

## **MONTAGUE SELECTBOARD MEETING**

**VIA ZOOM**

**Monday, January 29, 2024**

### **AGENDA**

**Join Zoom Meeting: <https://us02web.zoom.us/j/81897380809?>**

**Meeting ID: : 818 9738 0809**

**Passcode: 633159**

**Dial into meeting: +1 646 558 8656**

Topics may start earlier than specified, unless there is a hearing scheduled

#### **Meeting Being Taped**

#### **Votes May Be Taken**

1. 6:30PM Selectboard Chair opens the meeting, including announcing that the meeting is being recorded and roll call taken
2. 6:30 Approve Selectboard Minutes from January 16 and 22, 2024
3. 6:32 Public Comment Period: Individuals will be limited to two (2) minutes each and the Selectboard will strictly adhere to time allotted for public comment
4. 6:34 **Personnel Board**
  - Correct Reserve Officer Pay for John Dempsey effective 1/15/2024
  - Request current Sergeant list for Promotion from Civil Service
  - Review and Execute Proposed Contract with Walter Ramsey for Role of Town Administrator effective July 1, 2024
5. 6:50 **FY25 Budget Review and Recommendations, Steve Ellis**
  - Review Budget Updates and Identify Unknowns
  - Review Selectboard Budget Changes
  - Vote Recommendations Re Current Draft Budget
6. 7:15 **Assistant Town Administrators Business**
  - Review FRCOG DLTA Assistance Options
  - Vote Intention to lay out Sandy Lane as a Public Way
  - Execute Agreement for Professional Services with GZA Geoenvironmental, Inc. for Installation of three (3) landfill gas monitoring wells at the Montague Landfill and Burn Dump
7. 7:30 **Town Administrators Business**
  - Cannabis Control Commission Updates – Host Community Agreement Template and Social Equity Requirements
  - Topics not anticipated in the 48 hour posting

#### **Next Meeting:**

- Selectboard, Monday, February 5, 2024 at 6:00PM, In Person and Via Zoom at 1 Avenue A, Turners Falls, and via ZOOM

# Town of Montague

## Personnel Status Change Notice

### New Hires

Employee # \_\_\_\_\_

Board Authorizing **Appointment:** Selectboard Meeting Date: 1/29/24

Authorized Signature: \_\_\_\_\_

Board Authorizing **Wages:** Selectboard Meeting Date: 1/29/24

Authorized Signature: \_\_\_\_\_

**General Information:**Full name of employee: John Dempsey Department: POLICETitle: Reserve Police Officer Effective date of hire: 01/15/2024**New Hire:**Permanent: X Y \_\_\_\_\_ N If temporary, estimated length of service: \_\_\_\_\_Hours per Week: PT Union: N/APay: Grade \_\_\_\_\_ Step \_\_\_\_\_ Wage Rate: \$28.00 (annual/ hourly)Board Authorizing: Selectboard Date of Meeting: 1/29/2024**Wages:**

Union: \_\_\_\_\_

Wages: Grade \_\_\_\_\_ Step \_\_\_\_\_ Wage Rate: \_\_\_\_\_ (annual/ hourly)

Notes:

## Copies to:

\_\_\_\_\_ Employee

\_\_\_\_\_ Department

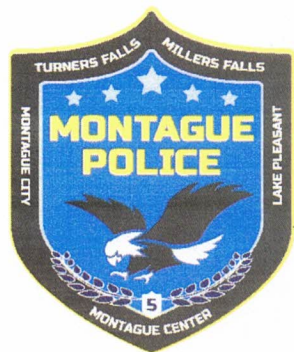
\_\_\_\_\_ Board of Selectmen

\_\_\_\_\_ Treasurer

\_\_\_\_\_ Accountant

\_\_\_\_\_ Retirement Board

\_\_\_\_\_ Town Clerk



**Montague Police Department**  
**180 Turnpike Road**  
**Turners Falls, MA 01376**

(413) 863-8911  
 (413) 863-3210 (fax)

*Chief Christopher P. William*



TO: Selectboard/Town Administrator

FROM: Chief Christopher Williams

RE: Vacant Sergeant Position

DATE: January 24, 2024

Gentlemen,

Sergeant John Dempsey retired on December 30, 2023 and left the department with an open sergeant position. Presently, there is an active promotional list for sergeant via Civil Service and it expires on October 5, 2024. We have three patrol officers on that list; Officer James Ruddock and Det. Justin Moody are tied for the top spot and Officer Jamal Holland is second.

The Town and the Union have agreed to exit Civil Service and are currently in the process of doing so with a Special Town Meeting vote scheduled for March 14, 2024. As part of the exit process the union required a new hiring and promotional policy to be put in place as they are presently nonexistent.

The union is requesting that myself and the town move forward with promoting a new sergeant prior to our exit. As of now, the past practice in all promotions (Sergeant, Lieutenant and Chief) has been a Sole Assessment Center style test where the number one candidate was offered and accepted the position.

Because we have an active, certified assessment test/list the union wants to move forward before a new policy is put into place which could make the current promotional list void. Sgt. Jacob Dlugosz was promoted last November from the current list.

I would like to petition the Selectboard to request a current list for promotion to sergeant from civil. We would like to promote as soon as possible.

Respectfully,

*Chief Christopher P. Williams*



**Montague Police Department  
180 Turnpike Road  
Turners Falls, MA  
Montague Sergeants 183**



To: Chief Christopher Williams

From: Montague Patrol, Detective and Sergeants

Subject: Sergeants Promotion

On 1/18/24 the Montague Unions had a joint meeting and the members voted to request that a Sergeant be promoted now. The Montague Police Department is in the process of leaving Civil Service and we would like to promote before we leave to be fair to those individuals who are currently on the active certified list.

On 1/23/24, we met with Chief Williams and spoke about how this could be a viable option because we believe that promoting now will be the best path forward and elevate any issues that may arise. Once we are officially out of Civil Service the new promotional policies and procedures would be put in place.

Respectfully submitted,

Christopher Smerz – Patrol & Detective Union President

A handwritten signature in black ink, appearing to read "Chris Smerz".

Peter Lapachinski - Sergeants Union President

A handwritten signature in blue ink, appearing to read "Peter Lapachinski".

**AGREEMENT BETWEEN  
TOWN OF MONTAGUE  
and  
WALTER F. RAMSEY**

**This Agreement**, entered into this \_\_\_\_ day of January 2024, by and between the TOWN OF MONTAGUE, Massachusetts, a municipal corporation, having a usual place of business at Town Hall, One Avenue A, Turners Falls, Massachusetts, party of the first, hereinafter referred to as Town, acting through its Selectboard, hereinafter referred to as Board, and WALTER F. RAMSEY, party of the second part, hereinafter referred to as Employee, WITNESSETH:

WHEREAS, the Town desires to engage the services of Employee to hold the position of Town Administrator.

WHEREAS, Employee is willing to undertake and perform the duties of said position of Town Administrator.

NOW THEREFORE, in consideration of the mutual agreement hereinafter set forth, the parties hereto agree as follows;

**1. Duties**

- A. The Town agrees to employ Employee as Town Administrator to perform the functions and duties specified in the Job Description attached hereto and marked Exhibit "A" and to perform other legally permissible and proper duties and functions as the Board may from time-to-time assign.

**2. Term**

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board to terminate the services of Employee at any time subject only to the provisions set forth in Section 4, Paragraphs A and B of this Agreement.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with the Town, subject only to the provisions set forth in Section 4, Paragraph C, of this Agreement.
- C. Employee agrees to remain in the employ of the Town from the commencement date of this contract on July 1, 2024 until June 30, 2027 and neither to accept other employment nor to become employed by other employer until said termination date is affected as hereinafter provided. Before the end of the three-year term of this Agreement, both parties shall meet to negotiate a new agreement. The term "employed" shall not be construed to include occasional teaching, performing, writing or consulting performed on Employee's time off.

### **3. Suspension**

- A. The Board may suspend Employee with full pay and benefits at any time during the term of this Agreement, but only if, (1) a majority of the Board and Employee agree, or (2) after a public hearing, a majority of the Board votes to suspend the Employee for just cause provided, however, that Employee shall have been given written notice setting forth any charges at least ten days prior to such hearing by the Board members bringing such charges.
- B. The Board may suspend Employee without pay for just cause at any time during the term of this Agreement, but only if, (1) a majority of the Board and Employee agree, or (2) after a public hearing, a majority of the Board votes to suspend, provided that Employee shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing by the Board members bringing such charges.

### **4. Termination and Severance Pay.**

- A. In the event that Employee is terminated by the Board before the expiration of the aforesaid term of employment and during such time Employee is willing and capable of performing his duties under this Agreement, the Board agrees to give the Employee nine (9) months' notice, and shall, upon mutual agreement of the parties, either continue in the employ of the Town, or in the alternative, to receive a cash sum equal to the salary that would have been actually earned during said nine month period, less applicable withholding and deductions. Said salary to include any and all benefits currently being provided to the employee.
- B. In the event the Town at any time during the term of this Agreement reduces the salary, compensation or other financial benefits of the Employee by five (5) per cent or more, or in the event the Town refuses following written notice, to comply with any provisions benefiting Employee herein, or Employee resigns following a request by the Board that he resign, then in that event, Employee may at his option, be deemed "terminated" at the date of such reduction, or such refusal to comply, or such request, within the meaning and context of the herein severance pay provision.
- C. In the event Employee voluntarily resigns his position with the Town before expiration of the aforesaid term of his employment, then Employee shall give the Board thirty (30) days written notice in advance, unless the parties otherwise agree. In the event of a voluntary resignation of Employee, such benefits as are enumerated in Section 4, paragraph A and B hereinabove, shall not apply.

## **5. Salary**

- A. The Town agrees to pay the employee for his services a base salary of \$108,710 for FY2025. This results from placement of the employee on his current grade and step (Grade J, Step 3) of the Town's Classification Plan. Employee shall also be entitled to annual step increases on July 1st, until reaching the top step of his grade during any subsequent year of the contract. He shall also receive a cost of living adjustment, or other additional compensation, which may be granted by the Selectboard to other non-union personnel during each of the contract years.
- B. If the Grade level or scale associated with this position is amended during the term of this agreement and a new wage and classification plan through Town Meeting vote, the basis for the Employee's base compensation rate will be amended to reflect the new scale. Following any such change, the contract will be re-opened to consider the Employee's placement (step level) on the existing or new scale.

## **6. Performance and Evaluation**

- A. The Board shall normally review and evaluate Employee's performance annually and shall maintain consistency with the performance evaluation schedule implemented for all other employees. All performance reviews shall be in accordance with specific criteria developed jointly by the Board and Employee. The Chairman of the Board shall provide the Employee with a summary written statement of the finding of the Board. The Board shall provide an adequate opportunity for Employee to discuss his evaluation with the Board before the review is made part of Employee's personnel records.
- B. Performance appraisals shall be performed in accordance with the evaluation and goal-setting instrument contained in Appendix B attached.

