

EXECUTED

ELECTRONIC

ORIGINAL

Temporary Space Use Agreement

**Floyd Little Fieldhouse
476 Sherman Parkway
New Haven, CT**

A21-0085

This Temporary Space Use Agreement (“Agreement”) is made and effective as of date herein by and between the City of New Haven (as “Licensor”) and Yale New Haven Health Services Corporation (as “Licensee”).

Whereas, Licensor and Licensee are acting in a cooperative manner to identify appropriate space to serve as a COVID-19 vaccination site; and

Whereas, Licensor possesses certain space known as The Floyd Little Fieldhouse (the “Building”), which is a gymnasium attached to Hillhouse High School located at 476 Sherman Parkway, New Haven, CT (such portions of the Building and its associated grounds, including parking areas, designated by Licensor, the “Premises”); and

Whereas, Licensor and Licensee agree that certain space within the Premises may be appropriate to repurpose during the COVID-19 emergency to serve as a vaccination site for the general public; and

Whereas, Licensee wishes to utilize certain of Licensor’s space, grounds and services, as and to the extent set forth herein, and Licensor wishes to grant Licensee the right to use the same, all pursuant to the terms and conditions of this Agreement.

Now, therefore, Licensor and Licensee agree as follows:

1. Space. Licensor hereby grants Licensee the right to use the space in the Premises as described on Exhibit A, both of which are attached hereto and incorporated herein (which space shall hereinafter be referred to as the “Space”). Licensee shall have reasonable access to the Space through portions of the common areas within the Premises as designated by Licensor from time to time for Licensee’s agents, patients and invitees.

2. Use.

(a) The Premises shall be used by Licensee solely as a COVID-19 vaccination site and services related to COVID-19. Licensee shall also have the right to use those certain common areas within the Premises and grounds designated by Licensor, including lavatories, during the schedule of use set forth on Exhibit A.

3. Intentionally Omitted.

4. Utilities. Licensee shall have the benefit of the utilities currently available at

the Space as reasonably necessary for Licensee. Licensor will provide electricity, heat and air conditioning, water and sewer to the Space through existing facilities, in accordance with the schedules and policies in effect from time to time for the Premises. Licensor shall provide maintenance and repair services for the Space in accordance with Licensor's policies and procedures for such services at the Premises, as in effect from time to time. Licensor shall further repair, maintain and replace as necessary the Space, the Premises and the Building, and the systems therein, including but not limited to the roof, foundation, structural columns, beams, load bearing walls and façade of the Building. Licensor shall also maintain the sidewalks, parking areas and entryways on and around the Building in a safe condition and free and clear of snow, ice and other obstructions, including trash. Subject to the provisions of paragraph 9(c) hereof, Licensee shall be responsible for any repairs necessitated as a result of any negligent or willful acts of Licensee or Licensee's agents, patients or invitees, to the extent not covered by policies of insurance maintained (or required to be maintained pursuant to the terms of this Agreement) by Licensor or the owner of the building in which the Premises are located.

5. Reimbursement of Costs. Licensor shall not charge Licensee for the use of the Space. Licensee shall reimburse Licensor for the costs of Services provided by Licensor and/or by third party vendors as detailed in Exhibits A.

Licensee shall further reimburse Licensor for excess utilities costs, if any, for utilities including electricity, natural gas, water and sewer. "Excess Utilities Costs" means and shall be limited to additional utilities costs incurred by the Licensor beyond the three year average for such utilities for the 2016-2017, 2017-2018, and 2018-2019 fiscal years as detailed in Exhibit A.

6. Term. This Agreement shall be effective upon signature, but occupancy of the Space shall commence upon notice to Licensor as set forth on Exhibit A. This agreement shall terminate six months after execution, unless extended by mutual agreement of the parties.

7. Termination. This Agreement may be terminated by either party on ten days prior written notice, or at any time upon mutual written agreement between the parties. In addition, and notwithstanding the foregoing, in the event that either party shall default in performing any of said party's obligations under this Agreement (the "Breaching Party"), and such default shall continue for a period of three (3) days after receipt of written notice thereof given by the other party (the "Non-Breaching Party"), then, in addition to any other remedies available to such Non-Breaching Party, the Non-Breaching Party may terminate this Agreement on two (2) days prior written notice.

8. Billing for Clinical Services. Licensor shall not bill or collect for any services rendered by Licensee in the Space. Licensee shall be exclusively responsible for billing and collecting to the extent appropriate based on the nature of the services.

