

**City of Carson City
Agenda Report**

Date Submitted: February 25, 2014

Agenda Date Requested: March 6, 2014
Time Requested: Consent

To: Carson City Board of Supervisors
From: Health and Human Services (Nicki Aaker)

Subject Title: For Possible Action: Action to approve a Lease Agreement between Carson City and Vitality Unlimited, a non-profit Nevada corporation.

Staff Summary: Community Counseling Center's lease with Carson City was terminated due to the loss of funding. Vitality, who will provide the same services Community Counseling Center provided, desires to enter into a lease with Carson City for 6,998 square feet at 900 East Long Street; Carson City, Nevada. Vitality will be providing detoxification and substance abuse treatment.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify) Information Only

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve the lease agreement between Carson City and Vitality Unlimited, a non-profit Nevada corporation.

Explanation for Recommended Board Action: Vitality desires to enter into a lease agreement with Carson City for uses of detoxification and substance abuse treatment. Vitality will not make rental payments and will be responsible for paying \$2,563.00 for utilities.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 244.284

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Do not approve the lease between Vitality Unlimited and Carson City.

Supporting Material: Lease Agreement between Carson City and Vitality Unlimited

Prepared By: Nicki Aaker, MSN, MSN, RN

Reviewed By: D. Aaker

Date: 2-25-14

(Department Head)

Marema...

Date: 2-25-14

(City Manager)

Randy...

Date: 2/25/14

(District Attorney)

Mark...

Date: 2/25/14

(Finance Director)

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as the "Lease") is made and entered into this ____ day of _____, 2014, by and between the Consolidated Municipality of **CARSON CITY**, hereinafter referred to as **CITY**, and **VITALITY UNLIMITED**, a non-profit Nevada corporation hereinafter referred to as **VITALITY**.

WHEREAS, **VITALITY**, is a non-profit charitable or civic organization under the provision of the Internal Revenue Code 501 (c) (3), use of 6,998 square feet of property located at 900 East Long Street, Carson City, Nevada, for charitable or civic purposes, to-wit; a non-profit detoxification and treatment center; and

WHEREAS, NRS 244.284 allows the Carson City Board of Supervisors to lease any real property of the county for a term not exceeding ninety nine (99) years if such real property is not needed for the public purposes of the county and is let to a nonprofit charitable or civic organization for charitable or civic purposes; and

WHEREAS, the Carson City Board of Supervisors specifically finds that this Lease meets the conditions of NRS 244.284; and

WHEREAS, a condition precedent to **VITALITY**'s occupancy of the premises under this Lease is that **VITALITY** must apply for and receive all required special use permits for variances and any other licenses or permits required by City, State, or Federal governmental agencies; and

IN CONSIDERATION of the mutual promises of both parties and other good and valuable consideration as hereafter set forth, the parties hereto covenant and agree as follows:

CITY does hereby lease to **VITALITY**, and **VITALITY** does hereby lease from **CITY**, the following described property hereinafter referred to as "the premises". Such premises consist of approximately 6,998 square feet of portion of the second floor of the building located at 900 EAST LONG STREET. The premises' floor plan is depicted in Attachment A.

1. **TERM**: a. This Lease begins on _____ day of _____ 2014, and terminates at midnight on the 31st day of October, 2017, unless sooner terminated by mutual agreement of the parties or for violation of any term or condition of this Lease.

Given the limited amount of space owned by **CITY**, **VITALITY** shall, during the duration of this lease, continue to explore other leasing options. This Lease may be terminated by either party with or without cause by the terminating party giving the other party ninety (90) days written notice.

b. **Option to Renew Lease**: Upon the expiration of the initial term of this Lease (10-31-17), **VITALITY** may request to renew this Lease upon the same terms and conditions as contained herein, for one five year period, by providing notice of its desire to remain on the premises for an additional five years. Said notice must be provided in writing at least sixty (60) calendar days prior to the expiration of the initial term of this Lease. Renewal of this Lease shall be at the sole discretion of the Carson City Board of Supervisors which may

base its decision to renew or not to renew on a number of factors including, but not limited to, the need to use the premises for a public purpose and the performance of VITALITY under the terms of this lease.

