

OAKLEY



CALIFORNIA

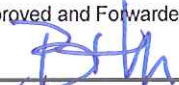
Agenda Date: 02/28/2017

Agenda Item: 5.2

STAFF REPORT

Date: February 28, 2017
To: City Council
From: Bryan Montgomery, City Manager

Approved and Forwarded to City Council:


Bryan Montgomery, City Manager

SUBJECT: Consideration of License Agreements with Alan Lucchesi to Plant Grape Vines on certain City-owned Properties, specifically on a 1-acre parcel located on Live Oak Avenue (APN 041-021-014) and within a portion of a 17-acre parcel north of the BNSF Railroad at about 7th Street (APNs 037-191-019 & 037-191-025).

Background and Analysis

Alan Lucchesi is part of a long-time Oakley family that has planted and cared for grape vines throughout the community for over 100 years. Most recently, Mr. Lucchesi has planted/transplanted dozens of acres of vines at the northeast corner of Rose Ave. and Laurel Rd., the northwest corner of Laurel and Empire Ave., the southwest corner of Empire and Oakley Rd., on the vacant land near the "Legless Lizard Preserve," as well as in other areas. As has been mentioned by the City Council in the past, these plantings are welcomed, provide an attractive landscape, and help to preserve the agricultural heritage of Oakley.

Mr. Lucchesi has recently purchased the vacant private property located at the northwest corner of Live Oak Ave. and Neroly Rd. The City owns an adjacent 1-acre parcel (see attached aerial) that was designated by the County many years ago as a possible site for a future fire station. While a fire station may be built there in the future, it is not believed to be financially possible for at least five or more years. In the meantime, the cost to keep the property clear of weeds and debris has been the City's.

To the mutual benefit of all parties, it is proposed that a license agreement be granted to Mr. Lucchesi to plant vines on the property. It will take some expense on his part to plant and get established the vines; however, some revenue will be generated from the grapes after two or three years. At current prices, the yield would be less than \$5,000 per year. It is for that reason that some license fee be charged after year three, but it is proposed to be only \$1,200 per year. The savings in maintenance costs to the City would be approximately \$300 per year. The vines would also serve as attractive landscaping to what is now just a patch of dirt.

A similar "win-win" can be achieved on a 17-acre parcel of land that was donated to the City last year (see attached aerial). This parcel is mostly a low-lying drainage area, but the perimeter of the property (perhaps totaling 3 acres) could be planted. Again, this would obviate the need to maintain the property and would provide a landscape perimeter. This property does not have much value at all and the ongoing maintenance cost to the City could be significant, so the license fee is proposed to be nominal.

You will note that a portion of the aerial photo of this property has been highlighted in blue. This is an area that we propose could be planted, but may be needed for the extension north of Rose Ave. The license agreement calls for any vines planted in this area to be removed at Mr. Lucchesi's expense with a 120-day notice.

Fiscal Impact

As explained above, the savings to the City in maintenance costs are significant and revenues from the proposed license agreements would be a little over \$2,600 for the terms of the agreements.

Recommendation

Adopt a resolution approving license agreements with Alan Lucchesi to plant vines on certain City properties.

Attachments

1. License Agreement for Live Oak Property
2. License Agreement for 17-acre Donation Property
3. Resolution

**LICENSE AGREEMENT FOR
PROPERTY LOCATED AT
LIVE OAK AVENUE, OAKLEY, CA
APN # 041-021-014**

This Agreement, dated and effective March 1, 2017, is by and between the **CITY OF OAKLEY**, a public body, corporate and politic, hereinafter designated as "CITY," and Alan Lucchesi, doing business as a sole proprietor, hereinafter designated as "**LICENSEE**," for the License by **LICENSEE** of real property owned by **CITY** in the City of Oakley, County of Contra Costa, State of California, commonly described as the "Live Oak Fire Station Parcel", Oakley, CA Main Street (approximately 1.07 acres), Assessor's Parcel No. 041-021-014, hereinafter referred to as the "Premises" and further described in Exhibit A to this Agreement.

