

# MEETING AGENDA

The City Council/Successor Agency of the City of Firebaugh

Vol. No. 22/01-03

**Date/Time: January 3, 2022/6:00 p.m.**

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**\*SPECIAL NOTICE DUE TO COVID-19 MEETING WILL BE HELD TELECONFERENCE VIA WEBEX,  
THE MEETING WILL BE HELD OPEN TO IN-PERSON MEETING**

**PURSUANT TO PARAGRAPH 11 OF EXECUTIVE ORDER N-25-20,  
EXECUTED BY THE GOVERNOR OF CALIFORNIA ON MARCH 12, 2020**

*Members of the public who wish to address the Council may do so by submitting a written comments to the Deputy Clerk via email [deputyclerk@ci.firebaugh.ca.us](mailto:deputyclerk@ci.firebaugh.ca.us) Please provide: Council Meeting Date, Item Number your comment are pertaining to, Name, Email and comment, no later than 3:00 PM the day of the meeting.*

**\*Pursuant to Government Code Section 54953 (b)(2), all action taken during this teleconferenced meeting shall be by roll call vote.**

## **Join Zoom Meeting**

<https://cityoffirebaugh.my.webex.com/cityoffirebaugh.my/j.php?MTID=m51108e14f2ff83bf5dc5dd46f592cecc>

**Meeting ID:** 2551 381 2463

**Meeting password:** QzNPDh34rB5 (79673434 from phones and video systems)

**Phone:** 1-650-479-3208

## **CALL TO ORDER**

### **ROLL CALL**

Mayor Brady Jenkins  
Mayor Pro Temp Felipe Pérez  
Council Member Marcia Sablan  
Council Member Elsa Lopez  
Council Member Freddy Valdez

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Andrew Firebaugh Community Center to participate at this meeting, please contact the Deputy City Clerk at (559) 659-2043. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to the Andrew Firebaugh Community Center.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall, in the Deputy City Clerk's office, during normal business hours.

## **PLEDGE OF ALLEGIANCE**

## **APPROVAL OF THE AGENDA**

## **PUBLIC COMMENT**

## **PRESENTATION**

## **CONSENT CALENDAR**

Items listed on the calendar are considered routine and are acted upon by one motion unless any Council member requests separate action. Typical items include minutes, claims, adoption of ordinances previously introduced and discussed, execution of agreements and other similar items.

### **1. APPROVAL OF MINUTES – The City Council regular meeting on December 20, 2021.**

**PENDING – UNTIL MARCH 2022**

2. ORDINANCE NO. 21-04 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH REPEALING SECTIONS 9-1.1, 9-1.2, 9-1.3, AND 9-1.4 OF CHAPTER 9 [TRAILERS AND TRAILER PARKS] OF THE MUNICIPAL CODE, REPLACING THE HEADING OF CHAPTER 9 WITH THE TITLE “MOBILE HOME PARKS ACT”, AND ADDING SECTIONS 9-1.1 THROUGH 9-1.11 RELATING TO THE ASSUMPTION OF RESPONSIBILITY OF ENFORCING THE MOBILE HOME PARKS ACT AND SPECIAL OCCUPANCY PARKS ACT OF THE CALIFORNIA HEALTH AND SAFETY CODE – SECOND READING.

Recommended Action: Council receives public comment & approves Ord. No. 21-04.

**PUBLIC HEARING**

3. **ORDINANCE NO. 21-07 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FIREBAUGH AND ELEMENT 7, LLC – SECOND READING.**

**Recommended Action:** Council receives public comment & approves Ord. No. 21-07.

**NEW BUSINESS**

**STAFF REPORTS**

**CLOSED SESSION**

**ANNOUNCEMENT AFTER CLOSED SESSION**

**ADJOURNMENT**

**Certification of posting the agenda**

I declare under penalty of perjury that I am employed by the City of Firebaugh and that I posted this agenda on the bulletin boards at City Hall, December 30, 2021, at 5:00 p.m. by Rita Lozano Deputy City Clerk.

