

RESOLUTION NO. 2021- 2822

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A TEMPORARY REVOCABLE, NON-EXCLUSIVE LICENSE AGREEMENT WITH CURATIVE INC. TO PROVIDE A SELF-SERVICE KIOSK AT TOWN HALL FOR COVID-19 TESTING; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 12, 2020, the Town declared a state of emergency due to the public health crisis presented by the novel coronavirus (“COVID-19”); and

WHEREAS, Curative has contracted with an independent physician or physician group, duly licensed and authorized under applicable local, state, and federal laws, in order to administer and report Curative COVID-19 tests for the public (the “Test”); and

WHEREAS, Curative has proposed to operate a self-service, kiosk at a designated space on the first floor of Town Hall for the purpose of conducting COVID-19 testing for the general public using the Test (the “Services”); and

WHEREAS, the Town desires the Services and expertise provided by Curative in order to provide the public and residents with an additional, accessible location for COVID-19 testing; and

WHEREAS, accordingly, the Town desires to grant Curative a temporary revocable, non-exclusive license to use a designated space within Town Hall to conduct COVID-19 testing for the public using Curative’s Test in a self-service, kiosk provided by Curative, as set forth in the Temporary Revocable, Non-Exclusive License Agreement attached hereto as Exhibit A (“Agreement”); and

WHEREAS, the Town Commission wishes to approve the Agreement, in substantially the form attached hereto as Exhibit “A”, and finds that the Agreement is in the best interest and welfare of its residents and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval of Agreement. The Agreement with Curative for the Services, in substantially the form attached hereto as Exhibit "A", is hereby approved.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement with Curative for the Services, in substantially the form attached hereto as Exhibit "A", subject to final approval by the Town Manager and Town Attorney as to form, content, and legal sufficiency. The Town Manager is further authorized to extend the term of the Agreement by mutual agreement of the parties.

Section 4. Implementation. The Town Manager and Town Officials are authorized to take any and all necessary action to implement the Agreement and the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of October, 2021.

Motion By: Commissioner Charles Kesl
Second By: Commissioner Eliana Salzhauer

FINAL VOTE ON ADOPTION:

Commissioner Charles Kesl	<u>Yes</u>
Commissioner Eliana R. Salzhauer	<u>Yes</u>
Commissioner Nelly Velasquez	<u>No</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>No</u>



Charles W. Burkett, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

TEMPORARY REVOCABLE, NON-EXCLUSIVE LICENSE AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
CURATIVE INC.

THIS TEMPORARY REVOCABLE, NON-EXCLUSIVE LICENSE AGREEMENT (this “Agreement”) is made on this __ day of _____, 2021 (“Effective Date”), by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, (the “Town”), and **CURATIVE INC.**, a Delaware company authorized to do business in Florida (hereinafter, “Curative”).

WHEREAS, on March 12, 2020, the Town declared a state of emergency due to the public health crisis presented by the novel coronavirus (“COVID-19”); and

WHEREAS, Curative has contracted with an independent physician or physician group, duly licensed and authorized under applicable local, state, and federal laws, in order to administer and report Curative COVID-19 tests for the public (the “Test”); and

WHEREAS, Curative’s Test has not been permanently FDA cleared or approved; and

WHEREAS, Curative has proposed to operate a self-service, kiosk at the Town for the purpose of conducting COVID-19 testing for the general public using Curative’s Test; and

WHEREAS, the Town desires the services and expertise provided by Curative in order to provide the public with an additional, accessible location for COVID-19 testing; and

WHEREAS, the Town desires to grant Curative a revocable, non-exclusive license to use the Town’s property described in Exhibit A, attached hereto and incorporated herein (the “Licensed Area”) for Curative to conduct COVID-19 testing for the public using Curative’s Test in a self-service, kiosk provided by Curative, as contemplated herein and outlined in Exhibit B, attached hereto and incorporated herein (the “Services”); and

WHEREAS, the Town finds that the limited use of the Licensed Area, in accordance with the terms of this Agreement, is a benefit to the community; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Curative and the Town agree as follows:

1. Grant of License; Non-Exclusivity; Use.

- 1.1. License.** The Town grants to Curative a revocable, non-exclusive license to use the Licensed Area described in Exhibit A to provide the Services as contemplated herein and outlined in Exhibit B. This license is personal to Curative and may not be assigned or transferred to any party without the Town’s express, written consent. Curative shall not permit the Licensed Area to be occupied or utilized by other organizations, entities, or persons. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in the Licensed Area or other Town property.