## **7. Hours of Work**

- A. Employee's work week shall ordinarily consist of thirty seven and one half (37.5) hours, beginning on Mondays and ending on Thursdays, including the hours required by mandatory attendance at Selectboard Meetings. The Town Administrator shall be expected to be present for work during the Town's regular business hours and further agree to devote that amount of time and energy which is necessary to faithfully perform the duties of the office.
- B. It is recognized that the Town Administrator must devote a substantial amount of time outside the normal office hours to business of the Town, and to that end, the Town Administrator shall be allowed to take compensatory time off within the policy guidelines to be established by the Board, and when workload permits. Town Administrator may use compensatory time to make reasonable adjustments to his work schedule at his discretion during said normal office hours at such time which will not

adversely affect Town operations. The current guidelines provide for accumulation of comp time up to a maximum of 75 hours.

#### **8. Automobile**

- A. If it should be necessary at any time for Employee to use his personal automobile for travel in connection with the performance of his official duties, he shall be reimbursed at the IRS approved rate provided by the Town to its other employees.

#### **9. Vacation, Sick Leave and Personal Leave**

- A. Employee shall be entitled to four (4) weeks' vacation with pay during each of the twelve (12) month periods of employment. Such vacation shall be taken at such time, or times, approved by the Selectboard. Up to three (3) weeks of vacation may accumulate from year to year if not all taken in one 12-month period of employment, due to work schedule. The Selectboard, at its sole discretion, may authorize the Town Administrator to carry forward an additional week of vacation. Unused vacation may be exchanged for cash compensation upon the conclusion of his employment.
- B. Employee shall be entitled to health and life insurance, and sick leave benefits as provided to other non-affiliated employees of the Town, including a sick leave buyback of up to twenty five percent (25%) of an employee's unused sick leave upon an approved retirement under the town's retirement plan. The amount of the buy back shall not exceed Thirty Five Hundred Dollars (\$3,500.00).
- C. Employee shall be entitled to holiday and personal leave benefits as provided to other non-affiliated management employees of the Town.
- D. Employee shall be entitled to use vacation in a manner that allows a full two (2) week vacation at least one time per year at his discretion.

#### **10. Other Benefits**

- A. Employee shall also be entitled to any bereavement, insurance, deferred compensation, or any other benefits generally available to full-time Town personnel under the same terms unless specifically limited under the terms of this agreement.

#### **11. No Reduction in Benefits**

- A. The Town shall not at any time during the term of the Agreement reduce the salary, compensation or other benefits of the Employee, except to the extent such a reduction is across the board for all employees of the Town.



## **12. Dues and Subscriptions**

- A. The Town agrees to budget and pay for professional dues and subscriptions of the Employee necessary for the continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and development, and for the good of the Town. This may include maintaining profession certification with the American Institute of Certified Planners (AICP). These costs are to be included as part of the Town Administrator's budget, and shall be no less than five hundred dollars per year.

## **13. Professional Development**

- A. The Board recognizes its obligations to encourage the professional development of the Employee and agrees that the Employee shall be given adequate opportunity to develop his skills and abilities as a professional in Town government. Accordingly, Employee will be allowed to attend the annual conference of the M.M.A. and/or similar organizations each year in addition to other courses, seminars, meetings, conferences and conventions subject to the approval of the Board. These costs are to be included as part of the Town Administrator's budget and are to be no less than \$2,500 per year.

## **14. Indemnification**

- A. To the extent permitted by law, the Town shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Administrator. In the event that the employee leaves the employ of the town, said coverage shall continue for any actions originating during his tenure of employment. The Town agrees to pay the amount of any settlement or judgement rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgement rendered thereon without recourse to the Town Administrator.
- B. In connection with those claims or suits involving the Employee in his professional capacity and covered under Section 14.A above, the Town, at its sole option, shall either retain and pay for an attorney to represent the Employee (including all fees and costs) or reimburse the Employee for any reasonable attorneys' fees and costs incurred by the Employee or in connection with same, provided that the Employee submits proper invoices and evidence of payment of same.
- C. This indemnification shall also apply to the Town Administrator after he leaves the employment of the Town.
- D. This section shall survive the termination of the agreement.

## **15. Other Terms and Conditions of Employment**

- A. The Board, in consultation with Employee, shall fix any terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town By-laws or any other law.

## **16. Notices**

- A. Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing, sent by certified mail to his last known residence, in the case of the Employee, or to the Town Clerk's Office in Montague, Massachusetts, in the case of the Town.

## **17. General Provisions**

- A. The text herein shall constitute the entire Agreement between the parties. If any provision or portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- B. This Agreement may be amended at any time by mutual consent of the parties except as otherwise provided herein. No changes to express terms of this Agreement shall be enforceable unless reduced to writing and mutually executed.
- C. If the employee is at any time absent without leave from his duties for a period of seventy-two (72) hours or more, Employee may be deemed to have voluntarily resigned. Said determination to be made at the option of the Board.
- D. This Agreement shall be interpreted and construed for all purposes under the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Town of Montague has caused this Agreement to be executed in its corporate name by the Selectboard and WALTER F. RAMSEY has set his hand and seal, as of the day and year first written above.

Selectboard

Town Administrator

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Richard J. Kuklewicz, Chair

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Walter F. Ramsey

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Christopher M. Boutwell, Sr., Vice Chair

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Matthew Lord, Clerk



TO: Franklin County Town Officials  
FROM: Linda Dunlavy, FRCOG Executive Director  
DATE: January 4, 2024  
RE: **District Local Technical Assistance Project Requests**

The FRCOG has again received District Local Technical Assistance (DLTA) funding from the MA Executive Office of Housing and Livable Communities (EOHLC) to help municipalities.

### **What are the funds used for?**

Since 2006, DLTA funding has allowed the FRCOG to assist our member municipalities on projects that promote regionalization of services and local and regional planning. The funding also supports the Community Compact Best Practices program. The expanded list of Community Compact Best Practices is available at <https://www.mass.gov/info-details/community-compact-best-practice-areas>.

### **Three NEW things in FY24!!**

1. We are changing how we select projects and create budgets starting in FY24, especially with Planning projects. Historically, we tried to ensure that all or most of our member municipalities were part of a project every year. Often, this meant it took multiple years to complete a project like an Open Space and Recreation Plan. Starting with this round of funding, we will do fewer Planning projects, but with more robust budgets, so projects will be done more quickly. However, this means not every town will get or be part of a DLTA project each year. We will track projects to ensure that every town receives a project every three years or so. (We encourage all towns to utilize the Community Compact Program to pursue projects not selected for DLTA funding.)
2. This year's funding will again include additional funds that allow the FRCOG to help our member municipalities seek federal funding for priority projects. New to our project solicitation form is a question about your municipal project priorities. Please list your priorities and we will use the lists to monitor grant programs and potential funding opportunities.
3. Some towns ask if we can provide part-time professional planner support services to municipal Planning Boards. This year's form also includes a question about your interest in sharing a Planner so we can assess whether there is a way to create a part-time or full-time position to offer these services to a select number of towns on an on-going contract basis.

### **What do we need from you?**

We need to know what projects your Town is interested in pursuing. Attached is a form that contains a list of potential projects. **Please share this form with your town or city's boards, committees and**

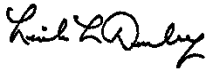
departments. We ask that the Select Board/Mayor compile one consolidated response on behalf of the municipality and email it back to us as soon as possible, but no later than January 31, 2024.

We will prioritize the projects based on the following criteria:

- Projects that meet the DLTA program's eligibility requirements.
- Projects that can be largely completed within the program's time period (by 12/31/24).
- Projects that have the demonstrated support of the municipality.
- Projects that result in implementation.
- Projects that, in total, serve as many municipalities as possible.
- Projects that meet demonstrated regional needs and priorities.

Thank you for your help and input in this process. We are looking forward to working with you. Please contact us with questions and **please submit your completed form to the FRCOG by January 31<sup>st</sup>, 2024, by emailing Clara Lopez at [clopez@frcog.org](mailto:clopez@frcog.org)**. If you need to mail or fax the form instead, or need more time to complete it, please reach out to Clara to make arrangements.

Thanks,



Linda Dunlavy  
Executive Director

Selectboard Votes Intention to Lay Out Sandy Lane as a Public Way

Motion of Intention to Lay Out Sandy Lane  
as a Public Way

I move that the Selectboard vote its intention to lay out Sandy Lane as a public way, all as shown on a plan entitled “Proposed Street Acceptance Plan ‘Sandy Lane’ Plan of Land in Montague, Massachusetts,” dated January 18, 2024, prepared by Harold L. Eaton and Associates, Inc., and to forward this vote and the plan to the Planning Board for its comments and recommendation pursuant to G.L. c. 41, §§81G and 81I.



# Town of Montague Selectboard

1 Avenue A  
Turners Falls, MA 01376

(413) 863-3200 xt. 108

January 29, 2024

Montague Planning Board  
Chairman Ron Sicard

Subject: Layout of Sandy Lane as a Town Way

Chairman Sicard,

At a duly noticed meeting of the Selectboard held on January 29, 2024, the Selectboard voted its intention to lay out Sandy Lane as a town way, as shown on a plan entitled "Proposed Street Acceptance Plan 'Sandy Lane' Plan of Land in Montague, Massachusetts," dated January 18, 2024, prepared by Harold L. Eaton and Associates, Inc." The Selectboard hereby submits the plan to the Planning Board for its comments and recommendation pursuant to G.L. c. 41, §§81G and 81I.

Please review the enclosed plan and provide, in writing, your comments and/or recommendation relative to the layout of Sandy Lane as a public way.

Following the required notifications, the Selectboard will place the layout of Sandy Lane on the Selectmen's meeting agenda for March 4, 2024. Provided that the Planning Board has submitted its recommendation by that date, the Selectboard will vote on whether to lay out Sandy Lane as a town way and to place an article on the warrant for the next scheduled Town Meeting for acceptance of the foregoing.

Thank you for your cooperation.