# MEETING MINUTES

The City Council/Successor Agency of the City of Firebaugh  
Vol. No. 21/12-20

**PURSUANT TO PARAGRAPH 11 OF EXECUTIVE ORDER N-25-20,  
EXECUTED BY THE GOVERNOR OF CALIFORNIA ON MARCH 12, 2020**

City Council Meeting held via teleconferencing

**\*Pursuant to Government Code Section 54953 (b) (2), all action taken during this teleconferenced meeting shall be by roll call vote.**

**Location of Meeting:** Andrew Firebaugh Community Center  
1655 13<sup>th</sup> Street, Firebaugh, CA 93622

**Date/Time:** December 20, 2021/6:00 p.m.

**CALL TO ORDER** Meeting called to order by Mayor Valdez at 6:00 p.m.

**ROLL CALL** Mayor Pro Tem Brady Jenkins  
Council Member Marcia Sablan  
Council Member Felipe Pérez  
Council Member Elsa Lopez

**ABSENT:** Mayor Freddy Valdez

**OTHERS:** City Attorney James Sanchez; City Manager/Acting Public Works Director, Ben Gallegos; Deputy Clerk, Rita Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza; City Planner, Karl Schoettler; Michael Sigala, Oscar Sablan, Randy Hatch, Hector Marin, Thom Black, Anthony, Maurine's, Wesley Smith of RSG, Joseph of Mid-Valley, Melissa Knight, & others.

**PLEDGE OF ALLEGIANCE** Council Member Jenkins led pledge of Allegiance.

## APPROVAL OF THE AGENDA

*Motion to approve agenda by Council Member Jenkins, second by Council Member Sablan, motion passed by 5-0 vote.*

**PUBLIC COMMENT** None

## PRESENTATION:

- ❖ Michael Sigala of Sigala Inc. – Accessory Dwelling Unit Program (ADU) Downtown Mixed-Use Concept

## REORGANIZATION

### 1. REORGANIZATION OF CITY COUNCIL.

- A. Mayor New Mayor Jenkins
- B. Mayor Pro Temp New Mayor Pro Temp Felipe Perez

## CONSENT CALENDAR

### 2. APPROVAL OF MINUTES – The City Council regular meeting on December 6, 2021.

**3. WARRANT REGISTER – Period starting November 1 and ending on November 30, 2021.**

November 2021	General Warrants	#42047 - #42186	\$ 1,104,696.90
	Payroll Warrants	#71622 - #71648	\$ 188,730.78
	<b>TOTAL</b>		<b>\$ 1,293,427.68</b>

**4. CITY OF FIREBAUGH 2022 HOLIDAY SCHEDULE.**

**5. CITY OF FIREBAUGH 2022 COUNCIL MEETING SCHEDULE.**

*Motion to approve Consent Calendar by Council Member Valdez, second by Council Member Lopez, motion passed by 5-0 vote.*

**PUBLIC HEARING**

**6. ORDINANCE NO. 21-04 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH REPEALING SECTIONS 9-1.1, 9-1.2, 9-1.3, AND 9-1.4 OF CHAPTER 9 [TRAILERS AND TRAILER PARKS] OF THE MUNICIPAL CODE, REPLACING THE HEADING OF CHAPTER 9 WITH THE TITLE "MOBILE HOME PARKS ACT", AND ADDING SECTIONS 9-1.1 THROUGH 9-1.11 RELATING TO THE ASSUMPTION OF RESPONSIBILITY OF ENFORCING THE MOBILE HOME PARKS ACT AND SPECIAL OCCUPANCY PARKS ACT OF THE CALIFORNIA HEALTH AND SAFETY CODE – SECOND READING.**

