



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** September 23,2021

RE: *Approve Lease Agreement between the City of Mesquite and Southern Nevada Health District*

PETITION #09-22

That the Southern Nevada District Board of Health *approves the Lease Agreement with City of Mesquite*

PETITIONERS:

Sean Beckham, Facilities Manager *SB*
Fermin Leguen, MD, MPH District Health Officer *FL*

DISCUSSION:

The Health District proposes to lease 832 square feet at the Jimmie Hughes Campus, 150 North Yuca Street, Mesquite NV suites #3&4. The space will be used as temporary location of SNHD services while a permanent location is remodeled. Lease term is 6 months.

FUNDING:

\$400 per month. Lease will be paid through 8010.

FACILITY USE AGREEMENT

THIS AGREEMENT is made and entered into by and between the **City of Mesquite**, a municipal corporation of the State of Nevada (“City”), and **Southern Nevada Health District**, (“User”) (collectively referred to as the “Parties”). This Agreement is legally effective when signed and dated by the Parties below.

Witnesseth:

WHEREAS, City is the owner of the land, buildings and improvements of the Jimmie Hughes Campus (“Facility”), located at 150 North Yucca Street, Mesquite, Nevada, 89027; and

WHEREAS, Nevada Revised Statutes (“NRS”) Chapter 277.045(1) provides that two or more political subdivisions of this State may enter into a cooperative agreement for the performance of any governmental function and such agreement may include the furnishing of facilities; and

WHEREAS, NRS Chapter 277.045(2)(b) requires the governing body of each participating political subdivision to maintain written documentation of the terms of the agreement for at least three (3) years after the date on which the agreement was entered into; and

WHEREAS, the User desires to utilize a portion of the Facility specifically illustrated in the Facility Use Agreement (“Agreement”) and Exhibit “C” hereto, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Grant of Use.** The City hereby grants the revocable right of use, subject to the conditions hereinafter set forth, certain portions of the Facility as is more particularly described in the body of the contract and Exhibits “C”, attached hereto and made a part hereof. The subject property shall be used for the sole purpose of: office space, trainings and immunizations space.

This Agreement includes the right of reasonable ingress and egress to and from the used areas. Payment of a Common Area Maintenance Fee in accordance with the provisions of this agreement shall further entitle User to utilize those common facilities at the Facility that are used jointly with other persons and groups.

The User acknowledges that its use of the specified portion of the Facility is temporary and the City may require User to relocate its use to another portion of the Facility or another location during the term of this Agreement, at the City’s discretion. Absent emergency or unavoidable circumstances, City will provide User a written “notice to relocate” at least thirty (30) days prior to the date of the required relocation.

2. **Improvements.** User shall be responsible for any and all desired improvements upon and around the used property beyond those currently existing to accommodate the uses contemplated herein including but not limited to earthwork, buildings, paving, and utilities. No person shall paint, construct, remodel, erect, add to, or rehabilitate any portion of the Facility or improvement on the general property of the Facility, except with the express written permission of the City Manager and after obtaining all required permits. Any and all such improvements shall be at the sole expense of User and shall be performed only by a licensed contractor.

User agrees to restore the premises to its pre-use condition and/or to remove any equipment or personal property owned by the User from the premises at the expiration or other termination of this Agreement at the request of the City. Any request by the City that the premises be restored or that equipment or property be removed from the premises will be made before the expiration of the Agreement or at the time that notice of termination is provided to the User. Such restoration and removal shall be completed within

fifteen (15) days after any such expiration or termination. Any equipment or personal property remaining on the premises which is not removed by that time shall become property of the City and City shall have the right to dispose of the same or retain it at no cost to City. No further notice to User is required before the exercise by City of its rights hereunder. User shall not remove any building or other structure or improvement that has been affixed to the property and all such structures or improvements constructed or installed by the User at the Facility during the term of this Agreement shall be deemed and shall become the property of the City upon termination of this Agreement. The City reserves the right to require the used premises to be restored to its pre-use condition and to effect the restoration at the expense of the User if not accomplished in the above noted 15 day period.

3. **Term & Termination.** This Agreement shall be for a term of Six (6) months commencing on **September 01, 2021 and ending February 28, 2022**. The term of this Agreement may continue for an additional term or terms only upon the mutual, written consent of both Parties.

Use of the premises by the User for purposes other than those specified in this Agreement shall be grounds for immediate termination of this Agreement if not corrected within five (5) days upon written notice of the first instance of such inappropriate use during the term of this Agreement. In the event that a second written notice of inappropriate use is issued during the term of the Agreement, the User will have three (3) days to correct such inappropriate use or said use will cause grounds for immediate termination of this Agreement. City, at its sole discretion, may immediately terminate the Agreement upon notice to User of a third instance of inappropriate use during the term of the Agreement.