\_\_\_\_\_, Chair  
Selectboard

I REPORT THAT THE PROPERTY LINES SHOWN  
HEREON ARE THE LINES DIVIDING EXISTING  
OWNERSHIPS, AND THE LINES OF STREETS AND  
WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE  
STREETS OR WAYS ALREADY ESTABLISHED, AND  
THAT NO NEW LINES FOR DIVISION OF EXISTING  
OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

I REPORT THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY  
WITH THE 1976 RULES AND REGULATIONS OF THE REGISTERS  
OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

RANDALL E. IZER #35032

LEGEND

- FOUND IRON PIN
- REBAR TO BE SET
- FOUND CONCRETE BOUND
- FOUND STONE BOUND
- △ UNMARKED POINT
- ρ UTILITY POLE
- ⊙ RAILROAD SPIKE TO BE SET

MERIDIAN OF PLAN BOOK 142, PAGE 26

FRANKLIN REGIONAL TRANSIT AUTHORITY  
BOOK 7829, PAGE 10  
SEE: PLAN BOOK 142, PAGE 26 - LOT A

THE INHABITANTS OF THE TOWN OF MONTAGUE

JUDD WIRE, INC.  
BOOK 7944, PAGE 96  
SEE: PLAN BOOK 142, PAGE 26 - LOT B

STORMWATER EASEMENT AREA  
SEE: PLAN BOOK 150, PAGE 36

VERDI L. POCIUS AND MARION C. FLEMING  
BOOK 5600, PAGE 262  
SEE: PLAN BOOK 62, PAGE 19

SUBJECT TO ELECTRIC DISTRIBUTION EASEMENT  
GRANTED TO NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY  
BOOK 7828, PAGE 70  
SEE: PLAN BOOK 149, PAGE 45

JUDD WIRE MANUFACTURING  
SEIP, LTD.  
BOOK 2252, PAGE 226  
SEE: PLAN BOOK 71, PAGE 13



"PROPOSED STREET ACCEPTANCE PLAN"  
"SANDY LANE"  
PLAN OF LAND IN  
MONTAGUE, MASSACHUSETTS  
PREPARED FOR  
THE TOWN OF MONTAGUE

SCALE: 1"=40' JANUARY 18, 2024  
HAROLD L. EATON AND ASSOCIATES, INC.  
REGISTERED PROFESSIONAL LAND SURVEYORS  
235 RUSSELL STREET - HADLEY - MASSACHUSETTS  
413-584-7599 413-585-5976 (fax)  
email - hleaton@aol.com



**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN  
THE TOWN OF MONTAGUE  
AND  
GZA GEOENVIRONMENTAL, INC**

THIS AGREEMENT is made this 29<sup>th</sup> day of January 2024, by and between the Town of Montague, hereinafter called the OWNER and GZA, Inc, with offices at 1350 Main Street, Suite 1400, Springfield, MA (herein called the "CONSULTANT"):

The OWNER'S Designated Representative under this contract is:

Name Tom Bergeron Position/Title DPW Superintendent

Address: Town of Montague, 128 Turners Falls Rd., Turners Falls, MA 01376

Telephone (413) 863-2054 (Extension 322) Fax \_\_\_\_\_

Email hwysupt@montague-ma.gov

The CONSULTANT'S Designated Representative under this contract is:

Name Guy P. Dalton Position/Title Vice President

Address 1350 Main St., Suite 1400, Springfield, MA 01103

Telephone 413 726 2100

Email Guy.Dalton@gza.com

WITNESSETH, for consideration hereinafter set forth, the CONSULTANT AND OWNER hereto agree as follows:

**ARTICLE 1. ENGAGEMENT OF THE CONSULTANT**

- 1.1 THE OWNER hereby engages the CONSULTANT, and the CONSULTANT hereby accepts the engagement to perform certain professional services hereinafter described as:

**Montague Landfill and Burn Dump – Installation of three (3) landfill gas monitoring wells**

**ARTICLE 2. GENERAL CONDITIONS**

The OWNER agrees that all work be done by the CONSULTANT and all materials to be used on the project shall be in accordance with the standards applicable to the relevant professions employed on the PROJECT.



### **ARTICLE 3. SCOPE OF SERVICES**

GZA will oversee the installation of 3 landfill gas monitoring wells at the Montague Landfill and Burn Dump. The monitoring wells will be installed by Geosearch, Inc. (Geosearch) of Sterling, Massachusetts to approximately 40 feet below grade (or less) and completed with a 10-foot screen above the groundwater table. The wells will be completed above-grade each with a 4" metal standpipe. GZA anticipates the proposed well locations will be accessible with an ATV rig. GZA anticipates the work to be completed in 2 days.

Labor: **\$2,240**

Subcontractor: **\$9,185**

Equipment Rental & Transportation: **\$180**

Total Estimated Cost: **\$11,605**

### **ARTICLE 4. CONTRACT PRICE AND PAYMENT**

- 4.1.1 For services performed under this AGREEMENT, the OWNER agrees to pay the CONSULTANT fee of **\$11,605** for the scope of services described in Article 3 of this AGREEMENT. The Parties may increase or decrease the fees set forth in the proposal by mutual agreement signed by both Parties.
- 4.2.1 Payments to the CONSULTANT shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate of 1% per month.
- 4.3.1 For services performed beyond basic services, (additional services) the CONSULTANT shall be compensated in accordance with the procedure established in Article 13.
- 4.4.1 The OWNER agrees to make payment to the CONSULTANT within thirty (30) days of the invoice date for work completed to the OWNER'S satisfaction. If the OWNER fails to make any payment due the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT'S statement therefore, except for just cause, the CONSULTANT may, after giving seven (7) days' written notice to the OWNER, suspend services under this AGREEMENT. Unless payment is received by the CONSULTANT within seven (7) days of the notice, the suspension shall take effect without further notice. In the event of a suspension of services due to failure of the OWNER to make payment as agreed in this section, the CONSULTANT shall have no liability of the OWNER for delay or damage caused the OWNER because of such suspension of services.
- 4.5.1 Notwithstanding anything in this AGREEMENT to the contrary, any and all payments that the OWNER is required to make under this AGREEMENT shall be subject to appropriation or other availability of funds as certified by the Town Accountant.

### **ARTICLE 5. TERM OF AGREEMENT AND TIME FOR PERFORMANCE**

- 5.1.1 The CONSULTANT will initiate work under this AGREEMENT following formal acceptance of this AGREEMENT by the OWNER and upon receipt of a Notice to Proceed

from the Owner. The CONSULTANT agrees to provide services for the duration of work, starting within two weeks of the Notice to Proceed.

#### **ARTICLE 6. KEY PERSONNEL**

- 6.1.1 The CONSULTANT shall provide a list of the names and qualifications of individual staff people who will be assigned to the performance of the CONSULTANT'S obligations under this contract.
- 6.2.1 The OWNER shall have the right to require the CONSULTANT to remove any key individual from his or her assignment to this PROJECT for cause. The key individual shall receive reasonable notice of any such action.

#### **ARTICLE 7. CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNMENTS**

- 7.1.1 The CONSULTANT shall not employ consultants, except Key Personnel designated in ARTICLE 6, or assign or transfer any part of his services or obligations under this AGREEMENT without the prior approval of and written consent of the OWNER. The OWNER shall not unreasonably withhold such approval. The OWNER'S written consent shall not in any way relieve the CONSULTANT from its responsibility for the professional standards in the coordination of all data, designs, drawings, specifications, estimates or other work or materials furnished.
- 7.2.1 Except as otherwise provided in this contract, whenever the services of the following consultants are required, the CONSULTANT shall employ them within the basic fee for this project: Surveyors, Structural Engineers, Electrical Engineers, Mechanical Engineers, Civil Engineers, Acoustical Engineers, Architects, Landscape Architects and Designers, Cost Estimators, Code Specialists and Specification Writers. Consultants must be registered in their respective disciplines if the applicable General Law requires registration.
- 7.3.1 When the CONSULTANT receives payment from the OWNER, the CONSULTANT shall within 30 calendar days make payment to each consultant whose work was included in the work for which such payment was received from the OWNER. The OWNER shall have the contractual right to investigate any breach of a consultant's contract and to take corrective measures necessary for the best interest of the OWNER.

#### **ARTICLE 8. STATUTORY COMPLIANCE**

- 8.1.1 This AGREEMENT will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the AGREEMENT shall conflict with any provisions or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the contract, the provisions of General Laws are incorporated by reference into this contract, including but not limited to the following:

General Laws Chapter 30B: Procurement of Goods and Services  
General Laws Chapter 30 Sec. 39 et seq: Public Works Contracts  
General Laws Chapter 149, Sec 44A et seq: Public Buildings Contracts

- 8.2.1 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this AGREEMENT. To whatever extent any provision of this AGREEMENT shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.
- 8.3.1 The CONSULTANT shall exercise due care in accordance with generally accepted standards of professional practice at the same time as this Agreement, and perform the work required under this AGREEMENT in conformity with all applicable laws of the Commonwealth of Massachusetts, its political subdivisions and the Federal Government. Unless otherwise provided by law, the CONSULTANT shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the CONSULTANT'S failure to comply with the provisions of this Article and shall indemnify the OWNER against any liability incurred as a result of a violation of this section, in place at the time of this Agreement's execution.

## **ARTICLE 9. INSURANCE**

### **General Liability Insurance**

- 9.1.1 The CONSULTANT shall secure and maintain, for the duration of this PROJECT, the following General Liability Insurance policy or policies at no cost to the OWNER. With respect to the operation the CONSULTANT performs, the CONSULTANT shall carry Commercial General Liability Insurance providing for a combined single limit of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate for bodily injury, death and property damage.

#### **9.2.1 Automobile Liability Insurance**

The CONSULTANT shall secure, at its own expense, an Auto Liability Insurance policy with a limit of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

#### **9.3.1 Professional Services Liability Insurance**

The CONSULTANT shall secure, at its own expense, a Professional Services Liability Insurance policy with a limit of One Million Dollars (\$1,000,000) per claim and in the aggregate, and maintain such policy from the time that this CONSULTANT is signed to the date when all construction work designed under this CONSULTANT is completed and accepted by the OWNER. Since this insurance is normally written on a year-to-year basis, the CONSULTANT shall notify the OWNER should coverage become unavailable.

- 9.4.1 The CONSULTANT shall, before commencing performance of this AGREEMENT, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all its employees and shall continue such insurance in full force and effect during the term of this AGREEMENT.
- 9.5.1 Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with this AGREEMENT. CONSULTANT shall provide notice to the OWNER at least fifteen days prior to the intended effective date of cancellation, which date should be expressed in said notice.

#### **ARTICLE 10. RESPONSIBILITIES OF THE OWNER**

The OWNER without cost to the CONSULTANT, shall do the following in a timely manner so as not to delay the services of the CONSULTANT:

- 10.1.1 Designate in writing a person to act as the OWNER'S representative with respect to work to be performed under this AGREEMENT, such person to have authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the work covered by this AGREEMENT.
- 10.2.1 Through its officials and other employees who have knowledge of pertinent conditions, confer with the CONSULTANT regarding both general and special considerations relating to the PROJECT.
- 10.3.1 Assist the CONSULTANT by placing at the disposal of the CONSULTANT all available information pertinent to the PROJECT including previous reports and existing survey data and any other data relative to design or construction of the PROJECT.
- 10.4.1 Waive or pay all application and permit fees associated with approvals and permits from all governmental authorities having jurisdiction over the PROJECT and obtain such approvals and consents from others as may be necessary for completion of the Project. The CONSULTANT shall assume that the information provided by OWNER is reliable for the purposes of these services. All materials and information provided to the CONSULTANT by OWNER under this contract shall remain the property of OWNER and shall be returned to OWNER upon completion of this contract or upon early termination of this contract
- 10.5.1 Arrange for access to and make all provisions for the CONSULTANT to enter upon public and private lands as required for the CONSULTANT to perform its work under this AGREEMENT.
- 10.6.1 Cooperate with and assist the CONSULTANT in all additional work that is mutually agreed upon.
- 10.7.1 Pay the CONSULTANT for work performed in accordance with terms specified herein.
- 10.8.1 Develop, organize and implement all public information and participation efforts.

- 10.9.1 OWNER does not guarantee the accuracy of information furnished and CONSULTANT must satisfy itself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by OWNER. If the above data are not available or they are in the opinion of CONSULTANT insufficient, CONSULTANT, upon request, may be given authorization to obtain the services of a consultant or perform the work with its own employees. Such consultants shall carry adequate liability insurance. In no case shall CONSULTANT commence such additional work without prior written authorization of OWNER.

Written consent shall not in any way relieve CONSULTANT from its responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specification, estimates and other work or material furnished.