- 1.2. **Non-Exclusivity.** The Town designates Curative as a non-exclusive provider of COVID-19 testing at within the Town during the term of this Agreement. The Town specifically reserves the right to contract with and grant a license to any other entity providing services similar to those provided by Curative.
- 1.3. Curative, its agents, employees, invitees and guests shall have the non-exclusive right to ingress and egress to the Licensed Area during the dates and times set forth in Exhibit B.
- 1.4. The Town makes the Licensed Area available to Curative in an "as is" condition. The Town makes no representations or warranties concerning the condition of the Licensed Area or its suitability for use by Curative, its customers, or the public, and assumes no duty to warn either Curative, its customers, or the public concerning conditions that exist now or may arise in the future.
- 1.5. In making the Licensed Area available for use by Curative, the Town assumes no liability for loss or damage to Curative's kiosk, equipment, supplies, or other property. Curative agrees that the Town is not responsible for providing security at the Licensed Area, and Curative hereby waives any claim against Town in the event Curative's kiosk, equipment, supplies, or other property are lost, damaged, or stolen.
2. **Term; Effective Date.**
 - 2.1. The term of this Agreement shall be from August 24, 2021, through November 22, 2021, unless earlier terminated in accordance with Paragraph 6. The Agreement may be renewed by mutual agreement of both Parties.
3. **License Fee; Compensation; Utilities.**
 - 3.1. The Parties agree that there is no license fee associated with this Agreement.
 - 3.2. The Parties agree that neither party shall be responsible for compensating the other party for any payments, obligations of funds, or reimbursements for anything related to this Agreement.
 - 3.3. The Town shall pay the cost of any utilities consumed on the Licensed Area during the period of Curative's use of the Licensed Area, including, but not limited to, electricity, water, and sewer and trash collection.
4. **Curative's Responsibilities; Representations and Warranties.**
 - 4.1. Curative shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a consultant under similar circumstances.
 - 4.2. Curative hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services. Curative further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first-class manner.
 - 4.3. Curative represents that is an entity validly existing and in good standing registered to do business under the laws of Florida. The execution, delivery and performance of this Agreement by Curative have been duly authorized, and this Agreement is binding on Curative and enforceable against Curative in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

4.4. Curative is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto.

5. **Conflict of Interest.**

5.1. To avoid any conflict of interest or any appearance thereof, Curative shall not, for the term of this Agreement, provide any consulting services to any private sector entities with any current, or foreseeable, adversarial issues in the Town.

6. **Termination.**

6.1. Either party to this Agreement, without cause, may terminate this Agreement upon five (5) calendar days' written notice to the other party, or immediately with cause.

6.2. Upon receipt of the Town's written notice of termination, Curative shall immediately terminate its operations and use of the Licensed Area, vacate the Licensed Area within three (3) business days of written notice of termination, and return the Licensed Area to its original condition (excepting normal wear and tear), unless directed otherwise in writing by the Town Manager.

7. **Insurance.**

7.1. Curative shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents, and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Curative's insurance and shall not contribute to the Curative's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent.

7.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Curative. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

7.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Curative shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

7.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

7.1.4. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

7.2. **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Curative shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

7.3. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Curative in performance of this Agreement. Curative's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Curative's insurance. Curative's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

7.4. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. Curative shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

7.5. The provisions of this section shall survive termination of this Agreement.

8. **Nondiscrimination.** Curative shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

9. **Attorneys' Fees; Waiver of Jury Trial.**

9.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

9.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

10. Indemnification.

10.1. With the exception of Town's negligence and/or willful misconduct, Curative shall indemnify and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Curative's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Curative and third parties made pursuant to this Agreement and/or Curative's use of the Licensed Area. Curative shall reimburse the Town for its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Curative's performance or non-performance of this Agreement or Curative's use of the Licensed Area.

10.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the Town nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Town is subject to section 768.28, Florida Statutes, as may be amended from time to time.