Notwithstanding the foregoing, either party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other party hereto. Termination of this Agreement by any party does not affect or diminish authority exercised prior to the effective date of such termination. In the event that the Agreement is terminated, the City shall provide User with a final invoice for the amount due up to the effective date of termination.

4. **User's Budgetary Limits and Fiscal Fund Out.**

- a) User, as local governmental entity, is subject to the requirements of NRS 244.230 and NRS 354.626, which require User to budget annually for its expenses and which prohibit District from obligating itself to expend money or incur liability in excess of the amounts appropriated for a particular function or purpose. User's financial obligations under this Agreement are subject to those statutory requirements, and subparagraphs 4.b and 4.c below, hereinafter referred to as the "Fund Out Clause."
- b) Notwithstanding the monetary obligations of this Agreement, the total amount of User's payment obligations hereunder for any fiscal year shall not exceed the amounts that User has appropriated for rent, maintenance of space and related liabilities for property located at Suite # 3 & Suite # 4 at the Jimmie Hughes Campus, 150 North Yucca Street, Mesquite, Nevada. User reasonably believes that sufficient funds can be obtained for this Agreement from the budget for the fiscal years covered by the term of this Agreement, and User staff shall take appropriate actions to obtain funding for each fiscal year to satisfy financial obligations under this Agreement.
- c) Notwithstanding the monetary obligations of this Agreement, this Agreement shall terminate and User liability and payment obligations thereunder shall be extinguished at the end of the fiscal year (June 30) in which User's governing body fails to appropriate monies for the ensuing year for the payment of all amounts which will then become due.

5. **Notices.** All notices and subsequent correspondence to do with this agreement shall be mailed to the following:

CITY: **City of Mesquite Department of Athletics & Leisure Services**
100 West Old Mill Road
Mesquite, Nevada, 89027
Attention: **Nicholas Montoya** – Director Nmontoya@mesquitenv.gov

USER: **Southern Nevada Health District**
280 S. Decatur Blvd
Las Vegas, NV 89107
Attn: **Contract Administrator, Legal Dept** Contracts@snhd.org

Such notices shall be deemed delivered following the mailing of such notices in the U.S. Mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either party giving formal notice to the other Party of a change of address.

6. **Monthly Use Payments.** User agrees to pay the City the total monthly use amount set forth in Exhibit “C” each month during the term of this Agreement.

Monthly use payments are due on the 1st of each month and shall be remitted to:

City of Mesquite Department of Athletics & Leisure Services
100 West Old Mill Road
Mesquite, NV 89027
ATTN: **Vickie Anderson** – Administrative Assistant (702) 346-8732 Ext: 4007
vanderson@mesquitenv.gov

User agrees to use its best efforts during this and any successive term of this Agreement to seek funding for reimbursement for these expenses, and User acknowledges that the use payment is likely to increase in successive terms.

7. **Care and Maintenance.** User shall be responsible for any and all damages caused by the User or any and all damages caused because of the activities of the User on the premises which are not caused by the City or its elected officials, officers, agents or employees. The User also agrees that the City may inspect the premises used by the User at the Facility at any time with or without advance notice.

8. **Defaults.** User shall be in default of this Agreement if User fails to fulfill any use obligation or term by which User is bound. Subject to any governing provision of law to the contrary, if User fails to cure any financial obligation with 5 days of due date (or any other obligation within the prescribed time) after written notice of such default is provided by City to User, City may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing City’s rights to damages. In the alternative, City may elect to allow User to cure any default and the cost of such action shall be added to User’s financial obligations under this Agreement. User shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by City by reason of User’s defaults. The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

9. **Late Payments.** For any payment that is not paid within 5 calendar days after its due date, User shall pay a late fee of 10% of the amount of the total required monthly payment set forth in Exhibit “C”.

10. **Abandonment.** Upon the occurrence of an apparent abandonment of the space allocated to the User pursuant to this Agreement, the City may consider such abandonment to be a breach of this Agreement

and provide the User notice in writing of termination as a result of such abandonment, and a failure to remedy the apparent abandonment within a fifteen (15) day period after mailing of such notice to the address for the User herein or different address if properly changed by the User as provided herein, shall cause this Agreement to become void and possession and property rights to revert to the City as in the case of a default. Any personal property or equipment remaining upon the premises more than fifteen (15) days after termination hereunder shall become the property of City, and City shall have the right to dispose of the same or retain them at no cost to itself. No notice shall be required in connection with City's right to clean up or take over vacated premises in order to grant use of the space to another group, other than the notice hereinabove provided.

