



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 5, 2019

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

Dear Council President Morad and Honorable Members of the Council:

I write to inform the City Council that my Administration has negotiated a Host Community Agreement with Tree Beard, Incorporated.

The company is currently seeking a license from the Massachusetts Cannabis Control Commission to operate a recreational marijuana dispensary at 1 Nauset Street. Under the Agreement substantial benefits will be provided to the City and to the residents of New Bedford. These are summarized below:

Payments

An initial payment of \$25,000 upon opening of the facility and a total payment of 3% of gross retail sales revenue per year of operation.

Annual charitable contributions of \$50,000 or 1½% of gross retail sales, whichever is greater, to New Bedford-based organizations that deliver substance abuse prevention and education programs in the City's public-school district.

In any year in which gross sales reach \$2,500,000, an additional charitable contribution of \$50,000 is made. Should gross sales reach \$5,000,000, the additional charitable contribution is \$100,000.

Safety

The company must coordinate with the New Bedford Police Department on security planning, security camera installation, and other safety measures. The company must meet with police on a regular basis for a review of operations.

Employment

The company must, to the extent legally permissible, give priority to qualified residents of the City for employment at the facility. Applicants must do their best to comply with the *New Bedford Works* policy.

Taxes

The company will pay all real estate and personal property taxes on the facility.

Signage

Ground mounted, pylon, internally lit and/or flashing and off-premises signs are not allowed. Wall signs are limited in size to be smaller. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street.

While a Host Community Agreement is an important milestone towards the operation of a recreational marijuana dispensary in the City, it is important to also note that many steps remain before such a facility opens.

Applicants must complete the Cannabis Control Commission application process and receive a provisional license. Once in possession of a provisional license, applicants must all obtain the required City approvals for their facilities. In this instance, approvals will include a Special Permit from the Planning Board, compliance with Board of Health regulations, and a license from the City Licensing Board.

In sum, for the proposed facility to become a reality in New Bedford several outstanding issues remain in need of attention. That said, I have undertaken all the actions available to me as Mayor under Massachusetts law to advance the proposal while ensuring that the City's interests are served.

I ask for the City Council's support for the attached Agreement so that together we can secure these benefits for New Bedford residents and businesses. Thank you for your consideration on this important matter.

Sincerely,



Jon Mitchell
Mayor

Attachment

CITY OF NEW BEDFORD
TREE BEARD INC., HOST COMMUNITY AGREEMENT FOR THE SITING OF A
RECREATIONAL MARIJUANA ESTABLISHMENT
IN THE CITY OF NEW BEDFORD

This Host Community Agreement (the "**Agreement**") is entered into this 4th day of September, 2019 (the "**Effective Date**") by and between the City of New Bedford, a Massachusetts municipal corporation acting by and through its Mayor, with a business address of 133 William Street, New Bedford, MA 02740 (the "**City**") and Tree Beard, Inc., a Massachusetts business entity with a business address of 319A Union Street, New Bedford, MA 02740 (the "**Company**") (City and Company, collectively the "**Parties**").

RECITALS

WHEREAS, the Company desires to locate a Recreational Marijuana Establishment ("**RME**") at 1 Nauset Street, New Bedford, MA 02746 MA (hereinafter the "**Facility**"), for the operation of a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter in accordance with the laws of the Commonwealth of Massachusetts ("**MA Law**") and those of the City ("**Local Law**");

WHEREAS, the Company desires to provide community impact fee payments to the City pursuant to M.G.L. c. 94G, § 3(d) in order to address any reasonable costs imposed upon the City by Company's operations in the City;

WHEREAS, the Company desires to be a responsible corporate citizen in the City through its community outreach efforts and will aid in education and treatment programs designed to deliver substance abuse prevention and education in the City's public school district; and

WHEREAS, the City supports the Company's intention to operate an RME at the Facility with licenses to operate as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter.