*Opening hearing at 6:50 pm – City Staff is not able to take on the full responsibilities and duties, since the city only has a part-time code enforcement department. Fresno County was contacted and asked by the city to provide services for the duties and responsibilities as a City consultant or agreement. Fresno County suggested reapproaching them in six-months, since they are just implementing ordinance for Fresno. The city will be responsible for collecting fees during the code enforcement process but most of the fees will still be forwarded to the State, so only a small portion will be kept by the city & it will not cover all operational expenses. Residents in the mobile parks are concerned they may be relocated or displaced. Oscar Sablan added no one wants to displace the residents but we don't want to lose anyone to a fire or structure issue because it's not safe to living in some of them. City Manager suggested notifying the State of any complaints or safety issues in the meantime. Council requested staff have a meeting with the managers of the park facilities to start addressing any safety concerns. – Close hearing at 7:00 pm*

*Motion to table item for two months by Council Member Valdez, second by Council Member Lopez, motion passed by 5-0 vote.*

**7. ORDINANCE NO. 21-06 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ADDING SECTIONS 13-2.20 of CHAPTER 13 AND SECTIONS 25-24 AND 25-21.9.1 OF CHAPTER 25 OF THE MUNICIPAL CODE – SECOND READING.**

*Opening hearing at 7:06 pm – no comment given – Close hearing at 7:06 pm*

*Motion to approve Ord. No. 21-06 by Council Member Valdez, second by Council Member Lopez, motion passed by 5-0 vote.*

**8. ORDINANCE NO. 21-07 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FIREBAUGH AND ELEMENT 7, LLC – FIRST READING.**

*Opening hearing at 7:12 pm – no comment given – Close hearing at 7:13 pm*

*Motion to waive the first reading of Ord. No. 21-07 by Council Member Valdez, second by Council Member Sablan, motion passed by 5-0 vote.*

## NEW BUSINESS

**9. RESOLUTION NO. 21-45 - RESOLUTION OF THE CITY OF FIREBAUGH APPROVING FIRST AMENDMENT TO AN AGREEMENT FOR PROFESSIONAL LEGAL SERVICES WITH LOZANO SMITH AS CITY ATTORNEY(S) & AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS.**

*Motion to approve Res. No. 21-45 by Council Member Lopez, second by Council Member Perez, motion passed by 5-0 vote.*

❖ *Motion to move into Successor Agency by Council Member Valdez, second by Council Member Lopez, motion passed by 5-0 vote.*

## SUCCESSOR AGENCY MATTERS:

**10. RESOLUTION NO. 21-46 - A RESOLUTION OF THE SUCCESSOR AGENCY OF THE FIREBAUGH REDEVELOPMENT AGENCY APPROVING A CONTRACT WITH RSG, INC. TO PROVIDE CONSULTING SERVICES TO THE SUCCESSOR AGENCY IN FISCAL YEAR 2022-23.**

*Motion to approve Res. No. 21-46 by Council Member Lopez, second by Council Member Perez, motion passed by 5-0 vote.*

**11. RESOLUTION NO. 21-47 A RESOLUTION OF THE SUCCESSOR AGENCY TO THE FIREBAUGH REDEVELOPMENT AGENCY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR JULY 1, 2022, THROUGH JUNE 30, 2023, AND THE ADMINISTRATIVE BUDGET FOR JULY 1, 2022, THROUGH JUNE 30, 2023.**

*Motion to approve Res. No. 21-47 by Council Member Valdez, second by Council Member Lopez, motion passed by 5-0 vote.*

**12. HOUSING SUCCESSOR AGENCY SENATE BILL 341 ANNUAL REPORTS FOR FISCAL YEAR 2020-21.**

*Information item only*

❖ *Motion to move into City Business by Council Member Valdez, second by Council Member Perez, motion passed by 5-0 vote.*

## STAFF REPORTS

- Police Chief Sal Raygoza – Officers will have a toy & food drive, also jacket will be given if needed at the High School parking lot due to the rain this weekend.
- Deputy City Clerk, Rita Lozano – The school district would like to hold a joint meeting with city council, so please provide available dates in February for the joint meeting.
- Finance Director, Pio Martin – we'll be trying a new texting service, individuals will be able submit services request, report issues, and receive a response regarding city services. The program is a two-year pilot program, staff will promote so the public is aware of it, after the two years, if there isn't enough response, we will not continue it, program will start on January 10, 2022.
- City Attorney, James Sanchez – nothing to report.

