477 PASSWORD: 20995363 AND WILL BE GIVEN THE OPPORTUNITY TO PROVIDE PUBLIC COMMENT. JOIN FROM A PC, MAC, IPAD, IPHONE, OR ANDROID DEVICE BY USING THIS URL:

<https://us06web.zoom.us/j/7019061477?pwd=VElrMTlYdmNZTk53ZitzZUdSZUQxZz09>

Regular Planning Commission meetings are scheduled on the 2nd and 4th Thursday of each month at 7:00 p.m. January-October and on the 3rd Thursday only in November and December. The agenda/packet is usually posted by 5:00 p.m. the Thursday before a scheduled Thursday Planning Commission meeting.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (209) 895-8020. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II].

The Planning Commission agenda and supporting public documents are available for viewing in City Hall, Planning Department, 1 Plaza, 2nd Floor, Patterson, California, during normal business hours. The Planning Commission agenda and supporting public documents are also available online on the City web site www.ci.patterson.ca.us listed under Agenda Center "Planning Commission" or please call or email the Planning Department at (209) 895-8020 or planning@ci.patterson.ca.us

If you wish to be notified of future Planning Commission meetings, please visit our website www.ci.patterson.ca.us go to Popular Links "Planning Commission Agendas" and Subscribe to "RSS"

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ITEMS FROM THE PUBLIC The public wishing to address the Planning Commission on items that do not appear on the agenda may do so; however, the Planning Commission will take no action other than referring the item to Staff for study and analysis and may place the item on a future agenda [Resolution 92-25].

Any member of the audience desiring to address the Planning Commission regarding a matter on the agenda, please raise your hand or step to the podium at the time the item is announced by the Chairperson. In order that all interested parties have an opportunity to speak, any person addressing the Planning Commission will be limited to a maximum of five (5) minutes unless the Chairperson grants a longer period of time.

STATEMENT OF CONFLICT BY COMMISSIONERS

RIGHT TO APPEAL Any person who is dissatisfied with the decision of the Planning Commission may appeal such action to the City Council within ten (10) business days after action.

CORRESPONDENCE None

CONSENT AGENDA

1. Planning Commission Meeting Minutes of June 22, 2023

AGENDA ITEMS:

1. **Public Hearing:** **Revocation of Conditional Use Permit #17-21 for Failure to Comply with Conditions of Approval and a Recommendation to Terminate the Development Agreement with Central Valley-Sierra Associates.**

The Planning Commission will hold a regular meeting to review Conditional Use Permit #17-21 ("CUP") to determine whether Central Valley-Sierra Associates (the "Developer") has failed to comply with certain conditions of approval associated with its project to operate a cannabis dispensary business at 100 West Las Palmas Avenue, Suite H, Patterson, CA 95363 (the "Project"). The Planning Commission will consider the possible revocation of the Developer's CUP and a recommendation to the City Council to terminate the development agreement by and between the City and Developer and approved by the City Council on December 5, 2017 (the "Agreement"). Section 8.1 of the Agreement provides that the failure or delay by Developer to perform in accordance with the terms and provisions of the Agreement shall constitute a default and the City may, in its sole discretion, give notice to Developer of its intent to revoke or rescind any operable CUP related to or concerning the Project. The Planning Commission will consider if Developer has failed to comply with the terms of the Agreement, and if Developer has failed to do so, whether the CUP should be revoked, and whether termination of the Agreement should be recommended to the City Council based on Developer's breach of the terms of the Agreement.

2. **Public Hearing:** **Fourth Amendment to Development Agreement (Nucleus Homeopathics, Inc.)**

The Planning Commission will hold a regular meeting to consider recommending to the City Council adoption of an ordinance to approve a Fourth Amendment to the Development Agreement with Nucleus Homeopathics, Inc. ("Nucleus"), associated with its project to operate a cannabis manufacturing, distribution and cultivation business at 240 Park Center Drive, Patterson, CA 95363 (the "Project"). A Development Agreement is a contract that provides certain terms regarding infrastructure and public benefits, while the developers receive vested rights to develop their properties in accordance with the development plans. The Fourth Amendment will provide that Nucleus' recent payment to the City shall constitute full and complete satisfaction of Nucleus' past-due public benefit amounts owed to the City; that Nucleus will be subject to the City's cannabis tax on an ongoing basis; that a new Public Benefit payment schedule will be added and shall become effective on the first business day following the conclusion of the Project's first quarter of operation; that Nucleus shall ensure the Project is open and operational

within twelve (12) months of the effective date of the Fourth Amendment to the Development Agreement; and that in the event the Project requires additional time to become operational, Nucleus and the City may extend this period upon a showing that progress is being made to the City's satisfaction.

- **ITEMS FROM STAFF**
- **ITEMS FROM COMMISSION**
- **ADJOURNMENT**

**CITY OF PATTERSON
PLANNING COMMISSION MINUTES
JUNE 22, 2023**

The Planning Commission regular meeting of June 22, 2023, was called to order by Chairperson West at 7:03 p.m.

SHOWN PRESENT (HYBRID MEETING): Shown present: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Aplan and Commissioner Sidhu. Also shown present: City Planner Andrews, Deputy City Attorney Josh Varinsky (zoom), IT Manager Ford and Planning Commission Secretary Melo. Shown excused: Community Development Director Stice and Associate Planner Rodriguez.

