




TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** October 23, 2008

RE: *Approval of Interlocal Contract between Southern Nevada Health District and the University of Nevada School of Medicine Providing for Operation of the Southern Nevada Public Health Laboratory*

PETITION #30-08

That the Southern Nevada District Board of Health *approve the attached Interlocal Contract between Southern Nevada Health District and the Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada School of Medicine providing for the continued operation of the Southern Nevada Public Health Laboratory.*

PETITIONERS:

Scott Weiss, Director of Administration^{SW}
Lawrence Sands, DO, MPH, Chief Health Officer 

DISCUSSION:

The Southern Nevada Public Health Laboratory (SNPHL) was established in 2002 pursuant to CDC bioterrorism funding to upgrade the public health infrastructure in Clark County. The SNPHL is located on the second floor of the Health District's warehouse building on Desert Lane, just east of the Shadow Lane campus. The SNPHL has the capability to test for biological agents such as anthrax, plague, tularemia and botulism in the event of a bioterrorist attack, and also serves to support environmental testing as well as identifying common microorganisms related to other disease outbreaks in support of core public health functions.

On August 8, 2003 the Clark County District Board of Health approved an Interlocal Agreement between the Clark County Health District and the Board of Regents on behalf of the University of Nevada School of Medicine (UNSOM) "to define the relationship between the District and the University regarding establishment and operation of a branch public health laboratory in Las Vegas, Nevada as provided by NRS 439.240." In summary, the Interlocal Agreement provided:

1. The University would operate the SNPHL as the managerial agent for the District while utilizing the financial, facilities, and human resources infrastructure of the District.

DISCUSSION (cont.):

2. The University would provide a medical director for the SNPHL as required by law.
3. The District would reimburse the University \$12,000 annually plus reimbursement for travel expenses of the medical director.

In January 2008 UNSOM and the District initiated negotiations to update the 2003 Interlocal Agreement in response to the changing needs of both parties. The Interlocal Contract presented herewith is the product of those negotiations, and in summary provides:

1. The SNPHL will be solely under the ownership and control of the District.
2. The SNPHL will continue to be designated as a branch of the Nevada State Health Laboratory pursuant to NRS 439.240.
3. UNSOM will provide the Laboratory Director for the SNPHL, who shall provide scientific and technical oversight of public health laboratory services of the SNPHL as required by law and as specified in the Interlocal Contract (Attachment A – Scope of Work), for which the District will pay \$1,000 per month and reimbursement of customary travel expenses.

The Interlocal Contract presented herewith more accurately defines the relationship between UNSOM and the District regarding operation of the SNPHL, and more accurately specifies the mutual obligations of each.

FUNDING:

Sufficient funds have been budgeted in the Public Health Emergency Preparedness (PHEP) grant.

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

**A Contract between the Southern Nevada Health District
An entity created by NRS 439.361 through 439.368
on behalf of the**

**SOUTHERN NEVADA PUBLIC HEALTH LABORATORY
P.O. Box 3902
Las Vegas, NV 89520
Phone: (702) 759-1020
Fax: (702) 759-1444
(hereinafter referred to as the "District")**

and

**The Board of Regents of the
Nevada System of Higher Education
Acting By and Through Its
University of Nevada School of Medicine
on behalf of the**

**NEVADA STATE HEALTH LABORATORY
1660 N. Virginia St.
Reno, NV 89503-1783
Phone: (775) 688-135
Fax: (775) 688-1460
(hereinafter referred to as the "State Lab")**

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, public health laboratory services constitute an integral component of pathogen characterization and other core public health functions; and

WHEREAS, the District has received federal funding from the Centers for Disease Control and Prevention via the Nevada Health Division to establish a public health laboratory; and

WHEREAS, the District is in need of a Laboratory Director to provide oversight for its public health laboratory and to assist the District in meeting the requirements of being a member of the National Laboratory Response Network and the State Lab is willing and able to provide such Laboratory Director; and