2. **RENTAL:** In the past the CITY has waived, and it continues to intend to waive for the purpose of this lease, the rental rate. The services provided by VITALITY to the CITY are valuable services that are needed for the residents of this community and which help off-set the expenses provided by the Sheriff's Office and the Fire Department. However, VITALITY shall be responsible for all costs of VITALITY's operation, renovation of the premises, and charges or expenses of any nature whatsoever including liens filed in connection with VITALITY's operation of the premises.

3. **THE USE OF PREMISES:** The premises are leased to VITALITY for the uses of detoxification, residential treatment, civil protective custody, and transitional living. Any change of this use shall not be made unless such change of use is lawful and VITALITY first obtains the written consent of CITY. VITALITY shall not use the premises for any illegal trade, manufacturing or other business, or for any other illegal purpose or for any purpose not expressly allowed by this Lease or consented to by CITY in writing. The uses are for the specific area being leased and not the common areas or other tenant occupied areas.

4. **REPAIRS AND MAINTENANCE:** CITY shall be responsible for maintaining at CITY's expense the building and grounds in keeping with the requirements of the county regarding structural integrity and current City, State, and Federal codes. This shall include, but shall not be limited to the following:

HVAC, Fire Protection Equipment (Alarms, sprinkler systems, extinguishers and monitoring), Roof, foundation, exterior walls, underground plumbing, electrical service equipment as well as other major distribution points for any and all utilities and exterior grounds. Carson City provides inspections on elevator, extinguishers, overhead fire equipment that meet all national, state and local codes for its operations and usage. If VITALITY requires additional inspections, the cost for those additional inspections will be at VITALITY's expense. Any fire extinguisher discharged by VITALITY shall be serviced at VITALITY's expense.

VITALITY shall, at its own expense, maintain the premises in good condition and repair during the entire term of this Lease, including, but not limited to, the following:

Interior walls, flooring, paint, plumbing, HVAC appurtenant to the space, electrical fixtures, fire protection equipment, and the interior of the premises in general. Examples would be but are not limited to the following, water leaks, plugged toilets, burnt out bulbs, bad lighting ballasts, holes in walls, tears in carpet or damaged tile and the general up keep of the interior.

5. **ALTERATIONS, LIENS, ENCUMBRANCES, AND REPAIRS:** VITALITY shall not make any permanent alterations, additions, improvements or repairs in the premises without first obtaining the consent of the CITY in writing. All alterations, additions, and improvements which are made, shall be at the sole cost and expense of VITALITY, and shall become the property of the CITY upon completion, trade fixtures excluded. Upon expiration, or earlier termination of this Lease, VITALITY shall peacefully and quietly

surrender to CITY the premises, and all VITALITY's improvements and alterations to the premises, in good order and repair (excepting ordinary wear and tear). Any work performed by VITALITY must comply with all laws, ordinances, rules and regulations of the local agencies having jurisdiction hereof. VITALITY agrees to hold the CITY free and harmless from all damage, loss, and expenses arising out of said work. VITALITY agrees to keep and maintain the leased premises free from any liens or encumbrances caused by any act or omission of VITALITY.

6. **USE OF EXTERIOR GROUNDS:** VITALITY shall not conduct any business activity outside the premises, nor store vehicles or other property, nor perform any services, on any sidewalk, parking lot, or other public area provided by CITY without the written consent of CITY, which consent shall not be unreasonably withheld if the proposed uses are for exhibits or activities which relate directly to the permitted uses as described herein. Exterior grounds will be kept clean and free of debris.

7. **ENTRY AND INSPECTION:** VITALITY shall permit CITY and its agents to enter the premises during normal business hours for any reasonable purpose, including, but not limited to inspections; to show the premises to prospective purchasers or lessees; to post notices of nonresponsibility for alterations, additions, repairs or utility installations; for the purpose of placing upon the property or building in which said premises are located any ordinary "for sale" or "for lease" sign within six (6) months prior to the end of this Lease or any option thereof.