Motion to nominate Chairperson West to remain as Chairperson:

Vice Chairperson Bendix

Second: Commissioner Aplan

Motion passed: 5-0 Vote

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Aplan, Commissioner Sidhu

Ayes: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Aplan, Commissioner Sidhu

Noes: None

Abstained: None

Motion to nominate Vice Chairperson Bendix to remain as Vice Chairperson:

Chairperson West

Second: Commissioner Anderson

Motion passed: 5-0 Vote

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Aplan, Commissioner Sidhu

Ayes: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Aplan, Commissioner Sidhu

Noes: None

Abstained: None

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Aplan, Commissioner Sidhu

ITEMS FROM PUBLIC: None

STATEMENT OF CONFLICT BY COMMISSIONERS: None

CORRESPONDENCE: None

Planning Commission Minutes
June 22, 2023 - Official

CONSENT ITEMS:

1. Motion to approve Planning Commission meeting minutes of April 13, 2023:

Vice Chairperson Bendix

Second: Commissioner Apland

Motion passed: 4-0 vote

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Ayes: Chairperson West, Vice Chairperson Bendix, Commissioner Apland, Commissioner Sidhu

Noes: None

Excused: Commissioner Anderson

Abstained: None

2. Motion to approve Planning Commission meeting minutes of April 27, 2023:

Vice Chairperson Bendix

Second: Commissioner Apland

Motion passed: 5-0 vote

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Ayes: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Noes: None

Abstained: None

3. Planning Commission Resolution #2023-03 – Recognition of Jose Lopez Dedicated Service

Motion to approve Planning Commission Resolution #2023-03:

Vice Chairperson Bendix

Second: Commissioner Anderson

Motion passed: 5-0 vote

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Ayes: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Noes: None

Abstained: None

4. Planning Commission Resolution #2023-04 - Recognition of Titus Linares Dedicated Service

Motion to approve Planning Commission Resolution #2023-04:

Vice Chairperson Bendix

Second: Commissioner Anderson

Motion passed: 5-0 vote

ROLL CALL: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Ayes: Chairperson West, Vice Chairperson Bendix, Commissioner Anderson, Commissioner Apland, Commissioner Sidhu

Noes: None

Abstained: None

AGENDA ITEMS:

1. PowerPoint Presentation of Current and Future Projects

City Planner Andrews gave a PowerPoint presentation and answered questions from the Commission.

ITEMS FROM STAFF:

City Planner Andrews stated that the next Planning Commission meeting would be on July 13th with a few items for that meeting. He welcomed the two new commissioners to the Planning Commission.

ITEMS FROM COMMISSION:

None

ADJOURNMENT: The Planning Commission regular meeting of June 22, 2023, was adjourned by Chairperson West at 7:48 p.m.

Prepared by Denise Melo, Secretary of City of Patterson Planning Commission

CITY OF PATTERSON
Planning Commission Staff Report
Cannabis Development Agreement Ordinance
July 13, 2023 Meeting

SUMMARY

Resolution Revoking Conditional Use Permit No. 17-21, to Central Valley-Sierra Associates, for Failure to Comply with Conditions of Approval.

Resolution Recommending that the Patterson City Council Adopt an Ordinance Confirming the Termination of the Development Agreement By and Between the City of Patterson and Central Valley-Sierra Associates (“CVSA”) and Authorizing the Recording of a Notice of Termination.

BACKGROUND

Following consideration and recommendations from the City of Patterson (the “City”) Planning Commission (“Planning Commission”), on December 5, 2017 the City adopted Ordinance No. 812 approving the Development Agreement for the operation of a cannabis dispensary business located at 100 West Las Palmas Avenue, Suite H, Patterson CA 95363, Assessor’s Parcel Number 131-003-012 (the “Site”). On December 21, 2017, the Planning Commission voted to adopt Resolution 2017-14, approving Conditional Use Permit No. 17-21 (the “CUP”), associated with CVSA’s application for a cannabis dispensary (the “Project”) to be located at the Site.

Section 4.2 of the Development Agreement requires CVSA to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on CVSA (the “Public Benefit Amount”), pursuant to the terms stated in Section 4.2 of the Development Agreement. CVSA failed to make the required Public Benefit Amount payments (the “Delinquent Public Benefit Amount”) by the agreed-upon terms, resulting in a default of the Development Agreement, pursuant to Section 4.3 and 8.1(a).

On June 17, 2022, following discussions between the City and CVSA in an attempt to the resolve the default and bring the Project current, City wrote a letter to CVSA, in accordance with Section 8.1 of the Development Agreement, which specified the nature of the default and the manner in which the default may be cured, included an offer to settle the Delinquent Public Benefit Amount and cure CVSA’s default, and provided 10 days’ notice that if the default was not cured during that period, the City would commence proceedings to revoke the CUP and terminate the Development Agreement with CVSA. CVSA did not accept the City’s offer but proposed a counteroffer with additional terms. The parties did not reach a resolution.

In or around January 2023, CVSA engaged a new company, Catalyst Cannabis Company (“Catalyst”) to assist with operation and management of the Project. Catalyst and the City

engaged in further discussions but did not reach an agreement to resolve the Delinquent Public Benefit Amount, cure the default, or extend the term of the Development Agreement.

Thus, City and CVSA ultimately did not reach an agreement to resolve the Delinquent Public Benefit Amount or to extend the term of the Development Agreement, and CVSA failed to cure the default. The Development Agreement, by its own terms, expired on or about July 4, 2022.

DISCUSSION

Under Section 9.3 of the Development Agreement, the City has no further obligation to comply with the Development Agreement, or any portion thereof, upon its termination. The City's obligations to CVSA stopped as of July 4, 2022, when the Development Agreement terminated pursuant to Section 1.7. On March 29, 2023, City sent notice to Developers of its intent to revoke the CUP, pursuant to Section 8.1(b) of the Development Agreement, and no response was received within the required 10 days.

Before the Planning Commission are two resolutions:

1. **Resolution Revoking Conditional Use Permit No. 17-21, to CVSA, for Failure to Comply with Conditions of Approval.**

Under Patterson Municipal Code (“PMC”) section 18.14.110, the Planning Commission has the power to revoke or suspend a CUP in any case where one or more of the conditions of such CUP have not been substantially fulfilled or have been violated. Here, CVSA's default of the Development Agreement terms through its failure to make the Public Benefit payments provides the following grounds to revoke the CUP.

- Section 4.3 of the Development Agreement requires that any failure by CVSA to make any Public Benefit Amount payments to the City as they become due and payable in accordance with the terms of the Development Agreement “may constitute full and sufficient grounds for the revocation” of the CUP.
- PMC section 6.56.030 requires cannabis businesses in the City to obtain a development agreement and a conditional use permit in order to operate. With the Development Agreement terminated, CVSA is no longer in compliance with City requirements for the continued operation of the Project.
- The terminated Development Agreement and uncured default violate the CUP Conditions of Approval, Condition No. 1 [the Project “shall comply with all applicable State and Municipal Codes...”], No. 3, [the Project “shall comply with all applicable State cannabis laws and regulations”], and No. 5 [“the project and project applicant shall strictly comply with all administrative guidelines promulgated by the City for the operation of a cannabis business...”].)