LICENSEE hereby jointly and severally approves, agrees, and consents to the following terms and conditions:

1. **TERM:** The term of this tenancy shall commence March 1, 2017 and terminate on February 1, 2022; however, either party may terminate this Agreement as provided for herein. **LICENSEE** may request additional terms as may be mutually agreed upon in writing.

2. **LICENSE FEE:** The license fee for the use of the above Premises shall be ONE DOLLAR (\$1) per year from March 1, 2017 to February 1, 2020 and shall be ONE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$1,200) per year from February 1, 2020 to February 1, 2022. **LICENSEE** agrees to pay said fee in advance on or before the March 15th of each year so long as tenancy continues. All checks and money orders shall be made payable to CITY of OAKLEY and shall be mailed to:

CITY OF OAKLEY
Attn: City Manager
3231 Main Street
Oakley, CA 94561

If license fee is not paid to the CITY within ten (10) days after due date, a late charge of FIVE HUNDRED NO/100 DOLLARS (\$500) shall be added to the payment and the total sum shall become immediately due and payable to CITY. Failure to pay within twenty (20) days after the due date will incur an additional late charge of ONE THOUSAND DOLLARS (\$1,000) which shall be added to the payment and the total sum shall become immediately due. Failure to pay within thirty (30) days shall immediately terminate this Agreement.

In partial consideration for the nominal license fee for years one to three of the term, **LICENSEE** will plant vines on the Premises prior to June 1, 2017 and will maintain the property free of weeds, debris and trash throughout the tenancy.

3. **SECURITY DEPOSIT:** CITY will hold a deposit in the amount of ONE THOUSAND NO/100 DOLLARS (\$1,000), as security for the full and faithful performance by **LICENSEE** of all terms, conditions, and covenants of this Agreement.

Upon termination of this Agreement, the CITY may use any portion of the security deposit as may be reasonably necessary to remedy **LICENSEE**'S defaults of the provisions of this License Agreement, including, but not limited to, payment of unpaid rent due under paragraph 2 of this Agreement, cleaning of the Premises, repair of damage, or for storage of personal property which has been abandoned by **LICENSEE**. Any remaining

portion of the security deposit after such deduction shall be mailed to LICENSEE at LICENSEE's last known address.

4. **UTILITIES:** LICENSEE shall pay all costs in connection with LICENSEE's operations upon the Premises, including but not limited to costs of preparing the Premises for planting of crops, production costs, costs of tools and labor, electricity and other utilities, and costs of irrigation.

5. **PERMITTED USE:** LICENSEE shall utilize the Premises exclusively for the transplanting, planting, cultivating and harvesting of grape vines. Any other use will void this Agreement. LICENSEE agrees to use sound viticultural practices throughout LICENSEE's use of the Premises.

6. **LICENSEE'S MAINTENANCE AND REPAIRS OBLIGATIONS:** LICENSEE shall keep the Premises in good order, condition and repair throughout the License Term. On the last day of the License Term, or on sooner termination of this License, LICENSEE shall surrender the Premises to CITY in good and sound condition, and clean and free of debris. LICENSEE shall have a right to remove all vines prior to conclusion of License period or within thirty (30) days of the date of termination.

LICENSEE shall keep Premises in a clean, decent, safe, and sanitary condition, free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin. LICENSEE shall perform regular weed abatement and trash removal to the Premises.

LICENSEE shall take every care to prevent fires. In the event that the Premises is destroyed by fire, this Agreement shall immediately terminate and CITY shall not be responsible for any loss or damage to LICENSEE.

LICENSEE shall not allow non-operating vehicles, or parts thereof, to remain on the Premises.

7. **IMPROVEMENTS:** Without the prior written consent of CITY in its sole discretion, LICENSEE shall not make or erect on the Premises or on any portions thereof, any building, improvement, structure or appurtenances thereto. LICENSEE agrees not to make or suffer any alterations to be made in or on said Property without first obtaining the written consent of CITY.

8. **HAZARDOUS SUBSTANCES:** LICENSEE shall not store, keep, or use hazardous substances on the Premises. LICENSEE acknowledges that hazardous substances may permanently and materially impair the value and use of the Premises.

