

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF LAS VEGAS
THE CLARK COUNTY SCHOOL DISTRICT
AND FUTURE SMILES
FOR THE ED W. CLARK HIGH SCHOOL**

This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into this _____ day of _____, 2011, by and between the City of Las Vegas, a municipal corporation of the State of Nevada (hereinafter referred to as "City"), the Clark County School District, a political subdivision of the State of Nevada (hereinafter referred to as "District") and Future Smiles, a domestic non-profit organization (hereinafter referred to as "Future Smiles"). The City, District and Future Smiles may be individually referred to as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the District is the owner of that real property and improvements located at 4291 Pennwood Avenue, Las Vegas, Nevada, 89102, APN# 162-07-701-001, more commonly known as Ed W. Clark High School, (hereinafter referred to as "Premises") as attached by Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the City is the owner of a modular facility (hereinafter referred to as "Modular") placed on "Premises" pursuant to an MOU dated May 8, 2007 (hereinafter referred to as "Original MOU") by and between the City and the District for operation of the Clark Community School Program in order to provide community services; and

WHEREAS, it has been determined by the City and District that the Clark Community School Program is no longer in operation and that this MOU will replace the terms and conditions of the Original MOU and that the Original MOU will be expunged; and

WHEREAS, the City has requested to utilize the Modular for the operation of a non-profit dental health service program operated by Future Smiles in order to provide preventive pediatric dental health care services; and

WHEREAS, Future Smiles provides preventative oral health care services by Public Health Dental Hygienists at school based sites and/or school based health center and therefore identifies that the Modular on the Premises shall be recognized as a School Based Health Center for Education and Prevention of Oral Disease (hereinafter referred to as "SBHC-EPOD"). From this point forward, any and all references to or in conjunction with the Modular shall be as SBHC-EPOD; and

WHEREAS, the City has approved this use on the Premises at their February 8, 2011 Planning Commission meeting per application number SUP-40647.

NOW, THEREFORE, and in consideration of the mutual terms, conditions, and covenants set forth below, the Parties agree to the following:

1. **Purpose.** This MOU is being created for the purposes of granting the City and Future Smiles permission and authority to enter upon the Premises, and sets forth the respective obligations of the Parties in regards to maintenance and operation of the SBHC-EPOD.

2. **Authorization.** The District authorizes the City and Future Smiles representatives to enter upon the Premises to maintain, repair or conduct improvements on or in the SBHC-EPOD.

3. **Term.** This MOU and the authorization provided herein shall be for a period of five (5) years (hereinafter referred to as "Initial Term"), and shall commence after approval by the governing bodies of the City and District. The official commencement date shall be the date of the latest signing by an authorized representative of the governing bodies of the City and District hereto.

This MOU has the option of renewing for two (2) additional periods of five (5) years upon approval of the governing bodies of the City and District. Upon termination of this MOU, the City will at its expense, remove the SBHC-EPOD from the Premises, and return the Premises to its original condition, reasonable wear and tear expected.

4. **Right of Termination.** The City or District may terminate this MOU and the authorization granted hereunder without cause with written notice. Such termination shall become effective sixty (60) calendar days after written notice is served by the terminating Party on the other Party pursuant to Section 11 Notices.

5. **Use.** The Parties desire that a preventive pediatric dental health care program for the oral health of children be available to any qualifying child within Clark County. An example of these services shall include but not be limited to:

- a. Oral hygiene education
- b. Child prophylaxis
- c. Sealants
- d. Fluoride varnish
- e. Children with oral health needs will be referred to community dental clinics that have agreed to partner with Future Smiles

The Parties have agreed that the proposed use can be conducted on the Premises in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as determined by the City with the approval of the special use permit. The Parties agree to comply with all conditions as stated per SUP-40647.

The City and Future Smiles agree not to assign this MOU, sublet the SBHC-EPOD, use or permit the SBHC-EPOD to be utilized for any purpose other than that described in this MOU, except with the prior written consent and approval of the District. Any such assignment or delegation made without the required consent shall be void, and result in the termination of this MOU.

The City and Future Smiles agree not to allow any liens, mortgages or encumbrances to be placed against the SBHC-EPOD or the Premises during the term of the MOU without the written consent and approval of the District, whose consent shall not be unreasonably withheld.

6. **Maintenance and Repairs Responsibilities.** Future Smiles shall maintain the SBHC-EPOD and every part thereof in a clean, neat, and orderly condition, free of objectionable noise, odors, or nuisance and will in all respects and at all times fully comply with health, safety, and police regulations including all laws, regulations statutes or codes concerning the use, storage, or maintenance of hazardous material

in or around the SBHC-EPOD and the Premises. Future Smiles shall fully fund the operation of the SBHC-EPOD and be responsible for maintenance and custodial care of the SBHC-EPOD. The City will be responsible for the all expenses associated with major repairs to the SBHC-EPOD due to wear and tear. The District will be responsible for the expense associated with maintaining the landscaping on the Premises.

