

**FACILITY USE AGREEMENT**

This Agreement, made and entered into this 17 day of November, 2021, by and between Pathology Consultants of New Mexico, hereinafter designated as "User", and the City of Santa Fe, hereinafter designated "City", is as follows:

**RECITALS**

City is willing to grant User's request to utilize the premises described herein below subject to the following terms and conditions;

User, for good and valuable consideration, the sufficiency of which is hereby acknowledged, agrees to utilize the premise subject to the following terms and conditions:

1. **PREMISES.** The facilities are located at 1142 Siler Rd, 2931 Rufina St. and 2512 Camino Entrada, together with improvements (hereinafter "the Premises").
2. **TERM.** The term of this Agreement shall be from November 22, 2021 through December 31, 2021.
3. **USE OF PREMISES.** The Premises shall be used by User solely for the purpose of mass vaccination drive-thru events. User may not use the Premises for any other purpose without obtaining City's prior written consent.
4. **SAFE AND LAWFUL USE.** User agrees to abide by all laws, ordinances and codes applicable to the use of the facilities and/or equipment, and to observe all fire and safety rules and regulations. Violation of any such laws, ordinances, rules or regulations shall be grounds for the eviction of the individual(s) responsible and/or termination of this Agreement. Any penalties/fines imposed in connection with, related to, or arising out of User's use of the Premises shall be borne by User. User agrees that neither it, nor its invitees, employees, agents, or volunteers shall: (1) do or permit anything to be done in or about the Premises that may cause damage or constitute waste; (2) be a nuisance, public or private; or (3) be a menace or other disturbance to other users, owners of adjoining real property or anyone else.
5. **ASSIGNMENT OR SUBLETTING.** The right and privilege to use the Premises and any equipment provided and permitted to be used, is specific to User and may not be assigned or sublet to any other person or group. Violations of this provision, or any other term or condition of this Agreement shall constitute grounds for immediate termination by City
6. **ALTERATIONS.** No alterations may be made to the Premises by User without the written consent of City.
7. **LIABILITY.** User shall be responsible for all damages, accidents or injuries caused by, resulting from, or occurring in connection with its use of the Premises, except as provided

in Section 9 below. This Agreement is entered into on the express condition that the City shall not be liable or suffer any loss by reason of injury to persons or property from whatever cause which in any way may be connected to the use or occupancy of the Premises by User, except as stated herein.

8. **HOLD HARMLESS.** User shall hold harmless, defend and indemnify City, its officers, agents, volunteers, and employees, from and against any liability, claim, action, cost, damage or loss, including reasonable costs and attorneys' fees, for injury, including death, to any person or damage to any property arising out of User's use and/or occupancy of the Premises, but excluding liability due to the sole negligence, gross negligence or willful misconduct of City.
9. **INSURANCE.** Throughout the period of use, User shall obtain and maintain, at its sole cost and expense, insurance policies providing the following coverages:

Commercial General Liability insurance, which shall be written on an occurrence basis, covering bodily injury, property damage and personal and advertising injury, including broad form contractual liability coverage, with the following limits:

1. \$1,000,000	Each Occurrence
2. \$2,000,000	General Aggregate
3. \$300,000	Fire Damage Limit
4. \$2,000,000	Products-Completed Operations

- b. Workers' Compensation insurance with statutory limits and Employer's Liability insurance with limits of not less than \$1,000,000 per accident or disease. The Workers' Compensation policy shall be endorsed to include a waiver of subrogation in favor of the City. If User does not have employees, User shall submit written verification to the City that it is exempt from California Workers' Compensation laws because it has not employees.
- c. User's Property. User shall maintain insurance on all of User's personal property and/or equipment at full replacement value.
- d. The Commercial General Liability insurance policy shall be endorsed to name the City, its officers, agents, volunteers and employees, as additional insured for all liability arising out of User's use, occupancy and operations by or on behalf of the User under this Agreement.
- e. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of said policy.

- f. The insurance required by User herein shall be primary coverage and any insurance or self-insurance carried by the City shall be excess only and shall not be required to contribute with it.
- g. The following documentation shall be submitted to the City prior to User's use of the Premises:
  - (a). Properly executed Certificates of Insurance clearly evidencing all coverage, limits, and endorsements required above.
  - (b). User's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 10. **MATERIAL BREACH.** If User, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of Agreement.
- 11. **SEVERABILITY.** The invalidity or illegality of any provision shall not affect the remainder of the Agreement.
- 12. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with New Mexico law.
- 13. **MODIFICATIONS; WAIVER.** No waiver, modification, amendment, discharge, or change of this Agreement shall be valid unless it is in writing and signed by both parties to this Agreement.
- 14. **CONDITION AT TERMINATION.** During the term of this Agreement, User shall at all times maintain the Premises in a good, clean and safe condition. Upon the expiration of the term of this Agreement or upon the sooner termination thereof, User shall leave the Premises in as good order and condition as said Premises were in at the beginning of the term of this Agreement, except where damage may be caused by earthquake, flood, act of God, or public calamity.
- 15. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.
- 16. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties and all prior or contemporaneous agreements, understandings, representations, or statements, oral or written, are suspended.

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

[CITY]

By: Jarel LaPan Hill  
Jarel LaPan Hill (Nov 19, 2021 14:13 MST)

Title: Jarel LaPan Hill, City Hall

Attest:

Kristine Mihelcic

Kristine Bustos Mihelcic, City Clerk <sup>XIV</sup>

City Attorney's Office:

Marcos Martinez  
Marcos Martinez (Nov 19, 2021 13:39 MST)

Senior Assistant City Attorney

[USER]

By: Suzanne Tidmore

Title: COVID Line Director