## **ARTICLE 11. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 11.1.1 CONSULTANT shall indemnify and save harmless OWNER and all of its municipal boards, commissions, departments, officers and employees against any suits, claims of liability or expenses for or on account of any injuries to persons or damage to property to the extent that same are caused by the negligent acts, errors or omissions of the CONSULTANT in the performance of this AGREEMENT and/or failure to comply with the terms and conditions of this AGREEMENT, whether by CONSULTANT or its employees, consultants or subcontractors.

GZA will not be responsible for the acts or omissions of engineer, contractors or others at the Site, except for its own subcontractors and employees. GZA will not supervise, direct or assume control over or the authority to stop any other party's work, nor shall GZA's professional activities nor the presence of GZA or its employees and subcontractors be construed to imply that GZA has authority over or responsibility for the means, methods, techniques, sequences or procedures of construction, for work site health or safety precautions or programs, or for any failure of other party's to comply with contracts, plans, specifications or laws.

### **11.2.1 Hazardous Waste Indemnification's**

For the purpose of this AGREEMENT, CONSULTANT shall not be considered an owner or operator of the project site with respect to the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous waste in any form at the project site. Accordingly, the OWNER agrees to assert no claims against CONSULTANT, its principals, agents, employees, and consultants unless such claims are based, in whole or in part, upon the negligence, breach of AGREEMENT, warranty, indemnity, or other obligation of CONSULTANT, its principals, agents, employees and consultants.

- 11.2.2 The OWNER hereby warrants that, if he or she knows or has any reason to assume or suspect that hazardous materials may exist at the PROJECT site, he or she has so informed the CONSULTANT. The OWNER also warrants that he or she has done his or her best to inform the CONSULTANT of such known or suspected hazardous materials' type, quantity and location.

- 11.2.3 Notwithstanding anything herein to the contrary, and without waiving any claim for actual damages, in no event shall either party be liable to the other, nor shall either party make any claim for any special, indirect, incidental or consequential damages of any kind or nature whatsoever arising out of or in any way connected to the Project or to this Agreement. This mutual waiver shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract or breach of strict or implied warranty.

## **ARTICLE 12. NOTICE**

All notices required to be given hereunder shall be in writing and delivered by hand to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone and facsimile or email, but shall be followed by notice in writing in the manner stated above.

## **ARTICLE 13. EXTENSION OF SERVICES**

The OWNER, from time to time, may require changes or extensions in the Scope of Services to be performed hereunder. Such changes or extensions, including any increase or decrease in the amount of compensation, to be mutually agreed upon by and between the OWNER and the CONSULTANT, shall be incorporated into written amendments to this AGREEMENT.

## **ARTICLE 14. OWNERSHIP AND USE OF DOCUMENTS**

Upon payment for Services rendered, one (1) reproducible copy of all reports, design drawings, field data, calculations, estimates, and other documents and records (collectively referred to as "documents") which CONSULTANT prepares as instruments of service shall become the property of the OWNER upon payment in full to CONSULTANT under this AGREEMENT. Any re-use of such documents without CONSULTANT's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to CONSULTANT or to CONSULTANT'S independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the CONSULTANT'S rights under this AGREEMENT.

## **ARTICLE 15. TERMINATION**

- 15.1 The OWNER may terminate this AGREEMENT, without cause, upon ten days written notice to the CONSULTANT. In the event of such termination, the CONSULTANT shall be compensated for all services performed prior to termination.
- 15.2 If the PROJECT is suspended or abandoned in part for more than three (3) months, the CONSULTANT shall be compensated for all services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with other direct costs then due.

- 15.3 If the PROJECT is resumed after being suspended for more than nine (9) months, the CONSULTANT'S compensation shall be equitably adjusted.
- 15.4 In the event of termination by the OWNER, the CONSULTANT will be paid a percentage of the fee based on work completed on the PROJECT through the completion of services necessary to affect termination, in accordance with the provisions of Article 4 of this AGREEMENT.

## **ARTICLE 16. GENERAL PROVISIONS**

### **16.1 Precedence**

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding the CONSULTANT'S services.

### **16.2 Severability**

If any of these Standard Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this AGREEMENT to replace any such invalid or unenforceable provision with a valid enforceable provision that comes as close as possible to the intention of the stricken provision.

### **16.3 Force Majeure**

CONSULTANT is not responsible for delays, suspensions or any other time impacts caused by factors beyond CONSULTANT's reasonable ability to control, including but not limited to: weather, frustration, pandemics, epidemics, quarantine, strikes, lockouts, work slowdowns, or work stoppages (whether resulting from Client or governmental order or action), shortages in materials, delay in supply or delivery of materials, employees or labor, cost escalation, delays in obtaining materials, accidents or acts of God, failure of governmental or other regulatory authorities to act in a timely manner, shutdown of governmental or other regulatory authorities, or failure of the Client to furnish information or review comments in a timely manner and any other similar events that are beyond CONSULTANT's reasonable control or that may render CONSULTANT's Services impossible to perform ("Force Majeure"). The Client agrees that CONSULTANT is not responsible for any costs, damages or delays actually or allegedly resulting from any such Force Majeure event; nor will CONSULTANT be deemed to be in default of this Agreement due to any such event. If the performance of this Agreement is affected by a Force Majeure event CONSULTANT shall notify Client within five (5) days of its awareness of the event, and undertake reasonable measures to prepare and submit a plan to address any performance schedule or deadlines applicable to CONSULTANT's services; and CONSULTANT shall be compensated for delays, acceleration or any additional efforts including but not limited to demobilization and mobilization, increased staffing, multiple shift, or additional or substitution of materials and equipment. If performance by CONSULTANT is delayed or

otherwise impacted due to a Force Majeure event, the Schedule will be extended for a period of time reasonably necessary to overcome the effect of the event.

#### **ARTICLE 17. PROVISIONS REQUIRED BY MASSACHUSETTS LAW**

- 17.1 The CONSULTANT hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with the award of this AGREEMENT. (Statutory reference: M.G.L. c. 7, §38H (e) (i))
- 17.2 The CONSULTANT hereby certifies that no consultant to or subcontractor for the CONSULTANT has given, offered or agreed to give any gift, contribution or offer of employment to the CONSULTANT, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the CONSULTANT. (Statutory reference: M.G.L. c. 7, §38H (e) (ii))
- 17.3 The CONSULTANT hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the CONSULTANT, has been retained or hired by the CONSULTANT to solicit for or in any way assist the CONSULTANT in obtaining this AGREEMENT upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this AGREEMENT to the CONSULTANT. (Statutory reference: M.G.L. c. 7 § 38H (e) (iii))
- 17.4 The CONSULTANT hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty and that the CONSULTANT filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c. 7, §38H (e) (iv))

#### **ARTICLE 18. DISCLOSURE RIGHTS**

OWNER agrees the CONSULTANT has the authority to use its name as a client and a general description of the project as a reference for other prospective clients.



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## TAX COMPLIANCE STATEMENT

### Tax Compliance

Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that GZA GeoEnvironmental, Inc., to my best knowledge and belief, has complied with all laws of the Commonwealth of Massachusetts relating to taxes.

Date January 23, 2024

Guy P. Dalton  
Typed or Printed Name of Person Signing

  
Authorized Official's Signature

GZA GeoEnvironmental, Inc.  
Company or Corporation

## NON-COLLUSION STATEMENT

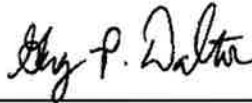
### Certificate of Non-Collusion

The undersigned certifies under penalties of perjury that AGREEMENT has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, entity, or group of individuals.

Date January 23, 2024

Guy P. Dalton

Typed or Printed Name of Person Signing



Authorized Official's Signature

GZA GeoEnvironmental, Inc.

Company or Corporation

## CERTIFICATE OF VOTE

At a duly authorized meeting of the Board of Directors of

GZA GeoEnvironmental, Inc. held on 1/18/2024,

it was unanimously voted to authorize Guy P. Dalton

its V.P./Associate Principal to sign any and all bid and contract documents on

behalf of the Corporation. I further certify that said vote remains in full force and effect and

has not been rescinded or modified as of the date below.

Date 1/23/2024

GZA GeoEnvironmental, Inc.

Corporate Name



~~Clerk~~ Susan Domko, Assistant Secretary

SEAL:





## Model Host Community Agreement Public Comment Period Now Open

*Cannabis Control Commission to seek feedback through January 31, 2024*



Today, the Cannabis Control Commission (Commission) opened a two-week public comment period for constituents to weigh in on the “Model Host Community Agreement (HCA)” that the agency has drafted as the template for a compliant contract between municipalities and license applicants/licensees. Responses should be emailed to [Commission@CCCMass.com](mailto:Commission@CCCMass.com) with a subject line of “Model HCA Public Comment” no later than **Wednesday, January 31, 2024, at 5 p.m.**

State law requires all Marijuana Establishments and Medical Marijuana Treatment Centers seeking a new license or renewal of a license to have an executed HCA with the municipality in which they seek to operate, or operating within, including all stipulations of responsibilities between the parties.

The Model HCA was incorporated into the Commission's recent regulatory revisions that were promulgated in accordance with the Commonwealth's cannabis equity reform law, which was enacted and signed into law August 2022. The final document will be an essential part of the Commission's engagement with cities, towns, and licensees across Massachusetts to fulfill its new, legislatively mandated authority to review, approve, and certify agreements between the parties.

Starting March 1, the Commission will begin enforcing adherence to an HCA that complies with state law and regulations, or that the license applicant/licensee and host community agree to a compliant waiver. The timeline for enforcing the agency's new HCA regulations will depend upon the date a new license applicant or current licensee submit a completed application to the Commission.

After the public comment period ends, and the final Model HCA is approved, the Commission recommends the Model HCA be used by stakeholders in the following ways:

- As a new, "fill-in-the-blank" agreement between the contracting parties;
- A template that can be used and modified based on the parties' agreement; or
- As an interim agreement for licensees and municipalities to quickly establish a compliant HCA if there are concerns that their current HCA may not be compliant with state law and regulations.

Commission regulations specify that agreements that conform to the Model HCA will be presumed compliant. However, while the template is meant as a tool for constituents to use, it is not the required HCA format, and it should

not be construed as legal advice. Any municipality, license applicant, or licensee is encouraged to consult with an attorney regarding the legal requirements for a HCA prior to signing any such contract.

All feedback to the Model HCA should be submitted as soon as possible, and not later than January 31, 2024. Those received by the deadline will be reviewed by Commissioners and staff and may be incorporated as changes for the final version that will be considered at a future public meeting. The Commission is scheduled to meet next on February 8, 2024.

Please be advised that the Commission may publish submissions it receives or produce them in response to a request made under the Massachusetts Public Records Law, M.G.L. c. 66, § 10, or any other compulsory legal processes.

**Review the Draft Model HCA**

**Submit Public Comment**



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COMMONWEALTH OF MASSACHUSETTS

# Model Host Community Agreement Template

## PUBLIC COMMENT

***Please note: the Cannabis Control Commission is accepting public comments in response to this template (Model Host Community Agreement) from January 17, 2024 through January 31, 2024 at 5 p.m. All public comment submissions should be emailed to [Commission@CCCMass.com](mailto:Commission@CCCMass.com) with the subject line “Model HCA Public Comment”.***

Disclaimer: Pursuant to M.G.L. c. 94G § 4(a), the Commission is authorized to review, regulate, enforce, and approve Host Community Agreements (“HCA”) and to develop this Model HCA. An HCA submitted by a License Applicant, Marijuana Establishment, and/or Medical Marijuana Treatment Center which is determined to conform with this document will be presumed compliant with applicable laws and regulations. While this template is a contractual tool for end users, it should not be interpreted or taken as the Commission providing legal advice. Prior to executing this document, or if you have additional questions regarding the legal requirements for Host Community Agreements, you are encouraged to consult with an attorney.



