

**LICENSE AGREEMENT**  
**2500 Bates Avenue, Concord**

THIS LICENSE AGREEMENT (“**Agreement**”) is dated as of March 15, 2021 (the “**Effective Date**”), and is between MERCED BAR, LLC, a Delaware limited liability company (“**Licensor**”), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“**County**”).

**RECITALS**

A. Licensor and County are parties to a lease dated April 16, 2013, as amended by a first amendment dated February 28, 2017, and a second amendment dated November 3, 2020 (the “**Second Amendment**”), (the “**Lease**”), under which the County is leasing from Licensor approximately 37,209 square feet of floor space in a building located at 2500 Bates Avenue, Concord, California (the “**Property**”) along with 263 parking spaces in the adjacent parking area.

B. County would like to temporarily use portions of the parking lot at the Property and the adjacent parcel of land owned by Licensor (identified as “Parcel 1” on Exhibit A to the Second Amendment) for purposes other than parking, in the locations shown on Exhibit A and as set forth in Section 4 below (the “**Licensed Uses**”); provided, however, that nothing herein shall be construed to include “Parcel 1” in the Lease and the County shall acquire no leasehold interest in “Parcel 1” by virtue of the execution of this Agreement by the parties.

C. Exhibit A to the Second Amendment shows the Property as having been bifurcated into “Parcel 1,” and “Parcel 2.” Licensor is contemplating the sale of both Parcel 1 and Parcel 2. A sale of either parcel could result in the termination of this Agreement and the curtailment of the Licensed Uses.

The parties therefore agree as follows:

**AGREEMENT**

1. **Grant of License; Term.**

- (a) Licensor hereby grants to County a revocable license for the Licensed Uses. In addition to the parking stalls and porch area outlined on Exhibit A.
- (b) County hereby accepts the Property for the Licensed Uses on an “as is” basis and in the condition it is in on the date of this Agreement and Licensor is hereby expressly relieved and released from any duty or obligation to make any improvements or alterations to the Property. County hereby further acknowledges that Licensor has made no representation or warranty whatsoever as to the condition or suitability of the Property for the Licensed Uses.

- (c) The term of this Agreement begins on the Effective Date and ends on the date that is one hundred eighty (180) days thereafter (the “**Initial Term**”); provided, however, if neither party terminates this Agreement in accordance with Section 1(e) below, this Agreement will automatically renew on a month to month basis.
- (d) Licensor has the right to terminate this Agreement immediately at any time upon any default hereunder by County (in addition to any other remedies Licensor may have at law and/or equity).
- (e) Either party may terminate this Agreement at any time upon thirty (30) days’ prior written notice to the other party. If this Agreement renews on a month to month basis after the Initial Term, either party may terminate this Agreement upon thirty (30) days’ prior written notice.

2. **Waiver of Liability and Indemnification.**

County agrees to use reasonable care to prevent damage to property and injury to persons while on the Property under this Agreement. County shall protect the asphalt from damage when setting up the pods through the use of plywood or other protective elements.

County assumes all risk of damage to property and injury to persons related to the Licensed Uses from any cause whatsoever, and agrees that, to the extent not prohibited by law, Licensor, its agents, partners, advisors, mortgagees, and any of their respective officers, managers, directors, employees, contractors, successors and assigns (each, including Licensor, a “**Licensor Party;**” collectively, “**Licensor Parties**”) shall not be liable for, and are hereby released from any responsibility for, any damage either to person, property or environment or resulting from the loss of use thereof, which damage is sustained by County or by other persons claiming through County.

County shall indemnify, defend, protect and hold harmless the Licensor Parties from and against any and all loss, cost, damage, expense, claims and liability, including without limitation court costs and reasonable attorneys' fees incurred in connection with or arising from any cause in, on or about the Property, and/or any acts, omissions or negligence of County or of any person claiming by, through or under County, or of the contractors, agents, employees, guests or invitees of County or any such person in, on or about the Property (“**Related Party**”). The provisions of this Section 2 shall survive the expiration or earlier termination of this Agreement.

3. **Insurance of County.**

County shall include the Licensed Uses and any property related thereto under its insurance policies required under the Lease. County shall provide Licensor with certificates or other evidence of such insurance satisfactory to Licensor concurrently with County’s delivery of an executed copy of this Agreement to Licensor. No Licensor Party shall have any liability whatsoever for any damage to County property used in connection with the Licensed Uses, or for any personal injuries or death arising out of any matter relating to the Licensed Uses; and in all events, County agrees to look to its insurance carrier for payment of any losses sustained in connection with the Licensed Uses. County shall indemnify, defend, protect and hold harmless all Licensor Parties (except to the extent of the losses

described below are solely caused by the gross negligence or willful misconduct of Licensor, its agents or employees), from and against any and all claims, losses, damages, obligations, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees and legal costs) which arise out of, are occasioned by or are in any way attributable to (i) the Licensed Uses, (ii) or the acts or omissions of County relating to the Licensed Uses, or (iii) any default of this Agreement by County (including any use or storage of hazardous materials in or about the Property). No Licensor Party shall have any liability for loss of or damage to any County property by theft, vandalism, fire, explosion, gas, electricity, water, rain, bursting of pipes, seepage, dampness, or any other cause. County hereby waives on behalf of its insurance carriers all rights of subrogation against all Licensor Parties.

