

From: [Susan Zuscak](#)
To: [Forsberg, Kristen](#)
Subject: FW: Public Records Request Douglas Moset 03.05.19
Date: Wednesday, March 20, 2019 2:00:00 PM
Attachments: [Cultivate Rec MJ Host Agreement SIGNED 4-2-18 .pdf](#)

From: Genereux, David <genereuxd@leicesterma.org>
Sent: Tuesday, March 5, 2019 1:46 PM
To: 'douglas.moser@nbcuni.com' <douglas.moser@nbcuni.com>
Cc: Davis, Debbie <Davisd@leicesterma.org>; Forsberg, Kristen <forsbergk@leicesterma.org>
Subject: Public Records Request

Dear Mr. Moser,

Attached is the executed host community agreement with Cultivate, as requested.

Regards,

David A. Genereux

David A. Genereux
Town Administrator
Town of Leicester
3 Washburn Square
Leicester, MA 01524
Telephone: (508) 892-7000
Fax: (508) 892-7070
Email: genereuxd@leicesterma.org

“Please remember that the Secretary of State has determined that email is a public record”

**TOWN OF LEICESTER
AND
CULTIVATE HOLDINGS LLC**

**HOST COMMUNITY AGREEMENT
FOR THE SITING OF AN ADULT-USE MARIJUANA ESTABLISHMENT
IN THE TOWN OF LEICESTER**

This Host Community Agreement (“Agreement”) is entered into pursuant to M.G.L. 94G, § 3(5)(d) this 2nd day of April, 2018 by and between **Cultivate Holdings LLC (f/k/a Natural Healthcare, Inc.)** (the “**Operator**”) a Massachusetts limited liability company, currently located at 1764 Main Street Leicester, MA (the “**Property**”) and the **Town of Leicester**, a Massachusetts municipal corporation with a principal address of 3 Washburn Square, Leicester, MA 01524 (the “**Town**”).

WHEREAS, On November 8, 2016 Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for adult use through Chapter 334 of the Acts of 2016, an Act for The Regulation and Taxation of Marijuana; and

WHEREAS, On July 28, 2017, Governor Baker signed the General Court’s revised law on the subject, “An Act to Ensure Safe Access to Marijuana” adopted as Chapter 55 of the Acts of 2017 (the “**Act**”); and

WHEREAS, Massachusetts, acting through the Cannabis Control Commission (the “**CCC**”) implemented regulatory framework for the regulation of adult use of marijuana establishments through 935 CMR 500.000 *et. seq.* (the “**CCC Regulations**”); and

WHEREAS, A “Marijuana Establishment” as defined in the CCC Regulations, means a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center; and

WHEREAS, Operator wishes to locate and operate a “Marijuana Establishment”, meaning specifically, a Marijuana Retailer, Marijuana Product Manufacturer, and Marijuana Cultivator (collectively, the Marijuana Retailer, Marijuana Product Manufacturer and Marijuana Cultivator shall be hereinafter referred to as the “**Facility**”) at the Property in accordance with CCC Regulations and such approvals as may be issued by the Town in accordance with its Zoning Bylaw and other applicable regulations in effect at the time the Operator files its application with the CCC; and

WHEREAS, Operator currently operates a compliant Medical Marijuana Treatment Center at the Property pursuant to an approval from the Massachusetts Department of Public Health

("DPH") pursuant to 105 CMR 725.00, dated November 24, 2017 and in compliance with the Host Community Agreement for the Siting of A Medical Marijuana Treatment Center in the Town of Leicester, dated December 19, 2016, by and between Operator and Town; and

WHEREAS, Operator will satisfy the purpose and intent of the voters and the Act by providing marijuana for adult use, educational materials and related products to citizens of the Town and throughout the Commonwealth of Massachusetts; and

WHEREAS, Operator intends to provide certain benefits to the Town upon receipt of CCC licensure to operate a Facility in Town and all required local approvals to do so; and

WHEREAS, notwithstanding the anticipated benefits to certain members of the community, the Operator and the Town agree that the Facility will impact Town resources in ways unique to the business of the Facility and will draw upon Town resources such as Town's road system, law enforcement, fire protection services, inspectional and permitting services, public health services in a manner not shared by the general population and may cause additional unforeseen impacts upon the Town; and

WHEREAS, Massachusetts General Laws chapter 94G, § 5 (d) states "that a marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center. An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; provided, said impact fee shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years.

