

GRANT AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of November ____, 2020, by and between the CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation, having its principal office at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Grantor"), and YONKERS SPINE MEDICINE PLLC, a New York professional service limited liability company, with offices at [REDACTED] (the "Grantee"), sets forth the rights and responsibilities of the parties as follows:

I. PURPOSE OF AGREEMENT:

The Grantor will provide funding to the Grantee for the purpose of financing the acquisition of personal protective equipment or installation of equipment necessary to prevent the spread of COVID-19 (the "Project").

II. EXPECTED OUTCOMES OF AGREEMENT:

The Grantee will use the Funds (as hereinafter defined) to assist in the completion of the Project.

III. GRANT AMOUNT:

The Grantor agrees to provide TEN THOUSAND DOLLARS (\$10,000), payable to the Grantee (the "Funds").

IV. TERM OF THE FUNDS:

The Funds are to be applied to expenses incurred by the Grantee in furtherance of the Project.

V. CONDITIONS OF THE FUNDS:

The Grantee agrees that the Funds are subject to the following conditions:

- A. **Return of the Funds.** The Grantee shall return to the Grantor any unexpended Funds upon the occurrence of any of the following events:
 - i. If the Grantee ceases to exist;
 - ii. If any portion of the Funds are not used for the purposes set forth in Section I of this Agreement; or
 - iii. If the Grantee uses any portion of the Funds for activities outside of the City of Yonkers..
- B. **Report on Outcomes.** The Grantee shall report back on the expected outcomes, i.e. the use of Funds in furtherance of the Project, as set forth in Section II of this Agreement, by December 31, 2020.

- C. **No Further Obligations by the Grantor.** This Agreement is made with the understanding that the Grantor has no obligation to provide other or additional monies to the Grantee, over and above the Funds.
- D. **Indemnification.** The Grantee agrees to indemnify, defend and hold harmless the Grantor and its affiliates, officers, directors, members, employees, agents, representatives, successors and assigns from and against, any and all claims (including but not limited to, bodily injury, death and/or property damage), demands, fines, penalties, actions, proceedings, judgments, settlements, liens, damages, losses, liabilities, obligations, disbursements, or costs (including but not limiting reasonable attorneys' fees and any other incurred expenses which may arise as a result of any of the foregoing) that may be occasioned by any cause whatsoever pertaining to (i) the operation of the Project and (ii) this Agreement. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Grantor, or any of its respective officers, directors, members, agents or employees.
- E. **Authorization.** The Grantee hereby covenants and warrants that it has full authorization from its governing body to enter into this Agreement and to undertake the purposes set forth in Section I of this Agreement.
- F. **Availability of Funds.** It is understood and agreed by the Grantee that all of the Funds are subject to, and contingent upon, sufficient monies being available to the Grantor. In the event such monies have been exhausted, this Agreement may be voided with no further obligation on the part of the Grantor.
- G. **Recapture.** Notwithstanding any provision to the contrary, it is understood and agreed that the Grantor is entering into this Agreement in order to provide the Funds to the Grantee and accomplish the public purposes of Chapter 109 of the Laws of 2020. In consideration therefor, the Grantee hereby agrees that if there shall occur a Recapture Event after the date hereof, the Grantee shall pay to the Grantor one hundred percent (100%) of the Funds ("Recaptured Benefits"). The Recaptured Benefits shall be paid to the Grantor within ten (10) days after notice of a Recapture Event has been served on the Grantee in accordance with Section VI (F). "Recapture Event" shall mean any of the following events: (x) any portion of the Funds are not used for the purposes set forth in Section I of this Agreement and/or (y) Grantee accepts a loan or grant from another Industrial Development Agency in the State of New York; and/or (z) failure to comply with Section (V) (B), Report of Outcomes.

VI. MISCELLANEOUS:

- A. This Agreement supersedes any and all prior written or oral agreements or understandings with respect to the subject matter hereof.
- B. The relationship between Grantor and Grantee shall be solely that of grantor and grantee, respectively, and nothing contained in this Agreement shall create any other relationship

between the Grantor and the Grantee. Nothing contained in this Agreement shall constitute Grantor as a joint venture, partner, or agent of the Grantee, or render Grantor liable for any debts, obligations, acts, omissions, representations or contracts of Grantee.

- C. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with the laws of the State of New York applicable to agreements executed and to be wholly performed therein. The parties hereto hereby agree to submit to the personal jurisdiction of the state courts located in Westchester County, New York.
- D. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.
- E. Grantor's rights and remedies under this Agreement shall be cumulative and may be exercised in such manner, order, and combination as Grantor may determine in its sole discretion.
- F. All notices, demands, and other communications made with respect to this Agreement shall be in writing and given by hand; by Federal Express, express mail, or any other nationally recognized overnight delivery service; by telecopier (provided a copy is also sent via first class mail); or by certified or registered first class mail, return receipt requested, postage prepaid; and addressed to Grantor's address, listed in the preamble of this Agreement or Grantee's address, listed in the preamble of this Agreement. Each of the foregoing addresses may be changed upon fifteen (15) days' prior written notice given by any of the foregoing prescribed methods. All notices shall be deemed to have been given, delivered, and received on the earlier of (i) actual receipt; or (ii) the tender of delivery by one of the above prescribed methods during normal business hours at the specified address.

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VII. ACCEPTANCE OF THE AGREEMENT:

If this Agreement correctly sets forth your understanding and acceptance of the arrangements made regarding this grant, please countersign and return to Grantor.

Accepted on behalf of the Grantee by:

YONKERS SPINE MEDICINE PLLC

By: 

Name: Michael Lackner

Date: 11/11/20

Agreed to and Acknowledged on behalf of the Grantor:

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Name:

Title:

Date: 12/3/20