

**CITY CLERK - CONTRACTS
SCAN SHEET**

CONTRACT #: 11304

CONTRACTING PARTY: PROVIDENCE HEALTH SYSTEM - SOUTHERN
CALIFORNIA

CONTRACT DATE: 04/19/2021

EXPIRATION DATE: 08/30/2021

DESCRIPTION: COLLABORATIVE SPACE USE AGREEMENT -
COVID-19 VACCINATION CENTER AT THE
ORANGE COUNTY GREAT PARK

AMOUNT: N/A

DEPARTMENT: PUBLIC SAFETY

ITEM #:

MEETING DATE:

COLLABORATIVE SPACE USE AGREEMENT (VACCINATION CENTER)

This COLLABORATIVE SPACE USE AGREEMENT (the “Agreement”) is made and entered into this 19th day of April, 2021 (“Effective Date”), by and between CITY OF IRVINE, a California municipal corporation and charter city (“Owner”) and PROVIDENCE HEALTH SYSTEM – SOUTHERN CALIFORNIA, a California nonprofit corporation (“Licensee”).

RECITALS

WHEREAS, Licensee is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which operates a health care system that provides professional health care services to its patients, including but not limited to physician services.

WHEREAS, Owner is a California municipal corporation and charter city.

WHEREAS, Owner has requested that health care providers like Licensee participate in distributing vaccines (collectively, the “Vaccine”) for the COVID-19 virus (the “Virus”).

WHEREAS, to administer the Vaccine to members of the community, Licensee desires to temporarily use space which is owned by Owner as a COVID-19 Vaccination Center (“Vaccination Center”).

WHEREAS, Owner desires to assist Licensee with its vaccination program by providing Licensee with the right to temporary use of the “Premises,” as defined below, in accordance with the terms of this Agreement so that Licensee is able to safely, equitably, and effectively administer the Vaccine to members of the community.

WHEREAS, the Owner’s provision to Licensee of the right to use the Premises under this Agreement is a service to the community and is consistent with the Owner’s goals and purposes.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. Right to Use Premises. Owner hereby grants to Licensee the right to utilize (i) the parking lot located in the City of Irvine and commonly known as the “Festival Site” or “Parking Lot 2,” and (ii) interior space of the building located in the City of Irvine and commonly known as the “Artist in Residence Studio” or “Building 245” (collectively, the “Premises”), between the hours of 7:00 a.m. to 3:00 p.m., Monday – Friday, except as otherwise agreed, in writing, between the parties (the “Scheduled Times”), solely to operate the Vaccination Center. The Premises is generally depicted in Exhibit “A”, which is attached hereto and incorporated herein by this reference. The interior space within the “Artist in Residence Studio” that comprises a portion of the Premises is depicted in Exhibit “B”, which is attached hereto and incorporated herein by this reference.

2. Term. This Agreement shall begin on the Effective Date and end on August 30, 2021 (the "Term"). The parties may agree to renew the Agreement by mutual consent. Either party may terminate this Agreement with or without cause on five (5) days' prior written notice to the other party.

3. Use Fee. In recognition of Licensee's mission and status as a 501(c)(3)-exempt organization, as well as in recognition of the COVID-19 declarations of emergency, and in exchange for Licensee's agreement to safely, equitably and effectively administer the Vaccine to patients, regardless of patients' ability to pay, Owner agrees to waive all Use Fees that may otherwise have been required.

4. Responsibilities of the Parties

a. Owner Responsibilities. Owner shall, at its expense (except as provided in clause iv below) and during normal business hours, furnish to the Premises during the Scheduled Times:

- i. Electric current for normal lighting infrastructure use.
- ii. Access to common restroom facilities with hot and cold water.
- iii. Regular janitorial and cleaning services to include normal space sanitization according to current City of Irvine standards.
- iv. Subject to availability, and at no cost to Owner, access to Owner's WiFi system for Licensee's internet access.
- v. Furniture (desks and chairs, tables, stations) and equipment to support the function of the Vaccination Center.
- vi. Security commensurate with the Owner's normal operations.
- vii. 25 computer tablets for check-in/registration.
- viii. Up to twenty (20) persons, as needed, which can be comprised of City staff and/or volunteers.
- ix. Personal Protective Equipment for the persons listed in viii above.
- x. Traffic control personnel.
- xi. One Refrigerator.

b. Licensee Responsibilities. Licensee shall perform all of the following, at Licensee's sole cost and expense:

- i. Operation of the Vaccination Center in accordance with the operations plan attached hereto and incorporated herein as Exhibit "C", and provision of all associated medical supplies and services, including but not limited to vaccination scheduling, SHARPS collection and disposal, in compliance with all applicable federal and state laws, regulations, and guidelines, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA").
- ii. Provision of check-in/front desk support staff for Vaccination Center check-in and registration.
- iii. Operation of the Vaccination Center in accordance with all applicable legal requirements.
- iv. Storage and transportation of the Vaccines, including any specialty equipment that the Vaccines require (including but not limited to refrigerators/freezers and related power supply).
- v. Administration of vaccines to vaccine recipients by individuals who are appropriately licensed under the state of California to administer the Vaccines.