11. Obligations of the User. Obligations to be assumed by the User shall include all those outlined in the *Facility Use Policy*, and among others, the following:

- a. To maintain the property and supervise its activities thereon in such a manner as to keep it in a safe and attractive condition. The premises shall not be used for the storage of inoperable or unsightly materials or equipment or non-User related uses.
- b. To conform to all current and future rules and regulations applicable to User by reason of the master plan, rules and regulations, policies, standards, and ordinances with respect to the Facility, together with all other laws of the City or any other governmental body that have application to any of the activities covered under this Agreement, including safety, health and sanitary codes. The User agrees that failure to comply with such provisions is a material breach which may terminate this Agreement at the option of the City.
- c. To be solely responsible for any damages or losses that may occur to the used property, unless caused by the willful, intentional or negligent act of the City, its agents or employees. The User is aware of and accepts the used property in its present condition.
- d. To the extent permitted by law, the User agrees to indemnify fully, defend, save and hold harmless the City, its elected officials, officers, agents and employees from and against all losses, damages, claims, liabilities, and causes of action of every kind, character and nature as well as costs and fees, including reasonable attorney's fees connected therewith, and expenses of the investigation thereof, arising from the User's use of the Facility, including damages to the property or injuries to third persons or their property caused either wholly or partially by the negligence intentional acts or omissions of User, its agents or employees. In the event of concurrent negligence of the parties, each party shall be responsible for payment of any claim or judgment in proportion to the percentage fault attributed by the party, subject to any limits set forth in law, including those set forth in NRS Chapter 41.
- e. To maintain the used premises in such condition of repair, cleanliness, and general maintenance as shall be acceptable to the City.
- f. To not assign, rent or sublease any part of the premises. It is understood that any termination of the User's direct operation of activities upon the premises will cause Section 10 hereof to apply.
- g. To at all times during the term of this Agreement comply with all applicable federal, state and local laws and to not permit the used premises or any portion thereof to be used or operated unlawfully.
- h. The premises shall not be used for overnight habitation.
- i. Vehicular access to the premises and parking is limited to the improved surfaces (asphalt and/or concrete) at the Facility.
- j. To in no manner encumber the premises nor permit, through its actions, any liens to be filed against the premises, and to indemnify the City against loss or expense it may incur as the result of any such lien or encumbrance.
- k. To in no manner allows its operations to conflict with the proper use of the Facility by any other user of the Facility, or the operations and needs of the City.

- l. To procure and maintain liability insurance with commercial insurers admitted to write in the State of Nevada in an amount no less than \$1,000,000 for all potential liability related to this Agreement, including, but not limited to the activities of the organization, employees, members, participants, and/or spectators while operating at the Facility, and to name the City as an additional insured on such policy. User shall maintain the policy in full force and effect during the life of the Agreement. User shall obtain agreement of User's insurer(s) to notify the CITY that a policy is due to expire at least ten (10) days prior to such expiration. User agrees to provide City with a current certificate of insurance prior to the contract effective date. At City's request, User also agrees to provide City with a copy of the insurance policy, including any endorsements.
- m. To post events open to the public to the City's website calendar.

12. Reservations to the City. The City reserves the following rights and privileges, among others:

- a. The right to develop further improves, maintain and repair the Facility as it sees fit. The City reserves the right to direct and control the above activities.
- b. The right of the City Manager or a designated representative to enter on any portion of the Facility, including those areas utilized by the User at reasonable times and for reasonable purposes with or without prior notice to User.
- c. The sole right of the City, in lieu of termination of the User's use of the Facility, to relocate the User to another location at the Facility at any time during the existence of this Agreement. In such case, the expenses of such relocation will be the responsibility of the User.
- d. The right to require User to abide by all instructions of the City with respect to User's compliance with existing and future local, federal or state requirements.

13. Damage to Premises. It is agreed that in the event the use by User or its agents of these premises and the property used hereunder results in any damage to any portion of the Facility, the User shall be strictly responsible for all said damages and shall either arrange for repair thereof, to a condition equivalent to that existing prior to the damage, or shall pay a fee equal to the cost of repair to the City. The City shall not be required to prove any negligence on the part of User to exercise its rights under this Agreement.

14. Miscellaneous. Should either party default on any of the terms of this Agreement, the party in default agrees to pay the reasonable attorney's fees of the other party in enforcing the same, whether by legal process or otherwise.

15. Statement of Eligibility. Each party acknowledges to the best of its knowledge, information, and belief, and to the extent required by law, neither party nor any of its respective employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a).

