

LATE MATERIAL
Meeting Date: 11-16-17
Item #: 10

APN's: 004-016-03
Property Address: 864 Evalyn Drive, Carson City, NV

AFTER RECORDING RETURN TO:
CARSON CITY PUBLIC WORKS
ATTN: STEPHANIE HICKS, REAL PROPERTY MANAGER
3505 BUTTI WAY
CARSON CITY, NV 89701

MAIL TAX STATEMENT TO:
CARSON CITY PUBLIC WORKS
ATTN: STEPHANIE HICKS, REAL PROPERTY MANAGER
3505 BUTTI WAY
CARSON CITY, NV 89701

LEASE AGREEMENT

This Lease Agreement ("LEASE") is made and entered into this ____ day of _____, 20____, between the Truckee Meadows Parks Foundation, a non-profit Nevada corporation ("LESSEE"), and CARSON CITY, NEVADA, a consolidated municipality and political subdivision of the State of Nevada (the "CITY").

WITNESSETH:

WHEREAS, the CITY is the owner of the property located at 864 Evalyn Drive, Carson City, NV; and

WHEREAS, the CITY has a cooperative agreement with the LESSEE for the assignment of three AmeriCorps VISTA members to the CITY for the benefit of Carson City residents; and

WHEREAS, the Carson City Board of Supervisors has determined that the property is not needed for public purposes of the CITY for a period of two (2) years commencing with the execution of the LEASE; and

WHEREAS, LESSEE is a non-profit charitable or civic organization under the provision of the Internal Revenue Code 501(c)(3), and desires to use the property for charitable or civic

purposes and more specifically, to support needs for the AmeriCorps Vista Program; and

WHEREAS, NRS 244.284 allows the Carson City Board of Supervisors to lease any real property of the county if such real property is not needed for the public purposes of the county and is let to a corporation for public benefit; and

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

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

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

The CITY does hereby lease to LESSEE, and LESSEE does hereby lease from the CITY, the following described property hereinafter referred to as "the premises":

864 Evalyn Drive, Carson City, NV

1. TERM:

The term of this LEASE is for a period of two (2) years, beginning on the ___ day of _____, 2017 and terminating at midnight on the ___ day of _____, 2019, unless sooner terminated by mutual agreement of the parties or for a violation of any term or condition of this LEASE.

2. RENTAL:

As rental for the premises, LESSEE agrees to pay the CITY, without offset to deduction the sum of ONE DOLLAR (\$1.00) per year due the 1st day of ___, 2017, and each _____, annually during the term of the LEASE. LESSEE shall be responsible for all costs of LESSEE's

operation, renovation of the premises, and charges or expenses of any nature whatsoever including liens filed in connection with LESSEE's operation of the premises.

3. THE USE OF PREMISES:

The premises are leased to LESSEE for the uses of the AmeriCorps VISTA program for the benefit of Carson City residents. Any change of this use shall not be made unless such change of use is lawful for charitable or civic purposes and LESSEE first obtains the written consent of the CITY. LESSEE shall not use the premises for any illegal trade, manufacturing, other business, or for other illegal purpose or for any purpose not expressly allowed by this LEASE or consented by the CITY in writing. LESSEE shall abide by all park rules and regulations.

4. REPAIRS and MAINTENANCE:

A. Except as otherwise provided herein, the CITY shall be responsible, at its sole expense and in accordance with any applicable local, state or federal law, regulation or code relating to structural integrity, for the proper and reasonable maintenance and repair of the building and grounds at all times during the term of this LEASE. Such proper and reasonable maintenance and repair of the building and grounds is limited to the roof, including periodic gutter cleaning as necessary; foundation; exterior and interior walls; flooring; plumbing; jointly-used electrical panels; and the HVAC (heating, ventilation and air conditioning) system.

B. Except as otherwise provided herein, LESSEE shall be responsible, at its sole expense and in accordance with any applicable local, state or federal law, regulation or code relating to structural integrity, for the proper and reasonable maintenance and repair of the premises at all times during the term of this LEASE to prevent the premises from entering into a state of disrepair. Such proper and reasonable maintenance and repair of the premises includes:

- (1) Maintenance of the flooring, but only in such a manner that is consistent with the use of techniques and products approved by the CITY Facilities Maintenance Manager

in advance of the commencement of any work; paint; electrical wiring and fixtures; equipment that is used for fire protection or suppression; 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 upkeep of the interior.