## HOST COMMUNITY AGREEMENT

Between

[MUNICIPALITY]

And

[COMPANY NAME]

This Host Community Agreement (“Agreement”) is entered into and executed this [DAY] day of [MONTH], [YEAR] by and between [COMPANY NAME], a business entity certified and recorded with the Massachusetts Secretary of the Commonwealth (the “Company”) applying for and/or currently holding a license issued by the Cannabis Control Commission (the “Commission”) and the Municipality of [MUNICIPALITY] (“the Municipality”).

WHEREAS, the Company is applying for a Commission license (the “Applicant”) and/or is currently licensed by the Commission as a Marijuana Establishment(s) or Medical Marijuana Treatment Center(s) (the “Licensee”), and is located within or plans to locate within the Municipality;

WHEREAS, the Company shall comply with all applicable state laws and regulations, including, but not limited to G.L. c. 94G, G.L. c. 94I, 935 CMR 500.000 *et seq.*, and 935 CMR 501.000 *et seq.*, as applicable, and such approvals as may be issued by the Municipality in accordance with its local zoning, laws, bylaws, or ordinances, as may be amended;

WHEREAS, the Company and the Municipality (collectively, the “Parties”) intend by executing this Agreement to comply and satisfy the provisions of G.L. c. 94G, § 3(d), as applicable to the licensed operation(s) of the Marijuana Establishment and/or Medical Marijuana Treatment Center, with such operations to be done in accordance with applicable zoning, laws, bylaws, or ordinances of the Municipality; and

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. **Terms.**

Where applicable, the following terms shall hold the same meaning and definitions as defined by the Commission in 935 CMR 500.000 *et. seq* and 935 CMR 501.000 *et seq.*, as applicable:

- a) Marijuana Establishment (ME) means a Marijuana Cultivator (Indoor or Outdoor), Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Microbusiness,

Independent Testing Laboratory, Marijuana Retailer, Marijuana Transporter, Marijuana Delivery Operator, Marijuana Courier, Marijuana Research Facility Licensee (as defined in 935 CMR 500.002: Marijuana Research Facility Licensee), Social Consumption Establishment (as defined in 935 CMR 500.002: Social Consumption Establishment), or any other type of licensed Marijuana-related business, except a Medical Marijuana Treatment Center (MTC).

- b) Medical Marijuana Treatment Center (MTC) means an entity licensed under 935 CMR 501.101 that acquires, cultivates, possesses, Processes (including development of related products such as Edibles, MIPs, Tinctures, aerosols, oils, or ointments), Repackages, transports, sells, distributes, delivers, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to Registered Qualifying Patients or their Personal Caregivers for medical use. Unless otherwise specified, MTC refers to the site(s) of dispensing, cultivation, and preparation of Marijuana for medical use.
- c) Final License means a certificate of final licensure issued by the Commission pursuant to its authority under G.L. c. 94G.
- d) Community Impact Fee (CIF) means impact fee(s) claimed by the Municipality which have been certified by the Commission or ruled upon by a court of competent jurisdiction as being Reasonably Related to the actual costs imposed by the Company.
- e) Reasonably Related means a demonstrable nexus between the actual operations of a ME or MTC and an enhanced need for a Municipality's goods or services in order to offset the impact of operations. Fees customarily imposed on other non-marijuana businesses operating in a Municipality shall not be considered Reasonably Related.

Should there be a conflict between these definitions and those contained in 935 CMR 500.000 *et seq.* and/or 935 CMR 501.000 *et seq.*, the Commission's regulations shall control. Additionally, any term used in this Agreement but not identified and defined in this section shall hold the same meaning and definition as so defined in the Commission's regulations.

## 2. Authorized Operations.

The Parties stipulate that this Agreement provides permission for the Company to apply for, obtain, and operate the following selected license type(s) within the Municipality:

- ☐ Medical Marijuana Treatment Center
- ☐ Marijuana Cultivator (Indoor)
- ☐ Marijuana Cultivator (Outdoor)
- ☐ Marijuana Product Manufacturer
- ☐ Marijuana Retailer
- ☐ Marijuana Microbusiness (Indoor Cultivation & Product Manufacturing)
- ☐ Marijuana Microbusiness (Outdoor Cultivation & Product Manufacturing)

- ☐ Marijuana Microbusiness (Indoor Cultivation only)
- ☐ Marijuana Microbusiness (Outdoor Cultivation only)
- ☐ Marijuana Microbusiness (Product Manufacturing only)
- ☐ Marijuana Microbusiness (with Delivery Endorsement)
- ☐ Craft Marijuana Cooperative
- ☐ Marijuana Courier
- ☐ Marijuana Delivery Operator
- ☐ Marijuana Transporter
- ☐ Marijuana Research Facility
- ☐ Independent Testing Laboratory
- ☐ Standards Laboratory

3. **Location.**

- a) The Parties acknowledge that the Company shall identify to the Commission a proposed location where licensed operations of the ME/MTC will occur prior to being issued a license for such operations.
- b) The Municipality authorizes the Company to operate within the Municipality at [SPECIFIED LOCATION ONLY / LOCATION COMPLIANT WITH LOCAL ZONING, RULES, BYLAWS, OR ORDINANCES].
- c) If the Municipality authorizes the Company to operate at a specified location within the municipality as identified in Section 3.b., the specific location authorized to operate the license type in Section 2 is the following: [SPECIFIED LOCATION / NOT APPLICABLE].

4. **Compliance.**

The Parties shall comply with all laws governing the operation of the license type(s) selected in Section 2, as applicable, including, but not limited to:

- a) G.L. c. 94G, G.L. c. 94I, 935 CMR 500.000 *et seq.*, and 935 CMR 501.000 *et seq.*, as the same may be amended from time to time, or its successor statute(s) if any.
- b) The Municipality bylaws, local laws, ordinances, and zoning applicable to the operation of MEs/MTCs, as the same may be amended from time to time.
- c) The Company shall be responsible for obtaining from the Commission and the Municipality all licenses, permits, and approvals required for the operation of each license covered by the Agreement.
- d) The obligations of the Parties are contingent on the Company:

1. Obtaining a Final License from the Commission for operation of a license type(s) selected in Section 2 in the Municipality; and
  2. The Company's receipt of any and all necessary local permits and approvals to locate, occupy, and operate the license type(s) selected in Section 2 in the Municipality, inclusive of zoning compliance.
- e) If the Company is unable to obtain a Final License from the Commission, or if such local permits and approvals are not granted for any reason, then this Agreement shall be void.
- f) This Agreement does not affect the authority of the Municipality to issue or deny permits, licenses, or other approvals under the statutes and regulations of the Commonwealth, or the bylaws, local laws, zoning, and ordinances of the Municipality. Nor does this Agreement affect the Municipality's ability to enforce any applicable law.
- g) The Parties to this Agreement shall work in good faith to effectuate the purposes of this Agreement.

5. **Annual Payments Responsibilities.**

The Parties agree to the following provisions regarding annual payments responsibilities:

- a) CIF
1. There may be additional expenses and impacts including but not limited to impacts on the Municipality's infrastructure systems, law enforcement, fire protection services, inspectional services, as well as unforeseen expenses and impacts on the Municipality that are Reasonably Related to the operation of the ME(s)/MTC(s).
  2. To mitigate Reasonably Related expenses and impacts, the Company shall pay a CIF to the Municipality.
  3. The Municipality shall not explicitly or implicitly require the Company to make a promise of future monetary payments, in-kind contributions, or charitable contributions to the Municipality, notwithstanding the CIF payment provision allowed under G.L. c. 94G, § 3.
  4. A claimed impact fee shall not exceed three percent of the gross sales of the Company, nor be calculated on a certain percentage of the Company's sales.
  5. The Municipality shall not attempt to collect impact fees relating to any operations occurring prior to the date the Company is granted a Final License by the Commission for a particular MEs/MTCs.
  6. No impact fees shall be assessed after the eighth year of the Company's operations.

7. The Municipality shall not attempt to collect impact fees from the Company that has held a Final License for more than nine (9) years for a particular ME(s)/MTC(s).
8. The Municipality shall provide an annual itemized invoice of the impact fees claimed by the Municipality that are Reasonably Related to the operations of the Company (“claimed impact fees”) within one (1) month of the anniversary of the date the Company receives or received a Final License from the Commission for each license held by the Company located within the Municipality, if more than one. All subsequent, one-year invoice periods shall be consistent with the anniversary of the Company’s Final License date(s). Failure to provide said invoice within the prescribed time shall result in the Municipality forfeiting any CIF it may have been entitled to for the applicable year of the Company’s operation.
9. The Municipality’s itemized invoice shall specifically describe how the claimed impact fees were spent, including a line item for each good or service charged, and a statement of its cost, purpose, and relation to the Company’s particular operations.
10. The Company shall annually pay any undisputed CIF no later than the end of the current fiscal year or within 90 days of the date of the Commission’s CIF certification, whichever is later.
11. The Company shall not be required to pay the CIF if the CIF is the subject of a nonfrivolous legal dispute either through the Commission's administrative hearing process or before a court of competent jurisdiction.

b) Waiver of Community Impact Fee

A Municipality may not assess a impact fees or may choose to not collect impact fees in a particular year. Any such election shall not operate as a waiver of the Municipality's rights under this Agreement to collect a CIF in subsequent years.

c) Generally Occurring Fees

Generally occurring fees are those fees customarily imposed by the Municipality on non-cannabis businesses operating within its confines and shall not be considered a CIF. These fees include, but are not limited to, sewer and water connection, waste collection, and local taxes. The Municipality now affirms the following list of expected Generally Occurring Fees the Company will be required to pay: [LIST].

The Company concurs and consents to the stated list of Municipality’s expected Generally Occurring Fees provided herein.

d) Local Taxes

Property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable taxes for that property shall be paid either directly by the Company or by its landlord.

e) **Other Taxes**

Notwithstanding any previously identified provisions, the Company acknowledges and affirms its obligation to pay any and all fees associated with sales tax, excise tax on Marijuana and Marijuana Products, or other taxes or fees otherwise provided for in G.L. c. 94G, G.L. c. 64H, and G.L. c. 64N.

6. **Security.**

- a) The Company shall maintain security at its ME(s)/MTC(s) in accordance with the security plan presented to the Municipality and approved by the Municipality's Police Department and the Commission. In addition, the Company shall at all times comply with all applicable laws and regulations regarding the operations of MEs/MTCs, as applicable, and the security thereof.
- b) The Company shall comply with all Commission and the Municipality's security requirements as promulgated by state law, regulation, local law, ordinance, or bylaw.

7. **Energy Usage.**

The Company shall comply with the Commission's energy regulations provided in 935 CMR 500.105(1)(q), 935 CMR 500.105(15), 935 CMR 500.120(11), 935 CMR 500.130, *et seq.*, and, if applicable, comparative medical regulations.

