

## USER AGREEMENT

This **USER AGREEMENT** (the “**Agreement**”) made and entered, effective as of the date set forth on the City’s signature page below, by and between the **CITY AND COUNTY OF DENVER** (the “**City**”), a Colorado municipal corporation, and **LA CLINICA TEPEYAC, INC.**, (the “**User**”), a Colorado nonprofit corporation, whose address is 4725 High Street, Denver, Colorado 80216.

### RECITALS

**WHEREAS**, La Clinica Tepeyac, the User, is a 501(c)(3) nonprofit organization whose mission is, among other things, to provide instruction regarding preventative health and wellness services to the medically underserved; and

**WHEREAS**, User desires to provide health and wellness programming, instruction, and classes at certain recreation centers owned and operated by the City and County of Denver through its Department of Parks and Recreation (“**Department**”); and

**WHEREAS**, the City owns and operates recreation centers which has facilities that can support certain community-oriented programming, which User desires to utilize for its programming, as described in the Agreement below; and

**WHEREAS**, the City concurs with and supports the proposed programming and desires to grant a permit to the User for this purpose subject to the terms and conditions of this Agreement; and

**NOW, THEREFORE**, the City, in consideration of the recitals stated above and the terms and conditions stated in this Agreement, hereby grants to the User, and the User hereby accepts, a permit for the purposes stated in this Agreement:

#### **1. REPRESENTATIVES:**

**A. City Representative.** The City’s Executive Director of the Department of Parks and Recreation (“**Director**”) designates the Recreation Supervisor to represent the Director with respect to the administration of this Agreement. All communications and contacts specified in this Agreement shall be with the Recreation Supervisor or the employee(s) with the Department of Parks and Recreation who the Recreation Supervisor designates in written notice to the User (collectively, “**City Representative**”).

**B. User Representative.** User shall designate, in writing to the City Representative, a person associated with the User who is directly in charge of directing the User’s programs at the recreation facilities and who shall have full authority to serve as the representative for the User for all essential communications and other contacts specified in this Agreement (“**User Representative**”). User shall provide as contact information, at minimum, a mobile telephone number and email address. The User may designate a new User Representative by providing written notice to the City Representative.

**2. PERMITTED ACTIVITIES, LOCATION and DURATION.** The User will provide its programming, instruction and classes (“**Program**”) in designated rooms within certain recreation centers provided by the City (“**Recreation Facilities**”). The User agrees that the Program, the use of the specified Recreation Facilities and rooms and the number of Participants will be limited as provided herein unless written permission is obtained by the User Representative in advance from the City Representative. The User shall provide comprehensive list and description of its proposed Program, requested Recreation Facilities, and the times and dates of each Program no later than three (3) months prior to the start of the proposed Program.

**3. USER RESPONSIBILITIES.**

**A. Basic Obligations.** The User shall conduct its Program in the Recreation Facilities in a careful, safe, and proper manner, and shall not engage in any uses or activities prohibited by the laws of the United States, the State of Colorado, or the City Charter or ordinances of the City and County of Denver. The User, along with its officers, employees, volunteers, agents, and Program participants, shall comply with all applicable rules and regulations of the City’s Department of Parks and Regulation regulating use and behavior in parks or recreation facilities. The User shall also keep the Recreation Facilities and the immediately surrounding area clean and free and clear from all trash, debris, waste or stains and shall take such reasonable measures as necessary to protect the Recreation Facilities, during Program activity, from damage resulting from the User’s use or activities or the use or activities of their officers, employees, volunteers, agents, and Program participants.

**B. Use; Operations; Employees.** User shall be allowed use of rooms within the Recreational Facilities for health and wellness Programs dependent upon availability of the rooms. User may also provide instruction in the proper use of the weight rooms. However, User may not allow participants to use the weight room for self-guided use or workouts without the participant purchasing a day-pass or membership. The User will handle all registrations for the Program. The User shall, subject to this Agreement, select and hire its own employees and shall be solely responsible for their pay, benefits, continued employment or termination, and all other aspects of the employment relationship. The User shall pay withholding taxes as well as unemployment compensation and workers compensation premiums for its employees and shall provide the City Representative with evidence of such compliance upon request.

**C. Costs.** Along with payment obligations that may arise under Section 5, User shall be responsible for payment of utilization of City and/or DPR instructors for User Programs. DPR instructors shall be paid at the rate of twenty-seven dollars (\$27.00) per hour. Payment shall be made by check or credit card. Payment shall be due at the time of reservation.

**D. Recreation Facility Permitting Policy.** User agrees to comply with the “Conditions of Use” specified in Section 6.0 of the adopted Recreation Facility Permitting Policy, except for Sub-section 6.2 regarding security which is not applicable. Tables and chairs will be provided by the Department of Parks and Recreation for the User’s use during the Program activity to extent provided in Section 6.0 of the Recreation Facility Permitting Policy.

**E. Modifications; Cancellations.** User shall provide to the City Representative written notice of any changes, modifications or cancellations regarding Program sessions or classes at least one (1) week in advance of the contemplated change, modification or cancellation.