9. Insurance.

(a) Licensee covenants and agrees that so long as this Agreement is in effect, Licensee, at Licensee's expense, will provide and keep in force the following policies of insurance: (1) commercial general liability insurance insuring Licensee against claims for bodily

injury or property damage arising out of or connected with the Premises or the use thereof. Such liability policy shall have limits not less than a combined single limit of \$5,000,000, have a broad form contractual liability endorsement; and (2) all risk property insurance, covering the full replacement cost of Licensee's Personal Property in the Space, if any. Such property damage policy shall include a waiver of subrogation clause in favor of Licensor. Certificates evidencing such insurance shall be provided to Licensor promptly upon request, or, in the alternative, Licensee may provide evidence of insurance by providing Licensor with access to an on-line memorandum of such insurance. Notwithstanding the foregoing, Licensee shall be permitted to utilize a program of self-insurance for all or any portion of the minimum limits required hereunder.

(b) Licensor, at its expense, shall maintain (i) an all Special Form Causes of Loss insurance policy on the Premises insuring the full replacement value and (ii) a policy of commercial general liability and property damage insurance, with a combined single limit of \$5,000,000 and a broad form contractual liability endorsement.

(c) Notwithstanding any other provision of this Agreement, each party hereby waives any and all rights to recover against the other or against the officers, employees, agents or representatives of such other party for damage to or loss of such waiving party's property or the property of others under its control, arising from any cause insured against under such party's insurance policies, provided such waiver is permitted by each party's insurance policy or by endorsement thereon without invalidation of the policy.

10. Intentionally omitted.

11. Condition of Space. Licensee hereby expressly acknowledges that Licensee has inspected the Space and is fully familiar with the physical condition thereof. Licensee agrees to accept the Space in an "as is" condition. Licensor has made no representations or warranties whatsoever, with respect to the Space and the Services, other than those, if any, expressly set forth in this License. Licensor shall have no obligation, duty, responsibility or liability (a) as to, or in connection with the preparation of, the Space for use by Licensee, its patients or invitees, (b) to make or provide any repairs, painting, decorating, restoration, construction, installation, maintenance or other work or services to or for Licensee's exclusive use or benefit.

12. Signage. Licensee shall be permitted to place signage in, on or about the Premises or the Space with Licensor's prior consent. Licensor will, in Licensor's discretion, erect signage at the Premises to indicate Licensee's presence at the Premises.

13. Requirements of Law. Licensee shall, at its cost, comply with any and all applicable laws, rules and regulations relating to Licensee's use of the Space and Premises, including without limitation, the Americans with Disability Act of 1990, as amended, and all laws relating to hazardous materials. Licensee shall also, at its cost, comply with all laws, rules and regulations of general applicability to the Space and Premises or to medical use generally, and, those relating to the license, conduct and management of the Physicians' practice. Licensor shall, at its cost, comply with all applicable laws, rules and regulations relating to the Space, the Premises and the Building, including without limitation, the Americans with Disability Act of 1990, as amended, and all laws relating to hazardous materials.

14. No Assignment. Licensee may not sub-license, sell, assign, or transfer this Agreement or Licensee's rights or responsibilities hereunder, in whole or in part, or permit any use or occupancy of the Space by any other party, except for affiliates of Licensee. Subject to the foregoing, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

15. Licensee Representations. Licensee agrees, represents and warrants that:

(a) neither Licensee nor, to the best of Licensee's knowledge, without any investigation, any of its employees or representatives performing services under this Agreement, has ever been (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another state or federal health care program; (ii) excluded or debarred from participation in any state or federal health care program, including Medicare and Medicaid; or (iii) otherwise sanctioned by the federal government, including being listed on the General Services Administration's or Office of Inspector General's Excluded Party Listing System. Licensee shall notify Licensor immediately in the event that Licensee becomes aware that the representation contained in this subsection is or becomes untrue at any time during the Term of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in the event that Licensee or one of its employees or representatives performing services under this Agreement is (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another state or federal health care program; (ii) excluded from or debarred from participation in any state or federal health care program, including Medicare and Medicaid; or (iii) otherwise sanctioned by the federal government, including being listed on the General Services Administration's or Office of Inspector General's Excluded Party Listing System, Licensor may, at its option, and as Licensor's sole remedy as a result thereof, terminate this Agreement immediately upon written notice to Licensee;

(b) Licensee has full power and authority to enter into and consummate the transaction contemplated by this Agreement and all required approvals and authorizations have been obtained;

(c) the person(s) executing this Agreement on behalf of Licensee is/are authorized to do so; and

(d) the execution, delivery and performance by Licensee of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under (i) any of the provisions of any of Licensee's governance documents or (ii) any law, governmental rule, regulation, judgment, decree or order by which Licensee is bound.