7. **Utility Responsibilities.** The District shall be responsible for and fully and promptly pay all water, gas, heat, power, and other public utilities of every kind associated with the SBHC-EPOD. Future Smiles will be responsible for telephone service, internet connection, custom dental equipment, program supplies and all other operating costs associated with the provision of education and oral health services.

8. **Compliance with Federal, State and Local Laws.** Future Smiles shall obtain and maintain as current any and all federal, state, and local permits and licenses, including required professional licenses, required to operate the SBHC-EPOD as a preventive oral health facility as described in this MOU. Future Smiles further agrees to abide by all applicable federal, state, and local codes regulations, statutes, ordinances, and laws, now in force or which hereafter may be in force with respect to the SBHC-EPOD. Future Smiles also agrees to comply with all District policies, regulations and standards.

9. **Insurance.** Future Smiles shall be responsible for providing and maintaining the following insurance coverages in force for the life of this MOU. The insurance company(ies) must have an A. M. Best rating of A or better and be licensed to write such insurance in the State of Nevada. Future Smiles shall provide to the District and City prior to commencement of this MOU, certificate(s) of insurance verifying required coverage. The insurance carrier shall give the Parties a thirty (30) calendar day written advance notice of any termination, expiration, or any and all changes in the coverage. Deductibles and self-insurance retentions shall be declared in the certificate(s) of insurance. All deductibles/retentions are the sole responsibility of Future Smiles.

Certificate(s) shall evidence the following coverage:

- A. Commercial General Liability Insurance, including contractual liability in accordance with the indemnification requirements in this MOU, and including bodily injury, personal injury, and property damage, with the limits of at least \$3,000,000.00 per occurrence. The general liability insurance shall include coverage for molestation, sexual abuse and corporal punishment, and shall name the Clark County School District and the City of Las Vegas as additional insured.
- B. Professional Liability in an amount no less than \$1,000,000.00 covering the professional liability of the individual dentists and their staffs in performance of this contract.
- C. Statutory Workers' Compensation and Employers Liability in an amount no less than \$1,000,000.00, including a waiver of subrogation in favor of the District and City.
- D. Evidence of Property Insurance in an amount sufficient to cover loss of real and personal property belonging to the City and Future Smiles, including a waiver of subrogation in favor of District and City.

The insurance may be provided under primary policies or by a combination of primary and excess policies.

10. **Indemnity.** Future Smiles, on behalf of itself and its participating dentists and their staff agrees to protect, defend, indemnify, save and hold harmless the District and the City, their governing board, its agents, officers, and employees and assume all costs, expenses, and liabilities of any nature to which the these Parties may be subjected as a result of any claim, demand, action, or cause of action arising out of the activities involving this MOU.

This MOU is being written and is approved at no risk to District. District shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by any Parties to this contract, or by any person who may at any time be using or occupying or visiting the SBHC-EPOD, or be in, on or about the SBHC-EPOD, whether the loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of Future Smiles or of any occupant, visitor, or use of any portion of the SBHC-EPOD. Future Smiles shall protect, defend, indemnify and hold District harmless against any and all claims, liability, loss or damage on account of any such loss, injury, death or damage arising from or related to operations of Future Smiles and/or the SBHC-EPOD during the term of the MOU.

District makes no warranty as to the suitability or safety of the site for the uses intended herein, and Future Smiles assumes all liability and responsibility for their use of said Premises, and accepts Premises and the SBHC-EPOD "as is". Future Smiles hereby agrees to protect, defend all claims, indemnify and hold the District harmless from and against any and all liability (including attorney's fees and costs) which District may incur by reason of use of the Premises and the SBHC-EPOD by or conduct of operations by Future Smiles or its agents, including injury arising by reason of a dangerous and defective condition of the improvements herein.

11. **Notices.** All legal notices required pursuant to this MOU shall be in writing. Any notice required to be given under the terms of this MOU shall be deemed to have been given when, (i) received by the Party to whom it is directed by hand delivery or personal service, (ii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

District Representative: For the purpose of communication, negotiation, or other notices the following will be considered the District's representative.

