

**CITY OF COSTA MESA
TEMPORARY LICENSE AGREEMENT**

THIS TEMPORARY LICENSE AGREEMENT ("Agreement") is made and entered into as of October 4, 2021 ("Effective Date"), by and between the CITY OF COSTA MESA, a California municipal corporation (hereinafter referred to as "City") and COVID CLINIC, INC., a California nonprofit corporation (hereinafter referred to as "Licensee"). Licensee and City may sometimes hereinafter be referred to individually as "Party" or jointly as "Parties."

WITNESSETH:

WHEREAS, City is the owner of real property located at 695 West 19th Street, Costa Mesa, California and all appurtenances thereon known as the Costa Mesa Senior Center, as further described and depicted in Exhibit A (the "Property"); and

WHEREAS, Licensee desires to use a portion of the Property as outlined herein and City is agreeable to such use pursuant to certain terms and obligations; and

WHEREAS, the City and Licensee desire to execute this Agreement to set forth their rights, obligations, and liabilities relating to Licensee's use of the Property.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Grant of License. In consideration of the agreements herein contained, City hereby grants to Licensee a revocable license to temporarily utilize a portion of the Property, which portion shall be designated by the City.

2. Use of Property. The portion of the Property designated by the City for Licensee's use shall be used solely for the purpose of providing free coronavirus (COVID-19) vaccinations and free and fee-based COVID-19 testing services, including installing and maintaining a testing kiosk or similar structure, in a form approved by City, administered by employees of Licensee in order to meet the social needs of the population and serve a valuable public purpose, which is consistent and compatible with the mission of the City and Licensee. Licensee shall not use the Property for any other purpose or business without first obtaining City's written consent. Licensee agrees that vaccination services and testing services shall be provided by appointment only; provided, however, that Licensee may provide walk-in testing services for law enforcement, firefighters, paramedics, and healthcare workers. Such COVID-19 vaccination services and testing services shall be provided in accordance with the following schedule:

- a. Days of Use: Mondays and Thursdays
- b. Hours of Use: 8:00 a.m. – 5:00 p.m.
- c. Frequency of Use: Weekly
- d. Duration of Use: October 4, 2021 – June 30, 2022

Notwithstanding the foregoing, Licensee acknowledges and agrees that the Property will be closed on January 17, 2022, February 21, 2022, and May 31, 2022 due to holiday closures and Licensee will not be permitted to use the Property on such dates.

The City reserves the right to change the above-mentioned dates, times and/or the City property at which the Kiosk may be placed at any time upon written notice to Licensee. Any such changes will be evidenced by a written amendment to this Agreement executed by the Parties.

3. Fee-Based COVID-19 Testing Services. Licensee may provide the following fee-based COVID-19 testing services at the following rates:

Test	Fee
30-Minute Antibody COVID-19 Test	\$75.00
30-Minute Antigen COVID-19 Test	\$129.00
30-Minute COVID-19 + Flu Antigen Test	\$149.00
PCR COVID-19 Test – 1 Day Result – CMO	\$150.00
1-Hour Molecular NAAT COVID-19 Test	\$199.00
1-Hour PCR COVID-19 Test	\$299.00

4. Use Regulations. Licensee shall comply with the following requirements in connection with its use of the Property:

- a. Licensee shall not accept more than 300 appointments at the Property per day, unless otherwise authorized by City.
- b. Licensee shall provide staffing to manage vehicle and pedestrian traffic at the Property. The minimum number of staff required for such vehicle and traffic management shall be as directed by City.
- c. Licensee shall provide staffing to ensure clients are processed in an expeditious manner at all times, including, but not limited to, during surges in requests for testing services.
- d. Licensee shall comply with all reasonable requests of City.

5. Condition of Property. City makes no representation or warranty of any kind whatsoever regarding the condition of the Property or its fitness for Licensee's use, or any use. Licensee agrees to use the Property in its current "as is" condition.

6. Installation and Placement of Kiosk. City and Licensee acknowledge and agree that the Kiosk was installed on the Property on or about September 30, 2021. Upon request of City, Licensee shall move the Kiosk to another location on the Property. Licensee shall not replace the Kiosk without City's prior written consent.

7. Ownership of Kiosk. The Kiosk is the personal property of Licensee. Licensee shall be solely responsible for securing and maintaining the Kiosk at all times while it is placed on the Property. City shall not be responsible for any damages that occur to the Kiosk while it is placed on the Property.

