

**LICENSE AGREEMENT BY AND BETWEEN
MUDSLINGERS COFFEE AND THE CITY OF CLEARLAKE
(A Portion Of 14760 Olympic Drive, Clearlake, California)**

This License Agreement is made and entered into this 21st day of April, 2022, by and between the City of Clearlake, a municipal corporation, hereinafter referred to as “City”, and Mudslingers LLC, a California limited liability corporation, hereinafter referred to as “Concessionaire.”

RECITALS

- A. City is the owner of the real property located at 14760 Olympic Drive (the “City Property”), and Concessionaire desires to license a portion of the City Property as depicted and described in the attached Exhibit 1, incorporated herein by this reference (the “Premises”).
- B. Concessionaire has significant experience operating a drive thru coffee shop concession.
- C. Concessionaire desires to install a 10’ x 16’ site-built structure on the Premises for the purpose of operating a drive thru beverage and food concession (the “Facility”).
- D. City hereby finds that it is in the public interest to enter into a License Agreement with Concessionaire to operate the Facility. Such a Facility will provide a needed service to the community and will provide an additional revenue stream to City.
- E. The previously executed agreement, dated April 22, 2021, is hereby rescinded and replaced in its entirety by this agreement dated April 21, 2022.

NOW, THEREFORE, it is agreed as follows:

1. GRANT OF LICENSE:

Subject to all of the terms and conditions of this License Agreement, Concessionaire is hereby granted an exclusive license to improve, occupy and use the Premises (as shown on the attached Exhibit 1) and to occupy and use existing parking facilities on the City Property for the use of Concessionaire’s customers.

2. TERM AND OPTION TO EXTEND TERM:

The initial term of this License Agreement shall commence upon full execution of this License Agreement and terminate April 22, 2032 Concessionaire shall have the option to extend the term of this License Agreement, subject to all of the provisions contained

in this License Agreement, for an additional five (5) year term following expiration of the initial term, upon written approval of the Clearlake City Manager.

3. USE:

a) City agrees to install the site improvements such as roadways, parking stalls and provide access to utilities up to the building footprint. Concessionaire agrees to connect said utilities to the structure.

b) Concessionaire agrees that its sole use of the premises shall consist of the operation of a food and beverage concession open to the public, together with related sale of merchandise. Concessionaire is permitted by this License Agreement to install the Facility, necessary utilities, and allowed signage, upon approval of all required land use entitlements, permits, or licenses required by the City's Municipal Code. All outside signage used by Concessionaire shall be approved in accordance with the City Zoning Ordinance.

c) Concessionaire agrees that it shall not use the property at the City Property for any use other than those specified in this License Agreement without City's written consent.

d) Concessionaire shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance.

e) Concessionaire shall conduct its business on the City Property and Premises under the trade name of Mudslingers Drive Thru Coffee.

4. COMPENSATION:

a) Concessionaire shall pay to City for the right to occupy a portion of the City Property and the Premises, a fixed monthly rent in the sum of \$500 per month.

b) The fixed monthly rental of \$500 shall be paid in advance on the first day of each month commencing on the first day of the month following the date the Facility is first open for business and continuing during the term of this License Agreement, as rental for the real property occupied by the Premises to be installed on City property at the sole expense of Concessionaire.

c) Concessionaire shall be solely responsible for all costs and expenses of all utilities and services for the Facility.

5. OPERATIONS:

Concessionaire agrees that its Facility shall be open and operating during normal business hours.

6. ALTERATIONS AND IMPROVEMENTS:

a) Except as specifically set forth in the License Agreement, Concessionaire may not make any changes, alterations, modifications, or additions to the City Property without the prior written approval of the City Manager.

b) Concessionaire shall perform all of the work and supply all the necessary materials and labor to prepare the Premises for Concessionaire's occupancy and authorized Use. Such work includes preparation of plans and specifications, architectural, engineering and design services, acquisition of all permits, equipment, labor and materials associated with the construction of such Concessionaire improvements.