This Resolution will include a finding by the Planning Commission that CVSA is in default of the Development Agreement and has failed to cure such default; and a revocation the CUP on the ground that one or more of the Conditions of Approval have been violated by CVSA's default of the Development Agreement and failure to cure this default, and by the subsequent termination of the Development Agreement.

2. Resolution Recommending that the Patterson City Council Adopt an Ordinance Confirming the Termination of the Development Agreement By and Between the City of Patterson and CVSA and Authorizing the Recording of a Notice of Termination.

The Second Resolution will provide a recommendation to City Council to confirm the termination the Development Agreement on the same grounds. Section 9.1. provides that upon termination of the Development Agreement, the City shall record a notice of such termination ("Notice of Termination") in substantial conformance with the form of notice attached as an exhibit to the Development Agreement, and the Development Agreement shall be on no force or effect except as otherwise set forth in this Development Agreement. The proposed Notice of Termination is attached hereto.

Under Section 9.3., termination of the Development Agreement does not eliminate the City's right to seek any applicable and available remedies or damages based on acts or omissions occurring before termination.

ENVIRONMENTAL REVIEW

Neither the CUP revocation nor the recommendation to terminate the Development Agreement is considered a "project" under the California Environmental Quality Act ("CEQA") since they do not have the potential to cause a direct or reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

The City would lose potential tax revenue due to the closing of the cannabis dispensary at the Site, which would result from the revocation the CUP and termination of the Development Agreement with CVSA.

ALTERNATIVE ACTIONS

The Planning Commission may:

1. Adopt the Resolutions revoking the Condition Use Permit No. 21-17 and recommending that the City Council confirm the termination of the development agreement with CVSA and authorize the recording of a Notice of Termination; or
2. Reject the proposed Resolutions; or

3. Continue the hearing on the Resolutions to the next regular meeting of the Planning Commission and provide direction to staff for any changes.

RECOMMENDATION

Staff recommends that the Planning Commission do the following:

1. Open a public comment period to receive input from the public.
2. Move to adopt Planning Commission Resolution 2023-07 Revoking Conditional Use Permit No. 17-21, to CVSA, for Failure to Comply with Conditions of Approval.
3. Move to adopt Planning Commission Resolution 2023-06 Recommending that the Patterson City Council Adopt an Ordinance Confirming the Termination of the Development Agreement By and Between the City and CVSA and Authorizing the Recording of a Notice of Termination.

Attachments

1. Proposed Resolution Revoking Conditional Use Permit No. 17-21 to CVSA
2. Proposed Resolution Recommending that the Patterson City Council Adopt an Ordinance Confirming the Termination of the Development Agreement Between the City and CVSA and Authorizing the Recording of a Notice of Termination
3. Proposed Ordinance
4. Proposed Notice of Termination

RESOLUTION 2023-07

**RESOLUTION OF THE PATTERSON PLANNING COMMISSION REVOKING
CONDITIONAL USE PERMIT NO. 17-21 FOR FAILURE TO COMPLY WITH
CONDITIONS OF APPROVAL**

WHEREAS, on November 13, 2017, in a duly noticed and conducted public hearing, the Planning Commission of the City of Patterson (the “Planning Commission”) considered the application for a Development Agreement (the “Development Agreement”) between the City of Patterson (the “City”) and Central Valley–Sierra Associates (the “Operator”) and voted to adopt Resolution 2017-09, to recommend that the City Council of the City of Patterson (the “City Council”) adopt the Ordinance No. 812, to approve the Development Agreement; and

WHEREAS, on December 5, 2017 the City adopted Ordinance No. 812 approving the Development Agreement for the operation of a cannabis dispensary business located at 100 West Las Palmas Avenue, Suite H, Patterson CA 95363, Assessor’s Parcel Number 131-003-012 (the “Site”); and

WHEREAS, on December 21, 2017, the Planning Commission voted to adopt Resolution 2017-14, approving Conditional Use Permit No. 17-21 (the “CUP”), associated with the Operator’s application for a cannabis dispensary (the “Project”) to be located at the Site.

WHEREAS, the Conditions of Approval of the CUP require, as Condition No. 1, that the Project “shall comply with all applicable State and Municipal Codes...,” and as Condition No. 3, that the Project “shall comply with all applicable State cannabis laws and regulations,” and as Condition No. 5, that “the project and project applicant shall strictly comply with all administrative guidelines promulgated by the City for the operation of a cannabis business, specifically including any administrative guidelines later adopted by the City, or as may be changed from time to time;” and

WHEREAS, Section 4.2 of the Development Agreement requires Operator to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on Operator (the “Public Benefit Amount”), pursuant to the terms stated in Section 4.2 of the Development Agreement; and

WHEREAS, Section 4.3 of the Development Agreement requires that any failure by Operator to make any Public Benefit Amount payments to the City as they become due and payable in accordance with the terms of the Development Agreement “may constitute full and sufficient grounds for the revocation” of the CUP; and

WHEREAS, the Operator has failed to make the required Public Benefit Amount payments (the “Delinquent Public Benefit Amount”) by the agreed-upon terms, resulting in a default of the Development Agreement, pursuant to Section 4.3 and 8.1(a); and

WHEREAS, On June 17, 2022, following discussions between the City and Operator in an attempt to the resolve the default and bring the Project current, City wrote a letter to Operator,

in accordance with Section 8.1 of the Development Agreement, which specified the nature of the default and the manner in which the default may be cured, included an offer to settle the Delinquent Public Benefit Amount and cure Operator's default, and provided 10 days' notice that if the default was not cured during that period, the City would commence proceedings to revoke the CUP and terminate the Development Agreement with Operator; and

WHEREAS, Operator did not accept the City's offer but proposed a counteroffer with additional terms, and City and Operator ultimately did not reach an agreement to resolve the Delinquent Public Benefit Amount or to extend the term of the Development Agreement; and

WHEREAS, since approximately January 2023, Operator has engaged a new company, Catalyst Cannabis Company ("Catalyst") to assist with operation and management of the Project, and City and Catalyst also did not reach an agreement to resolve the Delinquent Public Benefit Amount, cure the default, or extend the term of the Development Agreement; and