- **City Manager, Ben Gallegos** – the city didn't get awarded for the Maldonado Park or the Aquatic Center, so we will continue to apply. The equipment at the community center isn't properly working so service is scheduled for next Tuesday to try to resolve the issue, once it is operating correctly, the meeting will be held via WebEx, not Zoom. Ceasar Sierras is our new employee, he's worked with city before. Application for the CDBG Funds for local business is simple, Workforce Connection will assist us the grant. Working with the school on the food distribution.
- **City Attorney, James Sanchez** – nothing to report
- **Council Member Lopez** – nothing to report
- **Council Member Sablan** – nothing to report
- **Council Member Perez** - nothing to report.
- **Council Member Jenkins** – Parade was a success.
- **Council Member Valdez** – “the Police Chief, Officer b. Ortiz and I attended the breakfast at the prison in Mendota & we discussed the opportunity for some training.”

❖ *Motion to enter closed session@ 7:51 pm by Council Member Valdez, second by Council Member Sablan, motion passed by 5-0 vote.*

#### **CLOSED SESSION**

##### **13. Government Code Section 54957**

PUBLIC EMPLOYEE EVALUATION: City Manager.

##### **14. Government Code Section 54957(b).**

PUBLIC EMPLOYEE EVALUATION: City Attorney.

❖ *Motion to enter open session @ 8:52 pm by Council Member Valdez, second by Council Member Sablan, motion passed by 5-0 vote.*

#### **ANNOUNCEMENT AFTER CLOSED SESSION**

*City Manager received a positive evaluation, a contract will be prepared for an extension and placed on a future agenda for Council's approval.*

#### **ADJOURNMENT**

*Motion to adjourn at 8:53 pm by Council Member Valdez, second by Council Member Perez, motion passes by a 5-0 vote.*

## **ORDINANCE NO. 21-07**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FIREBAUGH AND ELEMENT 7, LLC**

**WHEREAS**, the Firebaugh City Council desires to approve a Development Agreement with Element 7, LLC (“Developer”) for development of a retail commercial cannabis business, including manufacturing, distribution, and delivery at 1210 12th Street, Firebaugh, CA (“Development Agreement”); and

**WHEREAS**, Developer desires to conduct commercial cannabis operations and related uses as described in the Development Agreement on APN: 008-080-029 (“Property”), consistent with applicable laws, City land use plans, ordinances, and regulations.

#### **THE CITY COUNCIL OF THE CITY OF FIREBAUGH DOES ORDAIN AS FOLLOWS:**

##### **Section 1. Incorporation of Agreement.**

This ordinance incorporates the Development Agreement between the City and Developer, a copy of which is attached to this ordinance as **Exhibit A**.

##### **Section 2. Hearing before the Planning Commission.**

On December 13, 2021, in accordance with Government Code Section 65867, the Planning Commission conducted a noticed public hearing on an application to consider the Development Agreement. During the hearing, the Planning Commission received and considered evidence and testimony. After the hearing concluded, the Planning Commission forwarded to the City Council a recommendation to approve the Development Agreement and related environmental documents.

##### **Section 3. Hearing before the City Council; Findings.**

On December 20, 2021, in accordance with Government Code Section 65867, the City Council conducted a noticed public hearing on the Development Agreement and related environmental documents. During the hearing, the City Council received and considered evidence and testimony concerning the proposed Development Agreement and related environmental documents. Based on the information in the application and the evidence and testimony received at the hearing, the City Council approved the Development Agreement and related environmental documents and finds that the proposed Development Agreement:

- a) Will not have a significant impact on the environment and is exempt from review under Section 15301(a) of the Guidelines of the California Environmental Quality Act, and a Notice of Exemption has been prepared; and
- b) Is consistent with the objectives, policies, and general land uses specified in the general plan and any applicable specific plans; and
- c) Is compatible and in conformity with public convenience, general welfare, and good land use and zoning practice; and
- d) Is not detrimental to the health, safety, and general welfare of the city; and

- e) Does not adversely affecting the orderly development of property or the preservation of property values; and
- f) Is in the best interest of City and that the public health, safety, and welfare will be served by entering into this Agreement; and
- g) Will contribute to the economic growth of City; and
- h) Will facilitate development of the property subject to the Development Agreement, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the City; and
- i) Without the Development Agreement, Developer would be unlikely to proceed with development of property in the manner proposed; and
- j) Requires Developer to incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit, including job creation, enhanced tax revenue and diversification of the City economic base.

#### **Section 4. Approval and Authorization.**

The City Council hereby approves the Development Agreement. The City Council hereby authorizes the Mayor to sign on the City's behalf, on or after the effective date of this ordinance.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Firebaugh held on the 20<sup>th</sup> day of December 2021 & adopted at a regular meeting of the City Council of the City of Firebaugh held on the 3<sup>rd</sup> day of January 2022 by the following vote:

**AYES:**

**NOES:**

**ABSTAINING:**

**ABSENT:**

**APPROVED:**

**ATTEST:**

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Brady Jenkins, Mayor

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Rita Lozano, Deputy City Clerk



# **EXHIBIT “A”**

## **Element 7 Development Agreement**

**PROJECT DEVELOPMENT AGREEMENT**

**CITY OF FIREBAUGH**

**AND**

**ELEMENT 7 FIREBAUGH, LLC**

## DEVELOPMENT AGREEMENT

This Project Development Agreement (“Agreement”) is entered into effective November 10, 2021 (“Effective Date”) between the City of Firebaugh, a California municipal corporation and general law city (“City”) and Element 7, LLC, a California limited liability company (“Developer”), with respect to the following Recitals, which are a substantive part of this Agreement:

### RECITALS

- A. This Agreement is contingent on Developer obtaining a commercial cannabis regulatory permit (“Regulatory Permit”) and a Conditional Use Permit to conduct commercial cannabis operations and related uses as described in Section I below and consistent with the Firebaugh Municipal Code and applicable law.
- B. Developer represents that its principals are experienced developers and/or operators of commercial cannabis operations or have otherwise contracted with experienced commercial developers, operators, contractors, and other professionals for the purposes of developing the Project on the Property. Developer acknowledges that it will be responsible for all improvements to the Property necessary for the Project.
- C. Developer represents its intention to use reasonable efforts to hire City residents to work in its commercial cannabis operations, and City encourages Developer to hire locally.
- D. Developer and City previously entered into a Development Agreement dated December 16, 2019. The Parties desire to have this Agreement supersede the previous Development Agreement.

**NOW, THEREFORE**, pursuant to the authority contained in the California’s Development Agreement statutes (Government Code section 65864, *et seq.*), enacted pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement, the City and Developer agree as follows:

**I. Development of Property.** Developer proposes to develop and operate a Commercial Cannabis Operation, which includes, manufacturing, distribution and dispensary sale of cannabis at 1210 12<sup>th</sup> Street, Firebaugh, CA to serve the uses (“Project”) under the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) and applicable law. For purposes of this Agreement, the definition of Property and Project shall be as noted on map attached as **Exhibit A**.

Developer agrees to the following:

- Developer to pay for all infrastructure and development costs relating to the Project.
- Developer to install complete perimeter lighting and security cameras.
- Developer must provide on-site security personnel 24 hours per day.

A Cannabis Regulatory Permit and a Conditional Use Permit are required prior to the development of the Property or following any assignment or transfer of Project or Property to be used for a commercial cannabis operation.