c) Upon the expiration of the term of this License Agreement or any earlier termination thereof, or any renewal thereof, Concessionaire shall surrender to City possession of Concessionaire's permanent improvements and City's parking facilities, and the Premises. All fixtures and/or equipment of whatsoever nature installed by the Concessionaire on the Premises shall continue to be the property of the Concessionaire, and shall be removed by the Concessionaire within thirty (30) days after the expiration or prior termination of this lease or extension thereof. Any of said property not removed from the City Property within thirty (30) days after the date of termination shall be considered abandoned and shall belong to City without the payment of any consideration.

d) If the property of the Concessionaire is not removed and/or any damage and/or injury to the premises caused by the removal of said property is not repaired within thirty (30) days after the expiration or prior termination of this lease or any extension thereof as provided in paragraph c) of this Section 6, the City may, at its option, perform or cause to be performed the necessary removal and/or repairs, and shall be reimbursed by the Concessionaire for the costs thereof.

7. MAINTENANCE AND GOOD ORDER:

(a) Concessionaire shall at its own cost and expense, during the full term of this License Agreement, keep and maintain the Premises in good order and condition to the equivalent standard of maintenance of all other comparable City facilities. However, City shall be responsible for maintenance of the parking lot and City facilities at the City Property.

(b) City shall not be obligated to make any repairs made necessary by the negligence of Concessionaire or its agents, servants, licensees or invitees.

8. NON-LIABILITY OF CITY FOR DAMAGES AND INDEMNIFICATION OF LICENSE AGREEMENT:

This License Agreement is made upon the express condition that the City is to be free from all liability and claims for damage by reason of any injury to any person or persons, including Concessionaire, its agents and employees, or by reason of any injury to property of any kind whatsoever, and to whomever belonging, including

Concessionaire, its agents and employees, from any cause or causes whatsoever, arising out of Concessionaire's performance of this License Agreement, or any extension thereof.

Concessionaire hereby agrees to defend and indemnify City and save City harmless from any and all claims, liability, damages, expenses, causes of action, suites or judgments, together with any and all cost or expenses connected with the investigation or defense thereof, including reasonable legal fees incurred in connection with said investigation and defense, by reason of or resulting from: (1) the performance of, or failure to perform the work or any other obligations of this License Agreement by Concessionaire, or any agent or employee of Concessionaire; (2) any alleged negligent act or omission of Concessionaire, or Concessionaire's agents or employees, in connection with any acts performed or required to be performed pursuant to this License Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused by City as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of City or its employees.

9. FIRE AND WORKERS' COMPENSATION INSURANCE:

Concessionaire shall carry and maintain during the life of this License Agreement such public liability, property damage, and worker's compensation insurance as specified below:

A. Public Liability, and Property Damage Insurance

Concessionaire shall maintain public liability and property damage insurance. All coverage available to the Concessionaire as named insured shall be made available to the City, its officers, employees and named volunteers as additional insured. Concessionaire shall provide to City the full policy limits of Concessionaire's insurance, with coverage at least as broad as, and limits no less than, the following:

Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

The public liability and property damage insurance furnished by Concessionaire shall provide for the defense of City, its officers, agents and employees, as well as Concessionaire, and Concessionaire's subcontractors, suppliers, agents and employees, from all suits, actions, damages, losses or claims of every type or description to which they may be subjected by reason or, or resulting from Concessionaire's operations in the performance of the work pursuant to this License Agreement and all insurance policies shall so state. Said insurance shall also specify that it acts as primary insurance. Said

insurance shall also insure performance by Concessionaire of the indemnity provisions of this License Agreement.

Concessionaire further agrees that it will, at all times during the term of this License Agreement, at its own cost and expense, obtain and keep in full force and effect naming both City and Concessionaire as insured's thereunder, fire, windstorm and extended coverage insurance in an amount equal to the actual replacement cost of the Premises installed on the property by Concessionaire without deduction for physical depreciation.

B. Workers' Compensation Insurance

Concessionaire shall be permissibly self-insured or shall carry full worker's compensation insurance coverage for all persons employed, either directly or through subcontractors, in performing the services contemplated by this License Agreement, in accordance with the Workers' Compensation Act contained in the Labor Code of the State of California.

