



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

May 17, 2018

City Council President Linda M. Morad
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I am enclosing for your consideration a draft host community agreement (“adult use HCA”) between the City and ARL Healthcare, Inc. (“ARL”) that would permit ARL to engage in the cultivation of marijuana and the manufacturing of marijuana products for adult use purposes (a/k/a recreational purposes) at ARL’s facility at 167 John Vertente Boulevard in the industrial park (“the site”). As you know, on July 20, 2017, the City Council approved an HCA with ARL that permits it to engage in the cultivation of marijuana and the production of marijuana products at the site for medical purposes (“medical HCA”).

Under state law, a municipality may not enact regulations that would prevent placing an adult use marijuana establishment that cultivates, manufactures or sells marijuana or marijuana products in any area in which a medical marijuana treatment center (of which ARL is one) is registered to engage in the same type of activity. G.L. c. 94G, § 3(a)(1)(i). Thus, the City cannot entirely prevent ARL from engaging in the cultivation of marijuana and the manufacturing of marijuana products for adult use purposes at the site.

The City can, however, subject any such adult use operations to other reasonable time, place, and manner restrictions. G.L. c. 94G, § 3(a)(1). Further, state law mandates that adult use marijuana establishments enter into HCAs with the municipalities in which they are located, G.L. c. 94G, § 3(d), and state regulations provide that an adult use marijuana establishment’s application for a license to the Cannabis Control Commission (“CCC”) is not complete without an executed adult use HCA. 935 CMR 500.101.

ARL has requested that the City enter into an adult use HCA with it as soon as possible so that it can complete its application with the CCC and begin adult use operations when the city’s temporary moratorium on adult use marijuana establishments is lifted. The proposed adult use

HCA provides that ARL cannot commence any adult use activity at the site until the City's temporary moratorium is no longer in effect and that ARL's adult use operations will be subject to any zoning and licensing requirements in place at that time.

The proposed adult use HCA with ARL is otherwise identical in all material terms to its medical use HCA with the City except that, as is required under state law regarding adult use HCAs, it (1) caps the annual host community payment to the City at three percent of gross revenue; and (2) limits the host community payments to five years, unless the allowable term of host community payments is extended by the legislature. G.L. c. 94G, § 3(d).

I would be grateful if you would approve the proposed adult use HCA, as such approval will expedite approval of ARL's license from the CCC and, ultimately, funding to the City.

Thank you for your consideration.

Sincerely,



Jon Mitchell
Mayor

ADULT USE HOST COMMUNITY AGREEMENT (HCA)

This Agreement (the "Agreement") entered into this ____ day of ____, 2018 by and between the CITY OF NEW BEDFORD, acting by and through its Mayor, with a principal address of 133 William Street, New Bedford, Massachusetts (hereinafter the "City") and ARL Healthcare, Inc., with a principal address of 193 Oak St. Suite 507, Newton, Massachusetts (hereinafter "COMPANY"). The City and COMPANY collectively are referred to as the "Parties."

WHEREAS, COMPANY wishes to locate a facility to operate as a marijuana cultivator and marijuana product manufacturer, as those terms are defined by G. L. c. 94G, at 167 John Vertente Blvd, New Bedford, MA 02745 (hereinafter the "Facility") in the City in accordance with G. L. c. 94G, 935 CMR 500, and all other applicable laws and regulations of the Commonwealth of Massachusetts and those of the City;

WHEREAS, the Parties made and dated a Host Community Agreement October 3, 2016 that is the stipulation of responsibilities regarding use of the Facility for medical marijuana purposes and sales of medical marijuana therefrom pursuant to the regulations of the Department of Public Health ("DPH"), 105 CMR 725 (the "Medical HCA"), said Medical HCA still being in force and effect;

WHEREAS, COMPANY will pay all local taxes attributable to its operation of the Facility, including real estate taxes on the space within which it is located;

WHEREAS, COMPANY desires to be a responsible corporate citizen and contributing member of the business community of the City consistent with the City's "New Bedford Works" policy, and in the event the contingencies noted below are met, intends to provide certain benefits to the City over and above the increased employment base and other typical economic development benefits attributable with similar new manufacturing concerns locating in the City;

WHEREAS, the City has enacted a temporary moratorium on the use of land or structures in the City for adult use marijuana establishments pursuant to G.L. c. 94G and 935 CMR 500 ("the temporary moratorium");

WHEREAS, COMPANY intends to submit an application to the Cannabis Control Commission (the "Commission") for licenses to operate as a marijuana cultivator and marijuana product manufacturer at the Facility pursuant to G. L. c. 94G and 935 CMR 500;

WHEREAS, the Parties acknowledge that the Commission will request certain information from the City as part of the Commission's licensing process for the Facility, and the City will respond promptly to those requests; and