A "Hazardous Substance" is defined to mean any substance, material or waste, including asbestos and petroleum (including crude oil or any fraction thereof), which is or becomes designated, classified or regulated as being "toxic," "hazardous," a "pollutant" or similar designation under any federal, state or local law, regulation or ordinance.

LICENSEE agrees to defend, save, protect, indemnify and hold CITY harmless from and against all liabilities, claims, actions, foreseeable and unforeseeable consequential damages, costs, and expenses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of CITY'S counsel) or loss directly or indirectly arising out of or resulting from the presence of any hazardous substance as a result of LICENSEE'S activities, in or around any part of the Premises, including those incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work, or any resulting damages or injuries to the person or property of any third parties or to any natural resources.

9. **COMPLIANCE WITH LAWS:** During the License Term, LICENSEE shall comply with all applicable laws, ordinances, orders, rules, regulations and requirements of Federal, State, County, City and Municipal Governments, departments, bureaus, boards, commissions and officials with respect to the Premises, the improvements thereon or the use or occupancy thereof.

10. **NOTICE OF TERMINATION:** CITY may terminate this License by providing LICENSEE written notice by December 1st of any given year. LICENSEE may terminate this License at anytime, but must provide CITY six (6) months notice of termination. CITY may terminate this License Agreement terminated at for non-payment of the License rate, as provide for herein.

11. **INSPECTION:** The CITY reserves the right to enter the Premises between the hours of and to employ the proper representative or contractor in order to see that the Premises is being reasonably cared for, that no waste is being made, and that all things are done in the manner best calculated for the preservation of the Premises, and in full compliance with the terms and conditions of this Agreement. CITY shall provide twenty-four (24) hour notice of its entry, except in an emergency.

12. **NOTICES:** All notices given hereunder shall be in writing and shall be deemed to have been given if personally delivered or deposited in the United States mail, postage prepaid, return receipt requested, and addressed to the other party as follows or as otherwise designated by written notice hereunder from time to time:

To LICENSEE: Alan Lucchesi
100 Kessler Lane
Oakley, CA 94561

To CITY: City of Oakley
3231 Main Street
Oakley, CA 94561
Attn: City Manager

13. **HOLD HARMLESS:** LICENSEE shall defend, indemnify, save, protect, and hold harmless CITY, its officers, agents, and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury or death, including without limitation all consequential damages from any cause whatsoever, to persons or property, arising directly or indirectly from or connected with this Agreement, including, but not limited to, any act under taken pursuant to the Agreement, or the LICENSEE'S use or possession of the Premises, save and except claims, costs, liability or litigation arising from the sole negligence or sole willful misconduct of CITY, its officers or employees, and, if required by CITY, will defend any such actions at the sole cost and expense of the LICENSEE.

14. **SUBLETTING:** LICENSEE shall not assign this tenancy or any interest therein and shall not sublet said premises or any part thereof without prior written approval from the CITY. Any such assignment or subletting without the CITY'S consent shall be void.

15. **INSURANCE:** CITY will not keep LICENSEE'S interest and property insured and LICENSEE waives the right to claim damages from the CITY for any damage resulting to said property in the event it is damaged or destroyed by fire or any other cause.

LICENSEE shall, prior to occupation of the premises, furnish or caused to be furnished to the CITY duplicate originals or appropriate certificates of the following insurance policies:

A. **General Commercial Liability Insurance.** LICENSEE shall obtain at its sole cost and keep in full force and effect during the term of this Agreement, general commercial liability insurance in the amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000) per occurrence for bodily injury, personal injury, and property damage. Said insurance shall provide that the policy shall operate as primary insurance, and that no other insurance effected by the CITY will be called upon to cover a loss covered thereunder.

B. **Certificates of Insurance.** LICENSEE shall file with the CITY, prior to occupation of the Premises, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement, without thirty (30) days notice to the CITY prior to the effective date of such cancellation, or change in coverage. LICENSEE shall deliver copies of the insurance policy upon CITY request.