By execution of this License Agreement, Concessionaire certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to take undertake self-insurance in accordance with the provisions of that Code. I will comply with such provisions before commencing the performance of the work of this contract."

As part of the execution of this License Agreement, Concessionaire agrees to furnish to City certificates of insurance evidencing the policies that it has taken out for public liability, property damage and workers' compensation insurance set forth above for the period covered by this License Agreement. Such insurance shall be placed with an insurance carrier acceptable to City under terms satisfactory to City. Said certified policies of insurance shall be furnished to City prior to commencing the services contemplated by this License Agreement. Each such certified policy shall bear an endorsement precluding the cancellation or reduction in coverage of any such policy before the expiration of thirty (30) days after the City shall have received written notification of such cancellation or reduction.

Should Concessionaire fail to obtain and keep in force the insurance coverage herein above required, City shall have the right to cancel and terminate this License Agreement forthwith and without regard to any other provisions of this License Agreement.

10. LICENSES AND PERMITS:

Concessionaire shall comply with all licensing requirements of the State of California applicable to Concessionaire's use of the premises, and Concessionaire shall comply with all federal, state, county and city laws, regulations or ordinances affecting the premises, the improvements thereon, the conditions existing thereon, and all activities conducted on the premises, including, without limitation, the obligation of Concessionaire at Concessionaire's expense to alter, repair, maintain and restore the premises in compliance and conformity with all laws and regulations relating to the condition, use or occupancy of the premises.

11. TAXES:

Concessionaire shall, at its sole cost and expense, pay any and all taxes for which it is responsible, or which may be assessed against it.

a) Possessory Interest Tax.

Under this License Agreement a possessory interest subject to property taxation may be created. Notice is hereby given pursuant to Revenue and Taxation Code section 107.6 that such possessory interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interests.

b) Right to Contest Taxes.

Concessionaire shall have the right in its own name, or to the extent necessary in City's name, to contest in good faith and by all appropriate proceedings the amount, applicability or validity of any possessory interest tax assessment pertaining to the Facility and Premises, and Concessionaire's operations thereon. In the event Concessionaire initiates such contest, City shall reasonably cooperate with Concessionaire, provided that such contest will not subject any part of City's property to forfeiture or loss.

If at any time, payment of any tax or assessment becomes necessary and Concessionaire has exhausted its remedies with respect to contesting the amount, applicability or validity of any such tax assessment pertaining to the Facility and Premises, Concessionaire shall then timely pay such tax or assessment.

12. DAMAGE TO OR DESTRUCTION OF PREMISES:

In the event of loss or damage to the Premises by fire or any extended coverage insured against by any insurance policy, Concessionaire shall collect the proceeds and shall apply them to the rebuilding, restoring or repair of the damaged or destroyed building to the same general condition in which it existed at the time of the occurrence of said event. If the net proceeds of said insurance are insufficient, Concessionaire may elect to pay any additional funds necessary to complete the repair and restoration of the

Premises. If Concessionaire elects not to pay said additional funds, then this License Agreement shall terminate.

Concessionaire hereby waives the provisions of Section 1932 subdivision 2 and Section 1933 subdivision 4 of the Civil Code of the State of California.

Concessionaire shall not be liable for the payment of any rent accruing during the period of time required for the repair or restoration of the Premises if Concessionaire's business cannot be operated during this period. However, if Concessionaire is able to continue to use the Premises after the destruction and during the period of repair and restoration, Concessionaire shall be liable for payment of rent as stated herein, subject to negotiation with City.

14. INSPECTION AND FINANCIAL STATEMENTS:

City or its duly authorized representative or agents may enter upon the premises at any and all reasonable times during the term of this License Agreement for the purpose of determining whether Concessionaire is complying with the terms and conditions hereof, and for any other purpose incidental to the rights of City. Upon request from the City Manager, Concessionaire shall deliver to City a financial statement.