8. **Equity and Local Opportunities.**

- a) The Company shall, consistent with applicable laws and regulations, make good faith efforts to hire municipal residents for employment, supplier services, and/or vendor services.
- b) The Company shall, consistent with applicable laws and regulations, have goals, programs, and metrics, and make progress towards those goals to hire individuals/businesses for employment, supplier services, and/or vendor services from areas defined as Areas of Disproportionate Impact by the Commission.
- c) The Company shall, consistent with applicable laws and regulations, have goals, programs, and metrics, and make progress towards those goals to hire individuals/businesses identifying as, as people of color, particularly Black, African American, Hispanic, Latinx, and Indigenous people, women, Veterans, persons with disabilities, and LGBTQ+ people.

9. **Effective Date, Term, and Termination.**

- a) This Agreement shall be in full force and effect beginning on [DATE].
- b) This Agreement shall terminate on [TERM / DATE / CONDITION PRECEDENT].
- c) At the conclusion of the term of this Agreement, the Parties may negotiate a new Agreement in accordance with the current prevailing regulations and laws as such regulations and laws may be amended or replaced. Alternatively, the Parties may negotiate and execute an HCA Waiver.

**10. Notice of Discontinuance of Operations.**

- a) The Municipality shall not discontinue relations with the Company in bad faith and shall provide the Company with written notice of the Municipality's intention to discontinue relations with reasonable advanced notice.
- b) This Agreement shall be void in the event that the Company ceases operations of its Marijuana Establishment in the Municipality for a period of greater than 60 days without substantial action to reopen or relocates such operations outside of the Municipality. The Company shall provide notice to the Municipality no less than 90 days prior to cessation or relocation of operations.

**11. Governing Law and Severability.**

This Agreement shall be governed in accordance with the laws of the Commonwealth of Massachusetts. 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, unless one or both Parties would be substantially or materially prejudiced.

**12. Confidentiality.**

The Parties agree that all records in the possession of the Municipality are governed by G.L. c. 66, § 10, the Public Records Law.

**13. Amendments/Waiver.**

The Parties may make amendments to this Agreement or waive its terms only by a mutually executed written agreement in accordance with the current prevailing regulations and laws as such regulations and laws may be amended or replaced.

**14. Successors/Assigns.**

This Agreement is binding upon the Parties hereto, their successors, assignees and legal representatives. The Company shall not assign, sublet, or otherwise transfer its rights nor



delegate its obligations under this Agreement, in whole or in part, without the prior written consent from the Municipality, and shall not assign any of the monies payable under this Agreement to the Municipality, except the written consent of the Municipality, but such consent by the Municipality shall not be unreasonably withheld or denied.

15. **Counterparts.**

This Agreement may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any Party hereto may execute this Agreement by signing one or more counterparts.

16. **Signatures.**

Facsimile and electronic signatures affixed to this Agreement shall have the same weight and authority as an original signature. The individuals signing below have full authority to do so by the entity on whose behalf they have signed.

17. **Notices.**

Except as otherwise provided herein, any notices, consents, demands, requests, approvals, or other communications required or permitted under this Agreement shall be made electronically to the email(s) addresses identified below for the respective Parties:

Email Address(es) for the Municipality: [EMAIL ADDRESS(ES)]

Email Address(es) for the Company: [EMAIL ADDRESS(ES)]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

**MUNICIPALITY OF [MUNICIPALITY]**

Duly Authorized Representative Name: [NAME]

Duly Authorized Representative Title: [TITLE]

Duly Authorized Representative Signature: [SIGNATURE]

Date of Signature: [DATE]

**COMPANY: [COMPANY NAME]**

Duly Authorized Representative Name: [NAME]

Duly Authorized Representative Title: [TITLE]

Duly Authorized Representative Signature: [SIGNATURE]

Date of Signature: [DATE]



## Cannabis Control Commission Regulatory Amendments Impacting Municipalities (Part I)

### Prepared for the January 2024 MMA Business Meeting and Trade Show

As many municipalities may recall, Chapter 180 of the Acts of 2022, "[An Act Relative to Equity in the Cannabis Industry](#)" (the "Act")<sup>1</sup> made numerous changes to Massachusetts' cannabis laws, G.L. c. 94G, effective November 9, 2022, including those governing Host Community Agreements ("HCAs") and community impact fees ("CIFs"). It also greatly expanded the regulatory oversight authority of the Massachusetts Cannabis Control Commission (the "CCC").

On October 27, 2023, the Cannabis Control Commission ("CCC") published its revised regulations for Adult Use of Marijuana ([935 CMR 500.000](#)) and Medical Use of Marijuana ([935 CRM 501.000](#)), pursuant to Act. This is the first of a three-part memorandum exploring major changes to the HCA process and what to know about the upcoming March 1, 2024, deadline. The second and third installments of this update will explore new requirements for the collection of CIFs and the CCC's certification of the same, as well as changes to the social equity regulations and the HCA process for Social Equity Businesses.

#### **HOST COMMUNITY AGREEMENTS<sup>2</sup>**

**CCC Review and Approval of HCAs.** Beginning March 1, 2024, the CCC shall review and approve each HCA as part of a marijuana business' completed initial license application and at each license renewal to determine compliance with the Act and new regulatory requirements. The CCC's regulations purport to apply the Act retroactively and therefore, even pre-existing HCAs (i.e., those effective prior to November 9, 2023) shall be subject to the CCC's review and approval. In particular, the regulations provide that the CCC may:

- Deem an HCA provision invalid or unenforceable;
- Declare an HCA or a provision of an HCA voidable upon deeming the HCA as a contract of adhesion; and
- Issue fines and other sanctions against a Host Community that is "noncompliant" with HCA regulatory requirements.

Upon presentment of an HCA by a marijuana business, the CCC has 90 days to review and issue a decision on a submitted HCA, or "HCA Waiver" (explained below). If the CCC determines that an HCA for an initial application is

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<sup>1</sup> For reference please see our previous [eUpdate](#).

<sup>2</sup> Additional regulations apply to social Equity Businesses and there are now new requirements regarding equity standards in the HCA process. These standards will be discussed in detail in the third installment of this update.

not compliant in any manner, it must provide written notice to the parties of any deficiencies identified by during its review of the HCA, as noted below, and may request additional information from the marijuana business and the Host Community. Any resubmission or amendment to the HCA restarts the 90-day timeframe for review. Failure to submit a compliant HCA or HCA Waiver with an application for licensure may result in a marijuana business' application remaining incomplete or may be grounds for denial of a renewal application.

The CCC's noncompliance notice to the parties shall state:

- (1) The factual basis for the finding of noncompliance, including identification of the noncompliant term(s), condition(s), or provision(s) of the HCA, if applicable;
- (2) The parties' option to correct the noncompliance and submit an amended HCA;
- (3) The parties' option to submit an HCA Waiver; and
- (4) The parties' option to proceed under an executed HCA that conforms with the CCC's Model Host Community Agreement, to be relied on in the interim until the parties come to an agreement<sup>3</sup>.

Importantly, while the CCC does not include this option in its noncompliance notice, the regulations provide that a Host Community may discontinue relations with a marijuana business provided, however, that such discontinuance is not in "bad faith", as noted below.

**Minimum Acceptable Requirements.** HCAs must include a statement of all stipulated responsibilities between the municipality and the marijuana business, including all terms and conditions, such as:

- A provision that the municipality will transmit CIF invoices to the marijuana business within one month of the anniversary date the business received the final license<sup>4</sup> and "clear, specific terms" regarding a Host Community's assessment of a CIF;
- A provision explicitly identifying generally occurring fees<sup>5</sup> (e.g. routine water, property tax, sewer, trash pickup etc.);
- The specific marijuana business license operations allowed under the terms of the HCA ((e.g., manufacturing, retail, delivery, cultivation, etc.);
- The name, signature, and title of the person authorized to enter into the HCA on behalf of the municipality;

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<sup>3</sup> The CCC has not yet issued a model HCA agreement or HCA Waiver form, but presumably will do so before March 1, 2024.

<sup>4</sup> The regulations do not clarify if the date remains the same after the first final license is issued. If the license is renewed on a date other than the first anniversary, it is unclear whether the new date becomes the anniversary date. While not required by the CCC, we recommend including a provision requiring the marijuana business to notify the Host Community of the date on the final license promptly after it is issued, as well as the date of each license renewal.

<sup>5</sup> Generally occurring fees are customarily imposed on other non-cannabis businesses operating in a Host Community and will not be considered a CIF.

- The name, signature, and title of the person authorized to enter into the HCA on behalf of the marijuana business;
- The certified business name of the licensee or applicant as recorded with the Secretary of State and CCC;
- The date of execution by both parties;
- The effective date of the HCA; and
- The duration of the HCA, which cannot be indefinite.

**Prohibitions.** The regulations provide that external or contemporaneous agreements between the Host Community and marijuana business to impose terms or conditions outside of an HCA will be unenforceable. Additionally, the CCC prohibits certain provisions in HCAs and will find them void, including provisions:

- Discouraging parties from bringing a civil cause of action or other legal challenge relative to an HCA or to an individual term;
- Affording a Host Community sole and absolute discretion on how it will spend CIFs;
- Mandating or otherwise requiring that the CIF be a certain percentage of a total or gross sales;
- Imposing legal, overtime, or administrative costs or any costs other than a CIF with the exception of tax obligations or routine, generally occurring municipal fee(s);
- Categorically deeming a Host Community's claimed impact fees to be reasonably related to the business' operations, or that otherwise excuse a Host Community from calculating impact fees based on the actual operations of a marijuana business;
- Including or otherwise deeming good faith estimates, unquantifiable costs, generalized expenses, or pro-rated expenses as a CIF;
- Waiving a marijuana business' ability to dispute whether impact fees claimed by a Host Community are reasonably related and properly due and payable as a CIF; and
- Imposing an unreasonable condition or a term that is "unreasonably impracticable"<sup>6</sup> in an HCA.

**Presumption of Reasonability for Some Terms and Conditions.** Certain conditions and terms in the HCA shall be presumed reasonable by the CCC, such as those that are:

- Required under by local rules, regulations, ordinances, or bylaws;
- Have been deemed necessary to ensure public safety and proposed by the chief law enforcement authority and/or fire protection chief with explanation and detail why the condition is necessary for public safety.

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<sup>6</sup> The CCC defines "unreasonably impracticable" as anything that exposes the marijuana business to "unreasonable risk or require[s] such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate" the marijuana business.

- Have been deemed necessary to ensure public health and proposed by the chief public health authority in a Host Community with explanation and detail why the condition is necessary for public health.
- A local requirement customarily imposed by the Host Community on other, non-cannabis businesses operating in the community;
- Required by law and do not conflict with other laws; or
- Otherwise deemed reasonable by the CCC based on particular circumstances presented by an HCA or contracting parties.

**No Monetary Obligations Outside of CIFs.** The CCC further restricted municipalities' authority to contract for financial obligations in HCAs. While there is no restriction on generally occurring fees like water, sewer, property tax, etc., no other financial obligations can be imposed on marijuana businesses outside of CIFs. This includes legal fees, overtime, and administrative costs outside of a CIF, as well as any additional payments or obligations including but not limited to monetary payments, in-kind contributions, providing staffing, advance payments, or charitable contributions. Similarly, the regulations restrict Host Communities from requiring upfront payments as a condition for operating in the Host Community. Likewise, Host Communities may not require money to be held in escrow, bond, or other similar account for the Host Community's use or purposes.