- vi. Provision of all appropriate personal protective equipment (PPE) in accordance with applicable legal requirements, the standard of care, and regulatory guidance for all staff members, including but not limited to health care providers and volunteers, who provide services at the Vaccination Center.
- vii. Provision of all appropriate signage to be posted in locations approved by Owner to identify the path from the public right-of-way to the location of the Vaccination Center, as well as instructional signage at the Vaccination Center to direct traffic, and including signage and place-setting within the Vaccination Center for appropriate social distancing of patients and/or staff members and volunteers.

5. Use of Premises. During the Scheduled Times, the Premises shall be used exclusively by Licensee for operation of the Vaccination Center to provide Vaccines to individuals and for no other purpose without the prior written consent of Owner, which consent Owner may withhold in its sole and absolute discretion. Licensee's use of the Premises shall be in strict compliance with all applicable federal and state laws, regulations, and guidelines.

Licensee shall have the sole responsibility for properly handling all hazardous wastes and materials generated by the operation of its Vaccination Center in accordance with all applicable federal and state laws and regulations.

6. Responsibility for Staff. Licensee is solely responsible for providing appropriate employees, contractors, volunteers and agents to operate the Vaccination Center. Licensee will ensure that its employees, contractors, volunteers and agents (a) follow all applicable public health guidelines to limit the transmission of COVID-19, including wearing masks and social distancing as appropriate, and (b) comply with the terms of this Agreement and all other applicable federal and state laws and regulations.

7. Advertising/Signs. Except as set forth herein with respect to directional signage for which Owner's consent is hereby granted (subject to Owner's right to approve such signage pursuant to Section 4.b.vii above), Licensee shall not in any manner display any sign, notice, picture or poster whatsoever which shall be visible outside the Premises without first obtaining Owner's written consent, which consent Owner may withhold in its sole and absolute discretion.

8. Alterations and Improvements. Licensee shall not make any alterations, additions, or improvements in or to the Premises without prior written consent of Owner, which consent Owner may withhold in its sole and absolute discretion.

9. Maintenance and Repair. Owner shall, at its own expense, maintain and keep in good repair the foundation, exterior walls, roof, and other structural portions of the Premises, and shall maintain the electrical, plumbing, heating and ventilating equipment in the Premises. Licensee is responsible for cleaning and maintenance of furniture, equipment, signage and interior walls in the Premises and for directional signage appurtenant to the Premises.

10. Application of COVID-19 Waivers, Orders or Emergency Declarations. This Agreement is created in response to current or anticipated needs with respect to the 2019 Novel Coronavirus and the emergency response required to protect patients and the general public. This Agreement shall be interpreted in accordance with any and all waivers now or hereafter granted by any government entity or person or other exceptions that may be applicable with respect to the COVID-19 services provided under this Agreement to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and state programs and to ensure that health

care providers that furnish such items and services in good faith, but are unable to comply with one or more of these regulatory requirements as a result of the consequences of the 2019 Novel Coronavirus pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse, including sanctions under section 1877(g) under such conditions and in such circumstances as CMS determines appropriate or as provided for under corollary state laws.

11. Disclaimer. THE PREMISES ARE PROVIDED “AS IS” AND “WITH ALL FAULTS.” THE OWNER ITS AFFILIATES AND THEIR REPRESENTATIVES SHALL NOT BE LIABLE FOR ANY USE OR INABILITY TO USE, AND EACH MAKE NO REPRESENTATION OR WARRANTY OR ENDORSEMENTS OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) ABOUT THE PREMISES, AND FUNCTIONS MADE AVAILABLE ON OR ACCESSED THROUGH LICENSEE’S USE OF THE PREMISES.