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:

AGREEMENT

1. Host Community Payments.

RME Related Payments. If the Company obtains final licenses, or their equivalent, for the operation of a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter at the Facility from the Cannabis Control Commission ("**CCC**"), and receives all necessary approvals from the City to operate a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter at the Facility, then the Company agrees to the following:

- i. The Company shall provide written notice to the City at least thirty (30) days in advance of the anticipated opening date of the Facility, and thereafter shall provide written notice to the City of the actual date of its first sale from the Facility (hereinafter the “**Sales Commencement Date**”).
- ii. The Company shall make a minimum of two annual payments to the City in the total amount of three percent (3%) of the gross sales of recreational marijuana at the Facility (the “**RME Payment**”).
- iii. The Company will make a one-time payment to the City in the sum of twenty-five thousand dollars (\$25,000) upon the Sales Commencement Date, and the initial RME Payment, less the aforementioned one-time payment of twenty-five thousand dollars (\$25,000), regarding the first twelve months of operations, shall be due on the first day of the fourteenth (14th) month following the Sales Commencement Date.
- iv. Subsequent RME Payments shall be made in two installments, one in month 7 of the agreement year to reflect the first six months of sales of that year, and the second reflecting the balance of sales payable within 60 days after the end of the year. For the purposes of this agreement, a year shall be the annual twelve (12) month period starting at the anniversary of the Sales Commencement Date.
- v. The term “gross sales” previously referenced shall mean the total of all retail sales of recreational marijuana transactions by the Company at the Facility and shall include the sale of adult-use marijuana, marijuana infused products, and any other products containing marijuana sold at the facility. The term shall not apply to sales between related business entities provided the company has informed the City of said relationship.
- vi. In the event that the Company enters into an HCA with another City in the Commonwealth of Massachusetts that contains financial terms more favorable than the financial term contained in this Agreement, then the Parties agree that this Agreement shall be amended so as to result in its financial terms being equally favorable to the City as those contained in the other City’s HCA. The Company represents and warrants to the City that it is not presently under an HCA with another Massachusetts City providing more favorable financial terms.

2. Term and Termination. The Term of this Agreement shall be five (5) years from the Effective Date (the “**Term**”), provided however Section 1 of this Agreement shall survive until the fifth annual RME Payment has been remitted to the City. In the event the Company loses or has its license(s), approvals, and/or permits to operate in the City revoked by the CCC or the City, this Agreement shall become null and void and all payments must be made. The Parties shall meet on the third year from the date of signing to review the terms of the HCA in good faith for compliance to MA Law and to see if any term amendments are required including, an increase of the community impact fee payments based on equitable principles and actual gross sales. Prior to the end of the Term, the Parties shall negotiate in good faith and unless prohibited

by Massachusetts General Law, a successor agreement, including an extension of the Payments called for herein.

If the Parties are unable to reach an agreement on a successor Agreement before the conclusion of the five (5) year term, the Annual Community Impact Fee shall be set at the average fee paid by Company over the previous three (3) years until such time as the Parties negotiate a successor Community Impact Fee.

3. Payments. The Company shall make the payments to the City as set forth in Section 1 of this Agreement. The Company acknowledges that the impacts of its operation may be impracticable to ascertain and assess as unique impacts may result in budgetary increases, though not separately identified; consequently, the Company acknowledges that the Payments due under this Agreement are reasonably related to Municipal impacts.

4. Failure to Remit Payments. The Parties acknowledge the Payments are expressly included as "other municipal charges" pursuant to G.L. c. 40, § 57. A City of New Bedford licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company's name appears on a list furnished to the licensing authority from the City Treasurer of individuals delinquent on their taxes and/or other municipal charges.

5. Acknowledgements. The City understands and acknowledges that payments due pursuant to this Agreement are contingent upon the Company's receipt of all state and local approvals required to operate a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter in the City.

6. Review. If under applicable Massachusetts law the terms relating to payment under this Agreement are determined to any extent to be illegal, otherwise invalid, or incapable of being enforced, which unenforceability would materially and adversely affect the economic substance of the transactions contemplated by this Agreement, the City and the Company shall negotiate, in good faith and in accordance to MA Law. Provided, however, any amendments to this Agreement shall result in neutral economic impact to the City.

7. Local Taxes. At all times during the Term of this Agreement, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord, and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property. Company shall pay all sales taxes, if applicable, when due. Company reserves the right to contest only the amount of any local real and personal property taxes assessed.

8. Other Payments. The Company shall pay any and all fees associated with its annual purchases of utility services from all local government agencies. The Company will pay any and all municipal fees associated with the local permitting and licensing of the Marijuana Establishment.