**HCA Waivers.** Municipalities can choose to forgo the HCA process and agree to waive the HCA requirement, in the form and manner determined by the CCC. The HCA Waiver constitutes a total relinquishment of the requirement to enter into a HCA. No party to an HCA may use an HCA Waiver to waive individual provisions of a HCA and, therefore, an HCA Waiver that sets an expiration date or any conditions will be deemed noncompliant. Once an HCA is recorded with the CCC, it can only be rescinded upon the CCC's approval of a complaint HCA subsequently executed and submitted by the parties.

NOTE: It is unclear if granting an HCA Waiver to one marijuana business will affect the Host Community's negotiations with other marijuana businesses. Host Communities considering HCAs Waivers should be mindful of whether their existing local bylaws or regulations sufficiently regulate marijuana businesses (i.e., odor controls, traffic, dark sky lighting, water usage, hours of operation, etc.).

**Discontinuing Host Community Status.** Municipalities can notify marijuana businesses if they no longer intend to continue as Host Communities, as long as this is not done in bad faith. If a Host Community discontinues relations with a marijuana business, or on submission of a mutual abrogation agreement executed by the parties, the marijuana businesses may submit a request for equitable relief to the CCC and send notice of the same to the municipality. The CCC may then exercise its discretion to (1) extend the business' license expiration date without additional prorated license fees, (2) waive a change of location fee, (3) institute procedures for winding down of operations at the licensed premises, or (4) any other equitable relief as determined by the CCC. If the CCC grants or denies a request for equitable relief, the agency will provide notice of its decision to the parties and both the municipality and the marijuana business can seek relief from that decision from a court of competent jurisdiction.

**Complaints of Noncompliance and Enforcement.** The CCC also has the authority to investigate any complaint of noncompliance and take enforcement action if noncompliance is found. Failure of a municipality to correct

noncompliant conduct can have serious consequences. The CCC can impose sanctions of up to \$50,000 per violation per day. Aggravating circumstances like duration and severity of the violation, previous noncompliance, knowledge of the violation, or whether the offense constituted grounds for denial of a license renewal will determine the severity of the fine. The municipality may also lose its “good compliance standing” and the CCC may abstain from considering for any new license applications affiliated with the community until the good compliance standing is restored.

### **MARCH 1, 2024, DEADLINE AND COMPLIANCE**

Any applications for an initial license or for a license renewal on or after March 1, 2024, must comply with these new regulations. The CCC has made clear that it will reject existing HCAs that do not comply with the newly promulgated regulations, regardless of the HCAs’ compliance with previous regulations. Municipalities which have signed HCAs with marijuana businesses may want to consider reviewing those existing HCAs now to assess compliance with the regulations, and evaluate how they wish to proceed, in the event of a finding of noncompliance by the CCC.

While not all marijuana businesses with existing HCAs will be seeking a license renewal in March, Host Communities may wish to begin negotiations for new compliant HCAs now. Such communities may inquire with existing marijuana businesses to determine when they intend to apply for license renewal and plan negotiations (if any) accordingly.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg ([lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com)) or Nicole J. Costanzo ([ncostanzo@k-plaw.com](mailto:ncostanzo@k-plaw.com)).

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

## Cannabis Control Commission Regulatory Amendments Impacting Municipalities (Part II)

### Prepared for the January 2024 MMA Business Meeting and Trade Show

This is the second of a three-part memorandum exploring extensive amendments to the Commonwealth's cannabis laws. In late October 2023, the Cannabis Control Commission ("CCC") promulgated amended regulations, [935 CMR 500.000](#) and [935 CRM 501.000](#), which, among other significant revisions, substantially alter the process in which Host Communities collect and calculate community impact fees ("CIFs").

Prior to the enactment of Chapter 180 of the Acts of 2022, "[An Act Relative to Equity in the Cannabis Industry](#)" (the "Act"), while G.L. c.94G, §3(d) regulated Host Community Agreements ("HCAs") and CIFs, the CCC did not have any jurisdiction or oversight to impose additional obligations on Host Communities. The Act, however, provided the CCC with expanded power to review, certify and approve HCAs and CIFs, including criteria for calculating CIFs. The first part of this three-part memorandum discussed the CCC's authority in reviewing and approving HCAs. In this second part, we discuss important changes that municipalities should be aware of if they wish to collect CIFs. The third part will explore new social equity regulations, as well as the HCA process for Social Equity Businesses.

#### **COMMUNITY IMPACT FEES**

HCAs may still include CIFs for the Host Community provided however, among other requirements, that no HCA shall include a CIF after the eighth year of operation of a marijuana business. All CIFs must be "reasonably related" to the actual costs imposed by the marijuana business. Once the CCC certifies a CIF, it becomes due and payable to the Host Community unless the marijuana business disputes the CCC's certification determination. Still, Host Communities should be aware that they are not required to assess a CIF and may choose to forgo collection of a CIF.

**Reasonable Related.** To qualify as a CIF, an impact fee alleged by a Host Community must be reasonably related to the actual costs imposed on the municipality by the operation of the marijuana businesses. The CCC has defined "reasonably related" in such a narrow manner as to impose a higher burden on communities that wish to meet this standard and seek to collect CIFs:

*Reasonably Related means a demonstrable nexus between the actual operations of a marijuana business and an enhanced need for a Host Community's goods or services in order to offset the impact of operations. Fees customarily imposed on other non-marijuana businesses operating in a Host Community shall not be considered Reasonably Related.*



**NOTE:** The CCC has not yet issued any guidance on the definition of “enhanced need.” Nor has the CCC issued any amended guidance for Host Communities with a list of reasonably anticipated impacts, the costs of which might be assessed to marijuana businesses. Communities that wish to propose a list of reasonable impacts for the CCC’s review or receive clarity on any proposed impact expenditures in advance, may contact the CCC at 774-415-0200 or [Commission@CCCMass.com](mailto:Commission@CCCMass.com).

**Timing.** The initial invoice period for requested CIFs must cover a one-year period that starts from the date the CCC grants a marijuana business a final license. The CCC will not certify any CIFs attributable to dates outside of the applicable invoice period. This means that any impact costs incurred prior to the CCC granting a final license cannot be included in the CIF.

A Host Community must transmit its CIF invoice to the marijuana business no later than one month after the anniversary of the date the received a final license from the CCC. Following this, the Host Community must ensure that all subsequent, one-year invoice periods are consistent with the anniversary of the business’ final license date. Failure to transmit the CIF within the prescribed time will result in a forfeiture of any CIFs for applicable year of operations.

Once the CIF invoice is received, the marijuana business has 30 days to submit the invoice and any supporting documentation, if applicable, to the CCC in a form and manner yet-to-be determined by the CCC. A marijuana business that has agreed to pay a CIF under its HCA must annually pay any undisputed CIF by the end of the current fiscal year or 90 days from the date of the CCC’s certification, whichever is later.

**NOTE:** The amended regulations presume that any costs sought to be recouped through a CIF assessment must be first expended, prior to certification by the CCC and subsequent payment by the marijuana business. Thus, CIFs essentially become reimbursements for public monies already spent, but only so long as the expenditures are deemed “reasonably related.” Additionally, communities should be reminded that HCAs may no longer mandate or otherwise require that the CIF be a certain percentage of total or gross sales, but in no event can the total CIF collected from any particular establishment exceed three percent (3%) of gross sales. Moreover, establishments cannot be required to pay CIF prior to certification by the CCC. Accordingly, communities that have or intend to rely on HCA payments for certain impact expenditures should be aware of the risk in relying on such monies where certification by the CCC may not be guaranteed.

**Calculating and Documenting CIFs.** Good faith estimates, prorating, unquantifiable costs, and general expenses are insufficient methods of measuring costs for CIFs. A Host Community must ensure that CIF invoices include a specific description of how the alleged impact fees were spent, including a line itemization for each good or service charged stating its cost, purpose, and relation to the marijuana business’ operations.

In circumstances where a licensed premises is the site of multiple final licenses, no Host Community “may amplify its assessment of claimed impact fee(s) by assigning the same impact fee(s) to each final license operating from the licensed Premises without regard to the distinct operations of each licensed entity.” The Host Community shall ensure that the CIF invoice is restricted to the licensee operating from the licensed premises alleged to have impacted the community. Further, Host Communities should be aware that the CCC will not certify CIFs for legal costs incurred by a Host Community to defend against a lawsuit brought by the marijuana business.

**Challenging a CIF Determination.** The CCC shall make a determination certifying the CIF, in whole or in part, and notify the parties of their option to seek court intervention to independently review the CIF by bringing a breach of contract action (or seeking certiorari review). Marijuana businesses may also request an administrative hearing before an independent hearing officer of the CCC to challenge the findings of fact and conclusions of law. Municipalities are not afforded this administrative option but may intervene as a party to the hearing. Once a CIF dispute has been resolved, the marijuana business must show the CCC proof of payment or proof that the obligation was eliminated with its next license renewal application.

NOTE: Host Communities and marijuana businesses may choose to bring a CIF dispute before a private mediator retained by the parties at any time if such mediation is voluntarily agreed to or is a term of the HCA. Though neither party may unilaterally compel private mediation, if the parties both consent, in an effort to reduce litigation costs, mediation provisions in HCAs are, generally, recommended.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg ([lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com)) or Nicole J. Costanzo ([ncostanzo@k-plaw.com](mailto:ncostanzo@k-plaw.com)).

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## Cannabis Control Commission Regulatory Amendments Impacting Municipalities (Part III)

### Prepared for the January 2024 MMA Business Meeting and Trade Show

This third installment of a three-part memorandum explores recent regulatory changes regarding social equity standards, Social Equity Businesses and Participants, and what you need to know about the upcoming May 1, 2024, deadline. The first and second installments of this update addressed significant changes to the Host Community Agreement (the “HCA”) process, the calculation and documentation of CIFs, and new role of the Cannabis Control Commission (the “CCC”), pursuant to recent legislation, known as “[An Act Relative to Equity in the Cannabis Industry](#)” (the “Act”).

The Act also authorized the CCC to establish procedures for Host Communities to encourage and enable full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. In accordance with the Act, the CCC promulgated amended regulations, [935 CMR 500.000](#) and [935 CRM 501.000](#), on October 27, 2023. As discussed in a previous [eUpdate](#), these new regulations seek to promote and encourage full participation by creating mandatory social equity standards and best practices governing the HCA and licensing processes.

#### **SOCIAL EQUITY STANDARDS AND MANDATORY TRANSPARENT PRACTICES**

By May 1, 2024, Host Communities must adopt local rules or bylaws that comply with the CCC’s new “Equity Standards for Host Communities to Promote and Encourage Full Participation in the Regulated Marijuana Industry.” Host Communities must submit an attestation to the CCC of their compliance that specifically identifies the rules or bylaws adopted, as well as copies of an “Equity Plan” to the CCC. The CCC has yet to issue guidance on what form the attestation must take, but presumably an affidavit will be sufficient. Host Communities must also submit their Equity Plans to the CCC.

Municipalities should be aware that failure to comply may result in fines, after receiving notice and opportunity to comply, no sooner than May 1, 2025.