KPM
Licensee’s initials

12. Indemnification. Each party (the “Indemnifying Party”) shall at all times indemnify and hold harmless the other party and its officials, members, employees, volunteers, and representatives (collectively, the "Indemnified Parties") from and against any and all liabilities, damages, penalties, settlements, judgments, orders, losses, costs, charges, attorneys' fees, and all other expenses and shall, further, defend the Indemnified Parties from any and all claims, actions, suits, prosecutions, and all other legal and/or equitable proceedings resulting from or relating to (whether directly or indirectly) any allegation (whether founded or unfounded and regardless of the nature or character thereof) regarding: (i) any negligent, willful, reckless, or wrongful act or omission of the Indemnifying Party, its employees, representatives, or contractors; (ii) any breach of, or inaccuracy in, any representation and/or warranty made herein including, without limitation, claims for personal injury, illness, death, or damage to property or other demands; (iii) any failure to perform by the Indemnifying Party of, or any defect in the performance of, its obligations and duties pursuant to this Agreement; or (iv) any alleged violation of any law, statute, regulation, emergency order, or ordinance.

Effective February 4, 2020, the DHHS Secretary issued a declaration stating that the spread of COVID-19 (or a virus mutating therefrom) constituted a public health emergency. The declaration provided tort liability immunity to certain individuals and entities (called “Covered Persons”) against a claim of loss “caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures)” to combat COVID-19. A “covered countermeasure” includes any “qualified pandemic and epidemic product” and “security countermeasure”.³ This includes the COVID-19 vaccines that have received Emergency Use Authorization by the Food & Drug Administration.

13. Insurance. Licensee shall maintain and pay all premium costs and deductibles, if any, for the following insurance coverages in amounts not less than specified throughout the Term:

a. Statutory Workers' Compensation Insurance with coverage and limits as required by law; and Employer's Liability Insurance, for limits of not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease. Such insurance shall cover all Licensee’s employees and volunteers.

b. Commercial General Liability Insurance for limits of not less than \$1,000,000 per claim bodily injury and property damage combined; and \$3,000,000 general aggregate limit. Defense costs shall not erode the limits.

c. Comprehensive auto liability insurance against bodily injury, death, and property damage endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than \$1,000,000 per occurrence.

d. Licensee shall name Owner and its officials, members, employees, volunteers, and representatives as "Additional Insureds" with respect to the commercial general liability, and such coverage shall be primary and noncontributory to any other insurance available to the additional insureds. The commercial general liability policy identified under this Section shall include a waiver of subrogation in favor of Owner. All required insurance will be placed with carriers authorized to do business in California and have an A.M. Best rating of A-, VII or higher, or through a program of self-insurance.

e. Licensee shall furnish to Owner prior to execution of the Agreement, and upon request thereafter, certificate(s) of insurance evidencing that such policies are in full force and effect. The failure of Licensee to furnish any such certificate shall not diminish or otherwise affect its obligation to procure and maintain any policies of insurance contemplated by this Section.

f. Licensee will require and ensure that its respective contractors who will be engaging in any business activity in connection with the proposed use will maintain commercial general liability insurance with limits of at least \$1,000,000 and provide satisfactory evidence thereof upon request of Owner. At no time will any contractor be allowed to provide any services on the Property without Workers Compensation and General Liability coverage as stated in paragraphs a and b, above.

g. Owner shall maintain Statutory Workers' Compensation Insurance with coverage and limits as required by law; and Employer's Liability Insurance, for limits of not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease. Such insurance shall cover all Owner's employees and volunteers.

h. Owner shall maintain Commercial General Liability Insurance with limits not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, including death, and property damage.

- i. Owner shall name, by endorsement, Licensee, its officers, directors, employees and volunteers as "Additional Insureds.
- ii. Upon request, Owner shall provide to Licensee certificate of insurance evidencing that such policy is in full force and effect with a copy of additional insured endorsement.

i. Owner shall maintain Comprehensive auto liability insurance against bodily injury, death, and property damage endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than \$1,000,000 per occurrence.

The insurance obligations stated in this Section are independent of, and shall not be affected by the scope or validity of, any other indemnity or insurance provisions in other sections of this Agreement..

14. Independent Contractor. The relationship between Licensee and Owner, as well as their respective employees, agents, and volunteers, is that of independent contractors, and neither shall be considered an agent or representative of the other party for any purpose, nor shall either hold itself out to be an agent or representative of the other for any purpose. Licensee acknowledges that all the Vaccine administration and all other health care services in connection with this Agreement are the sole responsibility of Licensee and the Owner does not dictate or control Licensee's clinical decisions with respect to the administration of Vaccines and other health care services.

15. Waiver of Breach. All waivers must be in writing. No waiver of breach or failure to exercise any option, right, or privilege under the terms of this Agreement by either party on any occasion or occasions shall be construed to be a waiver of the same or any other option, right, or privilege on any other occasion.

