

Memorandum of Understanding  
Between the City of Concord, California, Landlord, and Commercial Lessee  
With Respect to Measure V Commercial Rent Relief Program

Lessee/Business Name: \_\_\_\_\_ (“Lessee”)  
Lessee/Business Entity Type: \_\_\_\_\_  
Landlord Name: \_\_\_\_\_ (“Landlord”)  
Landlord Entity Type: \_\_\_\_\_  
Lessee/Business Address \_\_\_\_\_ (“Property”)

This Memorandum of Understanding (“MOU”) is entered into on the date of the City Manager’s signature below (“Effective Date”), by and between the CITY OF CONCORD, a California municipal corporation (“City”), the Greater Concord Chamber of Commerce, a non-profit business association (“Chamber”), Landlord, and Lessee. City, Chamber, Landlord, and Lessee are referred to herein individually as a “Party”, and collectively as the “Parties”.

1. Recitals.

- a. On March 10, 2020, due to the COVID-19 pandemic, the Contra Costa County Board of Supervisors proclaimed the existence of a local emergency throughout Contra Costa County (County Resolution No. 2020/92). On March 13, 2020 the Director of Emergency Services of the City of Concord, designated as the City Manager, proclaimed a local emergency, which the City Council of the City of Concord (“City Council”) ratified via Resolution No. 20-12 on March 19, 2020.
- b. On March 16, 2020, the Governor of the State of California (“Governor”) issued Executive Order N-28-20, placing a moratorium on residential and commercial evictions when the basis of the eviction is nonpayment of rent arising from a substantial decrease in household or business income, or substantial out-of-pocket medical expenses, caused by the COVID-19 pandemic. The Governor has since extended commercial eviction protections through June 30, 2021 via Executive Order N-80-20.
- c. On March 25, 2020, the City Council passed the Concord Eviction Moratorium (<http://cityofconcord.org/DocumentCenter/View/4348/Urgency-Moratorium-Ordinance-3-25-20?bidId1>), which, among other things, provides eviction protections to Affected Commercial Tenants<sup>2</sup> who can provide evidence of a substantial decrease in household or business income<sup>3</sup> caused by the COVID-19 pandemic. The commercial eviction protections under Ordinance 20-3 are concurrent with N-28-20, and any extensions thereof; at present, they expire on June 30, 2021.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Ordinance 20-3.

<sup>2</sup> See definition at Ordinance 20-3, Section 4.a.

<sup>3</sup> See definition at Ordinance 20-3, Section 4.z.

- d. On March 30, 2021, the City Council authorized the creation of the Measure V Commercial Rent Relief Program (“Program”), utilizing up to \$1 million in Measure V funding, to provide rent relief grants of \$10,000 each to commercial rental assistance, all as further set forth herein.
2. MOU Term. This MOU shall commence on the Effective Date and shall terminate (with respect to each specific Grant) once the City determines that all obligations of the applicable Landlord and Lessee hereunder have been satisfied or discharged.
  3. Program Description.
    - a. Grants.
      - i. Commercial rent relief grants shall be in the amount of \$10,000 each (“Grant”).
      - ii. Grants shall be remitted and applied as set forth in this MOU.
      - iii. If awarded, Grants will be remitted directly to Landlord, not Lessee.
      - iv. Landlord shall apply the Grant to defray Property rent arrears.
      - v. Only one Grant per Lessee/Business/Property may be awarded.
      - vi. Additional requirements are as set forth in this MOU.
    - b. Application Process.
      - i. This MOU does not guarantee the Lessee will receive a Grant. Lessee must meet the eligibility requirements.
      - ii. The online application portal for the Program will open on April 26, 2021 and close on May 14, 2021.
      - iii. Only applications from Lessees who meet the eligibility requirements (see Section 4 (Lessee Eligibility) below) will be accepted.
      - iv. This MOU, signed by Lessee and Landlord, together with submittal of materials identified herein, constitute the required documents in the application process.
      - v. Applications must include the following:
        - This MOU signed by both Lessee and Landlord.
        - A completed application form, including an accounting of deferred rent from March 31, 2020 to March 31, 2021, specified by month, signed by both Lessee and Landlord.
        - A copy of the Property lease.
      - vi. Restaurant, retail, and personal service establishments will receive priority in the application process.
      - vii. A lottery will be implemented if the number of qualified applicants exceeds available funding.

