



TESTING SERVICES AGREEMENT

This **TESTING SERVICES AGREEMENT** (“**Agreement**”) entered into by and between the undersigned clients (“**Client(s)**”) and Walgreen Co. (“**Walgreens**”) is effective as of the date set forth on the signature page (the “**Effective Date**”).

A. Clients desire to arrange for Walgreens to provide testing services as set forth in **Exhibit A**, attached hereto and incorporated herein (“**Covered Services**”) to individuals eligible to receive such Covered Services (“**Participants**”).

B. Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Walgreens hereby agree as follows:

I. CLIENT’S RESPONSIBILITIES

1.1 **Reimbursement.** Subject to the terms and conditions of this Agreement, Clients are responsible for payment of all amounts due for Covered Services provided by Walgreens, less, if applicable, the amount that Clients direct Walgreens to collect from the Participant at the time a Covered Service is provided (“**Participant Payment Amount**”).

II. WALGREENS’ RESPONSIBILITIES

2.1 **Covered Services.** Subject to the limitations or restrictions imposed by federal and state contracts, laws, and regulations, and the availability of the appropriate tests, and upon Walgreens’ receipt of the Participant Payment Amount, if any, Walgreens will provide Covered Services. Notwithstanding the foregoing, Walgreens may withhold Covered Services to a Participant for good cause, including, but not necessarily limited to, Clients’ nonpayment for Covered Services provided to Participants or nonpayment of the Participant Payment Amount, if applicable.

III. PAYMENT/BILLING

3.1 Clients will reimburse Walgreens at the amount identified in **Exhibit A**.

3.2 **Payment.** Clients will pay Walgreens all amounts due under this Agreement, including but not limited to reimbursement amounts for Covered Services provided to Participants, any fees or interest charges due hereunder, and, subject to Section 3.5 below, any amount arising out of the Tax. Where applicable, payment shall be due within thirty (30) days from Clients’ receipt of Walgreens’ invoice. Clients will make payment to Walgreens’ designated bank account via an electronic funds transfer or via check to Walgreens’ remittance address. At the time of payment, Clients will provide Walgreens with (i) a written explanation of the

specific claims for which payment is made; and (ii) notice (in accordance with Section 3.3 below) of amounts subject to bona fide dispute, if any. Notwithstanding anything to the contrary in this Agreement, any claim of overpayment must be made by Client(s) within twelve (12) months from the date of services.

3.3 **Disputed Amounts.** In the event either Client in good faith disputes any amount invoiced by Walgreens, Client(s) will notify Walgreens in writing within the time period specified in Section 3.2. The notice will identify the specific claims in dispute and include supporting documentation. Upon review of a Client’s notice of dispute, if Walgreens (i) agrees with Client(s) that an amount(s) is not properly billable to Client hereunder, Walgreens will adjust, as appropriate, the next invoice sent to Client(s); or (ii) rejects a disputed amount, Walgreens will provide written notice and documentation to support Walgreens’ rejection notice. Payment for rejected claims will be due within thirty (30) days’ of a Client’s receipt of Walgreens’ rejection.

3.4 **Late Payment.** All sums owed by Clients to Walgreens will bear interest of 1.5% per month from the date payment is due until paid; however, in no event will such interest rate be greater than the rate permitted by law. Clients shall be solely responsible for any and all costs incurred by Walgreens in seeking collection of any delinquent amounts. Walgreens may invoice Clients for interest and costs due under this Section 3.4 on a monthly basis and payment will be due within the time period set forth in Section 3.2.

3.5 **Clients’ Tax Exempt Status.** In the event that Clients provide Walgreens with a valid tax exemption certificate or other such documentation required under applicable law, to the extent allowable under applicable law, Clients will not be responsible hereunder for the payment of Taxes to Walgreens. In the event Client(s) loses its Tax exempt status, Client(s) will promptly notify Walgreens in writing and Client(s) shall be responsible for any Tax imposed in conjunction with this Agreement as of the date that Client(s) lost its tax exempt status. For purposes of this Agreement, “Tax” means any sales tax, imposition, assessment, excise tax, or other government levied amount based on purchase at wholesale or Walgreens’ sale of prescriptions to Participants either on gross revenues or by transaction, whether such tax is designated a sales tax, gross receipts tax, retail occupation tax, value added tax, wholesaler distributor tax, health care provider tax, transaction privilege tax, assessment, pharmacy user fee, or charge otherwise titled or styled. It includes any tax in existence or hereafter created whether or not the bearer of the tax is the retailer or consumer.