WHEREAS, the Development Agreement, by its own terms, expired on or about July 4, 2022, pursuant to Section 9.1, and has not been renewed, updated, extended, reactivated, or made current, and remains expired; and

WHEREAS, pursuant to Section 9.3 of the Development Agreement, the termination of the Development Agreement eliminated any further obligation of City to comply with the Development Agreement or any portion thereof; and

WHEREAS, on March 29, 2023, City sent a notice to Operator of its intent to initiate proceedings to confirm the expiration of the Development Agreement and revoke the Conditional Use Permit associated with the Project; and

WHEREAS, Patterson Municipal Code section 6.56.030 requires any cannabis business allowed in the City to obtain a development agreement and a conditional use permit; and

WHEREAS, pursuant to Patterson Municipal Code section 18.14.110, the Planning Commission shall have the power to revoke or suspend a CUP in any case where one or more of the conditions of such CUP have not been substantially fulfilled or have been violated.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission finds that the Development Agreement terminated on July 4, 2022, and that Operator was in default of the Development Agreement at the time of termination and failed to cure such default.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Patterson hereby revokes the CUP on the ground that the Conditions of Approval of the CUP have been violated by Operator's default of the Development Agreement and failure to cure this default, and by the subsequent termination of the Development Agreement.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Patterson, held on the 13th day of July 2023, by Commissioner _____, who moved its adoption, which motion was duly seconded by Commissioner _____, and the resolution adopted by the following vote:

AYES:

NOES:

EXCUSED:

APPROVED:

Ron West, Chairperson
City of Patterson Planning Commission

ATTEST:

Lisa Ochoa, Secretary
City of Patterson Planning Commission

RESOLUTION 2023-06

RESOLUTION OF THE PATTERSON PLANNING COMMISSION RECOMMENDING THAT THE PATTERSON CITY COUNCIL ADOPT AN ORDINANCE CONFIRMING THE TERMINATION OF THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF PATTERSON AND CENTRAL VALLEY-SIERRA ASSOCIATES AND AUTHORIZING THE RECORDING OF A NOTICE OF TERMINATION

WHEREAS, on November 13, 2017, in a duly noticed and conducted public hearing, the Planning Commission of the City of Patterson (the “Planning Commission”) considered the application for a Development Agreement (the “Development Agreement”) between the City of Patterson (the “City”) and Central Valley–Sierra Associates (the “Operator”) and voted to adopt Resolution 2017-09, to recommend that the City Council of the City of Patterson (the “City Council”) adopt the Ordinance No. 812, to approve the Development Agreement; and

WHEREAS, on December 5, 2017 the City adopted Ordinance No. 812 approving the Development Agreement for the operation of a cannabis dispensary business located at 100 West Las Palmas Avenue, Suite H, Patterson CA 95363, Assessor’s Parcel Number 131-003-012 (the “Site”); and

WHEREAS, Section 4.2 of the Development Agreement requires Operator to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on Operator (the “Public Benefit Amount”), pursuant to the terms stated in Section 4.2 of the Development Agreement; and

WHEREAS, Section 4.3 of the Development Agreement requires that any failure by Operator to make any Public Benefit Amount payments to the City as they become due and payable in accordance with the terms of the Development Agreement “may constitute full and sufficient grounds for the revocation” of the conditional use permit (“CUP”) associated with the Project; and

WHEREAS, the Operator has failed to make the required Public Benefit Amount payments (the “Delinquent Public Benefit Amount”) by the agreed-upon terms, resulting in a default of the Development Agreement, pursuant to Section 4.3 and 8.1(a); and

WHEREAS, On June 17, 2022, following discussions between the City and Operator in an attempt to resolve the default and bring the Project current, City wrote a letter to Operator, in accordance with Section 8.1 of the Development Agreement, which specified the nature of the default and the manner in which the default may be cured, included an offer to settle the Delinquent Public Benefit Amount and cure Operator’s default, and provided 10 days’ notice that if the default was not cured during that period, the City would commence proceedings to revoke the CUP and terminate the Development Agreement with Operator; and

WHEREAS, Operator failed to cure any of the material defaults of the Development Agreement within the required timeframe, and City and Operator did not reach an agreement to resolve the Delinquent Public Benefit Amount, cure the default, or extend the term of the Development Agreement; and

WHEREAS, since approximately January 2023, Operator has engaged a new company, Catalyst Cannabis Company (“Catalyst”) to assist with operation and management of the Project, and City and Catalyst also did not reach an agreement to resolve the Delinquent Public Benefit Amount, cure the default, or extend the term of the Development Agreement; and

WHEREAS, the Development Agreement, by its own terms, expired on or about July 4, 2022, pursuant to Section 9.1, and has not been renewed, updated, extended, reactivated, or made current, and remains expired; and

WHEREAS, pursuant to Section 9.3 of the Development Agreement, the termination of the Development Agreement eliminated any further obligation of City to comply with the Development Agreement or any portion thereof; and

WHEREAS, on March 29, 2023, City sent a notice to Operator of its intent to initiate proceedings to confirm the expiration of the Development Agreement and revoke the CUP associated with the Project; and

WHEREAS, Patterson Municipal Code section 6.56.030 requires any cannabis business allowed in the City to obtain a development agreement and a conditional use permit; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Patterson hereby recommends that the City Council adopt Ordinance No. ____, confirming termination of the Development Agreement by and between the City of Patterson and Central Valley-Sierra Associates and authorizing the City Attorney to record a written Notice of Termination, in accordance with Section 9.1 of the Development Agreement and in the form attached hereto as **Exhibit A**.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Patterson, held on the 13th day of July 2023, by Commissioner _____, who moved its adoption, which motion was duly seconded by Commissioner _____, and the resolution adopted by the following vote:

AYES:
NOES:
EXCUSED:

APPROVED:

Ron West, Chairperson
City of Patterson Planning Commission

ATTEST:

Lisa Ochoa, Secretary
City of Patterson Planning Commission

CITY OF PATTERSON
ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PATTERSON
CONFIRMING THE TERMINATION OF THE DEVELOPMENT AGREEMENT BY
AND BETWEEN THE CITY OF PATTERSON AND CENTRAL VALLEY-SIERRA
ASSOCIATES AND AUTHORIZING THE RECORDING OF A NOTICE OF
TERMINATION**