- viii. Applicants will receive an emailed status notification by May 21, 2021 from the Chamber.
  - c. Program Administration. The Chamber shall serve as the Program administrator. The Chamber's duties will include Program outreach, reviewing Program applications, and service as primary point of contact for the Program applicants and accepted Lessee during the MOU term. City will be solely responsible for Grant disbursements.
  - d. Grant Disbursement. If the Lessee's Program application is approved, the City will disburse the Grant to the Landlord within fourteen (14) business days after the following have been completed:
    - i. Lessee has submitted an application and it has been reviewed and accepted.
    - ii. All parties have signed this MOU, as required in the application process.
    - iii. All parties have submitted documents required to disburse the Grant.
    - iv. Landlord has submitted a W-9 form.
4. Lessee Eligibility.
- a. Lessee must own a business located within the city limits of Concord, California. Such business must employ no more than a total of 25 employees as of June 30, 2020 and must have an active Concord business license as of June 30, 2020;
  - b. Such business must occupy commercial rental property located within the incorporated city limits of Concord, California ("Property").
  - c. Lessee's name/the business' name must appear as primary, master tenant (not as a sub-lessee or similar arrangement) on a bona fide written lease for the Property executed no later than June 30, 2020.
  - d. Lessee must be an Affected Commercial Tenant with at least \$10,000 in commercial rent arrears for the above-referenced commercial lease and business accumulated from March 31, 2020 to March 31, 2021, pursuant to the Concord Eviction Moratorium;
  - e. Lessee must, by their signature to this MOU, acknowledge that the Grant will be provided directly to the Landlord and not to Lessee; and
  - f. Lessee must, by their signature to this MOU, attest that the Lessee/the business is not a lending/investment institution, gambling facility, corporately-owned chain, franchise with more than three locations within the city limits of Concord, California, business engaged in illegal activity, non-profit organization or home-based business.
  - g. Lessee must secure their Landlord's signature to this MOU (see also Section 5, Landlord Obligations, below).
5. Landlord Obligations. Landlord represents, warrants, acknowledges and agrees to Section 3 (Program Description) and to the following:

- a. Landlord must have an active City of Concord business license.
- b. The Property must be a commercial rental property located within the incorporated city limits of Concord, California.
- c. Lessee's name/the business' name must appear as primary, master tenant (not as a sub-lessee or similar arrangement) on a bona fide written lease for the Property.
- d. Landlord's name must appear on such lease as primary, master landlord (not as sub-lessor or other similar arrangement).
- e. Landlord shall use the Grant solely to pay Lessee's rent and utility payments for the Property (IF such utility payments are normally paid to Landlord), deferred between March 31, 2020 and March 31, 2021, pursuant to the Concord Eviction Moratorium.
- f. Landlord shall not assess penalties or interest against Lessee for past-due rent or utility payments accrued from March 31, 2020 to June 30, 2021, pursuant to the Concord Eviction Moratorium.
- g. By signing this MOU, Landlord declares that the Lessee has a current lease through 2021 or Landlord intends to renew lease through 2021.
- h. Landlord has read and understood all of the following materials, links to which are included below:
  - i. State of California Executive Order N-28-20, <https://www.cityofsacramento.org/-/media/Corporate/Files/CDD/Code-Compliance/Programs/92320EON8020COVID19Signed-Governor-Newsom.pdf?la=en>; and
  - ii. State of California Executive Order N-03-21, <https://www.gov.ca.gov/wp-content/uploads/2021/03/3.4.21-EO-N-03-21-text.pdf>; and
  - iii. Contra Costa County Ordinance 2020-29 (An Urgency Ordinance Authorizing a Temporary Prohibition on Certain Evictions of Residential and Commercial Tenants in Contra Costa County Impacted by the Covid-19 Pandemic and Authorizing a Moratorium on Certain Residential and Commercial Rent Increases), <https://www.contracosta.ca.gov/DocumentCenter/View/68919/Urgency-Ordinance-No-2020-29>;
  - iv. Contra Costa Ordinance 2021-04 (An Urgency Ordinance Continuing a Temporary Prohibition on Certain Evictions of Residential and Commercial Tenants in Contra Costa County Impacted by the COVID-19 Pandemic and Continuing a Moratorium on Certain Residential Rent Increases), <https://www.contracosta.ca.gov/DocumentCenter/View/69601/Urgency-Ordinance-No-2021-04>; and

v. City of Concord Ordinance 20-3,  
<http://cityofconcord.org/DocumentCenter/View/4348/Urgency-Moratorium-Ordinance-3-25-20?bidId>

- i. Landlord has received independent legal advice from Landlord's legal counsel as to the matters set forth herein, or has knowingly chosen not to consult legal counsel as to the matters set forth herein.