**F. Reporting.** User shall prepare and maintain attendance sheets for each Program session or class conducted at any Recreational Facility. User shall submit to the City Representative a quarterly summary of attendance and the activities conducted.

**G. Background Checks.** The User acknowledges and represents that it has satisfactorily conducted and completed all backgrounds checks.

**H. Release and Waiver.** The user shall prepare a release and waiver of liability form, acceptable to the City, which it will require all participants to sign. The City shall be a party, along with the User, for which the participants are releasing and waiving liability.

#### **4. CITY RESPONSIBILITIES.**

**A. Coordination.** City shall provide coordination, either through the City Representative or a Recreational Facility coordinator, for the Program to facilitate scheduling of Recreation Facilities and rooms in the Facilities, and to provide support staff at the Recreational Facilities. The City Representative shall assist User in ensuring that scheduling and space requirements for the Programs are met. City reserves the right to impose certain restrictions on User activities including but not limited to priority use of Recreational Facilities for City activities over User activities.

**5. RENTAL PAYMENTS.** The User is not required to pay rental payments for use of Facilities, and the City agrees to waive any such payment, except in cases where User utilizes Facilities after regular hours, then User shall pay costs incurred by the Department (staff time, operational and overhead costs incurred in association with the Program and use of the Recreation Facilities). Payments, if any, shall be made quarterly on or before the 15<sup>th</sup> of the month following the end of a quarter. Payment shall be made out in the name of the Denver Manager of Finance and delivered to the Finance Director of the City's Department of Parks and Recreation.

#### **6. TERM and TERMINATION.**

**A. Term:** The term of this Agreement shall begin as of August 1, 2017, and shall expire on December 31, 2018, unless sooner terminated pursuant to the terms of this Agreement or is extended by an amendment to this Agreement executed in the same manner as this Agreement ("**Term**").

**B. Termination:**

1) The City and the User may mutually agree to terminate this Agreement at any time.

2) The City may, upon good cause and at its election, terminate the permit issued under this Agreement for a material breach or default by the User under this Agreement, provided that the User shall have ten (10) days (or such longer time as specified by the Director) following the receipt of written notice from the City to substantially cure or rectify the breach or default. If the User fails to substantially cure or rectify the breach or default within the specified period of time, the City shall have a right to terminate the permit issued under this Agreement and require that the User pay the City for any compensation owed under paragraph 4 of this Agreement, for the repair of any damages to the Recreation Facilities resulting from the operation of the Program, for any unpaid debt related to the operation of the Program for which a creditor is seeking payment from the City, and for any financial recovery the City may be entitled to under this Agreement.

## **6. DEFENSE & INDEMNIFICATION.**

**A.** The User hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the Work performed by the Consultant under this Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Consultant or its sub-consultants or subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

**B.** The User’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. The User’s duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City’s negligence or willful misconduct was the sole cause of the alleged damages.

**C.** The User will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City’s exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

## 7. USER INSURANCE.

**A. General Conditions:** The User agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, activities, occupancies, uses and services under this Agreement. The User shall keep the required insurance coverage in force at all times during the term of the Agreement or any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. The User shall provide written notice of cancellation, non-renewal and any reduction in coverage to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** The User shall provide a copy of this Agreement to its insurance agent or broker. The User certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of User’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require, and the User shall promptly provide, additional proof of insurance, including but not limited to policies and endorsements, at any time.

**C. Additional Insureds:** For Commercial General Liability and Business Auto Liability, the User’s insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**D. Waiver of Subrogation:** For all coverages, the User’s insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants of User:** All subcontractors and subconsultants of User (including independent contractors, suppliers or other entities providing goods or services to User at the Recreation Facilities) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the User. The User shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. The User agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** User shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**G. Commercial General Liability:** The User shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**H. Business Automobile Liability:** The User shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all hired and non-owned vehicles used in association with this Agreement. The User has represented, upon which representation the City is relying, that it does not utilize any vehicles owned by the User and rather uses hired and non-owned vehicles.

**I. Additional Provisions:**

- (1) For Commercial General Liability, the policy must provide:
  - (i) That this Agreement is an Insured Contract under the policy;
  - (ii) Defense costs in excess of policy limits;
  - (iii) A severability of interests, separation of insureds or cross liability provision;
  - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
  - (v) No exclusion for sexual abuse, molestation or sexual misconduct.
- (2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
- (3) The User shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the User's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the User shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**J. Other:** The insurance requirements set forth in this paragraph 7 shall survive the expiration or earlier termination of this Agreement. The Executive Director of Parks and Recreation shall have the right to suspend this Agreement, and deny User access to the Recreation Facilities, if at any time the Director becomes aware that the User has failed to satisfy the insurance requirements, in whole or part, set forth in this paragraph 7 and may, at the Director's discretion, terminate this Agreement if the User fails to rectify the deficiency on the insurance requirements within a reasonable time frame, as determined by the Director. Alternatively, if it should be determined by the Director that the Agreement should remain in effect, the City shall have the right to obtain any insurance coverage specified in this paragraph 7

as Denver Risk Management deems necessary to remedy the deficiency in the User's policies, and the User agrees to promptly and fully reimburse the City for the costs of such insurance coverage upon being provided a bill for the costs.