City Council finds that upon the grant of a Cannabis Regulatory Permit, Conditional Use Permit and the approval of this Agreement, the Developer shall have invested a substantial sum in reliance on the approvals, including, but not limited to, cannabis regulatory permitting related to the Property as well as significant land acquisition costs. Therefore, the Council agrees that during the Term of this Agreement, the Developer shall have a vested right subject to this Agreement to undertake the development and operation of the Project in accordance with the Project approvals issued by the City. No Subsequent Land Use Regulation (defined below) shall delay, hinder, materially increase the cost of development or operation or impede the purpose or the effect of the vested rights of the Developer which arise hereunder unless necessitated by county, state, federal law or local public health and safety necessity.

Except as otherwise provided under the provisions of this Agreement, the only rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development and operation of the Property, shall be those set forth in the Existing Land Use Regulations and the Subsequent Land Use Regulations (if any) to which Developer has consented in writing, subject to the terms of this Agreement.

“Existing Land Use Regulations” means all ordinances, laws, resolutions, codes, rules, regulations, moratoria, initiatives, policies, requirements, or guidelines of the City in effect on the Agreement Effective Date (defined below) which govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, and all other ordinances of City establishing subdivision standards, park regulations, impact or development fees and building and improvement standards.

“Subsequent Land Use Regulations” means any change in or addition to the Existing Land Use Regulations which would otherwise be applicable to the Property and the Project and which are adopted by the City after the Agreement Effective Date and which thereafter become effective during the Term, including, without limitation, any change in the general or a specific plan, zoning, subdivision, or building regulation applicable to the Property, including, without limitation, any such Subsequent Land Use Regulation which is enacted by means of an ordinance, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or any other board, agency, commission or department of City, or any officer or employee thereof, which affected the Existing Land Use Regulations of the City during the Term, and which would, absent this Agreement, otherwise be applicable to the Project.

“Agreement Effective Date” means the effective date of the City legislative action approving this Agreement.

**II. Lawfulness of Activities.** In entering into this Agreement and processing the Regulatory Permit, the City makes no guarantees or promises as to the lawfulness of the proposed commercial cannabis operations under State or federal law, and Developer is obligated to comply with all applicable laws. To the fullest extent permitted by law, City shall not assume any liability whatsoever with respect to approving the Ordinance, a Regulatory Permit for Developer, this Agreement or any other commercial cannabis operation approved by City.

**III. Developer Representations.** Developer represents and warrants that Developer, and/or principal members of Developer, is/are an experienced developer and operator of commercial properties with experience in cannabis operations, or has otherwise contracted with experienced commercial developers, architects, and/or other professionals for the purpose of developing the Property. The qualifications and identity of Developer and Developer’s contractors are of particular concern to City, and because of such qualifications and identity, the City has entered into this Agreement with Developer. City has considered and relied upon Developer’s representations and warranties in entering into this Agreement.

**IV. Fees.** Developer shall pay to City the following fees specified in Firebaugh Municipal Code section 25-42.13.6(p):

- a. Business License Fee.
- b. Regulatory License Fee.
- c. Conditional Use Permit Fee.
- d. Revenue Raising Fee. An annual fee of \$25 per square foot for the first 3,000 square feet of building space for the commercial cannabis operation and \$10 per square foot for any remaining space over and above the first 3,000 square feet.
- e. Distribution and Sale. Developer agrees to pay the City 1% of gross receipts from the distribution of cannabis products and a separate 1% for the sale of cannabis products. This amount will be increased by an additional 1% for each year after the initial year.

The cannabis fees shall be fixed as specified in this Section IV for the Term of this Agreement.

The requirements of this Section shall be a recorded covenant running with the land and binding on all owners, tenants, and Regulatory Permit holders for the Property. The covenants shall expire on the expiration or earlier termination of this Agreement.

If the above cannabis operations are on the same parcel, the Manufacturing and Distribution operations can be added to one (1) Regulatory Permit. If on separate parcels, then

separate permits will be required.