8. **ASSIGNMENT AND SUBLEASING:** VITALITY may only assign this Lease or sublet the leased premises, in whole or in part, after first obtaining the written consent of CITY. If CITY consents, no assignments or sublease shall be effective until VITALITY delivers a copy of the assignment or subleasing agreement to CITY and the assignee or sublessee agrees in writing to assume all of the obligations of VITALITY under this Lease. No assignment or subletting will relieve VITALITY from any obligations under this Lease. This consent by CITY to any assignment or subletting shall not be deemed to be a waiver on the part of CITY of any prohibition against any future assignment, or subletting.

9. **INDEMNIFICATION:** Unless due to the sole negligence of CITY or CITY's failure to abide by the terms of this Lease, VITALITY hereby indemnifies and agrees to hold CITY harmless from and against all claims, which either arise from or in connection with the possession, use, occupancy, management, repair, maintenance, or control of the premises or any portion thereof; or as a result from any default, breach, violation or non-performance of this Lease or any provision of this Lease by VITALITY. VITALITY will defend, notwithstanding the CITY's right to participate, any claims against CITY with respect to the foregoing. VITALITY will pay, satisfy, and discharge any judgments, orders, and decrees which are recovered against CITY in connection with the foregoing. CITY hereby indemnifies and agrees to hold VITALITY harmless and shall defend any claims against VITALITY in any action where CITY was solely negligent or failed to abide by the terms of this Lease. The indemnifying party shall not be responsible for paying the attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.

10. **LIABILITY INSURANCE:** CITY shall not be liable to VITALITY, or to any person whatsoever, for any damage caused by the acts or omissions of any persons occupying any space adjacent to or adjoining the premises unless the CITY or its agents caused the loss

or damage. Except for loss or damage caused by CITY's sole negligence, CITY shall not be responsible or liable to VITALITY for any loss or damage resulting to VITALITY or VITALITY's property from any natural or manmade disaster, or water, gas or steam; or the bursting, stoppage, or leakage of pipes. VITALITY agrees to indemnify and hold the CITY harmless from and defend the CITY against any and all such claims or liability for any injury or damage to any person or property whatsoever, occurring in or on the premises or occurring as a result of the use of any of the facilities or appliances anywhere on the premises at 900 East Long Street. VITALITY further agrees to provide and pay for a general liability insurance policy with a limit of at least \$1,000,000 per occurrence and in the aggregate for bodily injury or death resulting therefrom, or for damage to the premises and shall name CITY as an additional insured by endorsement. A certificate of said insurance shall be presented to CITY prior to occupancy of the premises. The policy of insurance shall not be suspended, voided, canceled, or reduced in coverage without the prior written consent of CITY and shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to CITY no less than thirty (30) days in advance of the effective date thereof. Said policy of insurance shall be primary coverage for all claims and losses arising from the use, occupancy and operation of the premises under this Agreement.

11. DEFAULT:

A. DEFINITION OF DEFAULT: Each of the following events shall constitute a default:

1. Insolvency (this includes an assignment for the benefit of creditors; filing or acquiescing to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings.)
2. Assignment by operation of law.
3. Vacating the premises after occupation.
4. Refusing to take possession of the premises or permitting the premises to remain unoccupied and unattended.
5. Failure to pay any installment of rent or any other charge required to be paid by VITALITY under this Lease when due and payable and said failure continues for ten (10) days after written notice.
6. Failure to perform any other conditions required to be performed by VITALITY under this Lease and said failure continues for fifteen (15) days after written notice.
7. Loss of non-profit status.
8. Failure to continuously use the leased premises for the purposes described herein.