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. (the “Development Agreement Statute”), which authorizes 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, on December 5, 2017 the City adopted Ordinance No. 812 approving a Development Agreement (the “Agreement”) between the City of Patterson (the “City”) and Central Valley-Sierra Associates (the “Operator”) for the operation of a cannabis dispensary business (the “Project”) located at 100 West Las Palmas Avenue, Suite H, Patterson CA 95363, Assessor’s Parcel Number 131-003-012 (the “Site”); and

WHEREAS, Section 4.2 of the Development Agreement requires Operator to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on Operator (the “Public Benefit Amount”), pursuant to the terms stated in Section 4.2 of the Development Agreement; and

WHEREAS, Section 4.3 of the Development Agreement requires that any failure by Operator to make any Public Benefit Amount payments to the City as they become due and payable in accordance with the terms of the Development Agreement “may constitute full and sufficient grounds for the revocation” of the Conditional Use Permit (“CUP”) associated with the Project; and

WHEREAS, the Operator failed to make the required Public Benefit Amount payments (the “Delinquent Public Benefit Amount”) by the agreed-upon terms, resulting in a default of the Development Agreement, pursuant to Section 4.3 and 8.1(a); and

WHEREAS, on June 17, 2022, following unsuccessful discussions to resolve the default and bring the Project current, City gave written notice to Operator specifying the nature of the default and the manner in which the default may be cured, included an offer to settle the Delinquent Public Benefit Amount and cure Operator’s default, and provided 10 days’ notice that if the default was not cured during that period, the City would commence proceedings to revoke the CUP and terminate the Development Agreement with Operator; and

WHEREAS, Operator failed to cure any of the material defaults of the Development Agreement within the required timeframe, and City and Operator did not reach an agreement to resolve the Delinquent Public Benefit Amount, cure the default, or extend the term of the Development Agreement; and

WHEREAS, since approximately January 2023, Operator has engaged a new company, Catalyst Cannabis Company (“Catalyst”) to assist with operation and management of the Project, and City and Catalyst also did not reach an agreement to resolve the Delinquent Public Benefit Amount, cure the default, or extend the term of the Development Agreement; and

WHEREAS, the Development Agreement, by its own terms, expired on or about July 4, 2022, pursuant to Section 9.1, and has not been renewed, updated, extended, reactivated, or made current, and remains expired; and

WHEREAS, pursuant to Section 9.3 of the Development Agreement, the termination of the Development Agreement eliminated any further obligation of City to comply with the Development Agreement or any portion thereof; and

WHEREAS, on March 29, 2023, City sent a notice to Operator of its intent to initiate proceedings to confirm the expiration of the Development Agreement and revoke the CUP associated with the Project; and

WHEREAS, on July 13, 2023 the Planning Commission held a duly noticed public hearing to consider revocation of the CUP. At the conclusion of the public hearing, the Planning Commission revoked the CUP; and

WHEREAS, Patterson Municipal Code section 6.56.030 requires any cannabis business allowed in the City to obtain a development agreement and a conditional use permit; and

WHEREAS, the City Council of the City of Patterson, 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 Operator has not demonstrated good faith compliance with the terms of the Development Agreement, and the Term of the Development Agreement, as defined in Section 1.7, expired in 2022, has not been extended, reinstated, or reactivated.

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

SECTION 1. The City Council of the City of Patterson (the “City Council”) hereby affirms that the Development Agreement by and Between the City of Patterson and Central Valley-Sierra Associates, recorded in the Office of the Stanislaus County Recorder as Document No. 2018-0017054-00, terminated on July 4, 2022, upon expiration of the Term, in accordance with Sections 1.7 and 9.1 of the Development Agreement.

SECTION 2. The City Council instructs the City Attorney to record a written notice of termination (“Notice of Termination”) in substantial conformance with the Notice of Termination attached as Exhibit F to the Development Agreement, upon adoption of this Ordinance.

SECTION 2. Notice of the public hearing on the confirmation of termination of the Development Agreement was published in a newspaper of general circulation, printed and published in the City; and notices of the public hearing on the termination of the Development Agreement were mailed to all interested parties and property owners within three hundred (300) feet of the property, according to the most recent assessor’s roll.

SECTION 3. 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 4. 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.

Introduced at a regular meeting of the City Council of the City of Patterson, held on the ____ day of _____, 2023, and given its first reading and introduction at said meeting. Said Ordinance was given a second reading and adopted at a regular meeting of the City Council held on the ____ day of _____, 2023, and after such reading, Councilmember _____, who moved its adoption, seconded by Councilmember _____, and said ordinance was thereupon adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Aracely Alegre
City Clerk

Michael Clauzel
Mayor of the City of Patterson

Notice of Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Patterson
1 Plaza
Patterson, CA 95363
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 PATTERSON, a California municipal corporation
1 Plaza
Patterson, California 95363

CENTRAL VALLEY-SIERRA ASSOCIATES, a California nonprofit mutual
benefit corporation
235 North San Joaquin Street
Stockton, CA 95202

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

- A. By Instrument No. 2018-001-0017054-00, which was recorded in the Official Records of Stanislaus County, California, on March 12, 2018, City recorded a development agreement between City and Central Valley-Sierra Associates, dated December 5, 2017 (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 expired on July 4, 2022.
- 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), 2023, 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 PATTERSON,
a California municipal corporation

By: _____
City Manager

CITY OF PATTERSON
Planning Commission Staff Report
Nucleus Homeopathics, Inc., Development Agreement 4th Amendment
July 13, 2023 Meeting

SUMMARY

Resolution Recommending that the Patterson City Council Adopt an Ordinance to Approve a Fourth Amendment to the Development Agreement By and Between the City of Patterson and Nucleus Homeopathics, Inc.

BACKGROUND

Following consideration and recommendations from the City of Patterson (the “City”) Planning Commission (“Planning Commission”), on December 5, 2017, the City Council approved Ordinance No. 815, which authorized the City of Patterson (the “City”) and Nucleus Homeopathics, Inc. (the “Nucleus”) to enter into a development agreement for the operation of a cannabis manufacturing business (the “Project”) located at 100 West Las Palmas Avenue, Suite G, Patterson, CA 95373, identified as Stanislaus County Assessor’s Parcel Number 131-003-017 (the “Development Agreement”). On January 4, 2018, Ordinance 815 took effect and the initial term of the Development Agreement commenced.