10.3. Curative agrees to indemnify, defend, and hold harmless the Town for any sums the State or Federal government contends or determines Curative used in violation of State or Federal law. Curative shall immediately return to Town any funds Town or any responsible State or Federal agency, including the Department of Treasury, determines Curative has used in a manner that is inconsistent with this Agreement or State or Federal law.

10.4. The provisions of this section shall survive termination of this Agreement.

11. Notices/Authorized Representatives. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

12. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

13. Entire Agreement; Modification; Amendment.

13.1. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

13.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14. Public Records; Ownership and Access to Records; Audits.

14.1. Curative understands that the public shall have access, at all reasonable times, to all documents and information pertinent to this Agreement, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. For purposes of this section, the term: (a) "Curative" means

an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2); and (b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

- 14.2.** In addition to other contract requirements provided by law, Curative shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of Curative upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- 14.3.** Curative agrees to keep and maintain public records in Curative's possession or control in connection with Curative's performance under this Agreement. The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Curative involving transactions related to this Agreement. Curative additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Curative shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 14.4.** Upon request from the Town's custodian of public records, Curative shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 14.5.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 14.6.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Curative shall be delivered by the Curative to the Town Manager, at no cost to the Town, within seven (7) days. All such records, stored electronically by Curative shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Curative shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 14.7.** Curative's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

14.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF CURATIVE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CURATIVE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Custodian of Records: Sandra McCreedy, MMC

**Mailing address: 9293 Harding Avenue
Surfside, FL 33154**

Telephone number: 305-861-4863

Email: smccreedy@townofsurfsidefl.gov

15. **Nonassignability.** This Agreement shall not be assignable by Curative unless such assignment is first approved by the Town Manager. The Town is relying upon the apparent qualifications and expertise of Curative, and such firm's familiarity with the Town's area, circumstances and desires.
16. **Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
17. **Independent Contractor.** Curative and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
18. **Compliance with Laws.** Curative shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in its use of the Licensed Area and in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
19. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
20. **Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
21. **Prohibition of Contingency Fees.** Curative warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Curative, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for Curative, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

22. **Public Entity Crimes Affidavit.** Curative shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
23. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
24. **Conflicts.** In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.
25. **Most Favored Nation.** If during the term of this Agreement, Curative enters into an agreement with another municipality or county (“Other Governmental Entity”), the terms of which agreement include direct or indirect compensation to the Other Governmental Entity, then upon written request of the Town, Curative shall negotiate and enter into a new agreement with Curative which shall include the more favorable compensation terms extended to the Other Governmental Entity. Curative shall notify the Town within 30 days if it enters into an agreement with any other, Other Governmental Entity that has more favorable terms than this Agreement and the Town shall have the right to receive the more favorable terms immediately.
26. **No Third Party Beneficiaries.** Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
27. **Miscellaneous.**
 - 27.1. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.
 - 27.2. The Town cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Licensed Area or any operations at the Licensed Area. Nothing herein shall be deemed to create an affirmative duty of Town to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its ordinances, rules and regulations, federal laws and regulations and state laws and regulations.
 - 27.3. Curative hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the use of the Licensed Area.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

TOWN OF SURFSIDE

By: _____
Andrew Hyatt
Town Manager

Attest:

By: _____
Sandra McCready, MMC
Town Clerk

Approved as to form and legal sufficiency:

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

Addresses for Notice:
Andrew Hyatt
Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
ahyatt@townofsurfsidefl.gov (email)

With a copy to:
Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
larango@wsh-law.com (email)

CURATIVE INC.

By: _____
Ryan Souders
General Counsel

Approved as to form and legal sufficiency:

By: _____
Curative Legal Department

Addresses for Notice:
Curative Inc.
Attn: Legal Department
430 S. Cataract Avenue
San Dimas, CA 91773-2902
_____(telephone)
agatha@curative.com (email)

With a copy to:
Curative Inc.
Attn: Tami Wilson-Ciranna, Chief Financial Officer
430 S. Cataract Avenue
San Dimas, CA 91773-2902
_____(telephone)
_____(email)

Curative Inc.
Attn: Frederick Turner, Chief Executive Officer
1600 Adams Drive, Suite 105
Menlo Park, CA 94025
_____(telephone)
_____(email)

Curative Inc.
c/o C T Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

EXHIBIT A

Licensed Area at Town of Surfside

Space on the first floor/lobby area of Town Hall located at 9293 Harding Avenue, Surfside, Florida, with exact location of kiosk to be determined by the Town Manager.