4. **Use.**

The Licensed Uses are limited to drive-thru COVID-19 testing, including three (3) container pods that will be used for housing medical personnel. No commercial vehicles shall be kept on the Property for the Licensed Uses with the exception of a van that will support the medical efforts of the staff. County shall not make any temporary or permanent alterations, additions, or improvements to the Property of any kind whatsoever. The Licensed Uses shall not interfere with the quiet use and enjoyment of other tenants on the Property or adjacent properties, including limiting ingress and egress to the Property or adjacent properties, or in any way restrict or impede emergency vehicle access into and away from the Property or adjacent properties. The Licensed Uses shall be conducted in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Property.

Upon the termination of County rights under this Agreement, County shall discontinue the Licensed Uses and return the Property to the condition existing prior to commencement of County's activities related to the Licensed Uses. County shall be responsible for reimbursing Licensor for all costs expended by Licensor in repairing damage to or removing property from the Property caused by the Licensed Uses. Any personal property of County remaining on the Property after the expiration or termination of this Agreement shall be deemed abandoned by County.

5. **Hazardous Materials.**

County shall not cause or permit any Hazardous Materials (as hereinafter defined) to be handled, treated, generated in or about, or released or disposed of from, the Property. The term "**Hazardous Materials**" means any flammable material, explosives, radioactive materials, petroleum products, hazardous or toxic substances, or any waste or related materials, including without limitation anything included in the definition of "hazardous substances", "hazardous materials", "hazardous wastes", or "toxic substances" under any applicable federal, state or local law or regulation. If County or any Related Party in any way causes or permits contamination of the Property with Hazardous Material, County shall notify Licensor, and Licensor may terminate the license immediately. County hereby indemnifies Licensor, and agrees to defend and hold Licensor harmless, from and against all claims of any type arising from or in connection with contamination of the Property by Hazardous Materials caused by County or any Related Party or the Licensed Uses. The provisions of this Section 5 shall survive the expiration or earlier

termination of this Agreement. County will be using a small generator for providing electricity to the container/pods and will adhere to all AQMD regulations as well as fuel storage regulations for said generator. County will be responsible for any fuel spills and requisite clean up.

6. **Fees and Expenses.**

County shall pay to Licensor the amount of \$10.00 per month (the "Expense Fee") for the Licensed Uses.

County shall be required to pay the Expense Fee for the Initial Term upon its execution of this License. Thereafter, the monthly Expense Fee payments shall be due on the first calendar day of each month. Expense Fee payments shall be prorated for any fractional portion of a month. Any other payments which are required to be made by County to Licensor shall be paid within 5 business days after written request for payment. If any Expense Fee or any other sum due from County shall not be received by Licensor within five (5) days after such amount shall be due, County shall pay to Licensor a late charge equal to ten percent (10%) of such overdue amount. Acceptance of such late charge by Licensor shall in no event constitute a waiver of County's default with respect to such overdue amount, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder.

7. **Termination.**

"Cause" for termination of this Agreement shall exist if County fails to comply with any of the terms or provisions of this Agreement and, in the event of a monetary default by County, fails to cure such default within 30 days after the date of receipt of written notice of default from Licensor, or in the event of any non-monetary default, fails to cure such default within 5 days after the date of receipt of written notice of default from Licensor. Notwithstanding anything to the contrary set forth herein, Licensor shall have all remedies available at law and/or equity should County default or breach the terms of this Agreement.

8. **Assignment.**

County may not assign or otherwise transfer all or any part of its interest in this Agreement.

9. **Governing Jurisdiction.**

This Agreement shall be construed under and in accordance with the laws of the State of California.

10. **Notice.**

Any notice required to be given under this Agreement may be personally delivered to a party or may be sent by overnight courier service (e.g., Federal Express) to either party addressed as follows:

To County: Contra Costa County  
Public Works Department  
c/o Real Estate Manager  
40 Muir Rd, 2<sup>nd</sup> Floor  
Martinez, CA 94553  
Fax (925) 646-0288

To Licensor: Merced BAR, LLC  
Attention: Jeff Eales – Asset Manager  
31920 Del Obispo, Suite 260  
San Juan Capistrano, CA 92675  
Phone - (949) 545-0552

11. **Miscellaneous.**

Any modification of this Agreement must be in writing signed by both Licensor and County. If any provision of this Agreement is made unenforceable, such determination will not affect the enforceability of any other provision. If any action is brought by either party against the other, the prevailing party shall be entitled to recover reasonable attorney's fees. Except as expressly provided herein, this Agreement binds and inures to the benefit of the successors and permitted assigns of the respective parties. This Agreement may be signed in counterparts. If there is any conflict between this Agreement and the Lease, the terms of the Lease shall control.