(2) Repair of any damage that is directly or proximately caused by the LESSEE, its employees, agents, volunteers, contractors or invitees.

C. Notwithstanding any other provision of this LEASE, LESSEE shall be responsible, at its sole expense and in accordance with any applicable local, state or federal law, regulation or code relating to structural integrity, for the proper and reasonable repair of any damage to the building and grounds that is directly or proximately caused by the LESSEE, its employees, agents, volunteers, contractors or invitees.

D. For the purposes of this LEASE, the term "grounds" shall be deemed to include the parking lot, landscaping and sidewalks appurtenant to the building.

5. ALTERATIONS, LIENS, ENCUMBRANCES, AND REPAIRS:

A. LESSEE shall not make any permanent alterations, additions, improvements or repairs to the premises without first obtaining in writing the consent and approval of the CITY which consent shall be at the CITY'S sole discretion. This provision does not apply to any alteration, addition, improvement or repair that is merely cosmetic in nature.

B. LESSEE agrees that any alteration, addition, improvement or repair that is made to the premises is at the sole expense of the LESSEE and, upon termination of this LEASE, becomes the exclusive property of the CITY of which LESSEE shall have no claim of title or interest. This provision does not apply to any movable trade fixtures.

C. LESSEE shall, upon termination of this LEASE, surrender to the CITY the premises and any permanent fixtures in good condition, order and repair, excluding any condition that is

attributable solely to normal wear and tear.

D. LESSEE shall comply or, if employing the services of another in altering, adding, improving or repairing the premises, ensure the compliance with, any applicable local, state or federal law, regulation or code relating to such work. LESSEE agrees to release and hold harmless the CITY from any and all liability for damages or injury arising from or relating to any such work that is performed by any person, including circumstances involving any condition of the premises, building or grounds that is known or reasonably should have been known to the CITY. LESSEE further agrees to indemnify the CITY from any and all claims, demands, causes of action, suits, procedures, costs, damages and liabilities, including, without limitation, attorney's fees, arising from or relating to the conduct of LESSEE or its employees, agents, volunteers, contractors or invitees, and to provide the CITY reimbursement as necessary and appropriate.

E. LESSEE shall ensure at all times that the premises are kept free and clear of any liens or encumbrances that may be caused by any act or omission of LESSEE or its employees, agents, volunteers, contractors or invitees.

6. USE OF EXTERIOR GROUNDS:

LESSEE 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 the CITY without the written consent of the 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.

7. ENTRY AND INSPECTION:

LESSEE shall permit the 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 non-responsibility for

alterations, additions, or 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:

LESSEE may only assign this LEASE or sublet the leased premises, in whole or in part, after first obtaining the written consent of the CITY. If the CITY consents, which shall be solely at the CITY'S discretion, no assignments or sublease shall be effective until LESSEE delivers a copy of the assignment or subleasing agreement to the CITY and the assignee or sublessee agrees in writing to assume all of the obligations of LESSEE under this LEASE. No assignment or subletting will relieve LESSEE from any obligations under this LEASE. A consent by the CITY to any assignment or subletting shall not be deemed to be a waiver on the part of the CITY of any prohibition against any future assignment or subletting.

9. INDEMNIFICATION:

Unless due to the sole negligence of the CITY or the CITY's failure to abide by the terms of this LEASE, LESSEE hereby indemnifies and agrees to hold the 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 the LEASE by LESSEE. LESSEE will defend, notwithstanding the CITY's right to participate, any claims against the CITY with respect to the foregoing. LESSEE will pay, satisfy, and discharge any judgments, orders, and decrees which are recovered against the CITY in connection with the foregoing. The CITY hereby indemnifies and agrees to hold LESSEE harmless and shall defend any claims against LESSEE in any action where the CITY was solely negligent or failed to abide by the terms of this LEASE.

10. INSURANCE:

The CITY shall not be liable to LESSEE, 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 the CITY's sole negligence, the CITY shall not be responsible or liable to LESSEE for any loss or damage resulting to LESSEE or LESSEE's property from, but not limited to, any natural or manmade disaster, or water, gas or steam; or the bursting, stoppage, or leakage of pipes. LESSEE 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. The LESSEE further agrees to provide and pay for a general liability insurance policy with a minimum limit of One Million and no/100 Dollars (\$1,000,000.00) per occurrence and Two Million and no/100 Dollars (\$2,000,000.00) aggregate for bodily injury or death resulting therefrom, or for damage to the premises and shall name the CITY as an additional insured by endorsement. A certificate of said insurance shall be presented to the 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 the 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 the 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 LEASE.