16. Licensor Representations. Licensor agrees, represents and warrants that:

(a) neither Licensor nor, to the best of Licensor's knowledge, without any investigation, any of its employees or representatives performing services under this Agreement, has ever been (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another state or federal health care program; (ii) excluded or debarred from participation in any state or federal health care program, including Medicare and Medicaid; or (iii) otherwise sanctioned by the federal government, including being listed on the General Services Administration's or Office of Inspector General's Excluded Party

Listing System. Licensors shall notify Licensee immediately in the event that Licensors become aware that the representation contained in this subsection is or becomes untrue at any time during the Term of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in the event that Licensors or one of its employees or representatives performing services under this Agreement is (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another state or federal health care program; (ii) excluded from or debarred from participation in any state or federal health care program, including Medicare and Medicaid; or (iii) otherwise sanctioned by the federal government, including being listed on the General Services Administration's or Office of Inspector General's Excluded Party Listing System, Licensee may, at its option, and as Licensee's sole remedy as a result thereof, terminate this Agreement immediately upon written notice to Licensee;

(b) Licensors has full power and authority to enter into and consummate the transaction contemplated by this Agreement and all required approvals and authorizations have been obtained;

(c) the person(s) executing this Agreement on behalf of Licensors is/are authorized to do so; and

(d) the execution, delivery and performance by Licensors of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under (i) any of the provisions of any of Licensors's governance documents or (ii) any law, governmental rule, regulation, judgment, decree or order by which Licensors is bound.

17. Cooperation with Regulatory Authorities. Licensors and Licensee shall cooperate with one another (at no cost to the cooperating party) to respond to and/or correct any regulatory deficiencies identified by any regulatory authority including, but not limited to, governmental bodies including, but not limited to, the Department of Public Health, the Centers for Medicare and Medicaid Services and The Joint Commission.

18. Non-Use of Names. Licensee shall not use or permit the use of Licensors's name, logo or likeness, or that of any other affiliate, in any way, including in any advertising or promotional media, without obtaining the prior written consent of Licensors or its affiliate, as applicable. Licensors shall not use or permit the use of Licensee's name, logo or likeness, or that of any other affiliate, in any way, including in any advertising or promotional media, without obtaining the prior written consent of Licensee or its affiliate, as applicable.

19. False Claims. Licensors acknowledges that Licensee is an affiliate of the Yale New Haven Health System and that Yale New Haven Health System has provided it with access to its policy on False Claims and Payment Fraud Prevention (the "Policy") located on its internet site at www.ynhhs.org/FalseClaims.pdf. The federal False Claims Act imposes civil penalties on people and companies who knowingly submit a false claim or statement to a federally funded program, or otherwise conspire to defraud the government, in order to receive payment. It also protects people who report suspected fraud. Any suspected fraud should be reported as provided in the Policy. In no event shall Licensee have any liabilities, to Licensee or any other party, as a result of this Section 18 or any action or inaction of Licensee relating to this Section 19.

20. Intentionally Omitted.

21. Intentionally Omitted.

22. Intentionally Omitted.

23. Change in Law. The parties recognize that this Agreement is at all times to be subject to applicable local, state and federal statutory and common law, regulations of state and federal agencies, and state and federal judicial and administrative decisions. The parties further recognize that this Agreement shall be subject to changes and amendments in these laws and regulations and to the provisions of any new legislation, regulations and case law affecting this Agreement. Any provisions of law or judicial or administrative decisions that invalidate, or are otherwise inconsistent with, the terms of this Agreement, or which would cause one of the parties to be in violation of law, shall automatically supersede the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to modify the terms and conditions of this Agreement to accommodate such provisions of law or judicial or administrative decisions and to effectuate the existing terms and intent of this Agreement to the greatest possible extent consistent with the requirements of such law or decision.

24. No Violation of Law. The parties further agree that, to the best of their knowledge, without any investigation, nothing in this Agreement contemplates the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

25. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the respective parties and their heirs, administrators, executors, legal representatives, successors and permitted assigns.

26. Notices. All notices shall be given in writing and shall be delivered to the appropriate party (a) by registered or certified mail, return receipt requested; (b) in person or (c) by reputable overnight courier. All notices to Licensor shall be addressed to it at the address below or at such other place as may be designated by written notice to Licensee, and to Licensee at the address below or at such other place as may be designated by written notice to Licensor. Notices shall be deemed delivered upon receipt or refusal of receipt by addressee.