Clark County School District Real Property Management
Attn: Director
4190 McLeod Drive, 2nd Floor
Las Vegas, NV 89121
(702) 799-5214 Office
(702) 799-5436 Fax

With a Copy to:

Clark County School District Legal Department
Attn: General Legal Counsel
5100 W. Sahara Avenue, 3rd Floor
Las Vegas, NV 89121
(702) 799-5373 Office
(702) 799-5505 Fax

Premises Representative: For the purpose of communication the following will be considered the Premises representative.

Ed. W. Clark High School
Attn: Principal
4291 Pennwood Avenue
Las Vegas, Nevada, 89102
(702) 799-5800 Office
(702) 799-5813 Fax

City Representative: For the purpose of communication, negotiation, or other notices the following will be considered the City's representative

City of Las Vegas
Attn: Real Estate Administrator
333 North Rancho Road, 8th Floor
Las Vegas, NV 89106
(702) 229-1021 Office
(702) 464-2522 Fax

Future Smiles Representative: For the purpose of communication, negotiations, or other notices the following will be considered the Future Smile's representative.

Future Smiles Chair-Elect/Program Manager
Attn: Mary Teresa Chandler, RDH
PMB 155, 2171 W. Craig Road, Suite # 113
Las Vegas, NV 89129
(702) 521-4550 Office
(702) 383-6306 Fax

12. **Alterations, Additions, and Improvements.** At any time during the term of this MOU, Future Smiles, subject to the prior written approval of the District and City and at the sole expense of Future Smiles, may make alterations, additions, and/or improvements in and to the SBHC-EPOD only. Any such alterations, additions and/or improvements shall be performed in a workmanlike manner, in accordance with all applicable governmental regulations and requirements, and shall not weaken or impair the structural strength or lessen the value of the SBHC-EPOD.

13. **Modification and/or Amendments.** No amendments, changes and/or modifications of this MOU shall be valid unless in writing and signed by all Parties. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.

14. **Counterparts; Electronic Delivery.** This MOU may be executed in counterparts, all such counterparts will constitute the same MOU and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

15. **General Conditions.** The laws of the State of Nevada will govern as to the interpretation, validity and effect of this MOU. This MOU is intended only to benefit the Parties hereto and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

The Parties are associated with each other only for the purposes and to the extent set forth in this MOU, and in respect to performance of services pursuant to this MOU, the Parties are and shall be separate and distinct from each other. Nothing contained in this MOU shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other.

Pursuant to NRS 239.010, information or documents in connection with this MOU may be open to public inspection and copying. The Parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

Should any part of this MOU be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable, under any other part of this MOU. Each Party, or responsible representative thereof, has read this MOU and understands the contents thereof. The person(s) executing this MOU on behalf of each Party is empowered to do so and thereby bind the respective Party.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date set forth above.

CITY OF LAS VEGAS

By: _____
Oscar B. Goodman, Mayor

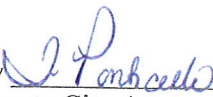
Date

ATTEST:

By _____
Beverly K. Bridges, MMC, City Clerk

Date

APPROVED AS TO FORM & CONTENT:

By 
Deputy City Attorney

4/6/11
Date

CLARK COUNTY SCHOOL DISTRICT

By: _____
Jeff Weiler, Chief Financial Officer

Date

ATTEST:

APPROVED AS TO FORM & CONTENT:

By: _____
C.W. Hoffman, Jr., General Counsel

Date

FUTURE SMILES

By: _____
Stephanie Redwine, Program Administrator

Date

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date set forth above.

CITY OF LAS VEGAS

By: _____
Oscar B. Goodman, Mayor

Date

ATTEST:

By _____
Beverly K. Bridges, MMC, City Clerk

Date

APPROVED AS TO FORM & CONTENT:

By _____
Deputy City Attorney

Date

CLARK COUNTY SCHOOL DISTRICT

By: _____
Jeff Weiler, Chief Financial Officer

Date

ATTEST:

APPROVED AS TO FORM & CONTENT:

By: _____
C.W. Hoffman, Jr., General Counsel

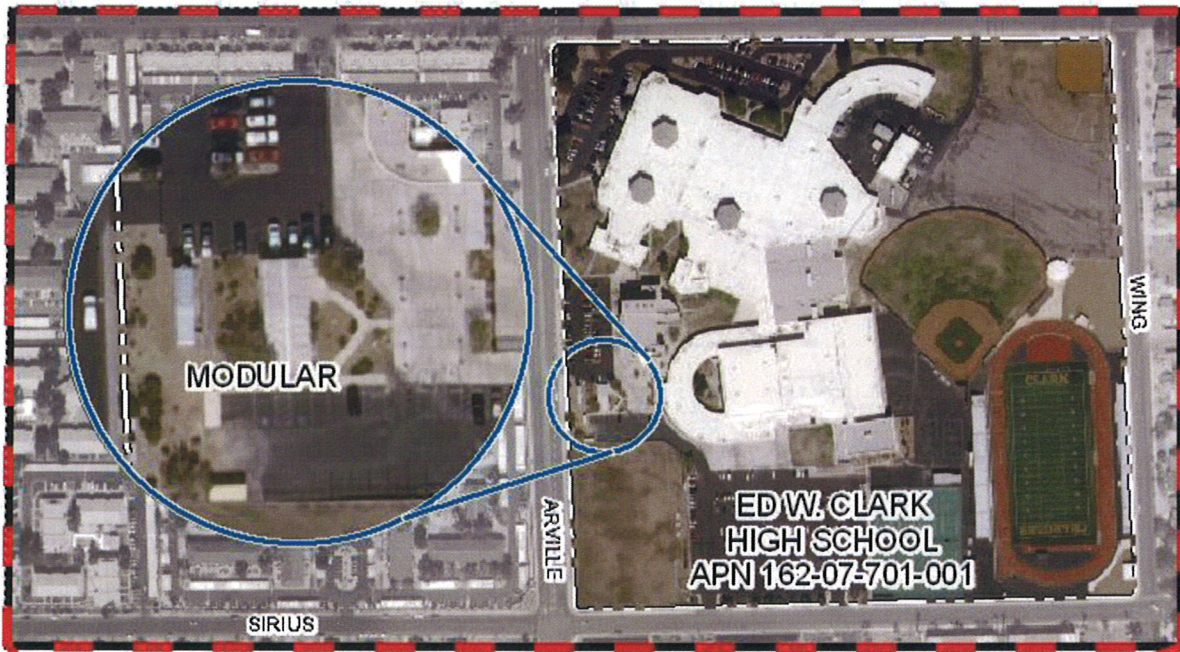
Date

FUTURE SMILES

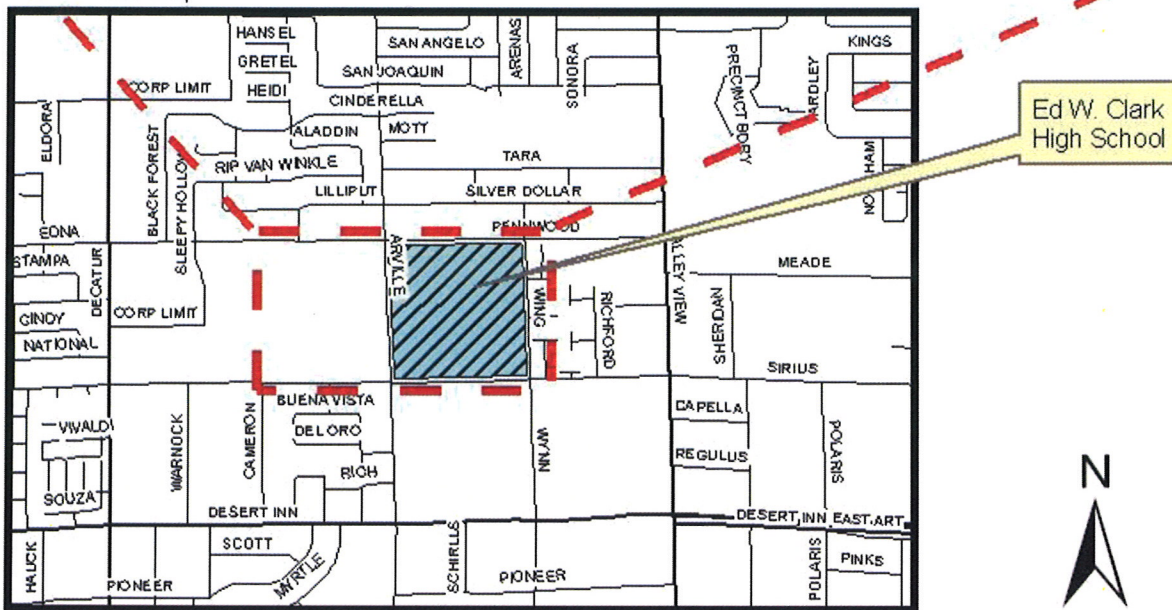
By: Mary Teresa Chandler
Mary Teresa Chandler, Program Manager

5/10/11
Date

Exhibit A



Site Map



Location Map

**MEMORANDUM OF UNDERSTANDING BETWEEN
FUTURE SMILES,
THE CITY OF LAS VEGAS, AND
CLARK COUNTY SCHOOL DISTRICT
AT ED W. CLARK HIGH SCHOOL MODULAR**