NOW, THEREFORE, in consideration of the above and the mutually agreed promises contained herein, the Operator and the Town agree as follows:

1. **Compliance**: Operator and Town shall comply with all applicable provisions of M.G.L. c. 94G, as affected by Chapter 55 of the Acts of 2017 and the CCC Regulations as the same may be amended from time to time; and the Leicester General Bylaws, Zoning Bylaws and all laws, rules, regulations and orders applicable to the operation of a Marijuana Establishment in the Town, such provisions being incorporated herein by reference, and Operator shall be responsible for obtaining all necessary licenses, permits, and approvals required for the operation of a Marijuana Establishment.
2. **Community Impact Fee**: Operator shall pay a community impact fee as required by M.G.L. c. 94G, § 5 (d) (the "**Impact Fee**") in the amounts and under the terms provided herein. The

Operator shall furnish the Town with annual Profit and Loss Statements, as soon as they become available, reflecting Gross Annual Revenues (as defined herein) figures for the adult use Marijuana Retailer portion of the Facility located within the Town. Additionally, the Operator shall provide the Town with copies of all of its periodic financial filings with agencies of the Commonwealth documenting Gross Annual Revenues.

3. Application of Impact Fee: The Operator acknowledges and agrees that the Town is under no obligation to use the Impact Fee payments made hereunder in any particular manner and that the payments are classified as General Fund under M.G.L. c. 44, § 53.
4. Calculation of Impact Fee Payments: Subject to adjustment or modification as set forth in this Agreement, Operator shall pay to the Town 3.00% of the Operator's Gross Annual Revenues as the Impact Fee; provided, that the total amount paid per year shall not be less than Seventy-Five Thousand and 00/100 Dollars (\$75,000.00)(the "**Minimum Annual Payment**"); and shall not exceed Two-Hundred and Fifty Thousand and 00/100 Dollars (\$250,000) (the "**Maximum Annual Payment**").
5. Dates of Payment: The Minimum Annual Payment for the first year shall be due and payable upon the first day of the third month following the commencement of adult use Marijuana Retail sales in the Town (the "**Sales Commencement Date**"). It shall be made in a separate payment to the Town and shall be used by the Town for economic development and recreational programs. Future payments of the minimum annual payment shall be made on the anniversary of the sales commencement date. Any payments due over the balances of the impact fee (if any) shall be made on the anniversary of the sales commencement date. The Balance of the first years Impact Fee (if any), and the entire Impact Fee in successive years shall be made once annually as of the last day of the month prior to the anniversary of the Sales Commencement date, and no later than thirty (30) days following the anniversary of the Sales Commencement Date, through the earlier of either the end of the fifth year of operation following the Sales Commencement Date; or the maximum time permitted under M.G.L. c. 94G, § 3(5)(d) (each an "**Annual Payment**" and collectively the "**Annual Payments**"). The Operator shall notify the Town in writing when the Operator commences sales within the Town.
6. Gross Annual Revenues: The term "**Gross Annual Revenues**" shall mean the grand total of all of the Operator's sales of marijuana for adult use at the Facility, less promotional discounts on products offered to customers, to the extent that such discounts or products are permitted by law or the CCC Regulations, but shall not include non-marijuana sales, sales of medical marijuana or medical marijuana products, or the sale of marijuana to other Marijuana Establishments or Registered Marijuana Dispensaries.
7. Amendment of Impact Fee Payment Date: At the option of the Operator, the payment date may be amended once, by written request, to align with the Operator's fiscal year or quarterly tax filing obligations for ease of administration, but such amendment shall not change the total amount due.