Since that time, the City has approved three separate amendments to the Development Agreement. On July 17, 2018, the City Council approved Ordinance No. 820 approving the First Amendment to the Development Agreement adding a distribution license to the Developer’s Authorized License. On December 4, 2018, the City Council approved Ordinance No. 835 approving the Second Amendment to the Development Agreement to add a cannabis cultivation license to Nucleus’ Authorized License. On April 21, 2020, the City Council approved Ordinance No. 842 approving the Third Amendment to the Development Agreement to authorize continued operations of the Project at an alternative location located at 240 Park Center Drive, Patterson, CA 95363 (the “Alternative Site”).

Section 4.2 of the Development Agreement requires Nucleus to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on Nucleus (the “Public Benefit Amount”), pursuant to the terms stated in that section. Nucleus failed to remit multiple required Public Benefit Amount payments, resulting in an overdue Public Benefit Amount (the “Delinquent Public Benefit Amount”) and a default of the Development Agreement pursuant to Section 8.1.

On May 23, 2023, following a period of discussions between the City and Nucleus in an attempt to resolve the default and bring the Project current, the City and Nucleus reached a resolution to settle the Delinquent Public Benefit Amount, cure the default, and bring the Project current and back into good standing.

DISCUSSION

Under the May 23, 2023, agreement, Nucleus agreed to pay One Hundred Nine Thousand Dollars (\$109,000.00) to the City to offset the entire outstanding Public Benefit Amount, due in full by June 2, 2023. The City received this amount in full by the deadline, and now acknowledges full and complete satisfaction of the past due amount. Nucleus and the City further agreed that the Development Agreement would be amended.

Section 1.9 requires that the Development Agreement may only be amended by mutual consent of the Parties, and all amendments must be in writing. Major amendments, which would include the proposed amendment here, must be approved by the City Council.

Before the Planning Commission is a resolution to recommend that the City Council approve a Fourth Amendment to the Development Agreement, which will include the following terms:

1. The Adjusted Public Benefit payment of One Hundred Nine Thousand Dollars (\$109,000.00) constitutes City's and Nucleus' final compromise as to the Delinquent Public Benefit amounts due as of the effective date of the Amendment.
2. The Amendment will establish a new Public Benefit payment schedule requiring a monthly minimum payment of Seven Thousand Dollars (\$7,000.00), or a five percent (5%) tax rate of Nucleus' gross receipts, whichever is higher. The new Public Benefit shall become effective on the first business day following the conclusion of the Project's first quarter of operation.
3. Nucleus will be subject to the City's cannabis tax on an ongoing basis.
4. Nucleus shall ensure the Project is open and operational within twelve (12) months of the effective date of the Amendment. In the event the Project requires additional time to become operational, Nucleus and the City may extend this period to eighteen (18) months upon Nucleus' showing that progress is being made to the City's satisfaction. Any failure of Nucleus to meet these conditions shall constitute a breach under Section 8.1 of the Development Agreement.

ENVIRONMENTAL REVIEW

The Development Agreement is not considered a "project" under the California Environmental Quality Act ("CEQA") since it does not have the potential to cause a direct or reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

The City would gain potential tax revenue when the cannabis dispensary opens at the Site, as well as public benefit payments received pursuant to the terms of the proposed Fourth Amendment.

ALTERNATIVE ACTIONS

The Planning Commission may:

1. Adopt the Resolution recommending that the City Council adopt an ordinance to approve a Fourth Amendment to the Development between the City of Patterson and Nucleus Homeopathics, Inc.; or
2. Reject the proposed Resolution; or
3. Continue the hearing on the Resolution to the next regular meeting of the Planning Commission and provide direction to staff for any changes.

RECOMMENDATION

Staff recommends that the Planning Commission do the following:

1. Open a public comment period to receive input from the public.
2. Move to adopt Planning Commission Resolution No. 2023-05 Recommending that the Patterson City Council Adopt an Ordinance to Approve a Fourth Amendment to the Development Agreement By and Between the City of Patterson and Nucleus Homeopathics, Inc.

ATTACHMENTS

1. Proposed Resolution 2023-05
2. Proposed Ordinance 2023-XX
3. Proposed Development Agreement Fourth Amendment

RESOLUTION 2023-05

RESOLUTION OF THE PATTERSON PLANNING COMMISSION RECOMMENDING THAT THE PATTERSON CITY COUNCIL ADOPT AN ORDINANCE TO APPROVE A FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF PATTERSON AND NUCLEUS HOMEOPATHICS, INC.

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. (the “Development Agreement Statute”), which authorizes 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, on December 5, 2017, the City Council approved Ordinance No. 815, which authorized the City of Patterson (the “City”) and Nucleus Homeopathics, Inc. (the “Developer”) to enter into a development agreement for the operation of a cannabis manufacturing business (the “Project”) located at 100 West Las Palmas Avenue, Suite G, Patterson, CA 95373, identified as Stanislaus County Assessor’s Parcel Number 131-003-017 (the “Development Agreement”); and

WHEREAS, on January 4, 2018, Ordinance 815 took effect and the initial term of the Development Agreement commenced; and

WHEREAS, on July 17, 2018, the City Council approved Ordinance No. 820 approving the First Amendment to the Development Agreement adding a distribution license to the Developer’s Authorized License; and

WHEREAS, on December 4, 2018, the City Council approved Ordinance No. 835 approving the Second Amendment to the Development Agreement to add a cannabis cultivation license to Developer’s Authorized License; and

WHEREAS, on April 21, 2020, the City Council approved Ordinance No. 842 approving the Third Amendment to the Development Agreement to authorize continued operations of the Project at an alternative location located at 240 Park Center Drive, Patterson, CA 95363 (the “Alternative Site”); and

WHEREAS, Section 4.2 of the Development Agreement requires Developer to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on Developer (the “Public Benefit Amount”); and

WHEREAS, Developer failed to remit multiple required Public Benefit Amount payments, resulting in an overdue Public Benefit Amount (the “Delinquent Public Benefit Amount”) and a default of the Development Agreement pursuant to Section 8.1(a); and