The Company shall reimburse the City for any and all reasonable and customary consulting costs and fees related to any land use applications concerning the Facility, negotiation of this and any other related agreements, and review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility. Said costs shall not involve work performed by City employees.

The Company shall reimburse the City for the actual outside costs incurred by the City in connection with holding public meetings not held in public buildings and forums not within the City's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. The Company shall also reimburse the City for costs incurred reviewing the proposed Facility applications and related equipment and systems and for any reasonable and customary consulting costs and fees.

The Company acknowledges that time is of the essence with respect to their timely payments of all funds required by this Host Community Agreement. If any such payments are not fully made within ten (10) business days of the date written demand has been received, the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of that payment in addition to the required payment.

9. Annual Charitable/Non-Profit Contributions. The Company, in addition to any funds otherwise specified herein, agrees to make an annual contribution of \$50,000.00 or 1½ % of the establishment's gross sales, whichever is greater, in charitable donations per year to New Bedford based organizations that deliver substance abuse prevention and education programs in the City's public school district. The first \$25,000.00 portion of the payment for the first year of operation shall be paid on the facility's opening date and the remaining balance must be made within 12 months of opening. Company shall submit annual reports to the City indicating payments made under this provision. In any year where the Company reaches gross sales of \$2,500,000.00, the Company shall make an additional charitable contribution of \$50,000.00 and in a year where the Company reaches \$5,000,000.00 in gross sales, the Company shall make an additional charitable contribution of \$100,000.00 Any charitable payment will not reduce the Community Impact Fee amount nor is it considered a payment in response to a community impact.

10. Accounting and Review. The Company shall submit with each payment to the City under this Agreement, both a certification of the accurate payment amount and the gross sales during the time period the payment represents. The City shall have the right to inspect the Company's financial records it is required to submit to the CCC, including, but not limited to the Metrc seed to sale tracking system. for the time period the payment to the City under this Agreement represents. The Company shall maintain its books, financial records and other compilations of data pertinent to the requirements of this Agreement in accordance with standard accounting practices and the regulations or guidelines of the CCC. All records shall be retained for a period of at least seven (7) years.

So long as this Agreement is in effect and for a period of three (3) years thereafter, the City shall have the right to examine audit and copy any portion(s) of Company's books and financial

records, including but not limited to all sales transaction records, to determine the accuracy of the Payments. Examinations may be made upon not less than thirty (30) days prior written notice from the City and shall occur only during normal business hours at such place where said books and financial records are maintained. The City's examination, copying or audit, as aforesaid, shall be conducted in such manner as to not interfere with Company's normal business activities.

In the Event that the Parties disagree as to the accuracy of the certification of the Company's annual sales, the City may conduct an audit of such sales at the expense of the Company. The City shall first notify the Company of any proposed inaccuracy and the Company shall have thirty days to respond prior to the City conducting an audit. If, after such audit and re-computation, an additional fee or payment is owed to the City, a penalty of five percent (5%) or five thousand dollars (\$5,000), whichever is greater, will be immediately due in addition to any amounts owed.

11. Additional Obligations.

a. Local Vendors – to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility.

b. Employment – except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the City as employees of the Facility. Company shall use its best efforts to comply with the New Bedford Works policy, the terms of which are incorporated herein.

c. The Company shall, at least annually, provide the City with copies of all reports submitted to the CCC regarding the Company's operations in the City.

d. The Company will work cooperatively with all necessary municipal departments, boards, commissions, and agencies to ensure that the Company's operations are compliant with the City's codes, rules, and regulations.

e. The Company will comply with the City's non-discrimination ordinance in hiring, transacting business and entering into contracts and will seek to hire employees and engage in contracts with a preference for diversity and supporting minority and women-owned businesses.

f. The facility shall be designed, constructed, renovated, or improved to reflect high quality construction standards and seek to improve the general design aesthetic of the neighborhood. The facility shall, at a minimum, reflect the following:

- i. Facade Variation: For all development and redevelopment involving new construction, the massing, façades, and roof configuration of a building shall be varied via constructed or two-dimensional means. If a building façade is more than 50 feet in length, it shall