8. Removal of Kiosk. Upon the expiration or termination of this Agreement, Licensee shall immediately coordinate with City and cause removal of the Kiosk. Licensee shall be responsible for all costs associated with returning the location of the Kiosk to the condition that existed prior to placement of the Kiosk. If restoration or repairs are necessary, City may invoice Licensee for the costs of restoring the location to its original condition. Licensee shall pay such invoices within thirty (30) days of receipt.

9. Restroom Access. City shall provide Licensee with access to a designated restroom facility, whether existing or portable, within reasonable distance from the Property, for use by Licensee, its officers, agents, and employees during the use of the Property pursuant to this Agreement.

10. Release of Liability. Licensee hereby waives, releases, and discharges City, its elected officials, officers, agents, employees, and volunteers (collectively, "City"), from any and all claims for damages and/or liability, including, without limitation, personal injury, death, or property damage, including liability arising out of the negligence of City, which arise out of or are incurred in connection with the use of the Property, except that Licensee does not release the City from damages or liability arising out of the negligence or willful misconduct of City in the operation, maintenance or repair of the Property.

11. Defense, Indemnity and Hold Harmless. Licensee shall defend, with legal counsel of City's choosing, indemnify, and hold harmless the City, its elected officials, officers, agents and employees (collectively herein, the "City"), at Licensee's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, arising out of this Agreement and/or Licensee's use of the Property and/or any actions or inactions of Licensee, its employees, agents, volunteers and/or authorized subcontractors, related thereto or undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Licensee, its employees, agents, volunteers and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of Licensee, its employees, agents, volunteers and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, based upon or related to actions and/or inactions of Licensee, its employees, agents, volunteers and/or authorized subcontractors, related to this Agreement and/or the Property, whether or not Licensee, its employees, agents, volunteers and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Licensee shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

12. Insurance.

- a. Minimum Scope and Limits of Insurance. Licensee shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X or better, in the most recent Best's Key Insurance Rating Guide, and approved by City:
 - i. Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than one million dollars

(\$1,000,000.00) combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

- ii. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than one million dollars (\$1,000,000.00) combined single limits per occurrence for bodily injury and property damage.
 - iii. Workers' compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability insurance with a limit of no less than one million dollars (\$1,000,000.00) per accident for bodily injury or disease. Licensee agrees to waive and to obtain endorsements from its Workers' Compensation insurer waiving subrogation rights under its Workers' Compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Licensee for the City and to require each of its subcontractors, if any, to do likewise under their Workers' Compensation insurance policies.
- b. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:
- i. Additional insureds. The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Licensee pursuant to its contract with the City; products and completed operations of Licensee; premises owned, occupied or used by Licensee; automobiles owned, leased, hired, or borrowed by Licensee.
 - ii. Notice. Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.
 - iii. Other insurance. The Licensee's insurance coverage shall be primary insurance as respect to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.
 - iv. Failure to Comply with Reporting Provisions. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
 - v. Insurance Applies Separately. Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- c. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.
- d. Certificates of Insurance. Licensee shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City prior to performing any services under this Agreement.
- e. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Licensee may be held responsible for payments of damages to persons or property.

13. Term; Termination. This Agreement shall commence on the Effective Date and continue until June 30, 2022, but may be terminated by either Party hereto at any time by giving thirty (30) days' written notice to the other Party, addressed to:

Licensee

Covid Clinic, Inc.
 18800 Delaware St., Ste 800
 Huntington Beach, CA 92648
 Attn: Matthew Abinante

City

City of Costa Mesa
 77 Fair Drive
 Costa Mesa, CA 92626
 Attn: City Manager

14. Assignment and Subletting. Licensee shall not assign this Agreement or sublet the Property or any part thereof without the prior written consent of City.

15. Compliance with All Laws. Licensee shall comply with all applicable laws and regulations in using the Property.

16. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

17. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

18. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so the Parties are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

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

CITY OF COSTA MESA

Lori Ann Farrell Harrison

Lori Ann Farrell Harrison
City Manager

LICENSEE

Matt Collins

Signature

Matt Collins, CEO

Name and Title

APPROVED AS TO FORM:

Kimberly Hall Barlow

Kimberly Hall Barlow
City Attorney

ATTEST:

Brenda Green

Brenda Green
City Clerk



APPROVED AS TO INSURANCE:

Ruth Wang

Ruth Wang
Risk Management

EXHIBIT A

DESCRIPTION OF PROPERTY

695 W. 19th Street
Costa Mesa, CA 92627
APN: 424-211-01