LESSEE shall also maintain a policy of insurance to cover LESSEE'S personal property in the event of personal property loss resulting from events of complete or partial destruction of the premises without fault, negligence or carelessness on the part of LESSEE, its agents,

employees, volunteers, or those holding possession of the premises under it.

Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers under federal and Nevada law and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

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 for a period of thirty (30) consecutive days after occupancy.
- (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 LESSEE under this LEASE when due and payable and said failure continues for ten (10) days after written notice.
- (6) Failure to perform any other condition required to be performed by LESSEE under this LEASE.
- (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, the CITY may give LESSEE a thirty (30) day notice of intention to cancel or terminate this LEASE. 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 LESSEE within said thirty (30) day period. Upon termination of the LEASE, LESSEE must quit and surrender the premises to the CITY. LESSEE's liability under all of the provisions of this LEASE will continue notwithstanding any expiration and surrender, or reentry, repossession or disposition pursuant to the following paragraph with a setoff to LESSEE for any new rents collected by the CITY from any new tenant during the term of this LEASE, such setoff not to exceed the total liability of LESSEE under the LEASE.

Upon the expiration or termination of this LEASE, the CITY or its agents or employees may immediately, or anytime thereafter, reenter the premises and remove LESSEE, LESSEE'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, the CITY may repossess and enjoy the premises. The CITY shall be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by the CITY or proceedings in forcible entry and detainer. LESSEE's liability, subject to any setoff, will survive the CITY's reentry, the institution of summary proceeding, and the issuance of any warrants with respect thereto.

C. DEFICIENCY:

If this LEASE is terminated before it expires, LESSEE shall remain liable (in addition

to accrued liabilities) to the extent legally permissible for the rent and all other charges LESSEE would be required to pay until the date this LEASE would have naturally expired had such earlier termination not occurred. LESSEE's liability for rent shall continue notwithstanding reentry or repossession of the premises by the CITY subject to a setoff pursuant to Paragraph (B) above

D. WAIVER OF REDEMPTION:

Except for setoffs discussed above, LESSEE 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 LESSEE is dispossessed for any cause, or in case the CITY obtains possession of the premises as herein provided.

E. THE CITY MAY CURE LESSEE'S DEFAULT:

If LESSEE is in default under this LEASE, CITY may cure the default at any time for LESSEE. If CITY cures a default for LESSEE, LESSEE 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 the CITY to cure a default of LESSEE from the date the expense is incurred to the date of reimbursement.

12. HOLDING OVER:

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

13. SALE OF PREMISES:

In the event of a sale or conveyance by the CITY of the building containing the premises,

the sale may be subject to the terms and conditions of this LEASE. The CITY may cancel this LEASE at its sole discretion in the event of a sale or conveyance of the building containing this premise. If the CITY cancels this LEASE pursuant to this paragraph, the CITY shall provide written notification of the termination of this LEASE to LESSEE not fewer than 30 days prior to the date this LEASE shall terminate. If the LEASE is cancelled pursuant to this paragraph, LESSEE and the CITY agree that LESSEE shall not be entitled to any consideration or compensation for the cancellation of this LEASE and shall vacate the premises subject to the terms and conditions of this section. If the sale is subject to the terms and conditions of this LEASE, LESSEE agrees to look solely to the successor in interest of the CITY to satisfy the terms of this LEASE. The CITY may transfer any security deposits held from LESSEE to its successor in interest and thereupon the CITY shall be discharged from any further liability in reference thereto.

14. 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 is taken, the 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 LESSEE 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 LESSEE shall continue to comply with LESSEE'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 the CITY. LESSEE hereby waives any interest in condemnation proceeding or litigation.

15. SUBORDINATION:

LESSEE 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 LESSEE. LESSEE agrees at any time, upon request by the 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 LESSEE a written agreement providing in effect that so long as LESSEE is not in default in the performance of its obligations under this LEASE, LESSEE shall not be disrupted in its possession of the premises hereunder.

16. SIGNS:

LESSEE shall be allowed to place one sign with the words, "Truckee Meadows Parks Foundation" and/or "AmeriCorps Vista" on the exterior walls of the premises after obtaining a City permit if applicable and the written consent of the CITY.

It is the intention of the CITY to ensure aesthetically tasteful uniformity in the building of which the premises are a part. The CITY may, without liability, enter onto the premises and remove any such sign, marquee, awning, decoration or attachment affixed in violation of this paragraph. LESSEE agrees to pay the cost of removal thereof.

17. SURRENDER OF LEASE:

No act or conduct of the 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 LESSEE prior to the expiration of the term hereof. Acceptance by the CITY of surrender of the premises by LESSEE must be evidenced by a written acknowledgement of acceptance of surrender by CITY. The voluntary or other surrender of this LEASE by LESSEE, or a mutual cancellation thereof, shall not constitute a merger, and the CITY may terminate all or any existing subleases, subtenancies, or concessions, or may, at its sole option, accept any and

all such subleases, subtenancies, or concessions as being legally binding and enforceable.

18. NOTICES:

Notices to the respective parties must be in writing and sent by certified or registered mail, addressed to the respective parties 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
CITY OF CARSON
201 N. CARSON STREET, CARSON CITY, NV 89701

LESSEE: EXECUTIVE DIRECTOR
TRUCKEE MEADOWS PARKS FOUNDATION
P.O. Box 7611
Reno, NV 89510

19. NO ORAL CHANGES:

This LEASE may not be changed or terminated orally.

20. 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.

21. UTILITIES:

The following utilities shall be supplied to the premises and paid for by the CITY: electrical power, gas, water, sewer, and garbage service. The total square footage of the building is 2,756. The total square footage subject to this LEASE is approximately 1,600 square feet.

The 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 the CITY, or by accidents, repairs, or strikes; nor shall the CITY be liable, except when solely 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.

22. QUIET ENJOYMENT:

The CITY agrees that as long as LESSEE 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.

23. SNOW REMOVAL:

Snow and ice removal shall be the responsibility of the CITY, subject to the CITY's Parks and Recreation Department Maintenance Standards.

24. COMPLIANCE WITH THE LAW:

LESSEE shall promptly execute LEASE and comply with all statutes, rules, orders, building codes, ordinances, requirements, and regulations of the City, 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 LESSEE from contesting the validity of any such regulations, rule or ordinance, provided LESSEE indemnifies the CITY to its reasonable satisfaction against the consequences of non-compliance during the period of dispute.

25. ENTIRE AGREEMENT:

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between the parties. This LEASE 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.

26. EARLY TERMINATION:

This LEASE may be terminated before the end of the term set forth hereinabove or before the expiration of any renewal period, if applicable, if notice of at least 180 days is provided to the other party:

A. By the CITY, if the CITY determines, in its sole discretion, that there is a need to use the premises for a public purpose.

B. By the LESSEE, if the LESSEE determines that securing the use of different premises would be more advantageous for the LESSEE.

C. By the CITY or the LESSEE, if either the CITY or the LESSEE determines that the purpose of this LEASE is substantially impaired or obstructed by any unforeseen event, occurrence or circumstance outside the control of the CITY or LESSEE, without prejudice or penalty to either party hereto and without such event, occurrence or circumstance being defined or construed as a breach or default on the part of either party. By the City, upon 30 days' notice, if the availability of the necessary public funding to perform in accordance with the terms of this LEASE, which may include various internal and external sources is not acquired or appropriated. No claim or cause of action may be based upon any such nonappropriation.

27. 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.

28. WAIVER:

The failure of CITY or LESSEE 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, but the same shall remain in full force and effect.

Failure to declare a default under to this LEASE shall not operate as a waiver by such party of any of its rights or remedies as to any other breach. If either party waives any particular default under this LEASE, said waiver shall not be construed to constitute a waiver of any other or subsequent breach nor shall the subsequent acceptance of any consideration by the CITY be construed as a waiver of any breach under this LEASE.

Additionally, no delay or omission by the CITY in exercising a right or remedy shall constitute a waiver of or acquiescence to any breach of this LEASE. No waiver of a default shall be effective unless it is in writing.

29. ATTORNEYS FEES AND OTHER REMEDIES:

Except as otherwise provided for by law or this LEASE, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorney's fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour.

30. 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 District Court located in Carson City.

IN WITNESS WHEREOF, the Parties have executed this LEASE on the day and year first above written.

CITY:
**CARSON CITY, NEVADA, A
CONSOLIDATED MUNICIPALITY**

LESSEE:
**TRUCKEE MEADOWS
PARKS FOUNDATION**

Mayor – Robert L. Crowell

Nathan Daniel, Executive Director

Attest:

Susan Merriwether, Clerk-Recorder

Approved as to Form:
CARSON CITY DISTRICT ATTORNEY

By: _____
Deputy District Attorney