WHEREAS, it is deemed that the services hereinafter set forth are both necessary and in the best interests of the public health;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the appropriate officials on behalf of the governing bodies of each party.
2. **DEFINITIONS.** "State Lab" means the Board of Regents of the Nevada System of Higher Education, the University of Nevada School of Medicine and the Nevada State Health Laboratory, its officers, employees, and immune contractors as defined in NRS 41.0307. The "District" means the Southern Nevada Health District, its officers, employees, and immune contractors as defined in NRS 41.0307. "SNPHL" means the Southern Nevada Public Health Laboratory. "NSHL" means the Nevada State Health Laboratory.
3. **PRIOR AGREEMENT.** The prior agreement between the parties hereto fully executed on November 25, 2003 regarding the establishment of a branch public health laboratory in Las Vegas, Nevada is hereby terminated and superseded in its entirety by this Interlocal Agreement. The SNPHL shall continue to be designated as a branch of the NSHL pursuant to NRS 439.240. State Lab will not have an ownership interest in the SNPHL and the SNPHL will be solely under the ownership and control of the District. The District shall be solely responsible for the actual operation of the SNPHL, including all financial responsibilities and costs thereof, except for those matters within the responsibilities of the Laboratory Director and Responsible Official as is required by law and as specified in this Contract.
4. **CONTRACT TERM AND RENEWAL.** This Contract shall be effective upon approval by appropriate officials on behalf of the Board of Regents and the Southern Nevada Health District, for a period of three (3) years from the effective date of this Contract. This Contract may be renewed upon the mutual agreement of the parties.
5. **TERMINATION.** This Contract may be terminated upon the following grounds:
 - a. By mutual consent of the parties.
 - b. By either party for cause, provided the terms of paragraph seven (7) herein are satisfied and termination shall not be effective until one hundred eighty (180) days after the completion of mandatory mediation, or until a replacement Laboratory Director assumes the duties of Laboratory Director at the SNPHL, whichever occurs first; or
 - c. The parties expressly agree that this Contract shall be terminated immediately if for any reason County, State and/or Federal funding ability to satisfy this Contract is withdrawn, limited, or impaired. This Contract may also be renegotiated in the event of a reduction in the anticipated County, State, or Federal funding revenue required to satisfy this Contract.

6. **DUTY TO COOPERATE.** The parties acknowledge that the parties' mutual cooperation is critical to the ability of each party to perform their duties hereunder successfully and efficiently. Accordingly, each party agrees to cooperate with the other fully in formulating and implementing goals and objectives which are in the best interests of the parties.

7. **DISPUTE RESOLUTION AND ATTORNEY FEES.** The parties are committed to a mutually beneficial relationship. The parties firmly desire to resolve all disputes arising hereunder without resort to litigation. The party who asserts a dispute exists shall provide to the other party in writing identification of such dispute, the specific facts thereof, and any documents which support that party's claim of a dispute. Following such written notice, the parties shall promptly meet and attempt in good faith to resolve such dispute. Any dispute between the parties that cannot be resolved in a mutually satisfactory manner within thirty (30) days shall be subject to mediation in Clark County, Nevada, before a retired Nevada District Court Judge, a retired Nevada Supreme Court Justice, or such other individual similarly qualified by experience. The mediator must be mutually agreed upon by the parties. If mediation is not successful, the parties shall submit the dispute to binding arbitration in accordance with the Uniform Arbitration Act, Nevada Revised Statutes Chapter 38. The judgment on the arbitrator's award shall be final, binding, non-appealable and may be entered in any District Court in the State of Nevada. The arbitration shall be in Clark County, Nevada, before a retired Nevada District Court Judge, a retired Nevada Supreme Court Justice, or such other individual similarly qualified by experience, other than the person who acted as mediator for the dispute. The arbitrator must be mutually agreed upon by the parties. By agreeing to mediation and arbitration the parties are waiving the right to jury trial. Arbitration proceedings shall be conducted in accord with the rules and procedures governing commercial disputes of the American Arbitration Association, unless the parties stipulate to other rules or procedures. This agreement to mediate and arbitrate all disputes between the parties applies even if there is a claim that this agreement is void, voidable or unenforceable for any reason. The parties to any mediation, arbitration or litigation arising out of this agreement shall be responsible for their own attorney fees and one-half of the mediation and arbitration fees.

8. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

9. **INCORPORATED DOCUMENTS.** The services to be performed pursuant to this Contract are specifically described in the following Attachments:

ATTACHMENT A: SCOPE OF WORK (See Attachment A)

ATTACHMENT B: MUTUAL ASSURANCES (See Attachment B)

10. **CONSIDERATION.** The State Lab agrees to provide the services set forth in paragraph (9) for the sum of One Thousand Dollars (\$1,000.00) per month, which shall be

due and payable on the fifteenth (15) day of the following month. The District also agrees to reimburse the State Lab for all customary travel expenses incurred by the State Lab in connection with providing the services set forth in paragraph (9). Reimbursement shall be in accordance with State of Nevada travel policies and at the per diem rates approved by the State of Nevada. State Lab shall submit invoices on a monthly basis for reimbursement of travel costs and shall be due and payable by the fifteenth (15) day of the following month. The State Lab shall be responsible for making travel arrangements for the Laboratory Director.

11. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract.

12. **INSPECTION AND AUDIT.**

- a. **Books and Records.** Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the County, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.
- b. **Inspection and Audit.** Each party agrees that the relevant books, records (written, electronic, computer related or otherwise) including, but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Unit, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.
- c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three (3) years and for five (5) years if any federal funds are used in this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue. The retention period runs from the date of termination of this Contract.

13. **INDEMNIFICATION BY DISTRICT.** Notwithstanding the existence of any insurance or self insurance, and without regard to the policy limits of any such insurance or self insurance, except to the extent that NRS 41.0305 to NRS 41.039 is applicable to the

agreement and to the extent limited in accordance with NRS 41.035 to NRS 41.037. District hereby indemnifies and agrees, at its sole expense, to protect, indemnify, defend and hold State Lab and its governing board, officers, employees and agents (each, a "State Lab Indemnified Party") harmless from and against and pay a State Lab Indemnified Party on demand with respect to any and all claims, demands, actions, causes of action, losses, penalties, damages (including consequential damages), obligations, liabilities (including strict liability), judgments, costs, attorney's fees and expenses of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by any State Lab Indemnified Party at any time and from time to time by reason or arising out of or in connection with: (a) any breach of this Contract by District; (b) any negligent acts or omissions or other misconduct by District or any of its employees or agents, or any subcontractor; (c) any failure on the part of District to comply with any law, regulation, or rule applicable to District; and (d) any accident, injury, or damage that shall occur (or claim to have occurred) to any person while in District's premises, or otherwise, within the custody and control of District, except to the extent that the accident, injury or damage is caused by the negligent act or omission or other misconduct of the State Lab or Laboratory Director. To the extent applicable, District will assert the defense of sovereign immunity as appropriate in all cases. To the extent applicable, District's indemnity obligation for actions sounding in tort is limited in accordance with the provisions of NRS 41.035 to \$75,000.00 per cause of action. For this duty of indemnification to apply, State Lab shall promptly notify District upon receipt of notice of any such claim, demand or action, and the District may defend or otherwise respond with legal counsel of its choice.

14. **INDEMNIFICATION BY STATE LAB.** To the extent that NRS 41.0305 to NRS 41.039 is applicable to this agreement and to the extent limited in accordance with NRS 41.0305 to NRS 41.039, State Lab shall indemnify, defend, and hold harmless District from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by State Lab or any of its officers or employees, which may occur during or which may arise out of the performance of this Agreement. To the extent applicable, State Lab will assert the defense of sovereign immunity as appropriate in all cases. State Lab's indemnity obligation for actions sounding in tort is limited in accordance with the provisions of NRS 41.035 to \$75,000.00 per cause of action. For this duty of indemnification to apply, District shall promptly notify State Lab upon receipt of notice of any such claim, demand or action, and the State Lab may defend or otherwise respond with legal counsel of its choice.

15. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

16. **INDEPENDENT PUBLIC AGENCIES.** The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to

performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

17. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

18. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

19. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

20. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties. In the event of the closure of the SNPHL, all SNPHL records shall be kept and maintained by the District.

21. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

22. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

23. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the service set forth in paragraph (7).

24. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State

of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

25. **ENTIRE AGREEMENT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

SOUTHERN NEVADA HEALTH DISTRICT

NEVADA STATE HEALTH LABORATORY

Chris Guinchigliani, Chair
Southern Nevada District Board of Health

Louis D. Brown, M.D., MPH, Director
Nevada State Health Laboratory

Date

Date

Lawrence Sands, D.O., MPH

**BOARD OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION ON
BEHALF OF THE UNIVERSITY OF NEVADA
SCHOOL OF MEDICINE**

Executive Secretary
Board of Health and Chief Health Officer

Ole J. Thienhaus, M.D., MBA
Dean

Date

Date

APPROVED AS TO FORM:



Stephen R. Minagil, Esq.
Southern Nevada Health District

10-15-08

Date

ATTACHMENT A: SCOPE OF WORK

The State Lab shall provide to the District a Laboratory Director, qualified and licensed as required by law, who shall serve as Laboratory Director of the SNPHL and who shall provide scientific and technical oversight of public health laboratory services at the SNPHL as required by law and this Contract, including but not limited to the following:

1. Perform all duties of Laboratory Director set forth in NRS 652.180 and as further specified in Nevada Administrative Code (NAC) 652.280-652.286 and 42 CFR, section 1407.
2. Provide oversight and consultation with the District so that the District is able to meet the qualifications and requirements necessary to comply with the Clinical Laboratory Improvement Amendments of 1998 (CLIA), to participate in the Select Agent Registration Program, and to be a member of the National Laboratory Response Network.
3. Provide oversight and consultation with the District in order that the SNPHL maintains Nevada licensure as a medical laboratory and as an environmental laboratory in accordance with Nevada law.
4. Provide oversight of laboratory testing on reportable disease isolates at the SNPHL identified by either the District or the State Office of Epidemiology.
5. Arrange for testing at either NSHL or an alternate Laboratory Response Network (LRN) participating laboratory or another qualified laboratory, for any LRN testing that cannot be performed at the SNPHL.
6. Provide consultation to the District in assessing what the SNPHL needs to adequately and efficiently support the public health activities of the District, and meet with the Chief Health Officer and/or or his designated representatives to discuss changes, additions and deletions of procedures, services and practices at the SNPHL.
7. Provide consultation to the District, and scientific and technical support to all divisions of the District, regarding testing, the interpretation of test results, and findings, as requested by the District.
8. Develop and/or update job descriptions for SNPHL personnel consistent with the District's personnel system; supervise and evaluate the SNPHL manager and SNPHL employees; prepare the SNPHL manager's annual performance evaluation in consultation with the Chief Health Officer and/or his designated representatives; and assist the District in determining proper staffing levels for the SNPHL within available District and federal funding.
9. Assist in the preparation of grant requests and provide oversight and consultation with the District regarding budgets pertaining to the SNPHL; review

expenditures made and proposed for the SNPHL within the available District and federal funding; provide approval, which shall not be unreasonably withheld, for any capital expenditure to be made by the District for the SNPHL in excess of \$3,000. Such requests for approval must be accompanied by a written explanation for the purchase. Capital expenditure is defined as any asset with a unit cost of \$3,000.00 or more with a useful life of more than one year.

10. In conjunction with the District, develop a Memorandum of Understanding or Agreement to maintain alternative relevant laboratory support for the identification of biological, chemical, radiological and nuclear agents in clinical (human), environmental and food specimens, if such testing cannot be performed at either the NSHL or SNPHL.

11. Provide oversight and guidance to the District on the use of accepted protocols, appropriate instrumentation, proficiency testing results monitoring, quality control standards and the reporting of accurate, timely and confidential results.

12. Provide supervision and guidance to SNPHL personnel in the development of, and adherence to, a laboratory safety manual.

13. Assist the District in the development of a schedule of fees for testing services to be charged.

14. Contribute to the SNPHL's strategic planning activities in concert or collaboration with those annual activities at the District.

15. Assist SNPHL personnel in the formation of a process for QA/PI issues, and to monitor and address variations with District staff.

16. Assist the District in procuring an EPA ID number for testing of hazardous waste and a Nevada State Health Division RAD license for testing of any radiological material as required by law, as well as any other certifications as are needed to complete any specific testing undertaken by the SNPHL.

ATTACHMENT B: MUTUAL ASSURANCES

1. The District shall be responsible for securing a qualified person to serve as the Responsible Official for the Select Agent Program who has the authority and control to ensure compliance with federal regulations.
2. Within one (1) year of the effective date of this Contract, the parties shall jointly create an operational plan for the SNPHL, and will thereafter meet annually to review and update as necessary.
3. The parties shall cooperate in the installation of the NSHL's Laboratory Information Management System for the electronic transfer of results from the NSHL to the SNPHL.
4. The SNPHL and NSHL will serve as a "surge capacity" laboratory for the other in the event of a public health emergency, such as a bioterrorism event or threat, or pandemic influenza testing, as determined necessary by the State Lab.
5. The District will provide suitable premises and facilities in Clark County, Nevada for public health laboratory for a Biosafety Level 3 laboratory and a Biosafety Level 2 laboratory to support activities of the SNPHL, as set forth in this Contract. Said Biosafety Level 3 and Biosafety Level 2 laboratories shall conform to the guidelines for those activities as specified in the "Biosafety 1 Microbiological and Biomedical Laboratories", 4th edition, U.S. Department of Health and Human Services, May 1999, as may be amended from time to time.
6. For any clinical testing of specimens presented to or collected by the District, the District may arrange for testing at the SNPHL, NSHL, or other qualified laboratory. In determining whether to send any specimen to the NSHL for testing, the factors to be taken into consideration by the District are: (i) whether the prices charged by NSHL are reasonable and comparable to prices charged by other laboratories utilized by the District; and (ii) whether NSHL can provide a level of quality and timeliness similar to other laboratories utilized by the District.
7. In the event of termination of this Contract or the State Lab otherwise not providing a Laboratory Director to serve as the Laboratory Director of the SNPHL, and as long as SNPHL so qualifies, the State Lab shall continue to a) designate the SNPHL as a member of the National Laboratory Response Network, and b) provide authority to SNPHL to test reportable disease isolates from Clark County. These two obligations survive the termination of this Contract.
8. The parties shall use their best efforts to ensure that the staff of both the SNPHL and the NSHL will maintain a cooperative working relationship.
9. The parties shall disclose to the other any actual or potential conflicts of interest that may arise during the term of this Contract.
10. The parties shall comply with the Civil Rights Act, 42 USC, section 1981, et. seq., and the Rehabilitation Act, 42 USC, section 701, et. seq.

11. The parties shall comply with the American Disabilities Act, 42 USC, section 2101, et. seq.

12. The parties shall comply with the single audit requirements of OMB Circular A133 "Audits of States, Local Governments, and Non-Profit Organizations."