B. EFFECT OF DEFAULT: If a default occurs, CITY shall give VITALITY a written notice of intention to terminate this Lease at the expiration of a thirty (30) day notice period. The written notice shall specify the breach. At the expiration of the notice period, the term of this Lease shall end if said default has not been cured by VITALITY within said thirty (30) day period. VITALITY must then quit and surrender the premises to CITY. VITALITY's liability under all the provisions of this Lease shall

continue notwithstanding any expiration, surrender, or reentry, repossession or disposition pursuant to the following paragraph with a setoff to VITALITY for any new rents collected by CITY from any new tenant during the term of this Lease.

Upon the expiration or earlier termination of this Lease, CITY or its agents or employees may immediately, or anytime thereafter, reenter the premises and remove VITALITY, VITALITY's agents, any subtenants, licensees, concessionaires or invitees, and any of their property from the premises. Reentry and removal may be effectuated by summary dispossession proceedings or by a suitable action or proceeding at law, by force, or otherwise. If the term of this Lease expires, CITY may repossess and enjoy the premises. CITY shall be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by VITALITY or proceedings in forcible entry and detainer. VITALITY's liability, subject to any setoff, will survive CITY's reentry, the institution of summary proceeding, and the issuance of any warrants with respect thereto.

- C. **DEFICIENCY**: If this Lease is terminated pursuant to Paragraph (B) above, VITALITY shall remain liable (in addition to accrued liabilities) to the extent legally permissible for the rent and all other charges VITALITY would be required to pay until the date this Lease would have naturally expired had such earlier termination not occurred. VITALITY's liability for rent shall continue notwithstanding reentry or repossession of the premises by CITY subject to a setoff pursuant to Paragraph (B) above.
- D. **ATTORNEY'S FEES AND COSTS**: VITALITY shall pay CITY and/or CITY shall pay VITALITY reasonable attorney's fees and court costs incurred in any lawsuit or action instituted by CITY or VITALITY to enforce the provisions of this Lease upon determination of the prevailing party.
- E. **WAIVER OF REDEMPTION**: Except for setoffs discussed above, VITALITY hereby waives (to the extent legally permissible), for itself and all persons who claim by, through, or under it, any right of redemption or for the restoration or the operations of this Lease in case VITALITY is dispossessed for any cause, or in case CITY obtains possession of the premises as herein provided.
- F. **CITY MAY CURE VITALITY'S DEFAULT**: If VITALITY is in default under this Lease, CITY may cure the default at any time for VITALITY. If CITY cures a default for VITALITY, VITALITY shall reimburse CITY for any amount expended by CITY in connection with said cure. CITY shall also be entitled to interest at the maximum legal rate on any amount advanced by CITY to cure a default of VITALITY from the date the expense is incurred to the date of reimbursement.

The rights and remedies of CITY set forth herein are in addition to any other rights and remedies now or hereinafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay or omission by CITY in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default. No waiver of a default shall extend to or affect any other default or impair any right or remedy with respect thereto. No waiver of a default shall be effective, unless it is in writing.

12. **CHOICE OF LAW AND FORUM:** The laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this Lease. The parties agree that any dispute and/or legal proceedings regarding this Lease shall be subject to the sole jurisdiction of the State courts in the State of Nevada and must be filed in the First Judicial Court located in Carson City.

13. **DESTRUCTION OF PREMISES:** VITALITY shall maintain a policy of insurance to cover events of complete or partial destruction of the premises with or without fault, negligence or carelessness on the part of VITALITY, its agents, employees, or those holding possession of the premises under it. CITY shall use reasonable efforts to repair such damage. Any insurance proceeds received by VITALITY as a result of such damage shall be assigned to CITY in order to pay for any necessary repairs.

14. **HOLDING OVER:** Should VITALITY holdover beyond the term hereby created with the consent of CITY, VITALITY shall become a tenant from month to month subject to the terms herein specified and VITALITY shall continue to be a month-to-month tenant until the tenancy is terminated by CITY or until VITALITY has given CITY a written notice at least one month prior to the termination of the monthly tenancy of its intention to terminate the tenancy.