**8. APPLICABLE LAW; COMPLIANCE WITH LAWS.**

**A. General Compliance with Laws.** The User shall comply with all applicable law in connection with this Agreement. The User shall use reasonable efforts to ensure that its employees, volunteers and participants comply with all applicable law in and around the Recreation Facilities. The City shall not be required to take any action which is inconsistent with applicable law. Applicable law shall include, but not be limited to, any law, governmental rule, regulation or ordinance, or judicial order or decree, including without limitation the Denver Charter; Denver Revised Municipal Code; rules, regulations, and policies of the City departments and agencies; and executive orders of the City's Mayor, as the same may be amended from time to time.

**B. No Discrimination in Employment.** In connection with the performance under this Agreement, the User agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.

**C. Colorado Governmental Immunity Act.** The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. and other law. All notice requirements provided by such laws shall be strictly complied with.

**D. Ethics.** The Parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. The User further agrees not to hire, or contract for services with, any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.

**9. MISCELLANEOUS.**

**A. Legal Authority.**

(1) The User assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

(2) The person or persons signing and executing this Agreement on behalf of the User, do hereby warrant and guarantee that they have been fully authorized by the User to execute this Agreement on behalf of the User and to validly and legally bind the User to all the terms, conditions, obligations, and requirements herein set forth.

(3) The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the User or the person signing the Agreement to enter into this Agreement.

**B. City Financial Obligations.** It is understood and agreed that any payment or performance obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council in each year in which the Agreement is in effect, encumbered, paid into the Treasury of the City, and available for the purposes of this Agreement. The User acknowledges that the (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect financial obligation of the City.

**C. No Third Party Beneficiary.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person. It is the express intention of the City and the User that any person or entity other than the City or the User receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**D. No Agency or Partnership Relationship.** Nothing in this Agreement is intended nor shall be deemed to create an agency, partnership or joint venture between the User and the City. Nothing in this Agreement is intended nor shall be deemed to grant to the User any power, right or authority to bind or otherwise contractually obligate the City. Nothing in this Agreement is intended nor shall be deemed to grant to the City any power, right or authority to bind or otherwise contractually obligate the User. No employee of the User shall be deemed an employee of the City. No employee of the City shall be deemed an employee of the User.

**E. Assignment and Subcontracting.** The City is not obligated or liable under this Agreement to any party other than the User. The User understands and agrees that it shall not assign any of its material rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Director. Failure to obtain the prior written consent and approval of the Director for any assignment shall be grounds for termination of the Agreement at the discretion of the Director. In the event any assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee, and the User shall remain fully responsible to the City according to the terms of this Agreement.

**F. Disputes, Venue and Governing Law.**

(1) It is mutually agreed by and between the parties hereto that, should any dispute arise regarding this Agreement and a judicial action or suit is deemed necessary by either Party, venue for such action shall lie solely in the District Court in and for the City and County of Denver, Colorado, and notices and summons and complaints may be served upon the User by delivery of notices and service of process for summons and complaints to the address of the User shown in this Agreement.



(2) This Agreement shall be construed and enforced pursuant to the laws of the State of Colorado and any applicable federal law, without regard to any statute or rule of law specifying a different choice of law, and pursuant to the City Charter, Denver Revised Municipal Code, the applicable rules, regulations, and policies of the City's departments and agencies, and executive orders of the City's Mayor.

**G. Notices.** All notices, demands or other communications required or permitted to be given under this Agreement shall be in writing and any and all such items shall be deemed to have been duly delivered upon (i) personal delivery; or (ii) as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or (iii) as of 12:00 Noon, MST, on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

If to City, to:                    Executive Director of Parks and Recreation  
City and County of Denver  
201 W. Colfax Ave., Dept. 601  
Denver, Colorado 80202

If to the User, to:                La Clinica Tepeyac, Inc.  
4725 High St.  
Denver, Colorado 80216

**H. Construction of this Agreement.**

(1) Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

(2) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the User as are permitted to succeed to the User's rights under this Agreement.

(3) Reasonableness of Consent or Approval. Unless otherwise specifically provided to the contrary, all decisions, approvals or consents shall be made in the reasonable discretion of the party making the same. Further, unless a specific time frame is provided herein, any approval or consent shall not be unreasonably withheld or delayed. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

(4) Severability. It is understood and agreed by the Parties that if any part, term, or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or in conflict with any law of the State of

Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid; provided, however, if the invalidated term was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with any applicable law and the judgment of the court.

**I.** Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the Parties pertaining to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or any other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

**J.** Final Approval. This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council, if so required, and fully executed by all signatures of the City and County of Denver.

**K.** Counterparts. This Agreement shall be executed in two (2) or more counterparts, each of which shall be deemed to be an original but all of which shall together constitute one and the same instrument.

**L.** Electronic Signatures and Electronic Records. The User consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[Remainder of page is deliberately left blank. Signature blocks begin on next page.]**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_


By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PARKS-201736861-00

Contractor Name: La Clinica Tepeyac

By:  \_\_\_\_\_

Name: Jim Garcia  
(please print)

Title: Chief Executive Officer  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