IV. TERM AND TERMINATION

4.1 **Term.** This Agreement will become

effective on the Effective Date and shall continue in full force and effect until February 28, 2021 (the “**Initial Term**”). Upon expiration of the Initial Term, this Agreement may renew for successive one-month terms upon written agreement of the parties (each a “**Renewal Term**” and each Renewal Term together with the Initial Term, the “**Term**”).

4.2 Termination Without Cause. Any party may terminate this Agreement at any time without cause by giving at least thirty (30) days’ prior written notice to the other party.

4.3 Termination for Breach. Any party may terminate this Agreement in the event of a material breach by the other party and such termination will be effective thirty (30) days after written notice of such breach has been provided to the breaching party, unless such breach has been cured to the satisfaction of the non-breaching party prior to expiration of the thirty (30) day notice period. Notwithstanding the foregoing, in the event that either Client fails to pay Walgreens amounts due hereunder, Walgreens may, in Walgreens’ sole discretion: (i) terminate this Agreement upon ten (10) days’ prior written notice to both Clients, unless full payment of the outstanding amount is received by Walgreens prior to expiration of the ten (10) day notice period; or (ii) suspend providing services to Participants without terminating this Agreement until such time that the Client(s) has cured the breach to Walgreens’ satisfaction.

4.4 Additional Termination Rights. In addition to termination rights contained elsewhere in this Agreement, any party may immediately terminate this Agreement at any time upon written notice to the other party in the event the other party becomes insolvent or bankrupt.

4.5 Effect of Termination. Termination will have no effect upon the rights or obligations of the parties arising out of any transactions occurring prior to the effective date of such termination.

V. LIABILITY AND INDEMNITY

5.1 Clients Indemnification. Clients hereby agrees to indemnify, defend, and hold harmless Walgreens, including Walgreens’ shareholders, directors, officers, employees, delegates, agents, representatives, and affiliates, from and against any and all third party claims or liabilities arising from (i) Clients’ denial of coverage to any Participant, whether by omission, decision or design; (ii) the negligent or wrongful acts of Clients, its employees, or agents in carrying out Clients’ duties and obligations under the terms of this Agreement; (iii) Clients’ failure to communicate accurate Participant Payment Amounts; or (iv) any other third party entity’s claims to enforce contractual obligations under any other contract that Clients may hold and to which Walgreens is not a party. This Section will survive the termination of this Agreement. Clients and other governmental entities do not waive, and specifically reserve, all of their statutory and common law defenses, including all protections under NRS Chapter 41.

5.2 Walgreens Indemnification. The parties acknowledge and agree that Walgreens is not liable for activities covered by the Public Readiness and Emergency Preparedness (PREP) Act. To the extent Walgreens’ activities are not covered by the PREP Act, Walgreens hereby agrees to indemnify, defend, and hold harmless Clients, including Clients’ shareholders, directors, officers, employees, delegates, agents, representatives, and affiliates, from and against any and all third party claims or liabilities arising from (i) the willful misconduct of Walgreens, its employees, or agents in carrying out Walgreens’ duties and obligations under the terms of this Agreement; or (ii) Walgreens’ breach of any representation, warranty or covenant set forth in this Agreement. This Section will survive the termination of this Agreement.

5.3 Limitation of Liability. In no event shall either party be liable to the other party under this Agreement for any special, incidental, indirect, exemplary, or consequential damages, whether based on breach of contract, warranty, tort (including negligence), lost profits or savings, punitive damages, injury to reputation, loss of customers or business, product liability, or otherwise, and whether or not such party has been advised of the possibility of such damage. Each party acknowledges and agrees that the foregoing limitations of liability are a condition to and material consideration for its entry into this Agreement.

VI. GENERAL TERMS

6.1 Advertising. No party may advertise or use any trademarks, service marks, or symbols of the other party without first receiving the written consent of the party owning the mark and/or symbol with the following exceptions: any party may use the name and the addresses of the other party in materials to inform Participants that Walgreens provides testing services.

6.2 Regulatory Compliance. This Agreement shall be construed to be in accordance with, and each party will comply with, all applicable laws, rules, and regulations. Clients represent and warrants that its program to provide testing services to Participants complies with applicable state and federal anti-kickback and beneficiary inducement prohibitions. Each party will cooperate with reasonable requests by the other party for information that is needed for its compliance with applicable laws, rules, and/or regulations.