**Publication.** Host Communities must now publicize certain information in a conspicuous location at their offices and on their website in an effort to make the process of understanding the requirements to locate a marijuana business in a particular municipality clear and accessible to all. The “local approval process”, for purposes of compliance, is defined by the CCC “the steps involving a host community’s cannabis licensing, including, but not limited to, zoning, all associated fees, deadlines, and meeting schedules for local bodies involved in such processes.” At minimum, the CCC now requires publication of:

- A list of all required steps in the local approval process, including all associated fees, deadlines, meeting schedules for local bodies<sup>1</sup> involved in the local approval process;
- Identification of key individuals involved in the local approval process, including their name, title, and business address and contact information (such as email address or phone number);
- A list of all documents and forms required by the Host Community in local approval process, in an electronically downloadable form and paper form;
- Identification of application criteria for local approval to operate a marijuana business, and scoring methodologies relied on by the Host Community;
- General scoring information for all applicants and the Host Community's scoring of each individual applicant;
- The Host Community's explanation, in narrative form, of its reasoning for the approval or denial of an application; and
- Any other information later required by the CCC.

In addition, Host Communities must publish data regarding their total applicant pool. This data must identify each Social Equity Business and license applicant that has been designated as a Social Equity Program Participant or Economic Empowerment Priority Applicant, or who has been pre-verified.

**Equity Plan.** Host Communities are also required to establish an Equity Plan to promote and encourage full participation in the industry by individuals from communities disproportionately harmed by cannabis prohibition and enforcement. As above, this plan must be published by the Host Community at a conspicuous location at its offices and on its website. The plan should encourage applications from business and individuals that would meet the definition of Social Equity Businesses, Social Equity Program Participants, and Economic Empowerment Priority Applicants as determined by the CCC. It must include goals, programs, and measures the Host Community will use to promote and encourage participation. The CCC has not yet, however, issued a model plan or guidance for municipalities on this topic.

**Best Practices.** The regulations mandate that Host Communities adhere to the CCC's "best practices" for HCA negotiations with individuals or entities that have pre-verified or verified pursuant to 935 CMR 500.101(7), Social Equity Businesses, and License Applicants that have been designated as Social Equity Program Participants or Economic Empowerment Priority Applicants as well.

***Standard Evaluation Form:*** Best practices include the development of a standard evaluation form (or adoption of a form developed by the CCC<sup>2</sup>) by the Host Community that scores components of an application with

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<sup>1</sup> This presumably includes the select board, board of health, building commissioner, planning board, zoning board of appeals, conservation commission, and any other board that may be implicated in the process. Host Communities may wish to create a link on their municipal websites to the board and committee meetings, and relevant calendar events, to help ensure compliance.

<sup>2</sup> The CCC has not yet issued a model evaluation form.

consideration of equity in the overall evaluation score. At least 25% of the score must consider social equity. The equity component must include the following factors:

- If the applicant is a Social Equity Business;
- If the applicant is a Social Equity Program Participant;
- If the applicant is an Economic Empowerment Priority Applicant;
- If the applicant has a prior Marijuana-related criminal offense(s) or conviction(s);
- If the applicant is part of an Area of Disproportionate Impact; and
- If the individual applicant, or a majority of an entity applicant, is of Black, African American, Hispanic, Latino, Native American, or indigenous descent.

***Caps on Marijuana Businesses:*** Host Communities that cap the number of marijuana businesses in their municipality but later choose to eliminate or increase the cap must, as a best practice, reserve at least half (and not less than one) of those licenses, above the previously established cap, for Social Equity Businesses, Social Equity Program Participants, and Economic Empowerment Priority Applicants. Host Communities may seek an exemption from this regulatory requirement by submitting a waiver request to the CCC.

**Presumption of Compliance.** Host Communities will be presumed to meet the CCC's minimum acceptable equity standards for promoting and encouraging full participation in the regulated marijuana industry by taking one of the three actions listed below. At this time, however, we recommend communities consult with their legal counsel before adopting any of these measures as special legislation may be required for the same.

- Adopting a bylaw to exclusively allow Social Equity Businesses for three years or until the goals<sup>3</sup> of the exclusivity period are met;
- Adopting the CCC's Model Ordinance or Bylaw<sup>4</sup> to permit Social Equity Businesses; or
- Creating a 1:1 local approval process for equity applicants, where a general applicant can only be approved after a Social Equity Business has begun operations.

**Consequences of Noncompliance.** Any interested party can file a complaint with the CCC alleging a Host Community's noncompliance with social equity requirements. If a Host Community is found in violation, the CCC may impose fines equal to the total Community Impact Fees for all marijuana businesses in the Host Community during the prior calendar year. These fines will not begin to be assessed until May 1, 2025.

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<sup>3</sup> It is unclear if these are the goals set by the Host Community in its Equity Plan or if these are separate goals that will be set by the CCC. The CCC has not yet issued any guidance to clarify this issue.

<sup>4</sup> The CCC has not yet issued a model ordinance or bylaw.

The CCC may also identify on its website any municipality or Host Community that has been assessed a fine for equity noncompliance. The Host Community may seek an administrative hearing before the CCC to appeal a finding of noncompliance.

### **Equity Standards During HCA Negotiations**

In addition to the above mandatory transparency practices, special consideration and priority must be given to Social Equity Program Participants, Economic Empowerment Priority Applicants and Social Equity Businesses, as well as an individual or entity verified or pre-verified as such by the CCC, during HCA negotiations.

A business in the process of certification can request that the CCC provide confirmation of its pre-verified status to Host Communities so that the HCA process can move forward concurrently. Should a business's pre-verified status change, the business is required to notify the Host Community which may need to reassess priority based on the list of pending applicants.

Pursuant to the CCC's regulations, a Host Community may waive or reduce fees for an equity party to an HCA negotiation, including, but not limited to CIFs, zoning and occupancy fees. Again, we recommend that Host Communities consult with their legal counsel to determine whether any waivers are appropriate and if so, which public body or official within the municipality would be responsible for approving the same.

***Required Practices.*** During the HCA negotiation process with equity parties, Host Communities must:

- Prioritize negotiations of HCAs with equity parties;
- Engage in an ongoing dialogue by providing multiple opportunities for discussion and negotiation of HCA terms including, at minimum, two conferences;
- Include any attorney, representative, or other advocate, if elected by an equity party, in all negotiation discussions and conferences;
- Promote language access by providing a certified interpreter or translator to assist an equity party during all negotiation discussions and conferences, if elected by an equity party;
- Provide reasonable opportunities for an equity party to review a proposed HCA, HCA term or condition outside of a negotiation conference, or to seek review or input by a third party of their choice.
- Negotiate the terms of an HCA in good faith, with consideration of flexible terms that may mitigate particular challenges affecting an equity party, such as access to capital, with all terms and clauses conspicuously identified and openly discussed; and
- Allow an equity party to propose an amendment to, or seek cancellation of, an HCA within 30 days from the date of execution of the HCA.

### **Equity Standards To Positively Impact Certain Communities**

Perhaps the most unclear and vague provision of the new regulations is the requirement for Host Communities to develop a plan that will positively impact one or more communities that were disproportionately harmed by

marijuana prohibition and enforcement. There will likely be some overlap between this plan and aforementioned Equity Plan, as both require Host Communities to outline the goals, programs, and measurements the Host Community will pursue. Additionally, this plan, like the Equity Plan, must be published on the municipal website and posted in a conspicuous location in Town offices. The CCC defines these disproportionately harmed communities as those with:

- Past or current residents of geographic areas of disproportionate impact;
- State-designated Economic Empowerment Priority Applicants;
- State-designated Social Equity Program participants;
- Massachusetts residents with a past drug conviction; and
- Massachusetts residents with parents or spouses with drug convictions.

At this time, it is not entirely clear what the CCC had envisioned when establishing this requirement and we anticipate that the CCC will develop guidance documents to help municipalities understand what will be expected to ensure compliance with this new regulatory requirement.

### **Next Steps**

There is no “one size fits all” sample policy that could or should be adopted in every municipality, as development of such policies involve local considerations. We will continue to work with municipalities to develop appropriate policies and procedures to promote equity in the industry as required by the regulations based on, among other things, each municipality’s unique physical characteristics, demographics, and guidance provided by the CCC. In the meantime, where the regulations require that these policies and procedures be adopted by May 1, 2024, but the CCC has not yet provided final guidance, municipalities are encouraged to update their websites and create a dedicated page as an initial step toward adopting a more fully developed policy.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg ([lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com)) or Nicole J. Costanzo ([ncostanzo@k-plaw.com](mailto:ncostanzo@k-plaw.com)).

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## Initial Policies and Procedures to Promote Equity in the Cannabis Industry July 11, 2023

As many municipalities are aware, in August, 2022, the state Legislature passed “An Act Relative to Equity in the Cannabis Industry” (the “Act”), effective November 9, 2022, making numerous changes to Massachusetts’ marijuana laws and emphasizing goals for increasing equity in the marijuana industry. Of significant importance to municipalities, the Act requires that host communities establish policies and procedures by July 1, 2023 to encourage and enable full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. The Cannabis Control Commission (“CCC”), which has until November 9, 2023 to promulgate minimum policies and procedures to further this equity goal, issued guidance on Thursday, June 29, 2023 for municipalities, found [here](#), to comply with this requirement.

Among the CCC’s suggestions for initial policies and procedures to promote and encourage such full participation, which may include participation by “Social Equity Businesses”, as defined by the Act, as well as “Social Equity Program Participants” or “Certified Economic Empowerment Priority Applicants”, as defined under CCC regulations, are those that:

- Lower or eliminate fees for equity applications to reduce barriers to entry including, but not limited to, waivers or reduction of fees associated with the host community agreement (i.e., community impact fees), host community approval process and/or zoning review process (i.e., application fees)
- Improve transparency and efficiency in the approval process to reduce barriers to entry and lower costs including, but not limited to:
  - adoption of host community agreement application process and/or clear selection scoring assessments for marijuana applicants
  - adoption of priority review or exclusivity periods for Social Equity Businesses, Social Equity Program Participants and/or Certified Economic Empowerment Priority Applicants
  - improvements to municipal websites to outline steps required to locate in the municipality and/or to link to applicable host community agreement applications, zoning bylaws and maps, general bylaws, and local regulations

Host communities that have not yet adopted initial procedures and policies are encouraged to review prior guidance issued by KP Law on this topic, available [here](#). In addition, since it is not entirely clear what the CCC will promulgate in its amended regulations as minimum policies and procedures, host communities should review local bylaws and regulations that may impact the adoption of such policies and procedures.

There is no “one size fits all” sample policy that could or should be adopted in every municipality, as development of such policies involve local considerations. We will continue to work with municipalities to develop appropriate policies and procedures to promote equity in the industry as required by the Act based on, among other things, each municipality’s unique physical characteristics, demographics, and guidance provided by the CCC. In the meantime, where the Act required that these policies and procedures be adopted by July 1<sup>st</sup>, but final guidance from the CCC has not yet been provided, municipalities are encouraged to at least consider updating their websites to create a dedicated page with the marijuana related information identified by the CCC, noted above, as an initial step toward adopting a more fully developed policy.

In the meantime, for further information, please call your KP Law attorney at 617.556.0007 or contact Attorney Nicole Costanzo at [ncostanzo@k-plaw.com](mailto:ncostanzo@k-plaw.com).

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