C. **Prior to occupation of the Premises.** LICENSEE shall file with the CITY the City of Oakley's standard endorsement form providing for each of the above requirements.

16. **POSSESSORY INTEREST TAX:** The County Assessor of Contra Costa County has invoked a possessory interest tax on all Licenses of CITY and other publicly-owned properties. This tax is mandatory by law and is levied on the LICENSEE and not the Premises. The occupant of the Premises on the lien date, April 1 of the current year, is liable for full payment, even if LICENSEE subsequently vacates the Premises. LICENSEE therefore, must recognize and understand, in accepting this License Agreement, his interest therein may be subject to a possible possessory interest tax that the County Assessor may legally impose on such possessory interest held by the LICENSEE. Each year, LICENSEE will pay the tax promptly.

17. **CITY'S RIGHT OF RE-ENTRY:** LICENSEE shall not vacate or abandon the Premises at any time during the term of this Agreement. If CITY'S right of reentry is exercised following abandonment of the Premises by LICENSEE then CITY may consider any personal property belonging to LICENSEE and left on the Premises to have been abandoned, in which case CITY may dispose of all such personal property in any manner pursuant to law. CITY shall deem proper and is hereby expressly relieved of all liability for doing so.

18. **WAIVER:** The waiver by CITY of any breach of a specific term, covenant or condition herein contained shall not constitute a waiver of any other breach of that term, covenant or condition herein contained or any other term, covenant or condition herein contained.

19. **WRITTEN AGREEMENT:** Neither party has relied on any promise or representation not contained in this Agreement. All previous conversations, negotiations, representations, agreements and understandings, either written or oral, are of no further force or effect. This License Agreement may be modified only by a writing signed by both parties. The headings of the paragraphs are for convenience only and are not a part of this License Agreement, nor shall they be considered in construing the intent of this License Agreement.

20. **ATTORNEY'S FEES:** Should either party bring any legal action or proceeding for the breach of any term, covenant or condition of this agreement the court shall award reasonable attorneys' fees to one or more of the parties therein based upon the degree to which each party prevails in such action or proceeding, as determined by the court.

21. **VENUE:** In the event that either party brings any action against the other party under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

22. **WAIVER OF RELOCATION BENEFITS:** LICENSEE warrants and represents to CITY that LICENSEE does not have nor shall LICENSEE claim any right to relocation benefits under any provision of any State of California or federal law and LICENSEE knowingly waives the right to make any claim against the CITY for relocation benefits in the event CITY elects to terminate this Agreement for any reason.

23. **SEVERABILITY:** The validity or illegality of a provision of this Agreement shall not affect the remainder of the Agreement.

24. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to each and all of the terms and provisions of this Agreement.

25. **AUTHORIZED SIGNATURE:** Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement and that the person or party will be bound by such signature.

26. **COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

CITY

LICENSEE

CITY OF OAKLEY

ALAN LUCCHESI, a sole proprietor

By: _____
Bryan H. Montgomery
City Manager

By: _____
Alan Lucchesi

ATTEST:

Libby Vreonis
City Clerk

APPROVED AS TO FORM:

William R. Galstan
Special Counsel

EXHIBIT A APN 041-021-014



**LICENSE AGREEMENT FOR
VACANT PROPERTY DESCRIBED AS
APN #'s 037-191-019 & 037-191-025
IN OAKLEY, CALIFORNIA**

This Agreement, dated and effective March 1, 2017, is by and between the **CITY OF OAKLEY**, a public body, corporate and politic, hereinafter designated as "CITY, " and Alan Lucchesi, doing business as a sole proprietor, hereinafter designated as "**LICENSEE**," for the License by **LICENSEE** of real property owned by **CITY** in the City of Oakley, County of Contra Costa, State of California, commonly described as the "Cunha Donation Parcels", Oakley, CA Main Street (approximately 17 acres), Assessor's Parcel Nos. 037-191-019 & 037-191-025, hereinafter referred to as the "Premises" and further described in Exhibit A to this Agreement.