8. Annual Review of Impact Fee: Notwithstanding anything to the contrary herein, every year after the Sales Commencement Date the Town and Operator shall jointly review the Impact Fee and may increase or decrease the Annual Payment (as the case may be) but in no event shall the Annual Payment exceed three percent (3%) of the Operator's Gross Annual Revenues.
9. Monitoring of Community Impacts: The Operator shall evaluate and monitor crime statistics, fire protection services, public health statistics including but not limited to marijuana usage in the Leicester High School, inspectional services and permitting services in conjunction with and with the reasonable cooperation of the appropriate municipal office before and after the Sales Commencement Date and shall provide this information to the Town. The Operator and the Town agree that any increase or decrease in the Impact Fee shall be based on the escalation of the aforementioned services in the area immediately surrounding the Facility, at a rate in excess of Town-wide escalation, unless mutually agreed upon by the Operator and the Town.
10. Filings with the Commonwealth: The Operator shall furnish the Town with the annual reports of the Gross Annual Revenue as described in Section 6, as soon as they become available, reflecting Gross Annual Revenue figures for the Facility and shall provide the Town with all copies of its periodic financial filings to the CCC and/or to the Massachusetts Department of Revenue documenting the Operator's Gross Annual Revenues, and shall furnish copies of its filings to the Secretary of the Commonwealth's Corporations Division, and if any, to the Massachusetts Office of the Attorney General.
11. Term: The term of this Agreement is five years, terminating on the fifth anniversary of the Sales Commencement Date, unless sooner terminated by:
 - a. revocation of Operator's license by the CCC; or
 - b. Operator's voluntary or involuntary cessation of operations; or
 - c. the Town's termination of this Agreement for breach of the conditions contained herein that remain uncured sixty (60) days from the date of written notice of such breach.
12. Renegotiation/Applicability: To the extent permitted by law: (a) the terms of this Agreement shall be renegotiated by the Owner and the Town in good faith following five (5) years of continuous operation of the Facility; and (b) the terms of this Agreement shall continue in full force and effect unless the parties reach accord on a subsequent agreement provided, however, that in no event shall the Operator be permitted to continue to operate the Facility after termination as set forth in Paragraph 11 above.
13. Property Valuation/Taxation: Operator shall not object or otherwise challenge the taxability of such property and shall not seek a non-profit exemption from paying such taxes and that, notwithstanding the foregoing, if:

- a. any real or personal property owned or operated by OPERATOR is determined to be non-taxable or partially non-taxable, or
- b. the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at full value, or
- c. OPERATOR is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then

OPERATOR shall pay to the TOWN an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at full assessed value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to the Impact Fee made by OPERATOR under this Agreement. The Operator shall not request any tax credits or subsidy from the Town for the Facility including, but not limited to, any request for a tax exemption or abatement as a non-profit entity and shall not object or otherwise challenge the taxability of its entity and shall not object or otherwise challenge the taxability of the Facility.

14. Impact Fee as Compensatory: The Impact Fee referenced herein shall be compensatory to the Town for all impacts of the Operator's operation of the Facility in the Town, including all reasonable indirect costs. Nothing herein shall be construed to exempt the Facility from payment of local, state and federal taxes.
15. Local Hiring: To the extent permissible by law, Operator will make jobs available to local, qualified residents; and such residency will be a positive factor in hiring decisions, but this does not prevent Operator from hiring the most qualified candidates and complying with all employment laws and other legal requirements. In addition to the direct hiring, Operator will work in a good faith, legal and non-discriminatory manner to similarly consider local status of vendors, suppliers, contractors and builders from the Town area to be a positive factor in retaining such vendors.
16. Approval of On-Site Manager: If requested by the Town, Operator shall provide to the Town, for review and approval, the information set forth in 935 CMR 500.101(1)(b), of the person proposed to act as on-site manager of the Facility, which submittal shall include authorization to perform a criminal history (CORI) check. Within thirty (30) days of its receipt of the information set forth in 935 CMR.500.101(1)(b), the Town shall, in consultation with the Police Chief determine whether the person proposed is of suitable character to act as on-site manager. Such approval shall not be unreasonably denied, conditioned or delayed. Said approval shall be considered unreasonably denied if the Town denies such approval and the CCC has approved said on-site manager pursuant to the Regulations. Notwithstanding the foregoing, if Town does not provide confirmation or rejection of the proposed on-site manager within thirty (30) days, that on-site manager of the Facility shall be deemed approved by Town. This approval process shall also apply to any change of on-site manager. The current on-site manager is Samuel Barber, and he shall be approved as part of this Agreement.