12. **Brokers.**

In connection with this License, County warrants and represents that it has had no dealings with any broker or finder and that it knows of no other person or entity who is or might be entitled to a commission, finder's fee or other like payment in connection herewith and does hereby indemnify and agree to hold Licensor and Licensor Parties harmless from and against any and all loss, liability and expenses that Licensor and Licensor parties may incur should such warranty and representation prove incorrect, inaccurate or false.

**[Signatures appear on following page]**

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

COUNTY OF CONTRA COSTA, a  
political subdivision of the State of  
California

MERCED BAR, LLC, a Delaware limited  
liability partnership

By: \_\_\_\_\_  
Eric Angstadt  
Chief Assistant County Administrator

By: \_\_\_\_\_  
Thomas G. Rock  
Authorized Representative

**RECOMMENDED FOR APPROVAL:**

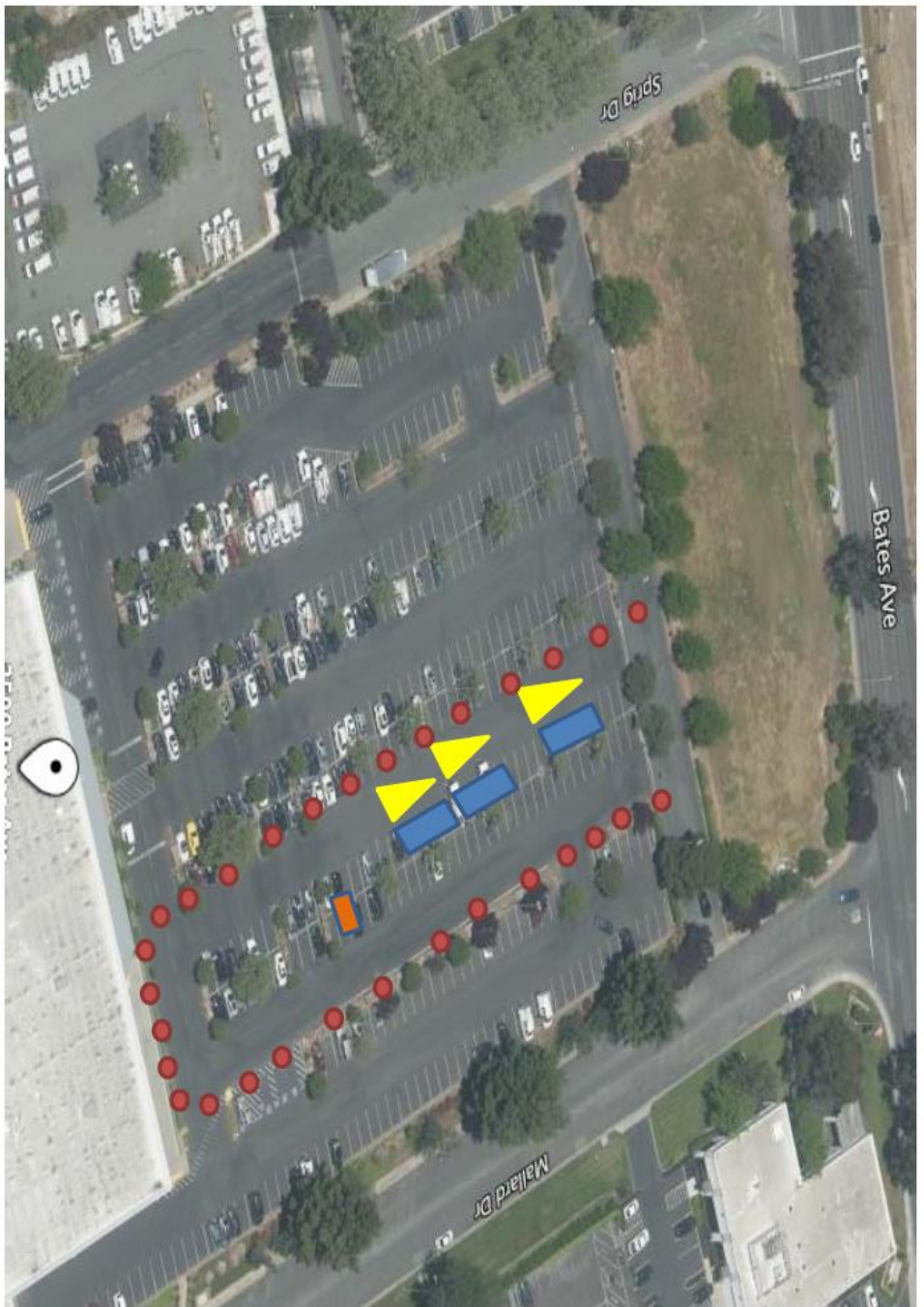
By: \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

By: \_\_\_\_\_  
Julin E. Perez  
Supervising Real Property Agent

**APPROVED AS TO FORM:**  
SHARON L. ANDERSON, County Counsel

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel

Exhibit A - 2500 BATES AVE., CONCORD



- : Cones/general flow of site
- ▲ Canopy
- Cones/staff accessible
- Cones (storage)