WHEREAS, this Agreement shall constitute the stipulations of responsibilities for the Facility between the host community and COMPANY with respect to adult use marijuana pursuant to G. L. c. 94G, § 3, as amended by Stat. 2017 c. 55, § 25.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below, the parties agree as follows:

1. **Host Community Payment.** In the event that COMPANY obtains final licenses from the Commission to operate the Facility as a marijuana cultivator and marijuana product manufacturer pursuant to G. L. c. 94G and 935 CMR 500 and receives any and all necessary and required permits and licenses from the City, and at the expiration of any final appeal period related thereto said matter not being appealed further, which said permits and/or licenses allow COMPANY to occupy and operate the Facility in the City as a marijuana cultivator and marijuana product manufacturer, then COMPANY agrees:
 - a. For the first year after the issuance of the licenses as called forth above, COMPANY shall make a host community payment in an amount equal to \$25.00 per pound of adult use "Usable Marijuana", as defined by 935 CMR 500.002 (provided that only the weight of marijuana used in a Marijuana Infused Product (MIPs) shall be counted toward this amount), produced at the Facility, as reported to the Commission, or \$50,000.00, whichever is greater (subject to paragraph g.). Said payment shall be in addition to any payments required by the Medical HCA and shall be due on the June 30 following at least 12 months after the issuance of the licenses called for above.
 - b. For the second year after the issuance of the licenses as called forth above, COMPANY shall make a host community payment in an amount equal to \$25.00 per pound of adult use "Usable Marijuana", as defined by 935 CMR 500.002 (provided that only the weight of marijuana used in a Marijuana Infused Product (MIPs) shall be counted toward this amount), produced at the Facility, as reported to the Commission, or \$75,000.00, whichever is greater (subject to paragraph g.). Said payment shall be in addition to any payments required by the Medical HCA and shall be due in two installments to be made on December 31 and June 30 of that fiscal year.
 - c. For the third year after the issuance of the licenses as called forth above, COMPANY shall make a host community payment in an amount equal to \$25.00 per pound of adult use "Usable Marijuana", as defined by 935 CMR 500.002 (provided that only the weight of marijuana used in a Marijuana Infused Product (MIPs) shall be counted toward this amount), produced at the Facility, as reported to the Commission, or \$100,000.00, whichever is greater (subject to paragraph g.). Said payment shall be in addition to any payments required by the Medical HCA and shall be due in two installments to be made on December 31 and June 30 of that fiscal year.
 - d. For each successive fiscal year of the Agreement, payments shall be made as required in paragraph c above, with the minimum payment increased each year by the percentage increase, if any, during the preceding 12 month period beginning July 1, in the Consumer Price Index for all Urban Consumers-Boston SMSA, published by the Bureau of Labor Statistics. In no event shall the minimum payment called for herein be adjusted downward.
 - e. The maximum yearly amount of a payment required herein shall not exceed \$300,000.00. Provided however, that said maximum yearly payment shall increase each year by the percentage increase, if any, during the preceding 12 month period beginning July 1, in the Consumer Price Index for all Urban Consumers-Boston SMSA, published by the Bureau of Labor Statistics. In no event shall the maximum payment called for herein be adjusted downward.

- f. COMPANY shall, at least biannually, provide the City with copies of all reports submitted to the Commission regarding cultivation and production at the Facility.
 - g. In the event that the host community payment exceeds 3% of COMPANY's gross revenues from the sale of adult use marijuana and marijuana infused products from the Facility, then COMPANY's host community payment to the City shall equal 3% of COMPANY's gross revenues from marijuana and marijuana infused products from the Facility.
 - h. The Parties acknowledge that the host community payments provided herein are reasonably related to the costs imposed upon the municipality by the operation of the Facility.
2. **Payments.** COMPANY shall make the payments set forth in Paragraph 1, above, to the City of New Bedford. The parties understand and acknowledge that the City is under no obligation to use the foregoing payments in any particular manner.
3. **Other Payments.** COMPANY anticipates that it will make annual purchases of water, and sewer from all local government agencies. COMPANY will pay any and all fees associated with the local permitting of the Facility.
4. **Re-Opener/Review.** The City will revisit the total amount and allocation noted above every 48 months to ensure that the City's priorities are being met and COMPANY has fulfilled its commitment to City's satisfaction. In no event will the annual payment called forth herein be reduced as a result of this paragraph.
5. **Local Taxes.** Notwithstanding any exempt status as to property taxes, COMPANY agrees that at all times during the term of this Agreement, all local taxes, vehicle excise taxes, and real estate taxes for the property at which the Facility is operated will be paid by COMPANY or any other entity owning said property and in no event will COMPANY or the property owner seek or file for any exemption from paying said taxes.
6. **Community Support.** COMPANY will provide the following indirect support to the City:
 - a. **Local Vendors** — To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, COMPANY will make every effort in a legal and non-discriminatory manner to give priority to local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility. COMPANY shall use good faith efforts to ensure that at least twenty percent (20%) of the vendors and/or contractors utilized by the Facility will be based in the City.
 - b. **Employment/Salaries** - To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, COMPANY shall use good faith efforts to ensure that at least twenty percent (20%) of the employees of the Facility will be City residents.