15. **SALE OF PREMISES:** In the event of a sale or conveyance by CITY of the building containing the premises, the sale shall be subject to the terms and conditions of this Lease. In such event, VITALITY agrees to look solely to the successor in interest of CITY to satisfy the terms of this Lease. CITY may transfer any security deposits held from VITALITY to its successor in interest and thereupon CITY shall be discharged from any further liability in reference thereto.

16. **CONDEMNATION:** If all the premises are taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this Lease shall be canceled automatically as of the taking date. If only a part of the premises are taken, CITY may cancel this Lease at its sole discretion. The option to cancel may be exercised within six (6) months of the taking date by giving VITALITY notice that the option has been exercised.

If there is a taking of the premises for temporary use, this Lease shall continue in full force and effect, and VITALITY shall continue to comply with VITALITY's obligations under this Lease, except to the extent compliance is rendered impossible or impracticable by reason of the taking. All compensation awarded upon the condemnation or taking shall belong to CITY. VITALITY hereby waives any interest in any condemnation proceeding or litigation.

17. **SUBORDINATION:** VITALITY agrees that this Lease is and shall be subordinate to any mortgage, deed of trust, or other instrument of security, existing on the land and building of which the premises are a part. Such subordination is hereby made effective without any further act by VITALITY. VITALITY agrees at any time, upon request by CITY, to execute and deliver any instrument, release or other document that may be required in connection with subjecting and subordinating this Lease to any lien or mortgage, deed of trust or other instrument of security.

This provision shall be without effect unless and until the holder of the mortgage, deed of trust, or other instrument of security in question delivers to **VITALITY** a written agreement providing, in effect, that so long as **VITALITY** is not in default in the performance of its obligations under this Lease, **VITALITY** shall not be disrupted in its possession of the premises hereunder.

18. **SIGNS**: **VITALITY** shall not place or permit to be placed any sign, marquee, awning, decoration or other attachment on or to the roof, front windows, doors or exterior walls of the premises without first obtaining a City permit and the written consent of the **CITY**. It is the intention of **CITY** to insure aesthetically tasteful uniformity in the building of which the premises are a part. **CITY** may, without liability, enter onto the premises and remove any such sign, marquee, awning, decoration or attachment affixed in violation of this paragraph. **VITALITY** agrees to pay the cost of removal thereof.

19. **SURRENDER OF LEASE**: No act or conduct of **CITY**, whether consisting of the acceptance of the keys to the premises, or otherwise, shall be deemed to constitute an acceptance of the surrender of the premises by **VITALITY** prior to the expiration of the term hereof. Acceptance by **CITY** of surrender of the premises by **VITALITY** must be evidenced by a written acknowledgment of acceptance of surrender by **CITY**. The voluntary or other surrender of this Lease by **VITALITY**, or a mutual cancellation thereof, shall not constitute a merger, and **CITY** may terminate all or any existing subleases, sub tenancies, or concessions, or may, at its sole option, accept any and all such subleases, sub tenancies or concessions as being legally binding and enforceable.

20. **NOTICES**: Notices to the respective parties must be in writing and sent by certified or registered mail, addressed to the respective party at the addresses set forth below, or at such other address as either party may elect to provide in advance in writing, to the other party.

CITY: **CARSON CITY MANAGER**
201 N. CARSON STREET
CARSON CITY, NV 89701

VITALITY: **Ester M. Quilici**
Chief Operations Officer
Vitality Unlimited
P.O. Box 2580
Elko, Nevada 89803
775-738-4158 (Office)
775-753-6487 (Fax)

21. **NO ORAL CHANGES**: This lease may not be changed or terminated orally.

22. **SUCCESSOR AND ASSIGNS**: Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs, and assigns.

23. **UTILITIES**: The following utilities shall be supplied to the premises by **CITY**:

ELECTRICAL POWER, GAS, WATER, SEWER, AND GARBAGE SERVICE. VITALITY shall pay \$2,563.00 for electric, power, gas, water, sewer and garbage serving the premises.