16. Inspection. Owner's facilities management and other staff shall have the right to inspect the Premises at all times and to enter to exercise any right or privilege of Owner under this Agreement; provided, however, that with respect to portions of the Premises where there is an expectation of patient privacy, Owner shall have the right to inspect such portions at all reasonable times provided that such area is not then occupied by a patient.

17. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of California. Venue for any litigation shall lie in the federal and state courts of Orange County, California.

18. Assignment. Licensee shall not assign or transfer this Agreement or any interest hereunder, or permit any assignment hereof by operation of law, or permit the use of said Premises by anyone other than Licensee, without the prior written consent of Owner, which consent may be given or withheld in Owner's sole and absolute discretion.

19. Amendment. Amendments to this Agreement shall be effective only if contained in a written instrument signed by the authorized representatives of both parties.

20. Entire Agreement. This Agreement contains the entire agreement between Owner and Licensee. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written between the parties hereto.

21. Notices. All notices given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally with receipt acknowledged or sent by registered or certified mail or equivalent, if available, return receipt requested, or by nationally recognized overnight courier that provides a receipt with the date and time of delivery, for next day delivery, addressed or sent to the parties at the following addresses:

To Owner

By Mail: City of Irvine
One Civic Center Plaza

Irvine, CA 92606
Attn: Bobby Simmons, Emergency Management Administrator

By Email: rsimmons@cityofirvine.org

To Licensee

By Mail: Providence St Joseph Healthcare
3345 Michelson Drive
Irvine, CA 92612
Attn: Teresa Frey
949-381-4715

By Email: tfrey@stjoe.org

22. Rights Cumulative; Third Party Beneficiary. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies. Except as expressly set forth herein, nothing contained herein shall be construed or is intended to give any person, other than the parties, any legal or equitable rights or remedies in respect of or under this Agreement.

23. Administration. This Agreement shall be administered and executed on behalf of Owner by the City Manager of the City of Irvine (“City Manager”). The City Manager shall have the authority to issue interpretations, waive terms and conditions, and enter into amendments of this Agreement on behalf of Owner provided that such actions do not materially add to the costs or obligations, increase the risk of liability, or impair the rights or remedies, of Owner provided herein. All other waivers or amendments shall require the formal consent of the City Council of the City of Irvine.

24. Counterparts. This Agreement may be executed in one or more counterparts. Delivery of an executed counterpart of this Agreement by facsimile transmission or PDF shall be as effective as a manually executed counterpart of this Agreement.

EFFECTIVE AS OF THE EFFECTIVE DATE FIRST SET FORTH ABOVE.

OWNER: CITY OF IRVINE, a California municipal corporation and charter city

DocuSigned by:
By: Marianna Marysheva
64A5F613721047D...
Name: Marianna Marysheva
Its: Interim City Manager
Date: 4/19/2021

LICENSEE: PROVIDENCE HEALTH SYSTEM-SOUTHERN CALIFORNIA

By: Kevin P. Manemann
Name: Kevin P. Manemann
Its: Chief Executive, Southern California
Date: April 19, 2021

**APPROVED AS TO FORM:
RUTAN & TUCKER, LLC**

DocuSigned by:
Jeffrey Melching
By: _____
DABE8686180C4BB...
Jeffrey Melching, City Attorney

ATTEST:

DocuSigned by:
Carl Petersen
By: _____
0FCAD91F02E547D...
Carl Petersen, City Clerk