17. Prevention of Diversion: To the extent requested by the Town's Police Department, and consistent with the Regulations, Operator shall work with the Town's Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the Sales Commencement Date. Such plan will include, but is not limited to, (i) training Facility employees to be aware of, observe, and report any unusual behavior in customers or Facility employees that may indicate the potential for diversion; (ii) strictly adhering to CCC Regulations as to certification amounts and time periods; (iii) rigorous customer identification and verification procedures required by the CCC; (iv) utilizing seed-to-sale tracking software to closely track all inventory at the Facility; and (v) refusing to complete a transaction if the patient or caregiver appears to be under the influence of drugs or alcohol.
18. Security: To the extent requested by the Town's Police Department and Fire Department, and consistent with the Regulations, Operator shall work with the Town's Police Department and the Town's Fire Department to determine the placement of interior and exterior security cameras, so that at least two cameras are located to provide an unobstructed view in each direction of the public way(s) on which the Facility is located. Operator will maintain a cooperative relationship with the Police Department and the Fire Department, including but not limited to periodic meetings to review operational concerns, cooperation in investigations, and communication to Police Department of any suspicious activities on or in the immediate vicinity of the site. Such camera(s) may be altered by the CCC during their security and architectural review process.
19. Attendants: If the Leicester Police Chief deems it necessary, Operator shall employ: (i) a parking lot attendant during the Police Chief's prescribed hours to ensure safe traffic flow to and from the Premises until the Police Chief deems such attention is not needed; and (ii) a police detail to ensure safe traffic flow to and from the Premises during the Police Chief's prescribed hours, until the Police Chief deems such attention is not needed.
20. Registration and Approvals Required: The obligations of Operator and the Town recited herein are specifically contingent upon the obtaining of a Certificate of Registration for the operation of an adult use Marijuana Establishment from the CCC to operate in Town, and contingent upon all necessary local permits and approvals required, which are consistent with M.G. L. c. 94G, Section 5 and in effect as of the date specifically required by said section.
21. On-Site Consumption: The on-site consumption of marijuana products shall be prohibited.
22. Cooperation: Operator shall work cooperatively and in good faith with the Town in securing the prompt and efficient siting, planning, permitting and preparation for opening of the Facility. Furthermore, Town shall recognize Operator's Existing RMD License Priority Applicant status under 935 CMR 500.101 (2). This Agreement does not affect, limit, or control the authority of Town boards, commissions and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws of the Town, or

applicable regulations of those boards, commissions, and departments, or to enforce said statutes, Bylaws, and regulations. The Town, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for the Facility to operate in the Town, or to refrain from enforcement action against the Operator and/or its Facility for violation of the terms of said permits and approvals or said statutes, Bylaws and regulations.