**V. Local Contractors.** To the extent practical, Developer will use reasonable efforts to hire construction/remodel contractors for the Property that are based within the City of Firebaugh or whose work force is made up of a significant number (e.g., 30%) of residents of the City of Firebaugh (a "Local Contractor"). Nothing in this section V. shall be construed to require Developer to accept a bid from a Local Contractor that is more than five percent (5%) higher than the lowest bid received for the same or similar work.

**VI. Compliance with Laws.** Developer shall operate the commercial cannabis operation in substantial conformity with the MAUCRSA and any implementing laws and regulations, as they may be amended from time to time. Developer shall similarly comply with all other applicable laws, state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the Firebaugh Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* with respect to the existing and any proposed improvements on the Property.

**VII. Administrative Actions.** The parties acknowledge that in the future there could be claims, enforcement actions, requests for information, subpoenas, criminal or civil actions initiated or served by either the Federal Government or the State Government in connection with Developer's development, operation and use of the Property (collectively, "Actions"). If any Action is brought by either the Federal or State Government, City shall, consistent with applicable law, (i) immediately notify Developer of the nature of the Claim, and if applicable law allows, provide Developer no more than ten days from the date of the notice to obtain injunctive or other relief. City, and (ii) and provide all correspondence or documents submitted to the City.

**VIII. Developer's Indemnity.**

a. **Commercial Cannabis Operations.** Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature arising from or related to any State or federal law enforcement action against Developer, Developer's tenants, subtenants, licensees, contractors and employees ("Developer Parties") in connection with the commercial cannabis operation conducted on the Property after the issuance of the Regulatory Permit ("Cannabis Claims"). Developer's defense and indemnity obligations under this Agreement shall apply, regardless of intent or fault, to any allegation or claim of liability brought against the City related to the subject Project, including land use and environmental law actions or meeting notice law actions following Project approval, modification, or denial. Developer's duty shall arise at the first claim, petition, or allegation of liability against City. Developer's indemnity shall not extend to any loss of revenue suffered or incurred by City in connection with any termination, cessation, restriction, seizure, or other limitation of any commercial cannabis operation on the Property.

b. Construction and Other Operations. In addition to the indemnity obligations of subsection (a), Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof, including all construction and operation activities on the Property, and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any acts or omissions of Developer Parties in the performance under this Agreement, whether such damage shall accrue or be discovered before or after termination of this Agreement ("Other Claims"). Developer's liability under this Subsection (b) is limited to the extent the property damage or bodily injury is caused by the sole negligence or willful misconduct of City or its agents or employees.

**IX. Restrictions on Encumbrance, Assignment or Transfer.**

a. Developer can encumber, sell, mortgage, assign or transfer the Property consistent with this Agreement. This cannabis regulatory Agreement would not be extinguished by a mortgage foreclosure so long as the foreclosing owner complies with all regulatory permits and applicable law relating to transfers of the Agreement.

b. Assignment/Transfer. In the case of a transfer of this Agreement or any of Developer's rights hereunder, Developer shall; (i) provide advance written notice of the proposed transfer, (ii) provide its representation and documentation that the transferee has similar experience and similar financial capacity as Developer possessed on the Effective Date of this Agreement, to undertake the obligations of this Agreement, and (iii) provide proposed assignment documents indicating whether the Developer or transferee or both will assume the obligations of this Agreement. If the transferee has similar commercial cannabis agricultural experience and financial capacity as Developer, the transfer may relieve the Developer of its obligations upon execution of an assignment agreement in a form reasonably approved by the City. If the City disagrees with the proposed transfer, the parties may submit the dispute to a neutral mediation with each party sharing the mediator costs. If the parties remain in disagreement following mediation, the parties may submit a decision to an arbitrator for a binding decision. The parties shall share the costs of arbitration.

c. Assignee Obligations. In the absence of specific written agreement by City or binding arbitration decision, no assignment or transfer by Developer of all or any portion of its rights shall be deemed to relieve it or any successor party from any obligations under this Agreement. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assignment agreement in a form reasonably approved by the City assuming such obligations and has received a regulatory permit.