EXHIBIT " A " DEPICTION OF PREMISES

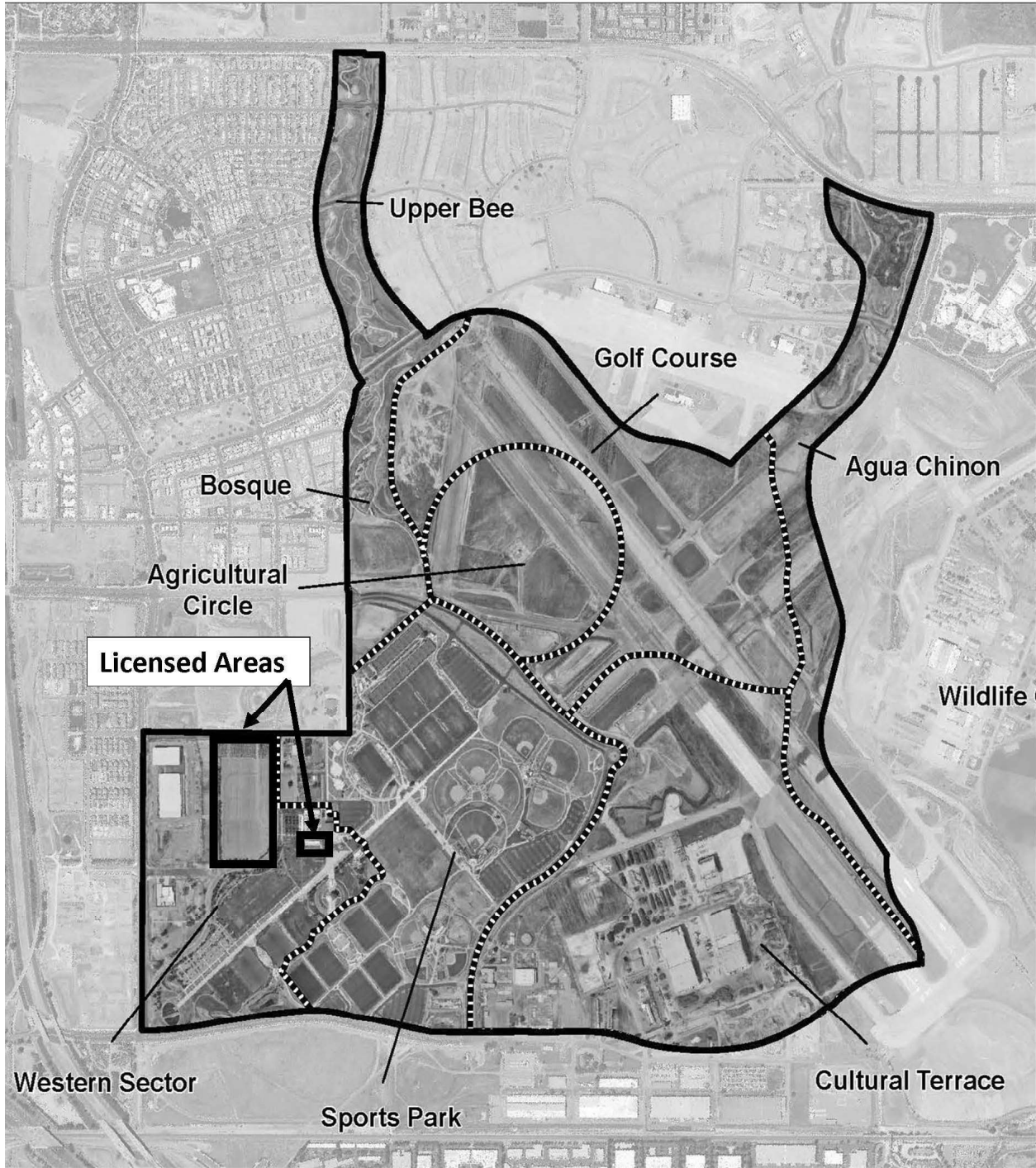
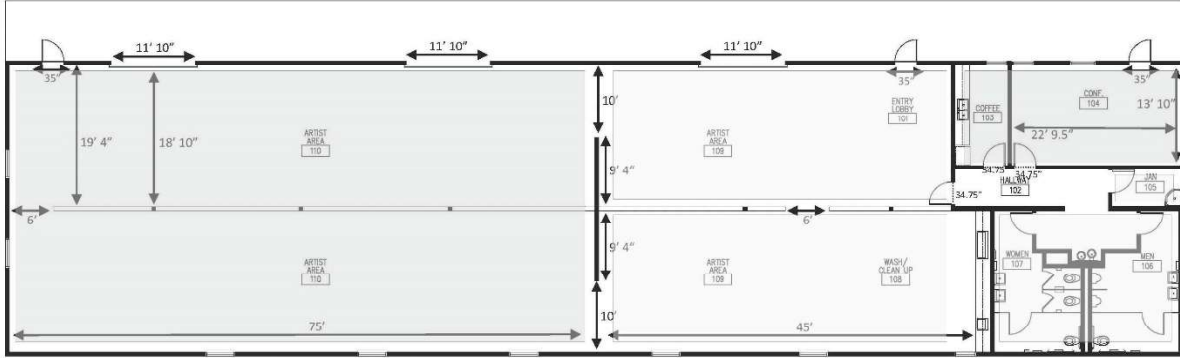


EXHIBIT " B "

DEPICTION OF INTERIOR SPACE WITHIN ARTISTS' RESIDENCE STUDIO

ARTIST STUDIOS - BUILDING 245

VACCINATION SITE - BACK OF HOUSE



Note: Specs are only approximate measurements and should be verified for use.

BUILDING 245



-  Area available for Vaccination Medical Staff Use and Storage
-  Area not available

EXHIBIT " C " OPERATIONS PLAN