6.3 Confidentiality of Protected Health Information. Each party warrants that it will protect and respect each Participant’s right to privacy and confidentiality concerning their medical and pharmaceutical records, and protect all individually identifiable health information as protected health information (“**PHI**”) from misuse or disclosure in compliance with all applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, as amended. Failure by any party to abide by these requirements shall be a basis for immediate

termination of this Agreement. The parties acknowledge and agree that nothing herein will limit any party's use of any aggregated Participant information that does not contain PHI. This Section will survive termination of this Agreement.

6.4 Non-Exclusivity/Patient Choice. The parties acknowledge that this Agreement does not create an exclusive relationship, and that any party may freely enter into similar agreements with other parties. The parties also acknowledge that Participants are free to choose a pharmacy provider of his or her choice, and nothing herein shall be construed to require an individual to obtain services from Walgreens.

6.5 Entire Agreement. This Agreement, which includes any and all documents, attachments, exhibits and schedules referenced herein or attached hereto, constitutes the entire and full agreement between the parties relating to the subject matter of this Agreement. Any prior negotiations, agreements, documents, understandings, or representations relating to the subject matter of this Agreement not expressly set forth herein or referred to or incorporated herein by reference are of no force or effect. Except as otherwise set forth herein, no changes, amendments, or alterations to this Agreement will be effective unless reduced to writing signed by a duly authorized representative of each party.

6.6 Exclusions. This Agreement is only applicable to the Covered Services. The parties further acknowledge and agree that the following services are specifically excluded from this Agreement: starter dose services, Indian tribal, mail-order, specialty, specialty at retail, clinical, ancillary, immunization and 340B services.

6.7 Force Majeure. The performance by any party hereunder will be excused to the extent of circumstances beyond such party's reasonable control, such as flood, tornado, earthquake, or other natural disaster, epidemic, war, material destruction of facilities, fire, acts of terrorism, acts of God, etc. In such event, the affected party will use its best efforts to resume performance as soon as reasonably possible under the circumstances giving rise to the party's failure to perform. Notwithstanding the foregoing, the parties agree that the

current state of the COVID-19 pandemic shall not impact their respective abilities to perform pursuant to this Agreement.

6.8 Insurance. Each party will self-insure or maintain at its sole expense, and in amounts consistent with industry standards, insurance for general and professional liability and such other insurance as may be necessary to insure the party, its employees, and agents against any claim or claims for damages arising out of or in connection with its duties and obligations under this Agreement. Upon request from Walgreens, Clients will provide a memorandum of insurance or certificate of insurance. Walgreens' insurance information is available at www.walgreens.com/insurance.

6.9 Notices. All notices provided for herein must be in writing sent by U.S. certified mail, return receipt requested, postage prepaid, or by overnight delivery service providing proof of receipt to the applicable address set forth following the signature blocks below. Notices will be deemed delivered upon receipt or upon refusal to accept delivery.

6.10 Third Party Rights. This Agreement is solely between Walgreens and Clients and may not be construed to create any rights or remedies in favor of any third party, including, but not limited to, any Participant.

6.11 Signatory Authority. Each party represents and warrants that the individual signing this Agreement on its behalf is duly authorized to bind such party to all terms and conditions herein.

6.12 Waiver. No waiver by any party with respect to any breach or default of any right or remedy and no course of dealing may be deemed to constitute a continuous waiver of any other breach or default of any other right or remedy unless such waiver is expressed in writing by the party to be bound.

[SIGNATURE PAGE FOLLOWS]

EFFECTIVE DATE: December 1, 2020

IN WITNESS WHEREOF, Client and Walgreens have executed this Agreement.

CLIENT: CITY OF RENO

SIGNATURE: [Signature]

NAME: DOUG THORNLEY

TITLE: CITY MANAGER

DATE: 12/4/2020

Legal Notice Address:

Julie B. Towler
Deputy City Attorney
Reno City Attorney's Office
P.O. Box 1900
Reno, Nevada 89505
Phone: 775-334-2050

CLIENT: CITY OF SPARKS

SIGNATURE: [Signature]

NAME: Neil C Krutz

TITLE: City Manager

DATE: 12/7/20

Ed Lawson, Mayor

Attest:

Lisa Hunderman, City Clerk

Approved as to form:

Chet Adams, City Attorney

Legal Notice Address:

Brandon C. Sendall
Assistant City Attorney
Sparks City Attorney's Office
431 Prater Way
Sparks, Nevada 89431
Phone: 775-353-2324

WALGREEN CO.