- c. COMPANY shall provide the City with annual reports indicating the percentages of vendors and employees in accordance with paragraphs (a) and (b) above.
- d. The numbers called forth above are based upon the representations of COMPANY. The parties understand and acknowledge that the percentages listed in the preceding paragraphs (a) and (b) constitute a portion of the consideration for the City entering into the within Agreement. In the event that COMPANY fails to meet the percentages called for herein, the parties shall review the Agreement pursuant to Section 4 herein.

- 7. **Support.** The City agrees to respond to the Commission within 60 days of a request from the Commission and to provide such other information as may be requested by the Commission in connection with COMPANY's applications for licenses at the Facility and cooperate in good faith in the Commission licensing process.
- 8. **Security.** COMPANY shall maintain security at the Facility at least in accordance the security plan presented to the City and approved by DPH, and such further plans that will be presented to the City, the Commission and approved by both. In addition, COMPANY shall at all times comply with all applicable laws and regulations regarding the operations of the Facility and the security thereof. Such compliance shall include, but will not be limited to: coordinating with the City regarding panic alarms; providing hours of operation; after-hours contact information and access to surveillance operations; and requiring dispensary agents to produce their Program ID Card to law enforcement upon request.

COMPANY shall promptly report the discovery of the following to City police within 24 hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.

- 9. **Subject to Zoning and Licensing Approval.** COMPANY agrees that it may not use the Facility for the manufacture or cultivation of marijuana for adult use purposes prior to the expiration of the City's temporary moratorium on the use of land or structures in the City for adult use marijuana establishments pursuant to G.L. c. 94G and 935 CMR 500. Company also agrees that prior to the expiration of the temporary moratorium, it will not apply to the City for any permits to use the Facility for the manufacture or cultivation of marijuana for adult use purposes. COMPANY further agrees that its ability to use the Facility for the manufacture or cultivation of marijuana for adult use purposes shall be subject to COMPANY obtaining any zoning and/or licensing approvals from the City that are required for marijuana establishments upon the expiration of the temporary moratorium.

10. **Term and Termination.** This Agreement shall take effect on the day above written, subject to the contingencies noted herein and shall expire if the COMPANY ceases to do business in the City or in any way loses or has its license revoked by the Commonwealth or on the date that the COMPANY makes its final host community payment to the City for its fifth year of operations (the "Termination Date"), unless the allowable term of host community agreement payments in G.L. c. 94G, §3(d) shall be extended by the Legislature in which case this Agreement shall remain in full force and effect. Within 120 days of the Termination Date, the Parties shall begin negotiations in good faith to extend the Agreement.
11. **Approvals.** The parties understand and acknowledge that the within agreement is subject to the approval of the New Bedford City Council and all rights and responsibilities contained herein are subject thereto.
12. **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Massachusetts and venue for any dispute hereunder shall be in the courts of Bristol County.
13. **Amendments/Waiver.** Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.
14. **Severability.** If any term or condition of the Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
15. **Successors/Assigns.** This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the City nor COMPANY shall assign or transfer any interest in the Agreement without the written consent of the other.
16. **Entire Agreement.** This Agreement constitutes the entire integrated agreement between the parties with respect to the matters described. The Agreement may be signed in counterparts.
17. **Notices.** Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To City: Mayor, City of New Bedford
133 William Street
New Bedford, MA 02740
(508) 979-1410
Fax: (508) 961-3078

With a copy to: City Solicitor, City of New Bedford

To Licensee: ARL Healthcare, Inc.
193 Oak St. Suite 507
Newton, MA 02464

With a copy to: Kevin Conroy
Foley Hoag, LLP
155 Seaport Blvd
Boston, MA 02210

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if next business day delivery is required, (c) upon the date personal delivery is made, or (d) upon the date when it is sent by facsimile, if the sender receives a facsimile report confirming such delivery has been successful and the sender mails a copy of such notice to the other party by U.S. first-class mail on such date.

In witness whereof, the parties have hereafter set faith their hand as of the date first above written.

CITY OF NEW BEDFORD

ARL HEALTHCARE, INC.

By: Jonathan F. Mitchell
Mayor

By: Kenneth Housman
President

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

May , 2018

On this day of October , before me, the undersigned Notary Public, personally appeared the above-named Jonathan F. Mitchell, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized Mayor of the City of New Bedford.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

May , 2018

On this 3rd day of October, before me, the undersigned Notary Public, personally appeared the above-named Kenneth Housman, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized President of ARL Healthcare, Inc.

Notary Public
My Commission Expires: _____