



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** August 22, 2019

RE: *Approval of Interlocal Contract between Southern Nevada Health District and the Nevada Department of Public Safety*

PETITION #04-20

That the Southern Nevada District Board of Health (*approve an Interlocal Contract between the Southern Nevada Health District (SNHD) and the Nevada Department of Public Safety where SNHD desires to use the Civil Fingerprint Based Background Check program, pursuant to the National Child Protection Act of 1993, as amended by the Volunteers for Children Act (NCPA/VCA). The Criminal Justice Information Services Systems Agency (CSA) and SNHD desire appropriate safeguards for dissemination of information through the Civil Applicant Fingerprint Response program.*

PETITIONERS:

Maria Azzarelli, *Manager, Chronic Disease Prevention* *M.A.*
John Hammond, *Manager, EMS & Trauma System* *JH*
Michael Johnson, PhD., *Director of Community Health* *MJ*
Joseph P. Iser, MD, DrPH, MSc, *Chief Health Officer* *J. Iser*

DISCUSSION:

The SNHD intends to use the Civil Fingerprint Based Background Check Program to submit fingerprint cards and review resultant Criminal History Record Information (CHRI) as part of the screening process for current and/or prospective employees, volunteers, contractors and vendors who have or may have unsupervised access to children, the elderly or disabled persons for whom SNHD provides services or care. In order to utilize the background check program, the SNHD must enter into an interlocal agreement with the State of Nevada’s Dept of Pubic Safety. This petition will result in the development of that agreement.

FUNDING:

Fees associated with the program shall be assessed by the SNHD in accordance with the most current fee schedule located on the State of Nevada, Department of Public Safety's website (<http://www.rccd.nv.gov>).

**NATIONAL CHILD PROTECTION ACT (NCPA) of 1993, AS AMENDED BY THE
VOLUNTEERS FOR CHILDREN ACT (VCA) FINGERPRINT BASED BACKGROUND CHECK
AGREEMENT BETWEEN**

DEPARTMENT OF PUBLIC SAFETY
Records, