

TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH DATE: January 22, 2014

RE: *Intrastate Interlocal Contract between the Southern Nevada Health District on Behalf of the Southern Nevada Public Health Laboratory 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 Public Health Laboratory*

PETITION # 08-15

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:

Cassius Lockett, PhD, MS, Director of Community Health 

Andrew J. Glass, FACHE, MS, Director of Administration 

Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer 

DISCUSSION:

The Southern Nevada Public Health Laboratory (SNPHL) was established in 2002 pursuant to Centers for Disease Control (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. 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 November 29, 2011, the Southern Nevada District Board of Health approved an Interlocal Agreement between the Southern Nevada 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."

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

This Interlocal Contract 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 will arrange for the Laboratory Director's travel.

FUNDING:

Sufficient funds have been budgeted in the CDC 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 "Health 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 PUBLIC HEALTH LABORATORY
1660 N. Virginia St.
Reno, NV 89503-1783
Phone: (775) 688-135
Fax: (775) 688-1460
(hereinafter referred to as the "NSPHL")

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 Health 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 Health District is in need of a Laboratory Director to provide oversight for its public health laboratory and to assist the Health District in meeting the requirements of being a member of the National Laboratory Response Network ("LRN") and the Nevada State Public Health Laboratory ("NSHPL") 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 Health District and the NSPHL (individually referred to as "Party," collectively, 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. PRIOR AGREEMENT. The SNPHL shall continue to be designated as a branch of the NSPHL pursuant to NRS 439.240. NSPHL will not have an ownership interest in the Southern Nevada Public Health Laboratory ("SNPHL") and the SNPHL will be solely under the ownership and control of the Health District. The Health District shall be solely responsible for the actual operation, financial responsibilities and costs of the SNPHL, including the cost of any Health District employed Laboratory Director and Responsible Official. Health District will not be responsible for the Laboratory Director and Responsible Official employed or retained by NSPHL, except as provided for herein.
3. 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.
4. 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 ninety (90) days after the completion of any 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.
5. 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.

6. 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 arbitration shall be in Clark County, Nevada. 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 under Nevada Revised Statutes Chapter 38, unless the Parties stipulate to other rules or procedures. Discovery shall be allowed as deemed necessary by the arbitrator. 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. This agreement to mediate and arbitrate all disputes between the Parties applies even if there is a claim that this contract 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.

7. 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 certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Party at the address set forth herein.

8. INCORPORATED DOCUMENTS. The services to be performed pursuant to this Contract are specifically described in the following Attachments which are incorporated by reference herein:

- ATTACHMENT A: SCOPE OF WORK (See Attachment A)
- ATTACHMENT B: MUTUAL ASSURANCES (See Attachment B)

9. CONSIDERATION. The NSPHL 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 Health District also agrees to reimburse the NSPHL for all customary travel expenses incurred by 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. NSPHL 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. SNPHL shall

be responsible for making travel arrangements for the Laboratory Director with thirty (30) days notice from NSPHL.

10. INSPECTION AND AUDIT.

- a. Books and Records. Each Party agrees to keep and maintain under generally accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the County, the State, 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.

11. INDEMNIFICATION. Neither Party waives any right or defense to indemnification that may exist in law or equity.

12. 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.

13. INDEPENDENT PUBLIC AGENCIES. The Parties are associated with each other only for the purposes and to the extent set forth in this Contract. Each Party is a public agency separate and distinct from the other Party and, subject only to the terms of this Contract. Each Party 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, employer-employee, principal-agent, or otherwise create any liability for either Party with respect to the indebtedness, liabilities, and obligations of the other Party.

14. 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.

15. 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 non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

16. 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.

17. 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 Health District.

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

19. CONFIDENTIALITY. The Health District and the NSHPL are each a governmental entity, and are covered entities pursuant to the Health Insurance and Portability Accountability Act ("HIPAA"). The Health District and NSHPL shall ensure proper safeguards against unauthorized use and disclosure of the protected health information ("PHI") exchanged under this Contract. Proper safeguards shall include the observation of policies and procedures that ensure any PHI shared under this Contract shall be used solely in accordance with the Parties respective statutory duties and responsibilities for the purposes outlined in this Contract, any attachments hereto, and in compliance with HIPAA (45 CFR Part 164) as it may from time to time be amended. The Parties shall adhere to established administrative, technical, procedural and/or physical safeguards to protect the confidentiality of information governed by the above-noted statutes and prevent unauthorized access to PHI.

Each Party shall keep confidential all information, whether PHI or personally identifiable 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. Access to confidential information shared under this Contract shall be restricted to each Party's authorized employees, agents, and officials who require access to perform their official duties in furtherance of the provisions and the objectives of this Agreement.

20. 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).

21. 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. Subject to the mediation and arbitration provisions herein, the Parties consent to the jurisdiction of the Nevada district courts for enforcement with Clark County being the exclusive venue of any action or proceeding arising out of or in connection hereto.

22. 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 PUBLIC HEALTH LABORATORY

By: _____
Joseph Iser, MD, DrPH, MSc
Chief Health Officer

By: _____
Trudy Larson, MD
Nevada State Health Laboratory

Date

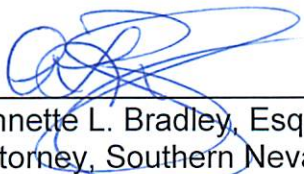
Date

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

By: _____
Thomas L. Schwenk, MD
Vice President, Division of Health Sciences
Dean, School of Medicine
President, Integrated Clinical Services, Inc.

Date

APPROVED AS TO FORM:

By:  _____
Annette L. Bradley, Esq.
Attorney, Southern Nevada Health District

ATTACHMENT A: SCOPE OF WORK

The State Lab shall provide to the Health 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 as 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 Health District so that the Health District is able to meet the qualifications and requirements necessary to comply with the Clinical Laboratory Improvement Amendments of 1998, to participate in the Select Agent Registration Program, and to be a member of the National LRN.
3. Provide oversight and consultation with the Health 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 Health District or the State Office of Epidemiology.
5. Arrange for testing at NSPHL, an alternate LRN participating laboratory, or another qualified laboratory for any LRN testing that cannot be performed at the SNPHL.
6. Provide consultation to the Health District in assessing what the SNPHL needs to adequately and efficiently support the public health activities of the Health 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 Health District, and scientific and technical support to all divisions of the Health District, regarding testing, the interpretation of test results, and findings, as requested by the Health District.
8. Provide consultation in the development and/or updating of job descriptions for SNPHL personnel consistent with the Health District's personnel system; supervise and evaluate the SNPHL manager and SNPHL employees as requested by the Chief Health Officer or designed; prepare the SNPHL manager's annual performance evaluation in consultation with the Chief Health Officer and/or his designated representatives; and assist the Health District in determining proper staffing levels for the SNPHL within available Health District and federal funding.

9. Assist in the preparation of grant requests and provide oversight and consultation with the Health District regarding budgets pertaining to the SNPHL.

10. In conjunction with the Health 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 NSPHL or SNPHL.

11. Provide oversight and guidance to the Health 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 Health District, as requested, 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 Health District, as requested by the Chief Health Officer or designee.

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

16. Assist the Health 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 Health 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 NSPHL's Laboratory Information Management System for the electronic inter-transfer of results from the NSPHL to the SNPHL.
4. The SNPHL and NSPHL 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 NSPHL.
5. The Health District will provide suitable premises and facilities in Clark County, Nevada for a public health 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 Health District, the Health District may arrange for testing at the SNPHL, NSPHL, or other qualified laboratory. In determining whether to send any specimen to the NSPHL for testing, the factors to be taken into consideration by the Health District are: i) whether the prices charged by NSPHL are reasonable and comparable to prices charged by other laboratories utilized by the Health District; and ii) whether NSPHL can provide a level of quality and timeliness similar to other laboratories utilized by the Health District.
7. In the event of termination of this Contract, the NSPHL otherwise not providing a Laboratory Director to serve as the SNPHL Laboratory Director, and as long as SNPHL so qualifies, the NSPHL shall continue to a) designate SNPHL as a member of the National LRN, 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 NSPHL 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 i) Civil Rights Act, 42 USC § 1981, et. seq., ii) the Rehabilitation Act, 42 USC § 701, et. seq.; iii) the American Disabilities Act, 42 USC § 2101, et. seq.; and iv) the single audit requirements of OMB Circular A 133 "Audits of States, Local Governments, and Non-Profit Organizations."