

**MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN  
NEW MEXICO DEPARTMENT OF HEALTH  
AND  
GADSDEN INDEPENDENT SCHOOL DISTRICT**

This Agreement is entered into between the New Mexico Department of Health (hereinafter “DEPARTMENT”) and Gadsden Independent School District (hereinafter “Entity”), pursuant to the terms contained herein.

**RECITALS**

**WHEREAS**, authority is vested in the State of New Mexico Department of Health (DEPARTMENT) and its Secretary of Health, pursuant to the New Mexico Public Health Act (PHA), § 24-1-1, *et seq.*, New Mexico Statutes Annotated (NMSA) (1978) and the regulations promulgated by the Secretary of Health, Title 7 – Health, Chapter 4 – Disease Control (Epidemiology), Part 3 – Control of Disease and Conditions of Public Health Significance, New Mexico Administrative Code (NMAC), to take such measures on the advice of its medical officer(s) as are deemed necessary and proper for the protection of the public health, including the authority to investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;

**WHEREAS**, the New Mexico Public Health Emergency Response Act (PHERA), § 12-10A-1, *et seq.*, New Mexico Statutes Annotated (NMSA) (1978), was enacted for the purpose of (1) providing the State of New Mexico with the ability to manage public health emergencies in a manner that protects civil rights and the liberties of individual persons; (2) preparing for a public health emergency; and (3) providing access to appropriate care, if needed, for an indefinite number of infected, exposed or endangered people in the event of a public health emergency;

**WHEREAS**, the DEPARTMENT is in need of buildings and/or facilities throughout the State of New Mexico for use as Point of Distribution sites (hereinafter “PODs” or “POD sites”) for providing access to appropriate care or other intervention (e.g., distribution of countermeasures, including medications, vaccines, personal protective equipment, etc.) for New Mexico residents, including members of Indian pueblos and tribes, in an effort to:

- (1) prevent the transmission of disease (i.e., an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host) or other condition of public health significance (i.e., a condition dangerous to public health or safety), as those terms are defined in the public health regulations, § 7.4.3.7, NMAC; or
- (2) respond to a declared public health emergency (i.e., the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof) as defined in PHERA, § 12-10A-3.G. (1978); or

- (3) respond to other disasters, emergencies or public health emergencies, including both natural and manmade catastrophic events;

**WHEREAS**, the Entity owns and operates the buildings and/or facilities described herein, including but not limited to those listed on **Attachment A** of this Agreement (hereinafter “FACILITIES”), and is willing to provide such facilities for use by DEPARTMENT for the purposes set forth in **Article I.** and under the authority described in the preceding paragraph.

**Article I: Purpose**

The purpose of this Agreement is to provide for emergency and public health emergency response planning by the DEPARTMENT, and for the coordination and expeditious delivery of emergency resources, support and assistance for the residents of Dona Ana County, New Mexico, including members of Indian pueblos and tribes, if needed, in response to a transmissible disease or other condition of public health significance, a declared emergency or public health emergency, or other emergency or disaster.

**Article II: Terms of Agreement**

A. The Entity will:

(1) Designate FACILITIES to be used by the DEPARTMENT for the purpose of **ANY OR ALL**,<sup>1</sup> but not limited to, the following:

- (a) Distribution sites for medications and medical supplies;
- (b) Vaccinations;
- (c) Prophylaxis;
- (d) Treatment;
- (e) Medical triage;
- (f) Decontamination;
- (g) Other emergency response activities.

(2) Expeditiously vacate any users of FACILITIES at the time use is requested by the DEPARTMENT officials or within three (3) hours notice by the DEPARTMENT of the need to respond to a transmissible disease or other condition of public health significance, a declared public health emergency or other emergency or disaster. Such notice will be made initially by verbal communication (in person or by telephone) from DEPARTMENT to Entity, followed by written notice to be delivered in person or by electronic mail or facsimile from DEPARTMENT to Entity as follows:

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<sup>1</sup> While it is anticipated that Point of Distribution sites (PODs) will be used primarily as distributions sites for medical countermeasures (e.g., medications and vaccines) and not as alternate care sites for triage and treatment of individuals who are ill or who may be infectious, this Agreement is intended to cover a worst case scenario such that an adequate number of facilities will be available to DEPARTMENT for use during a response to a large scale event. If Entity’s FACILITIES are needed for treatment of individuals, all appropriate precautions will be taken for the prevention and protection against disease transmission or contamination by biological agents.

To the Entity:

**Gadsden Independent School District**

**Travis Dempsey, Superintendent**

**Office 575-882-6901, Cell 575-915-7396, [tdempsey@gisd.k12.nm.us](mailto:tdempsey@gisd.k12.nm.us), fax 575-882-6229**

**Mail; PO Drawer 70, Anthony, NM 88021, Site; 4950 McNutt Rd., Sunland Park, NM 88063**

(3) Assist the DEPARTMENT officials and staff, to the extent possible, with set-up, cleanup and security of FACILITIES.

(4) Allow the DEPARTMENT to install additional communication and information technology equipment at FACILITIES, which equipment will be removed at the time DEPARTMENT vacates said FACILITIES. Removal does not include portals for communication lines installed within the walls of FACILITIES.

(5) To the extent permitted by applicable state and federal laws and regulations, maintain the confidentiality of this Agreement (including *Attachment A*), maintain the Agreement in a secure and protected manner, and refrain from disclosing or reproducing its contents in any form, either verbally or in writing except as needed to carry out the terms of this Agreement.

(6) Notify the DEPARTMENT should this Agreement, its contents or any witness to its contents become subject to subpoena, discovery request, notice of deposition, public records request or court order, which seeks disclosure of the contents of this Agreement.