LICENSEE hereby jointly and severally approves, agrees, and consents to the following terms and conditions:

1. **TERM:** The term of this tenancy shall commence March 1, 2017 and terminate on February 1, 2022; however, either party may terminate this Agreement as provided for herein. **LICENSEE** may request additional terms as may be mutually agreed upon in writing.

2. **LICENSE FEE:** The License Fee for the use of the above Premises shall be ONE DOLLAR (\$1) per year from March 1, 2017 to February 1, 2020 and shall be ONE HUNDRED AND NO/100 DOLLARS (\$100) per year from March 1, 2020 to February 1, 2022. **LICENSEE** agrees to pay said License fee in advance on or before the March 15th of each year so long as tenancy continues. All checks and money orders shall be made payable to CITY of OAKLEY and shall be mailed to:

CITY OF OAKLEY
Attn: City Manager
3231 Main Street
Oakley, CA 94561

If License Fee is not paid to the CITY within ten (10) days after due date, a late charge of FIVE HUNDRED NO/100 DOLLARS (\$50) shall be added to the payment and the total sum shall become immediately due and payable to CITY. Failure to pay within twenty (20) days after the due date will incur an additional late charge of ONE HUNDRED DOLLARS (\$100) which shall be added to the payment and the total sum shall become immediately due. Failure to pay within thirty (30) days shall immediately terminate this Agreement.

In partial consideration for the nominal License rate for years one to three of the License term, **LICENSEE** will plant vines on the Premises prior to June 1, 2017 and will maintain the property free of weeds, debris and trash throughout the tenancy.

3. **SECURITY DEPOSIT:** CITY will hold a deposit in the amount of ONE THOUSAND NO/100 DOLLARS (\$1,000), as security for the full and faithful performance by **LICENSEE** of all terms, conditions, and covenants of this Agreement.

Upon termination of this Agreement, the CITY may use any portion of the security deposit as may be reasonably necessary to remedy **LICENSEE**'S defaults of the provisions of this License Agreement, including, but not limited to, payment of unpaid rent due under paragraph 2 of this Agreement, cleaning of the Premises, repair of damage, or for storage of personal property which has been abandoned by **LICENSEE**. Any remaining

portion of the security deposit after such deduction shall be mailed to LICENSEE at LICENSEE's last known address.

4. **UTILITIES:** LICENSEE shall pay all costs in connection with LICENSEE's operations upon the Premises, including but not limited to costs of preparing the Premises for planting of crops, production costs, costs of tools and labor, electricity and other utilities, and costs of irrigation.

5. **PERMITTED USE:** LICENSEE shall utilize the Premises exclusively for the transplanting, planting, cultivating and harvesting of grape vines. Any other use will void this Agreement. LICENSEE agrees to use sound viticultural practices throughout LICENSEE's use of the Premises. The area highlighted in blue in Exhibit A can be planted in vines, but CITY reserves the right to utilize this portion of the property for other public purposes and LICENSEE shall remove any vines in this area, at his sole expense, upon one-hundred twenty (120) days written notice from the CITY.

6. **LICENSEE'S MAINTENANCE AND REPAIRS OBLIGATIONS:** LICENSEE shall keep the Premises in good order, condition and repair throughout the License Term. On the last day of the License Term, or on sooner termination of this License, LICENSEE shall surrender the Premises to CITY in good and sound condition, and clean and free of debris. LICENSEE shall have a right to remove all vines prior to conclusion of License period or within thirty (30) days of the date of termination.

LICENSEE shall keep Premises in a clean, decent, safe, and sanitary condition, free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin. LICENSEE shall perform regular weed abatement and trash removal to the Premises.

LICENSEE shall take every care to prevent fires. In the event that the Premises is destroyed by fire, this Agreement shall immediately terminate and CITY shall not be responsible for any loss or damage to LICENSEE.

LICENSEE shall not allow non-operating vehicles, or parts thereof, to remain on the Premises.

7. **IMPROVEMENTS:** Without the prior written consent of CITY in its sole discretion, LICENSEE shall not make or erect on the Premises or on any portions thereof, any building, improvement, structure or appurtenances thereto. LICENSEE agrees not to make or suffer any alterations to be made in or on said Property without first obtaining the written consent of CITY.