- include a minimum of 10 feet of variation in the building footprint (set-back or projection in the building wall) for every 50 feet of façade length, and related changes in the roofline in order to reduce the apparent mass of the building.
- ii. **Building Materials**: Use high quality, traditional materials that weather naturally on the exterior of the building to reflect regional building traditions. Alternatively, incorporate low-reflective, neutral, and earth tones to retain the subtle character of the region's traditional materials. In areas not visible from regional roadways or distinctive community districts, use of nontraditional materials, forms, and site designs may be appropriate. In such areas, maintenance of adequate landscape buffers on the subject property shall be required to ensure that the proposed development is screened from view. Metal and vinyl siding are prohibited.
 - iii. **Historic Buildings**: For all projects located in historic buildings, design guidelines of the Bedford Landing 40C district shall apply.
 - iv. **Temporary Signage**: The only temporary signage allowed shall be banner signage bearing the company logo, no greater than 25 SF, at a designated adults-only City permitted special event and may only remain up for no longer than three days.
 - v. **On-Site Signage**: Ground mounted, pylon, internally lit and/or flashing signs shall not be permitted. Wall signs shall be limited in size to be read at a pedestrian scale. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street. When more than one sign is used, the graphics shall be coordinated to present a unified image. All signage shall, at a minimum, be subject to requirements of New Bedford Code of Ordinances S. 3200 and Cannabis Control Commission. In the event of any conflict between said requirements and this Agreement, the more restrictive requirement shall prevail. Logos shall be tasteful and ambiguous in nature. All proposed signage (Wall, ground, blade, or otherwise) is subject to administrative approval by the Planning department.
 - vi. **Off-Premises Signage**: The Company agrees that neither it nor its agents will erect, place or otherwise establish any off-premises sign, other than the temporary signage permitted herein.
 - vii. **Lighting**: Site lighting and window displays shall be tasteful and conform with dark sky guidelines. No up lights, flashing or colored LED lights allowed on the premises. A photometric lighting plan is required under site plan review and shall not be waived.
 - viii. **Site Landscaping**: Use substantial landscape buffers to screen new development. Loading areas should be sited outside primary visual corridors or shielded from view by separate structures, projecting building wings, or distinctive landscaping and fencing. Outdoor storage of any kind is prohibited.
 - ix. **Parking**: Ample parking shall be provided via an engineered site plan filed under Site Plan Review. Parking plan must be peer reviewed for traffic implications via an

engineered traffic study at the Special Permit approval stage. A transportation management plan will also be required for all Companies which addresses anticipated peak traffic during grand opening and holidays.

- x. To the fullest extent practicable, the facility's power supply shall use renewable power sources.

12. Community Health Impact Assessment. Prior to the Sales Commencement Date, the Company must conduct a Health Impact Assessment (HIA) for the neighborhood of their proposed location. The HIA must be conducted by a firm approved by the City Health Department and undertaken in cooperation with the Board of Health. The HIA may utilize the most recent Community Health Needs Assessment (CHNA) prepared by Southcoast Hospitals Group as a baseline but every effort shall be made to make the assessment as site specific as possible with no greater a radius than one mile of the site. The HIA must include at least two community meetings regarding the proposed operation with notice to the neighborhood and conducted in a City location as close as possible to the proposed site. The Company is responsible for all costs associated with the community meetings and the HIA. The Company must make every effort to incorporate the recommendations of the Board of Health in the operations plan for the Facility.

13. Support. The City agrees to submit to the CCC all documentation and information required by the CCC from the City for the Company to obtain approval to operate. The City agrees to support Company's application(s) with the CCC but makes no representation or promise that it will act on any other license or permit request in any way other than in the City's normal and regular course of conduct in accordance with the applicable laws, codes, rules, and regulations.

14. Local Authority. This Agreement does not waive, limit, control, govern or in any way describe the legal authority of any Municipal board, commission, committee, officer or official to regulate, authorize, restrict, inspect, investigate, enforce against, or issue, deny, suspend or revoke any permit, license or other approval with respect to the Company or the premises on which the Company will operate; nor does it waive, limit, control, govern or in any way describe the legal authority of the New Bedford Police Department to investigate, prevent or take action against any criminal activity with respect to the Company or, the premises on which the Company will operate.

15. On-site Consumption. The Company agrees that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana-infused products at the Facility except for quality control conducted in accordance to the Company's strict policies and procedures including employee training, testing protocols, dosage requirements and diversion prevention.