WHEREAS, on May 23, 2023, the City and Developer reached a resolution (the “Resolution”) to settle the Delinquent Public Benefit Amount, cure the default, and bring the Project current and back into good standing, among other things; and

WHEREAS, Section 1.9 provides that the Development Agreement may only be amended by mutual consent of the Parties, that all amendments must be in writing, and that major amendments must be approved by the City Council; and

WHEREAS, the agreement between the City and Developer requires a Fourth Amendment to the Development Agreement to update its terms, and to confirm and memorialize the terms of the Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Patterson hereby recommends that the City Council adopt Ordinance No. XX approving the Fourth Amendment to the Development Agreement by and between the City of Patterson and Nucleus Homeopathics, Inc.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Patterson, held on the 13th day of July 2023, by Commissioner _____, who moved its adoption, which motion was duly seconded by Commissioner _____, and the resolution adopted by the following vote:

AYES:

NOES:

EXCUSED:

APPROVED:

Ron West, Chairperson
City of Patterson Planning Commission

ATTEST:

Lisa Ochoa, Secretary
City of Patterson Planning Commission

THE CITY COUNCIL OF THE CITY OF PATTERSON

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PATTERSON
APPROVING THE FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF PATTERSON AND NUCLEUS HOMEOPATHICS,
INC.**

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. (the “Development Agreement Statute”), which authorizes 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, on December 5, 2017, the City Council approved Ordinance No. 815, which authorized the City of Patterson (the “City”) and Nucleus Homeopathics, Inc. (the “Developer”) to enter into a development agreement for the operation of a cannabis manufacturing business (the “Project”) located at 100 West Las Palmas Avenue, Suite G, Patterson, CA 95373, identified as Stanislaus County Assessor’s Parcel Number 131-003-017 (the “Development Agreement”); and

WHEREAS, on July 17, 2018, the City Council approved Ordinance No. 820 approving the First Amendment to the Development Agreement adding a distribution license to the Developer’s Authorized License; and

WHEREAS, on December 4, 2018, the City Council approved Ordinance No. 835 approving the Second Amendment to the Development Agreement to add a cannabis cultivation license to Developer’s Authorized License; and

WHEREAS, on April 21, 2020, the City Council approved Ordinance No. 842 approving the Third Amendment to the Development Agreement to authorize continued operations of the Project at an alternative location located at 240 Park Center Drive, Patterson, CA 95363 (the “Site”); and

WHEREAS, Section 4.2 of the Development Agreement requires Developer to pay to the City certain amounts to offset the impacts to City infrastructure, services, and neighborhoods, commensurate with the private benefits conferred on Developer (the “Public Benefit Amount”); and

WHEREAS, Developer failed to remit multiple required Public Benefit Amount payments, resulting in an overdue Public Benefit Amount (the “Delinquent Public Benefit Amount”) and a default of the Development Agreement pursuant to Section 8.1(a); and

WHEREAS, on May 23, 2023, the City and Developer reached a resolution (the “Resolution”) to settle the Delinquent Public Benefit Amount, cure the default, and bring the Project current and back into good standing; and

WHEREAS, Section 1.9 provides that the Development Agreement may only be amended by mutual consent of the Parties, that all amendments must be in writing, and that major amendments must be approved by the City Council; and

WHEREAS, the agreement between the City and Developer requires a Fourth Amendment to the Development Agreement to update its terms, and to confirm and memorialize the terms of the Resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PATTERSON ORDAINS AS FOLLOWS:

SECTION 1. The City Council approves the Fourth Amendment to the Development Agreement by and between the City and Developer to modify Section 4.2, subdivision (a) to acknowledge receipt of Developer’s Delinquent Public Benefit payment and resolution of Developer’s past-due Public Benefit Amounts, and to set a Public Benefit amount of Seven Thousand Dollars (\$7,000.00), or five percent (5%) of Developer’s gross receipts from operations, whichever is higher, due to the City on the first business day of each month going forward, effective the first business day following the conclusion of the Project’s first quarter of operation; to remove the current Section 4.7 and replace it with new language stating that Developer will be subject to the City’s cannabis tax on an ongoing basis; and to add a new Section 2.13 to the Development Agreement, requiring Developer to ensure the Project is open and operational within twelve (12) months of the effective date of the Fourth Amendment and, should the Project require additional time to become operational, allowing an extension of this period to eighteen (18) months upon Developer’s showing that progress is being made to the City’s satisfaction.

SECTION 2. The City shall review the Development Agreement and Amendment, taken together, for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement.

SECTION 3. Notice of the public hearing on the Ordinance was published in the Patterson Irrigator, - [REDACTED], a newspaper of general circulation; and notices of the public hearing on the proposed Amendment were mailed to all interested parties and property owners within three hundred (300) feet of the property, according to the most recent assessor’s roll.

SECTION 4. Environmental impacts for the Amendment have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 et seq.). The Amendment is not a “project” under CEQA since the Amendment does not cause a direct physical

change in the environment, or a reasonably foreseeable indirect physical change in the environment.

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.

This Ordinance was introduced and approved by Ordinance No. _____ at a regular meeting of the City Council held on the ____, day of _____, 2023, and adopted at a regular meeting of the City Council held on the ____, day of _____, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Michael Clauzel
Mayor of the City of Patterson

ATTEST:

Aracely Alegre
City Clerk of the City of Patterson

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

City of Patterson
P.O. Box 667
Patterson, CA 95363
Attention: City Clerk

Recording Fee Exempt (Gov. Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 131-003-017

**FOURTH AMENDMENT TO THE
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF PATTERSON
AND NUCLEUS HOMEOPATHICS, INC.**

(Amendment to Recorded Document No. 2018-0031381-00)

Ordinance No. 815, Adopted on December 5, 2017 (Original Development Agreement)

Ordinance No. 820, Adopted July 17, 2018 (First Amendment)

Ordinance No. 835, Adopted December 4, 2018 (Second Amendment)

Ordinance No. 842, Adopted April 21, 2020 (Third Amendment)

Ordinance No. ____, Adopted _____, 2023 (Fourth Amendment)

FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT (“Fourth Amendment”) is made and entered into as of this [REDACTED], 2023, by and between the **CITY OF PATTERSON**, a California municipal corporation (“City”), and **NUCLEUS HOMEOPATHICS, INC.**, a California 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. 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 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.