23. Modification of Payments: Both the Operator and the Town understand and agree that a Marijuana Cultivator, Marijuana Retailer and Marijuana Product Manufacturer together have a distinct and separate impact on a municipality and justify a difference in Host Community Agreement terms. Should Operator enter into an agreement with any other municipality for the siting of a combined Marijuana Cultivator, Marijuana Retailer and Marijuana Product Manufacturer at terms materially more favorable to that municipality than the terms of this Agreement are to Town, this Agreement shall be modified to reflect those terms. Notwithstanding the foregoing, should Operator enter into an agreement with any other municipality for the purpose of operating one or more Marijuana Establishments that do not combine a Marijuana Cultivator, Marijuana Retailer and Marijuana Product Manufacturer this Agreement shall not be modified.
24. Location; Additional Operations: This Agreement applies to the proposed Marijuana Cultivator, Marijuana Retailer and Marijuana Product Manufacturer to be located at 1764 Main Street, Leicester. This agreement will remain in force should the Operator chose to move or transfer operations to a different location within the Town. Should the Operator and the Town agree to allow the Operator to site another facility within the Town, the Operator and the Town shall agree to negotiate an additional agreement.
25. Assignment: Neither the Town nor the Operator shall assign, sublet or otherwise transfer its rights nor delegate its obligations under this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided however such consent shall not be required in the event such transfer or assignment is between the Operator and another entity which is authorized by the CCC to operate the Facility pursuant to a Certificate of Registration granted by it, or if such assignment or transfer is the result of a merger or consolidation with the Operator.
26. Agreement as to Agricultural Exemption: Operator agrees to comply with all laws, rules, regulations and orders applicable to the Facility, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits and approvals required for the operation of an Facility. The Operator agrees not to assert or seek exemption as an agricultural use under the provisions of from the requirements of the Town's Zoning Bylaws pursuant to M.G. L. c. 40A, § 3.
27. Retention of Regulatory Authority: By entering into this Agreement, Town does not waive any enforcement rights or regulatory authority it currently holds over any business in Town.

28. Notices: Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 of this Agreement or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.
29. Severability: If any term or condition of this 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.
30. Governing Law: This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.
31. Entire Agreement: This Agreement, including all documents incorporated herein by reference, 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.
32. Confidentiality: Operator may provide to the Town certain financial information, investment materials, products, plans, documents, details of company history, know-how, trade secrets, and other nonpublic information related to Operator, its affiliates and operations (collectively, the "**Confidential Information**"). Town (inclusive of its employees, agents, representatives or any other of its affiliated persons) shall not, at any time during the term of this Agreement or thereafter, disclose any Confidential Information to any person or entity, except as may be required by court order or law (pursuant to M.G.L. c. 66 § 10), provided in all events, prior to such disclosure, the Town will notify Operator in writing of its intent to make such disclosure at least three (3) days in advance of any disclosure.
33. Waiver: The obligations and conditions set forth in this Agreement may be waived only by a writing signed by the party waiving such obligation or condition. Forbearance or indulgence by a party shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that party under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.

34. Third Parties: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Town or the Operator.
35. Amendment: This Agreement may only be amended by a written document duly executed by both of the parties hereto. No modification or waiver of any provision of this Agreement shall be valid unless duly authorized as an amendment hereof and duly executed by the Town and the Operator.
36. Modifications: Modifications to this Agreement may only be effective if made in writing and signed by both of the parties hereto.
37. Headings: The article, section, and paragraph headings in this Agreement are for convenience only, are no part of this Agreement and shall not affect the interpretation of this Agreement.
38. Counterparts: This Agreement may be signed in any number of counterparts all of which taken together, shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.
39. Signatures: Facsimile signatures affixed to this Agreement shall have the same weight and authority as an original signature.

[SIGNATURES TO FOLLOW]

The following signature indicate that the parties hereby agree to the terms set forth in this Agreement as per the date set forth on page 1 of this Agreement.

For the Town of Leicester, Massachusetts:

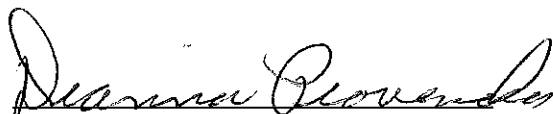


Harry Brooks
Chair

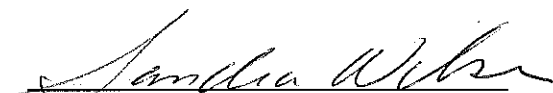
For Cultivate Holdings LLC:



By: Sam Barber,
Its: Manager




Dianna Provencher
Vice Chair



Sandra Wilson
Second Vice Chair



Douglas Belanger
Member



Brian Green
Member

Approved as to Form:

Christopher J. Petrini, Town Counsel

2018.03.22 DRAFT Proposed Leicester and Cultivate Host Community Agreement (ADULT USE) TC comments-CLEAN (1206-01)