EXHIBIT B

Curative has contracted with an independent physician or physician group duly licensed and authorized under applicable laws to authorize Curative to perform and report the Curative COVID-19 Tests for Test Recipients.

The Town has granted Curative a revocable license to use the Town's property described in Exhibit A (the "Licensed Area") to conduct COVID-19 testing for the public using Curative's Test in a self-service, Curative-supplied kiosk placed at the Licensed Area, as further outlined herein (the "Services").

1. Curative shall only operate one 10-foot by 10-foot kiosk within the Licensed Area. The Town shall have final authority over the location of Curative's kiosk.
2. Curative's kiosk shall only be used to conduct self-service, COVID-19 testing using Curative's Test. The Town shall in no way be responsible for maintenance of the kiosk owned or operated by Curative or the provision of the Services.
3. Curative shall operate the kiosk from August 24, 2021, through November 22, 2021. The kiosk will be in operation six days a week from 9:00 am to 7:00 pm (EST) Monday through Sunday. This is subject to change at the discretion of Curative, who shall notify and obtain the Town Manager's approval in writing for any changes in operating days and times.
4. The Town may promulgate and enforce reasonable rules and regulations governing the use of the Licensed Area by Curative. Curative shall comply with all Town property and facility rules and regulations. Curative shall provide adequate supervision of the Licensed Area at all times it conducts Services or sanctions activities thereon.
5. Curative shall be solely responsible for: (i) maintaining the Property to the Town's standards applicable for use by Curative as permitted under this Agreement; and (ii) obtaining any applicable permits and approvals (e.g., building, zoning) required by the Town, the County, the State, and/or any Federal agencies.
6. Curative's kiosk and equipment are to be confined within the kiosk and Licensed Area designated in Exhibit A. Curative may not utilize any other Town property to store supplies or equipment without the prior, written consent of the Town Manager and/or his/her designee.
7. Curative shall furnish all labor, services, materials, supplies, and equipment necessary to maintain the operation of the kiosk during the above-mentioned hours.
8. Curative shall not place or attach any personal property, fixtures, or structures to the Licensed Area without the prior written consent of the Town.
9. Curative shall be responsible for proper collection and disposal of medical waste generated by its use of the Licensed Area.
10. The Town will furnish electricity in such locations where these utilities now exist. All requests for use of these facilities and/or additional installations or any special needs must be made in writing to the Town.
11. The Town agrees to advertise and publicize the kiosk. The Town agrees to consult Curative regarding any advertisement, social media post, press release, or public commentary regarding the kiosk operation prior to publicizing or publication.
12. The kiosk and all intellectual property associated with such shall remain the sole and exclusive property of Curative.
13. Upon the expiration or termination of this Agreement, Curative shall at its sole cost and expense: remove all goods, belongings, and fixtures belonging to Curative; leave the Licensed Area in the condition in which it was received, reasonable wear and tear expected; and immediately restore the Property to a condition which is visually and structurally indistinguishable from the immediately surrounding area.
14. Curative shall provide regular weekly reports as such are generated and become available, to the Town concerning the public's utilization of its kiosk, including but not limited to total number of

tests administered, total number of positive, negative, and inconclusive results. Curative shall cooperate with the Town in the collection and analysis of aggregated data concerning its operations at the Licensed Area.

15. Use of the Licensed Area and Curative's operations within the Town, shall, at a minimum: a) not adversely affect the Licensed Area or any other Town property; b) not adversely affect the property of any third parties; c) not inhibit pedestrian movement within the Licensed Area; d) not create conditions which are a threat to public safety and security; and e) not constitute a nuisance with respect to neighboring residential or commercial uses.
16. Curative shall exercise due care in the Licensed Area and shall be responsible for maintaining the Licensed Area in good condition and repair. Curative shall not act, or fail to act, in any way that results in excessive wear or damage to the Licensed Area. Curative expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of Curative's use of the Licensed Area. Should Curative fail to repair, replace, or otherwise restore such real or personal property, Curative expressly agrees to pay the Town's costs in making such repairs, replacements, or restorations.
17. During a state of emergency (including storm or hurricane watch or warning), Curative shall remove the kiosk from the Licensed Area within 24 hours of notice by the Town Manager.