15. ASSIGNMENT AND SUBLETTING:

Concessionaire shall have no right, authority or power to sell or assign the concession rights herein granted to any other person, nor shall Concessionaire have any right, authority or power to allow or permit any other person or party to have any interest in this License Agreement without the written consent of City. It is the purpose and intent of this License Agreement to grant said concession privileges solely to said Concessionaire and neither directly nor indirectly to any other person or party. The assignment, subletting or encumbrance of said concession rights without the prior written consent of City shall be void and, at the option of City, shall terminate this License Agreement. No assignment shall relieve Concessionaire of its obligations under the terms of this License Agreement. The written consent of City to one assignment, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person.

16. DEFAULT BY CONCESSIONAIRE:

The occurrence of any of the following shall constitute a default by Concessionaire:

a) Failure to pay rent or any other sum due hereunder when due, if the failure continues for a period of thirty (30) days after said payment became due as provided herein.

b) Abandonment or vacation of the premises (failure to occupy and/or operate the business on said premises for ten (10) consecutive days) shall be deemed an

abandonment and vacation except when caused by acts of God, forces of nature, pandemic, or other causes beyond the control of the Concessionaire.

c) Failure to perform any other provision of this License Agreement if the failure to perform is not cured within thirty (30) days after notice has been given to Concessionaire.

In the event of any such default, City shall have the following rights and remedies in addition to any rights and remedies now or hereafter provided by law. All such remedies are cumulative and may be exercised concurrently or separately.

City can continue this License Agreement in full force and effect and the License Agreement will continue in effect as long as City does not terminate Concessionaire's right to possession, and City shall have the right to collect rent when due. After Concessionaire's default, and for as long as City does not terminate Concessionaire's right to possession of the premises, Concessionaire have the right to assign or sublet their interest in this License Agreement if Concessionaire shall obtain City's written consent, but Concessionaire shall not be released from liability. City's consent to a proposed assignment or subletting shall not be unreasonably withheld.

Upon default by Concessionaire as defined herein, City can terminate Concessionaire's right to possession of the premises at any time. Termination under this Paragraph shall not relieve Concessionaire from the payment of any sums then due to City, or for money claimed for damages previously accrued or then accruing against Concessionaire. No act by City, other than giving notice of default to Concessionaire, shall terminate this License Agreement. Acts of maintenance or preservation or efforts to relet the property, or the appointment of a receiver upon the initiative of the City to protect the City's interest under the License Agreement, shall not constitute a termination of Concessionaire's right to possession.

17. DEFAULT BY CITY:

The failure of City to perform any of its obligations pursuant to the provisions of this License Agreement shall constitute a default by City if Concessionaire notifies City of its failure to perform any of its obligations pursuant to the provisions of this License Agreement in writing, and City fails to initiate performance within sixty (60) days after such written notice has been given to City by Concessionaire. In the event of such default by City, Concessionaire shall have the option of terminating this License Agreement.

18. HOLDING OVER:

Any holding over after the expiration of the Term, including any Extension Period, with the consent of City, shall be construed to be a tenancy from month-to-month, cancelable upon thirty (30) days' written notice, and a rental upon all terms and conditions as existed during the last year of the Term, including any Extension Period. Any holding over after the expiration of the Term, including any Extension Period, without the consent

of City, shall be construed to be a tenancy-at-will at a Monthly Rent of Five Hundred and 00/100 Dollars (\$500.00) per month but otherwise on the terms and conditions in this License Agreement.

19. LIENS:

Ten (10) days before commencement of any work, improvement or repair which will cost in excess of Two Hundred Fifty Dollars (\$250.00), Concessionaire shall notify City in writing of its intention to commence said work. Said notice is to be given for the express purpose of permitting City to post a Notice of Non-responsibility to protect City's interests in the Licensed premises from the attachment of any mechanic's liens.

20. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required under this License by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, public health pandemic, or other cause without fault and beyond the control of the party obligated, performance of this act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of the delay; provided, however, nothing in this Section shall excuse Concessionaire from the prompt payment of any rental or other charge required of Concessionaire except as may be provided elsewhere in this License.

21. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this License is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this License shall remain in full force and shall in no way be affected, impaired, or invalidated.