CITY shall not be liable for failure to furnish any of the above services when such failure is caused by conditions beyond the control of CITY, or by accidents, repairs, or strikes; nor shall CITY be liable, except when negligent, for loss or injury to property, however occurring through or in connection with or incidental to the furnishing of any of the aforementioned services.

24. **QUIET ENJOYMENT:** The CITY agrees that as long as VITALITY is in full compliance with the provisions of this Lease, it shall be entitled to quietly enjoy the premises for the full term of this Lease. No use shall be made or permitted to be made of the premises or any part thereof and no acts will be done therein which may disturb the quiet enjoyment of any other tenant in the building of which the premises are a part. No acts will be done therein which may disturb the quiet enjoyment of any other tenant in the building of which the premises are a part, and said acts shall be considered a violation of the authorized use of the premises.

25. **SNOW REMOVAL:** Snow and ice removal shall be the responsibility of CITY.

26. **COMPLIANCE WITH THE LAW:** VITALITY shall promptly execute and comply with all statutes, rules, orders, building codes, ordinances, requirements, and regulations of the City, County, State and Federal governments, including OSHA, the Americans with Disabilities Act of 1990 (42 USC Section 12101 through 12213 and 47 USC Sections 225.611) and their underlying regulations and rules, which are applicable to the premises. Nothing herein contained shall be construed to restrict VITALITY from contesting the validity of any such regulations; rule or ordinance, provided VITALITY indemnifies CITY to its reasonable satisfaction against the consequences of non-compliance during the period of dispute.

27. **SMOKING AREA:** CITY shall furnish a separate outside area which may be used for smoking. CITY shall also post signs prohibiting smoking in any place not designated as a smoking area.

28. **REGULAR MEETINGS:** Representatives from VITALITY and the CITY will meet on a regular basis, either in person or by telephone, to discuss lease and any issues or concerns.

29. **ENTIRE AGREEMENT:** This instrument along with any exhibits and attachments hereto constitutes the entire agreement between the parties. This Agreement may only be altered, amended or revoked by an instrument in writing signed by both parties. It is understood that there are no oral agreements between the parties hereto and that all previous negotiations, discussions, and previous leases between the parties hereto affecting this Lease are superseded by this Lease.

30. **ATTORNEY'S FEES:** In case suit shall be brought for an unlawful detainer of the premises, for the recovery of any rent due under the provisions of this Lease, or for VITALITY's breach of any other condition contained herein, VITALITY shall pay to CITY

reasonable attorney's fees which shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of this action by CITY. VITALITY shall be entitled to attorney's fees in the same manner if judgment is rendered in favor of VITALITY.

31. WAIVER: The failure of CITY or VITALITY to insist upon strict performance of any of the covenants, terms or provisions contained in this Lease or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any said covenants, terms or provisions or any other covenants, terms or provisions, but the same shall remain in full force and effect.

32. REMEDIES. The remedies given to CITY and VITALITY shall be cumulative, and the exercising of any one remedy shall not be to the exclusion of any other remedy.

33. EARLY TERMINATION. This Lease may be terminated prior to the end of the term set forth herein above if the purpose of this Lease is substantially impaired or obstructed by any unforeseen event, occurrence or circumstance outside the control of CITY or VITALITY without prejudice or penalty to either party hereto and without such event, occurrence or circumstance being defined, interpreted or construed as a breach or default on the part of either party.

34. FORCE MAJEURE. Any delay or stoppage of business due to acts of God, enemy or hostile action, fire or other casualty, shall excuse the performance by either party to this Lease for a period equal to any such delay or stoppage.

IN WITNESS WHEREOF, the parties hereto have inscribed their names, and if corporations, have authorized their officers by resolution to execute this Lease in duplicate, the day and year herein above written.

LESSOR: CARSON CITY


By: _____
ROBERT L. CROWELL, Mayor

ATTEST:

Clerk-Recorder

Approved as to legal form:
NEIL A. ROMBARDO
District Attorney

**LESSEE: Vitality
Non-Profit Corporation**

By: 

ESTER M. QUILICI, CHIEF OPERATIONS OFFICER

ATTACHMENT A