B. The DEPARTMENT will:

(1) Provide the Entity (or its authorized designee) with prompt notice of the need for the use of FACILITIES, endeavoring to avoid unnecessary disruption of Entity's usual operations and to utilize FACILITIES only for the duration of time necessary to respond to a transmissible disease or other condition of public health significance, a declared emergency or public health emergency or other emergency or disaster;

(2) Exercise due care while occupying FACILITIES and be responsible for any damages to FACILITIES to the extent provided in **Article IX. Liability**;

(3) Provide all necessary and appropriate clean up (including decontamination, if necessary) prior to vacating and returning use of FACILITIES to the Entity.

### **Article III. Administering Agency**

The administering agency is the DEPARTMENT.

#### **Article IV. Payment**

The parties understand and agree that no payment is to be made by DEPARTMENT to the Entity pursuant to this Agreement as it is recognized that they are community partners in the protection of the health, safety and welfare of the residents of New Mexico during an emergency or public health emergency. The extent to which Entity's expenses of operation during occupancy of FACILITIES by the DEPARTMENT are subject to reimbursement is dependent upon a Governor declaration of emergency or public health emergency and the availability of state emergency funds, or a Presidential declaration of a major disaster or emergency and availability of federal emergency assistance.

#### **Article V. Property**

The parties understand and agree that FACILITIES shall be the property of the Entity.

#### **Article VI. Reporting**

The parties understand and agree that the Entity has no reporting requirements under this Agreement.

#### **Article VII. Confidentiality**

Any protected health or other confidential information which is accessed, shared with or provided to either party, its contractors, agents, subgrantees, or other agencies, shall be used only to fulfill the purposes and scope of this Agreement, and shall be governed by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act), all applicable regulations thereto, and all other state and federal rules, regulations and laws protecting the confidentiality, privacy and security of information.

If, upon POD activation, it is determined by DEPARTMENT and Entity that the Entity (i.e., its agents, employees or contractors) may reasonably be expected to have access to any individual's Protected Health Information (PHI) received and maintained by DEPARTMENT and the Entity is not a Covered Entity as defined under HIPAA, Entity agrees to execute a separate HIPAA Business Associate Agreement that will be provided by DEPARTMENT.

#### **Article VIII. Funds Accountability**

The parties understand and agree that no funds will be exchanged between DEPARTMENT and the Entity pursuant to this Agreement (see **Article IV. Payment** above).

#### **Article IX. Liability**

As between the parties, each party shall be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from the negligence of its employees, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, *et seq.*, NMSA (1978), as amended.

**Article X. Termination of Agreement**

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. At the time of termination, any obligations assumed by either party will be determined and written notice will be given to the other within five (5) working days. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES OF THE PARTIES.

**Article XI. Period of Agreement:**

This Agreement shall become effective on September 25, 2020 or as soon thereafter as approved by respective parties and shall remain in effect indefinitely unless terminated with or without cause by either DEPARTMENT or Entity pursuant to **Article X. Termination of Agreement.**

**Article XII. Modifications or Amendments**

Any and all modifications or amendments shall be made in writing and shall be agreed to and executed by the respective parties before becoming effective.

**Article XIII. Whole Agreement**

The terms and conditions as set forth in this Agreement is the whole agreement between DEPARTMENT and Entity and does not obligate either of these parties to agree to any further agreement, or to further terms, modifications or amendments to this Agreement.

**Article XIV. Designation of Representatives**

The parties hereby designate the person listed below as its official representative for the overall responsibility of the matters included in this Agreement.

Kimberly Brown, State SNS Coordinator  
New Mexico Department of Health  
Epidemiology and Response Division (ERD)  
Bureau of Health Emergency Management

Travis Dempsey, Superintendent  
Gadsden Independent School District

**Address:**

1301 Siler Road, Building F  
Santa Fe, New Mexico 87507

**Address:**

PO Drawer 70  
Antony, New Mexico 88021

**Contact Information:**

Desk: (505) 476-8248  
Mobile: (505) 699-0244  
Fax: (505) 476-8201  
E-Mail: [Kimberly.Brown2@state.nm.us](mailto:Kimberly.Brown2@state.nm.us)

**Contact Information:**

Desk: 575-882-6921  
Mobile: 575-915-7396  
Fax: 575-882-6229  
E-Mail: [tldempsey@gisd.k12.nm.us](mailto:tldempsey@gisd.k12.nm.us)

**NEW MEXICO DEPARTMENT OF HEALTH**

**GADSDEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Secretary  
New Mexico Department of Health

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
New Mexico Department of Health  
Office of General Counsel - Approved  
as to Form and Legal Sufficiency

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ***Attachment A***

***(In accordance with Article II. Paragraph A.(5) of this Agreement, the identity of Entity's FACILITIES as listed below should remain confidential and provided only on a "need to know" basis for purposes of carrying out this Agreement, unless such disclosure is required by law.)***

The following list of Entity's buildings and/or facilities, or the specifically described areas of such buildings or facilities as set forth below are considered optimal for POD development and operation by the DEPARTMENT due to their geographic location and size and are hereby designated by Entity as FACILITIES pursuant to Article II. Paragraph (1) of this Agreement:

(Describe each by name of owner of record, street address, county or municipality and postal code, as well as specific areas or locations within, surrounding, adjacent to or a part of such buildings or facilities, if applicable):

- ◆ Gadsden High School  
6301 Highway 28  
Anthony, NM 88021  
(575) 882-6300
  
- ◆ Santa Teresa High School  
100 Airport Road  
Santa Teresa, NM 88008  
(575) 589-5300
  
- ◆ Chaparral High School  
800 County Line Drive  
Chaparral, NM 88081  
(575) 824-9700