22. ATTORNEY'S FEES; LITIGATION COSTS:

If any action at law or in equity is brought to recover any rent or other sums under this License, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this License, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this License Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this License Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

23. NON-WAIVER:

The failure or omission by City to terminate this License Agreement for any violation of its terms, conditions or covenants shall in no way bar, stop or prevent City from terminating this License Agreement therefore, either for such, or for any subsequent violation of any such term, condition or covenant. The acceptance of rent hereunder shall not be construed to be a waiver of any breach of any term, covenant or condition of this License Agreement.

24. CONCESSIONAIRE AS INDEPENDENT CONTRACTOR:

The parties hereto agree that at all times during the term of this License Agreement, Concessionaire and Concessionaire's employees hired to perform services pursuant to this License Agreement are independent contractors for all purposes of this Concessionaire License Agreement. Under no circumstances shall Concessionaire or Concessionaire's employees be considered agents or employees of City. Concessionaire acknowledges, therefore, that it and its agents and employees are not entitled to workers' compensation benefits from City should Concessionaire or its agents and employees sustain an injury in the course of performing services specified in this License Agreement. Concessionaire shall be solely responsible for and have control over the means, methods, details techniques and procedures for operation of the Facility on the Premises referred to in this License Agreement. Concessionaire shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent of City, except as specifically authorized by the City Manager in writing. Concessionaire shall have no authority, express or implied, pursuant to this License Agreement, to bind City to any obligation whatsoever.

25. NEGATION OF PARTNERSHIP:

City shall not become or be deemed a partner or joint venturer with Concessionaire by reason of the provisions of this License Agreement.

26. LICENSE AGREEMENT TO BIND SUCCESSORS AND ASSIGNS:

This License Agreement shall inure to the benefit and bind the successors and assigns of the respective parties hereto.

27. PARAGRAPH HEADINGS:

The paragraph headings are titles to the paragraphs of this License Agreement and are inserted for reference only, and are not a part of this License Agreement and shall

have no effect upon the construction or interpretation of any part of this License Agreement.

28. COMPLETE LICENSE AGREEMENT:

This instrument contains all of the License Agreements and covenants made between the parties to this License Agreement and may not be modified orally or in any other manner than by License Agreement in writing signed by all the parties to this License Agreement or their respective successors or assigns.

29. AUTHORITY:

If Concessionaire is a corporation, trust, or general or limited partnership, all individuals executing this License Agreement on behalf of that entity represent that they are authorized to execute and deliver this License Agreement on behalf of that entity. If Concessionaire is a corporation, trust, or partnership, Concessionaire shall, prior to the execution of this License Agreement, deliver to City evidence of that authority and evidence of due formation, all satisfactory to City. If Concessionaire is a partnership, Concessionaire shall furnish City with a copy of Concessionaire's partnership License Agreement and with a certificate from Concessionaire's attorney, stating that the partnership License Agreement.

30. GOVERNING LAW:

This License shall be governed by and construed in accordance with the laws of the State of California.

31. SERVICE OF NOTICE:

Any notice to or demand upon City or Concessionaire required or permitted to be made under the provisions of this License Agreement or any provisions of law, shall be given or made by registered mail, postage prepaid and addressed as follows until changed:

City of Clearlake
14050 Olympic Drive
Clearlake, CA 95422
Attn: City Manager Alan Flora

Concessionaire:
Mudslingers LLC

27. TIME:

Time is of the essence of this License Agreement and all that is herein contained.

IN WITNESS WHEREOF, Licensee has caused its duly authorized representative for and on its behalf to execute this License Agreement, and the City of Clearlake, a municipal corporation, has

caused this License to be executed by its City Manager and attested to by its City Clerk and Licensee has so executed it.

CONCESSIONAIRE:

CITY:

CITY OF CLEARLAKE, a municipal corporation

By: _____

Name: Lisa Reynolds

Date: _____

By: _____

Alan Flora,
City Manager

By: _____

Name: Shana Parker

Date: _____

APPROVED AS TO FORM:

Ryan R. Jones, City Attorney

ATTEST:

Melissa Swanson, City Clerk

EXHIBIT 1

Premises