SIGNATURE: [Signature]

Digitally signed by Scott A. Schuler
Date: 2020.12.07 14:22:23 -06'00'



NAME: Scott A. Schuler

TITLE: Group Vice President, RX Contracting, Pricing and Operations

DATE: _____

Legal Notice Address:

Walgreen Co.
104 Wilmot Road, MS 1446
Deerfield, IL 60015
Attn: Health Law (KJO)

EXHIBIT A
COVERED SERVICES AND COST

ID NOW POINT OF CARE TEST

1. The following shall be provided as Covered Services:
 - a. Under NDC 11877-0011-26, or similar drug codes as adopted by Walgreens from time to time in accordance with applicable law, an Abbott ID NOW™ COVID-19 In Vitro Kit (a “**Point of Care Test**”) will be provided to a Participant and the Participant will self-administer the Point of Care Test while being directed and observed by a Walgreens professional.
 - b. The Walgreens professional will collect the Point of Care Test sample from the Participant, secure and label the Point of Care Test, and prepare it for testing.
 - c. Walgreens expects to generate results from Point of Care Tests within twenty-four (24) hours of testing.
 - d. Results from the Point of Care Tests will be communicated and reported in accordance with applicable rules and guidance. Walgreens will report to the Client on a daily basis the number of individuals served by day at each store.
 - e. Walgreens shall acquire and maintain any required CLIA-waived licenses necessary to process the Point of Care Tests.
2. Clients will pay Walgreens an up-front, flat fee of \$3,750,000.00 (the “**Fee**”) for Walgreens’ distribution of a total of 30,000 Point of Care Tests over the Initial Term of the Agreement, which represents a rate of \$125.00 per Point of Care Test to be administered. The Fee shall be paid as follows: City of Reno shall pay to Walgreens \$2,625,000.00, and City of Sparks shall pay to Walgreens \$1,125,000.00. Notwithstanding anything in the Agreement to the contrary, payment of the Fee shall be due no later than December 30, 2020. For the avoidance of doubt, Walgreens will not invoice Clients for the Fee. Walgreens shall undertake good faith efforts to administer all 30,000 Point of Care Tests during the Initial Term. In the event all 30,000 Point of Care Tests have not been administered by the end of the Initial Term, the parties agree that either (a) the parties will mutually agree in writing to enter a Renewal Term, during which Walgreens will continue administering Point of Care Tests up to the 30,000 limit; or (b) Walgreens shall reimburse the Clients a flat fee representing a rate of \$125.00 per unused Point of Care Test (the “**Reimbursement Amount**”), with 70% of the Reimbursement Amount paid to City of Reno and 30% of the Reimbursement Amount paid to City of Sparks. Upon administration of the initial 30,000 Point of Care Tests, the parties may mutually agree in writing to continue the Agreement, at which time Walgreens would invoice Clients at a rate of \$125.00 per each additional Point of Care Test administered to a Participant.
3. The amount of the Participant Payment Amount, as defined in the Agreement, for the Point of Care Test shall be Zero and 00/100 Dollars (\$0.00).
4. Point of Care Tests will be offered at the locations identified on Attachment 1 hereto. Of the Point of Care Tests administered, Walgreens shall undertake good faith efforts to administer at least 30% at the Sparks, Nevada locations.

ATTACHMENT 1 TO EXHIBIT A
POINT OF CARE TEST LOCATIONS

STORE NO.	ADDRESS	CITY	STATE	ZIPCODE
2662	12645 S VIRGINIA ST	RENO	NV	895114803
2658	10370 N MCCARRAN BLVD	RENO	NV	895036848
5295	750 N VIRGINIA ST	RENO	NV	895011001
11226	305 LEMMON DR	RENO	NV	895066746
11227	2299 ODDIE BLVD	SPARKS	NV	894317573
12540	9705 PYRAMID WAY	SPARKS	NV	894417541
2474	3000 VISTA BLVD	SPARKS	NV	894366702
9902	292 LOS ALTOS PKWY	SPARKS	NV	894367708