6. Lessee Obligations. Lessee represents, warrants, acknowledges and agrees to Section 3 (Program Description), Section 4 (Lessee Eligibility), and to the following:

- a. This MOU does not guarantee the Lessee will receive a Grant through the Program. Lessee must meet the eligibility requirements, and a lottery will be implemented if the number of applicants exceeds available funding. This MOU, signed by Landlord and Lessee, is a required document in the application process.
- b. By signing this MOU, Lessee attests that they meet the eligibility requirements in Section 4 (Lessee Eligibility), and information provided in the application process is true and correct.
- c. Lessee understands that Landlord shall use the Grant solely to pay Lessee's rent and utility payments for the Property (IF such utility payments are normally paid to Landlord), deferred as early as March 31, 2020, pursuant to the Concord Eviction Moratorium.
- d. Lessee has received independent legal advice from Lessee's legal counsel as to the matters set forth herein, or has knowingly chosen not to consult legal counsel as to the matters set forth herein.

7. Notices. All notices required hereunder may be given by personal delivery, U.S. mail, or courier service (e.g. Federal Express) and shall be effective upon receipt at the physical addresses below. Courtesy copies shall be sent via email to the email addresses below.

To City: City of Concord  
Attention: Director of Finance  
1950 Parkside Drive, MS/06  
Concord, California 94519  
Telephone: (925) 671-3178  
Email: [finance@cityofconcord.org](mailto:finance@cityofconcord.org)

With a copy to: City of Concord  
Attention: City Attorney  
1950 Parkside Drive, MS/08  
Concord, California 94519  
Telephone: (925) 671-3160  
Email: [city.attorney@cityofconcord.org](mailto:city.attorney@cityofconcord.org)

8. No Waiver. Waiver of a breach or default under this MOU shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provisions of this MOU.

9. No Assignment. This MOU is personal to the City and DVFCU due to their existing relationship and mutual commitment to the local Concord community, and shall not be assigned by any Party.

10. Severability. If any provision of this MOU or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this MOU and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

11. Entire Agreement. The recitals, any linked documents, and any exhibits attached to this MOU are incorporated by reference as though fully restated herein. This MOU represents the full, complete and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings or agreements, whether written or oral, between the Parties hereto with respect to such subject matter.

12. Remedies; Applicable Law; Venue. In the event of a violation of this MOU, any Party may institute a civil proceeding for injunctive relief, money damages, and whatever other relief the court deems appropriate. The remedy available under this Section shall be in addition to any other existing remedies which may be available under local, state or federal law. In addition, this MOU grants a defense to eviction to any unlawful detainer actions in violation of this Ordinance. This MOU is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California. In the event that an action or proceeding is brought by either Party hereunder, the Parties agree that venue of such action is exclusively in a state court in Contra Costa County, California.

13. Miscellaneous. As used in this MOU, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This MOU shall be interpreted as though prepared jointly by both Parties. Nothing herein is intended to create any third party benefit. Nothing contained in this MOU is intended to create or establish, or shall be construed in any manner as creating or establishing the relationship of employer/employee, agent/servant, partnership, joint venture, or association between the Parties. The word “day” or “days” shall mean calendar days unless otherwise noted.

14. Authority. The Parties represent that the individuals whose signatures appear at the end of this document as signatories are authorized by their respective boards to enter into this MOU on behalf of and to bind their respective agencies to the terms of this MOU.

15. Counterparts. This MOU may be signed in counterparts and the signature pages combined shall create a document binding on all the Parties.

16. Amendments. This MOU may not be modified or amended, in whole or in part, except by a written instrument signed by an authorized officer or representative of each of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the Effective Date set forth above.

*[Signatures appear on next page]*

CITY OF CONCORD

By: \_\_\_\_\_  
Valerie Barone, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Susanne Meyer Brown, City Attorney

LANDLORD

By: \_\_\_\_\_

Name: \_\_\_\_\_

Business License No.: \_\_\_\_\_

LESSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Business License No.: \_\_\_\_\_

CHAMBER

By: \_\_\_\_\_

Name: \_\_\_\_\_

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California      Date: \_\_\_\_\_

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEAR 2020/2021 TO PAY THE ANTICIPATED  
EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF \$10,000.      Account Code \_\_\_\_\_

\_\_\_\_\_  
Finance Director's Signature