B. On December 5, 2017, the City Council approved Ordinance No. 815, which authorized the Parties to enter into a development agreement for the operation of a cannabis manufacturing business (the “Development Agreement”) located at 100 West Las Palmas Avenue, Suite G, Patterson, CA 95363, identified as Stanislaus County Assessor’s Parcel Number 131-003-017.

C. City recorded the Development Agreement in the Office of the Stanislaus County Recorder as Document No. 2018-0031381-00.

D. City recorded the First Amendment to the Development Agreement in the Office of the Stanislaus County Recorder as Document No. 2018-0058583-00 (“First Amendment”). The First Amendment added a distribution license to Developer’s Authorized License in order to transport cannabis products between cannabis businesses pursuant to MAUCRSA.

E. City recorded the Second Amendment to the Development Agreement in the Office of the Stanislaus County Recorder as Document No. [REDACTED] (“Second Amendment”). The Second Amendment added cannabis cultivation and a microbusiness to Developer’s Authorized License.

F. City recorded the Third Amendment to the Development Agreement in the Office of the Stanislaus County Recorder as Document No. [REDACTED] (“Third Amendment”). The Third Amendment allows Developer to continue its cannabis business in an alternative location within the City.

G. The Development Agreement, at Section 4.2, requires Developer to pay to the City certain amounts to offset the impacts to City infrastructure, services, and

neighborhoods, commensurate with the private benefits conferred on Developer (the “Public Benefit Amount”).

H. On May 23, 2023, after Developer had failed to remit certain required Public Benefit Amount payments, resulting in an overdue Public Benefit Amount (the “Delinquent Public Benefit Amount”) and a default of the Development Agreement, Developer and the City reached a resolution to settle the Delinquent Public Benefit Amount, cure the default, and bring the Project current, subject to certain terms that would necessitate this Fourth Amendment to the Development Agreement (the “Fourth Amendment”).

I. On July 13, 2023, after a properly noticed public hearing, the Planning Commission reviewed this Fourth Amendment and provided its recommendations to the City Council.

J. Pursuant to Government Code sections 65867 and 65868, the City Council held duly noticed and properly conducted public hearings on [REDACTED], 2023, and [REDACTED], 2023, regarding this Fourth Amendment. Pursuant to Government Code section 65867.5, the City Council found the provisions of this Fourth Amendment to be consistent with the City’s General Plan, and authorized execution of this Fourth Amendment.

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

1. Recitals. The above recitals are incorporated by this reference and made a part of this Fourth Amendment.

2. Effect of Amendment. Except as provided herein, the defined terms used in this Fourth Amendment shall have the same meaning as the terms in the Development Agreement. Unless expressly amended by this Fourth Amendment, all unaltered terms and provisions of the Development Agreement shall remain in effect as provided therein. If any terms, provisions, or definitions in this Fourth Amendment conflict with terms, provisions, or definitions in the Development Agreement, the terms, provisions, and definitions in this Fourth Amendment shall control. All references in the Development Agreement to the “Agreement” shall be deemed to refer to the Development Agreement and this Fourth Amendment.

3. Effective Date. This Fourth Amendment shall be effective (the “Amendment Effective Date”) only after (a) thirty (30) days have passed from the City Council’s adoption of the ordinance approving this Fourth Amendment; and (b) all Parties have executed this Fourth Amendment. This Fourth Amendment shall be recorded by the City in the County of Stanislaus within ten (10) days following the Amendment Effective Date.

Fourth Amendment to the Development Agreement
City of Patterson &
Nucleus Homeopathics, Inc.

4. Amendments to the Development Agreement.

A. Section 4.2., subparagraph (a) of the Development Agreement is hereby removed in its entirety and replaced with the following language, which shall read as follows:

Section 4.2. Public Benefit

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burden 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 upon Developer (the "Public Benefit"). In consideration of the foregoing, Developer shall remit to City as follows:

- (i) As of the Amendment Effective Date, Developer has paid to City in full all outstanding Public Benefit amounts due and owing for the full time period before the Amendment Effective Date.
- (ii) Effective the first business day following the conclusion of the Project's first quarter of operation, a Public Benefit amount of Seven Thousand Dollars (\$7,000.00), or five percent (5%) of Developer's gross receipts from operations, whichever is higher, shall be due and payable to the City on the first business day of each month going forward.

B. Section 4.7. of the Development Agreement is hereby removed in its entirety and replaced with the following language, which shall read as follows:

Section 4.7. City Tax. Developer will be subject to the City's cannabis tax on an ongoing basis.

C. A new Section 2.13 shall be added to the Development Agreement, Article 2, Development of Property, and it shall read as follows:

Section 2.13. Schedule to Open Project. Developer shall ensure the Project is open and operational within twelve (12) months of the Amendment Effective Date. In the event the Project requires additional time in order to become operational, Developer and City may agree in writing to extend this period to eighteen (18) months upon Developer's showing that progress is being made to the City's satisfaction. Developer's failure to comply with the terms of this Section shall constitute a default as defined in Section 8.1.

5. Third Party Legal Challenge. In the event that legal action or special proceedings are commenced by any person or entity challenging this Fourth Amendment, 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 to this Fourth Amendment, with legal counsel satisfactory to 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. Unless prevented by law or court order, City shall continue to process any applications related to this Fourth Amendment and the Development Agreement, and any delay or failure to process such approvals or to take such other actions shall be considered a default by City of this Fourth Amendment and the Development Agreement.

6. Counterparts. This Fourth Amendment may be executed in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

7. Authority. The Parties and their signatories below warrant and represent that they have the power and authority to enter into this Fourth Amendment and the names, titles, and capacities herein stated on behalf of any entities, persons, states or firms represented or purposed 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 Fourth Amendment have been fully complied with. Further, by entering into this Fourth Amendment, each Party represents that this Fourth Amendment has not caused any breach of the terms or conditions of any other contract or agreement to which such Party is obligated.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

CITY OF PATTERSON, a California municipal corporation

By: _____
Ken Irwin, City Manager

Date: _____

DEVELOPER

NUCLEUS HOMEOPATHICS, INC., a California corporation

By: _____

Its: _____

Date: _____

Attest:

By: _____
Aracely Alegre, City Clerk

Approved to as Form

By: _____
Nubia I. Goldstein
City Attorney