**X. Defaults and Remedies.** Failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein, following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default ("Notice") to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any

proceeding against any other party, and the other party shall not be in Default if such party within fifteen (15) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall diligently complete such cure, correction or remedy.

In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Fresno, California, or in the United States District Court for the Eastern District of California – Fresno Division, if allowable.

#### **XI. Community Benefit.**

Developer shall enter binding Community Benefit arrangements with at least one local nonprofit public benefit entity to ensure public benefit to the residents of Firebaugh.

#### **XII. General Provisions.**

a. Notices, Demands, and Communications Between the Parties. Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Firebaugh  
City Manager  
1133 P Street  
Tel: (559) 659-2043  
Fax: (559) 659-3412  
Email: [bgallegos@Firebaugh.org](mailto:bgallegos@Firebaugh.org)

With a copy to: James Sanchez  
Lozano Smith  
7404 N. Spalding  
Fresno, California 93720  
Tel: (559) 431-5600  
Fax: (559) 431-4420  
Email: [jsanchez@lozanosmith.com](mailto:jsanchez@lozanosmith.com)

To Developer: Robert M. DiVito  
Element 7 Firebaugh, LLC  
645 West 9<sup>th</sup> Street, #110-631  
Los Angeles, CA 90015  
Tel: (312) 823 7638  
Email: [robert@e7ca.com](mailto:robert@e7ca.com)



With a copy to:           Attn: Sheila Merchant  
                                  Email: Sheila.merchant@gmail.com

Any written notice, demand or communication shall be deemed received: immediately if delivered by hand; 24 hours after delivery to a receipted, overnight delivery service such as Federal Express; 24 hours after delivery by e-mail with an acknowledgement of receipt by the intended recipient; and on the fourth (4th) day from the date it is postmarked if delivered by registered or certified mail.

b.     Successors and Assigns. All of the terms, covenants, and conditions of this Agreement shall be binding upon Developer and City, and their respective successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other successors and assigns as herein provided. This Agreement shall run with the land and be binding upon Developer's successors and assigns in and to the Property.

c.     Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Except as expressly provided herein or in the Attachments hereto, City shall not have any rights, powers, duties or obligations with respect to the Project.

d.     No Third-Party Beneficiaries. There shall be no third-party beneficiaries of this Agreement.

e.     City Approvals and Actions. City shall maintain authority over this Agreement, and the authority to implement this Agreement through the City Manager (or his/her duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change the uses or development contemplated under this Agreement, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform if applicable. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

f.     Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement shall be executed in two (2) originals, each of which is deemed to be an original.

g.     Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements including the Development Agreement dated December 16, 2019, other understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and

upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes all Attachments and Exhibits attached hereto, which are incorporated herein.

h. Interpretation and Applicable Law. This Agreement has been prepared with input from both parties, and shall be interpreted as though prepared jointly by both parties. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

i. No Waiver. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Nor shall a waiver by either party of a breach of any of the covenants, conditions or promises under this Agreement to be performed by the other party be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

j. Modifications. For any alteration, change or modification of or to this Agreement to become effective, it shall be made in writing and in each instance signed on behalf of each party.

k. Legal Advice. Each party represents and warrants to the other the following: They have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

l. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

m. Non-Liability of Officials and Employees of the City. No official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

n. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

o. Term. The term of this Agreement ("Term") shall be for a period of three (3) years

commencing on the Effective Date.

p. Savings Clause. If any provision of this Agreement or the application thereof is held in-valid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

**IN WITNESS WHEREOF**, the City and the Developer have executed this Project Development Agreement as of the date set forth above.

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

**ELEMENT 7 FIREBAUGH, LLC**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

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

**CITY OF FIREBAUGH**

By: \_\_\_\_\_  
Ben Gallegos, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Rita Lozano, City Clerk

**EXHIBIT A**  
**LEGAL DESCRIPTION AND DEPICTION OF PARCEL**

**[See Attached]**