16. Severability. If any term of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

17. Waiver. Failure to declare a breach or the actual waiver of any particular breach of the Agreement 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. Mutually Drafted. The Parties stipulate and agree that all parties have jointly participated in the negotiation and drafting of this Agreement upon advice of their own independent counsel or that they have had the opportunity to do so and this Agreement shall be construed fairly and equally as to all parties as if drafted jointly by them. The Parties hereby irrevocably waive the benefit of any rule of contract construction which disfavors the drafter of any Agreement.

19. **Third Parties.** It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or contract damages, pursuant to the terms or provisions of this Agreement.
20. **Changes.** The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement.
21. **Controlling Law.** This Agreement is executed and intended to be performed in the State of Nevada and the laws of Nevada shall govern its interpretation and effect. The parties consent to the exclusive jurisdiction of the Eighth Judicial District Court, State of Nevada, for enforcement of this Agreement.
22. **Duplicate Copies.** This Agreement has been prepared with duplicate originals so that each party may have an original.
23. **Execution.** This Agreement, including the exhibits made part hereof, constitutes the entire Agreement between the Parties and supersedes and controls over all prior written or oral understandings.

[SIGNATURE PAGE TO FOLLOW]



24. **IN WITNESS WHEREOF**, the Parties affixed their signatures and the date of the same below.

CITY:

USER:

CITY OF MESQUITE

SOUTHERN NEVADA HEALTH DISTRICT

By: _____
Andy Barton, Interim City Manager
City of Mesquite

By: _____
Fermin Leguen, MD, MPH
District Health Officer

Date: _____

Date: _____

ATTEST:

By: _____
Tracy Beck, City Clerk

APPROVED AS TO FORM

By: _____
Adam Anderson
Interim City Attorney
City of Mesquite

Approved as to form
Signature to be affixed
By: _____
Heather Anderson-Fintak, Esq.
General Counsel
Southern Nevada Health District

Description of Rates/Fees

Each Facility Use Agreement that is entered into by the City of Mesquite and a qualifying non-profit group for the use of a portion of the JHC shall set forth the fees encompassed in the monthly use rates. Rates set forth in the agreements shall be approved by the City of Mesquite City Council and are established to appropriately recover some of the capital improvements, operation costs, and maintenance costs of the JHC facility. Unless otherwise directed by the City Council, monthly use rates shall include:

- **Base Rate**

This monthly use fee shall be calculated by multiplying the base use rate by the square footage of the used space.

- **Utility Fee**

This monthly use fee shall be calculated to result in the reimbursement to the City of the utilities paid by the City for the JHC facility during the previous 12-month period and projected over the next two years. Utility fees for the historic gymnasium and portions of the JHC will be handled separately and directed to the respective groups utilizing those facilities. The utility fees for the portion of the JHC will be calculated on a square footage basis for groups at that location.

- **Capital Investment Fee**

This fee aids in the reimbursement of costs for capital projects at the JHC over a set period of years. Capital investment fees shall be calculated on a monthly basis based on the square footage used. These fees shall be applicable to non-profit groups benefitting from the projects.

- **Common Area Maintenance Fee**

This fee is intended to cover janitorial and maintenance costs for common areas used by non-profit groups at the portions of the JHC facility. This fee shall be applicable to all users of the JHC facility with the exception of groups who are authorized to use space solely for the purpose of storage or groups that have obtained approval from the City to provide their own janitorial services. This fee shall be a flat rate fee.

Certain improvements and maintenance conducted by Users at the Campus may qualify for a credit toward the use rate. Any users seeking this credit must submit their request in writing to the City Manager's Office **PRIOR** to installing the improvements or conducting the maintenance for which they desire to receive credit. A credit will not be given if City resources were used to pay for the improvements and/or maintenance and the value of any credit shall not extend beyond the term of this Agreement.

Amendments and Modifications

The City reserves the right to amend and modify this policy from time to time, as it deems appropriate.

EXHIBIT “C”

Monthly Use Payment

User: Southern Nevada Health District (SNHD)

Location: Suite # 3 & Suite # 4 at the Jimmie Hughes Campus, 150 North Yucca Street, Mesquite, Nevada

Amount of Space to be Used: 832 square feet

Required Monthly Use Payment:

Base Rate	\$.10 per sq. foot	
Utilities	\$.20 per sq. foot	
Capital Investment	\$.14 per sq. foot	
Sub-total of Square Footage Fees	\$0.440 x 832 feet	\$365.00
Common Area Maintenance Fee		\$35/mo.
Total Monthly Use Amount		\$400.00
Semi-Annual Use Amount: September 1, 2021 – February 28, 2022	\$400 x 6 months	\$2,400.00

****Please Note****

For any payment that is not paid within 5 calendar days after its due date, User shall pay a late fee of 10% of the amount of the total required monthly payment.