8. **HAZARDOUS SUBSTANCES:** LICENSEE shall not store, keep, or use hazardous substances on the Premises. LICENSEE acknowledges that hazardous substances may permanently and materially impair the value and use of the Premises.

A "Hazardous Substance" is defined to mean any substance, material or waste, including asbestos and petroleum (including crude oil or any fraction thereof), which is or becomes designated, classified or regulated as being "toxic," "hazardous," a "pollutant" or similar designation under any federal, state or local law, regulation or ordinance.

LICENSEE agrees to defend, save, protect, indemnify and hold CITY harmless from and against all liabilities, claims, actions, foreseeable and unforeseeable consequential damages, costs, and expenses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of CITY'S counsel) or loss directly or indirectly arising out of or resulting from the presence of any hazardous substance

as a result of LICENSEE'S activities, in or around any part of the Premises, including those incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work, or any resulting damages or injuries to the person or property of any third parties or to any natural resources.

9. **COMPLIANCE WITH LAWS:** During the License Term, LICENSEE shall comply with all applicable laws, ordinances, orders, rules, regulations and requirements of Federal, State, County, City and Municipal Governments, departments, bureaus, boards, commissions and officials with respect to the Premises, the improvements thereon or the use or occupancy thereof.

10. **NOTICE OF TERMINATION:** CITY may terminate this License by providing LICENSEE written notice by December 1st of any given year. LICENSEE may terminate this License at anytime, but must provide CITY six (6) months notice of termination. CITY may terminate this License Agreement terminated at for non-payment of the License rate, as provide for herein.

11. **INSPECTION:** The CITY reserves the right to enter the Premises between the hours of and to employ the proper representative or contractor in order to see that the Premises is being reasonably cared for, that no waste is being made, and that all things are done in the manner best calculated for the preservation of the Premises, and in full compliance with the terms and conditions of this Agreement. CITY shall provide twenty-four (24) hour notice of its entry, except in an emergency.

12. **NOTICES:** All notices given hereunder shall be in writing and shall be deemed to have been given if personally delivered or deposited in the United States mail, postage prepaid, return receipt requested, and addressed to the other party as follows or as otherwise designated by written notice hereunder from time to time:

To LICENSEE: Alan Lucchesi
100 Kessler Lane
Oakley, CA 94561

To CITY: City of Oakley
3231 Main Street
Oakley, CA 94561
Attn: City Manager

13. **HOLD HARMLESS:** LICENSEE shall defend, indemnify, save, protect, and hold harmless CITY, its officers, agents, and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury or death, including without limitation all consequential damages from any cause whatsoever, to persons or property, arising directly or indirectly from or connected with this Agreement, including, but not limited to, any act under taken pursuant to the Agreement, or the LICENSEE'S use or possession of the Premises, save and except claims, costs, liability or litigation arising from the sole negligence or sole willful misconduct of CITY, its officers or employees, and, if required by CITY, will defend any such actions at the sole cost and expense of the LICENSEE.

14. **SUBLETTING:** LICENSEE shall not assign this tenancy or any interest therein and shall not sublet said premises or any part thereof without prior written approval from the CITY. Any such assignment or subletting without the CITY'S consent shall be void.

15. **INSURANCE:** CITY will not keep LICENSEE'S interest and property insured and LICENSEE waives the right to claim damages from the CITY for any damage resulting to said property in the event it is damaged or destroyed by fire or any other cause.

LICENSEE shall, prior to occupation of the premises, furnish or caused to be furnished to the CITY duplicate originals or appropriate certificates of the following insurance policies:

A. **General Commercial Liability Insurance.** LICENSEE shall obtain at its sole cost and keep in full force and effect during the term of this Agreement, general commercial liability insurance in the amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000) per occurrence for bodily injury, personal injury, and property damage. Said insurance shall provide that the policy shall operate as primary insurance, and that no other insurance effected by the CITY will be called upon to cover a loss covered thereunder.