If to Licensor:

City of New Haven
Department of Health
165 Church Street
New Haven, CT 06510
Attention: Corporation Counsel

With a copy to:

City of New Haven
Department of Health
165 Church Street
New Haven, CT 06510
Attention: Corporation Counsel

If to Licensee:

Yale New Haven Health System
Office of the General Counsel
CB230
789 Howard Avenue,
New Haven, CT 06510

With a copy to:

Yale New Haven Health System
Office of the General Counsel
CB230
789 Howard Avenue,
New Haven, CT 06510

All invoices for the Licensee Fee and other amounts due from Licensee shall be sent to Licensee at the above address (*without* a copy to the General Counsel).

27. Rights Not Waived. Failure of either party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of such party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

28. Partial Invalidity. The invalidity of one or more phrases, sentences, clauses, subsections, articles or paragraphs contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

29. Entire Agreement. This Agreement and any Exhibits and Schedules attached hereto contain the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement.

30. Amendment. This Agreement may not be amended, modified, altered or changed in any respect whatsoever except by agreement, in writing, signed by each of the parties hereto.

31. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with, the internal laws of the State of Connecticut.

32. Force Majeure. Licensor or Licensee, as applicable, shall not be in default hereunder if it is unable to fulfill or is delayed in fulfilling any of its obligations hereunder, if it is prevented from fulfilling such obligations due to a force majeure event arising after the signing of this Agreement which is unforeseen and beyond the control of such Party. No obligation that can be satisfied by the payment of a commercially reasonable amount of money shall be deemed to be a force majeure event, and neither party may rely on this Section 32 unless it notifies the other party of the existence of the force majeure event within ten (10) days of its occurrence.

33. Access. Licensee shall have access to the Premises and the Space at all times on all days (twenty-four hours per day, seven days per week).

34. Broker. Each of Licensor and Licensee covenant, warrant and represent to each other that no broker was instrumental in bringing about or consummating this Agreement and that such party has had no conversations or negotiations with any broker concerning the leasing of the Premises herein provided. Each party shall indemnify, protect, defend and hold harmless the other party against all claims, demands, losses liabilities, lawsuits, judgments, costs and expenses (including reasonable attorneys' fees) for any leasing commission, finder's fee or similar compensation alleged to be owing on account of the indemnifying party's dealings with any other real estate broker, agent or finder.

35. Intentionally omitted.

36. Captions. The captions in this Agreement are inserted only for convenience and in no way constitute or interpret the provisions hereof or affect their scope or intent.

37. Counterparts. This Agreement may be executed in multiple counterparts, all of which constitute one and the same instrument.

38. Quiet Enjoyment. Licensor covenants with Licensee that so long as Licensee pays the License Fee and fulfills or performs all of the obligations hereunder, Licensee shall peaceably hold and quietly enjoy the Space, during the scheduled use, without interruption by Licensor or any person claiming under it.

39. Miscellaneous. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect, but only to the extent that each party remains bound by substantially the same obligations and entitled to the same benefits afforded hereby prior to such determination. It is the intention of the parties that if any provision of this Agreement were capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

LICENSOR:

LICENSEE:

CITY OF NEW HAVEN

YALE NEW HAVEN HEALTH SERVICES CORPORATION

DocuSigned by:
By: Justin Elicker
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Justin Elicker
Mayor

DocuSigned by:
By: Stephen Carbery, Vice President
FF5310D9F1401...
Stephen J. Carbery
Vice President Facilities, Design,
Construction & Real Estate

Date: 1/20/2021 | 3:47 PM EST

Date : 1/19/2021 | 3:58 PM EST

Approved Form & Correctness

DocuSigned by:
By: Stacy L. Werner, Senior Assistant Corporation Counsel
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Stacy L. Werner
Asst. Corporation Counsel

1/19/2021 | 4:47 PM EST

EXHIBIT A

New Haven Public Schools to Yale New Haven Health Services Corporation

1. **SPACE:** The Floyd Little Fieldhouse at 476 Sherman Parkway, New Haven, CT.

2. **SCHEDULED USE:**

During the term of this Agreement, Licensee shall be entitled to the full-time exclusive use of the Space described in paragraph 1 above, with non-exclusive access to and use of the Premises.

3. **INVOICING:**

Licensor shall invoice Licensee on a monthly basis for the License Fee described in this Agreement.

4. **SERVICES**

A. Licensor directly shall provide the following services to Licensee:

- i. Access to the site
- ii. Maintenance (including HVAC services as necessary to preserve restroom ventilation, and electrical and plumbing services as needed)
- iii. Parking
- iv. Grounds keeping
- v. Snow Removal

5. Licensor agrees that Licensee shall have the right to perform certain site modifications and renovations to allow for creation of a vaccination site for COVID-19,.

6. Three Year Utilities Averages.

7. **AGREEMENT COMMENCEMENT DATE:**

This Agreement shall go into effect upon signature, but Licensee's obligations hereunder shall not commence until occupancy of the Space.