16. Security. The Company shall maintain security at the Facility in accordance with a security plan approved by the CCC and the City. In addition, the Company shall comply with MA Law and Local Law regarding security of the Facility. At a minimum, the Company shall:

- i. Provide a security plan to be reviewed and approved by the Chief of Police annually. The Company shall present all proposed amendments to the security plan to the Chief of Police for prior approval.
- ii. Engage in periodic meetings with the Police Department to review operational concerns or other issues and shall promptly report the discovery of the following to City police within twenty-four (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, distribution, and delivery 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.
- iii. Site interior and exterior security cameras in coordination with the Police Department and provide unimpeded access to all security camera feeds to the Police Department.
- iv. Comply with all the CCC's requirements regarding Criminal Offender Record Information (CORI) review for any new manager hired and the Police Chief shall review and approve, within thirty days of receiving said CORI report, whether the individual is suitable to hold the position, such approval not to be unreasonably denied, conditioned, or delayed.
- v. Refuse to complete a transaction to any customer if the customer appears to be under the influence of drugs or alcohol.
- vi. Verify the legal age of all customer using a government-issued identification prior to the customer being admitted into the facility and again prior to the completion of a transaction. Company must utilize electronic identification verification measures when possible.

17. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the currently applicable laws of the Commonwealth of Massachusetts, without regard to the principals of conflicts of law thereof. The parties hereto expressly understand and agree that said law may change and place each party in a different financial position and have chosen to enter into this Agreement taking such possible change into account. The Parties expressly waive any defense to enforcement based upon nonconformance with federal law regarding the illegality of marijuana.

18. 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 Parties, prior to the effective date of the amendment.

19. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby with the exception of any term or condition regarding payment; provided that in the event that any term or condition regarding the payment of fees or annual charitable contributions shall be held invalid, illegal or unenforceable by a court of competent jurisdiction or the Cannabis Control Commission, this Agreement shall cease. To the extent the validity of this Agreement is challenged by the Company in a court of competent jurisdiction, and the validity of this Agreement is upheld, the Company shall be required to pay for any fees and costs incurred by the City in enforcing this Agreement.

20. Successors/Assigns. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. The City shall not assign or transfer any interest or obligations in this Agreement without the prior written consent of the Company, which shall not be unreasonably delayed, conditioned, or withheld. The Company shall not assign or transfer any interest or obligation in this Agreement without the prior written consent of the City, which shall not be unreasonably delayed, conditioned, or withheld.

Events deemed an assignment include, without limitation: final and adjudicated bankruptcy whether voluntary or involuntary; takeover or merger by or with any other entity; outright sale of assets and equity, majority stock sale to another organization or entity for which the Company does not maintain a controlling equity interest; or any other change in ownership; and/or any other assignment not approved in advance in writing by the City.

21. Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto.

22. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To the City:

City of New Bedford
Office of City Solicitor
133 William Street
New Bedford, MA 02740

To the Company:

Tree Beard Inc.
Attn: Nicholas A. Gomes, Esquire
319A Union Street
New Bedford, MA 02740

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, or (c) upon the date personal delivery is made before 1:00p.m..

23. No Joint Venture. The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City, or the City and any other successor, affiliate or corporate entity, as joint ventures or partners with the Company.

24. Indemnification. Upon the Effective Date, the Company shall defend, indemnify, and hold harmless the City, its officers, employees, and agents ("Indemnified Parties") against any claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits against or involving the Indemnified Parties, including reasonable attorneys' fees, reasonable experts' fees, and associated court costs ("Liabilities") that arise from or relate in any way to the Company's violation of this Agreement and/or any Massachusetts law or regulation governing medical marijuana and/or non-medical marijuana. This indemnification shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. If any action or proceeding is brought against the City arising out of any occurrence described in this section, upon notice from the City, the Company shall, at its expense, defend such action or proceeding using legal counsel approved by the City, provided that no such action or proceeding shall be settled without the approval of the City.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Host Community Agreement on the date set forth above.

FOR CITY OF NEW BEDFORD:

FOR TREE BEARD INC:

Signature

Nicholas A. Gomes
Signature

Jonathan Mitchell
Mayor of New Bedford

Nicholas A. Gomes, Esquire
Chief Legal Officer (duly authorized)

Date

9/4/2019
Date