B. **Certificates of Insurance.** LICENSEE shall file with the CITY, prior to occupation of the Premises, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement, without thirty (30) days notice to the CITY prior to the effective date of such cancellation, or change in coverage. LICENSEE shall deliver copies of the insurance policy upon CITY request.

C. **Prior to occupation of the Premises.** LICENSEE shall file with the CITY the City of Oakley's standard endorsement form providing for each of the above requirements.

16. **POSSESSORY INTEREST TAX:** The County Assessor of Contra Costa County has invoked a possessory interest tax on all Licenses of CITY and other publicly-owned properties. This tax is mandatory by law and is levied on the LICENSEE and not the Premises. The occupant of the Premises on the lien date, April 1 of the current year, is liable for full payment, even if LICENSEE subsequently vacates the Premises. LICENSEE therefore, must recognize and understand, in accepting this License Agreement, his interest therein may be subject to a possible possessory interest tax that the County Assessor may legally impose on such possessory interest held by the LICENSEE. Each year, LICENSEE will pay the tax promptly.

17. **CITY'S RIGHT OF RE-ENTRY:** LICENSEE shall not vacate or abandon the Premises at any time during the term of this Agreement. If CITY'S right of reentry is exercised following abandonment of the Premises by LICENSEE then CITY may consider any personal property belonging to LICENSEE and left on the Premises to have been abandoned, in which case CITY may dispose of all such personal property in any manner pursuant to law. CITY shall deem proper and is hereby expressly relieved of all liability for doing so.

18. **WAIVER:** The waiver by CITY of any breach of a specific term, covenant or condition herein contained shall not constitute a waiver of any other breach of that term, covenant or condition herein contained or any other term, covenant or condition herein contained.

19. **WRITTEN AGREEMENT:** Neither party has relied on any promise or representation not contained in this Agreement. All previous conversations, negotiations, representations, agreements and understandings, either written or oral, are of no further force or effect. This License Agreement may be modified only by a writing signed by both parties. The headings of the paragraphs are for convenience only and are not a part of this License Agreement, nor shall they be considered in construing the intent of this License Agreement.

20. **ATTORNEY'S FEES:** Should either party bring any legal action or proceeding for the breach of any term, covenant or condition of this agreement the court shall award reasonable attorneys' fees to one or more of the parties therein based upon the degree to which each party prevails in such action or proceeding, as determined by the court.

21. **VENUE:** In the event that either party brings any action against the other party under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

22. **WAIVER OF RELOCATION BENEFITS:** LICENSEE warrants and represents to CITY that LICENSEE does not have nor shall LICENSEE claim any right to relocation benefits under any provision of any State of California or federal law and LICENSEE knowingly waives the right to make any claim against the CITY for relocation benefits in the event CITY elects to terminate this Agreement for any reason.

23. **SEVERABILITY:** The validity or illegality of a provision of this Agreement shall not affect the remainder of the Agreement.

24. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to each and all of the terms and provisions of this Agreement.

25. **AUTHORIZED SIGNATURE:** Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement and that the person or party will be bound by such signature.

26. **COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

CITY

LICENSEE

CITY OF OAKLEY

ALAN LUCCHESI, a sole proprietor

By: _____
Bryan H. Montgomery
City Manager

By: _____
Alan Lucchesi

ATTEST:

Libby Vreonis
City Clerk

APPROVED AS TO FORM:

William R. Galstan
Special Counsel

EXHIBIT A

APN #'s 037-191-019 & 037-191-025



RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AUTHORIZING THE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS
WITH ALAN LUCCHESI TO PLANT GRAPE VINES ON CERTAIN CITY-
OWNED PROPERTIES**

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the License Agreements with Alan Lucchesi for the planting of grape vines on City-owned property true and accurate copies of which are attached as Exhibit A, and authorizes the City Manager to execute the documents.

The foregoing resolution was adopted at a regular meeting of the City Council held on the 28^h day of February, 2017 by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Sue Higgins, Mayor

ATTEST:

Libby Vreonis, City Clerk Date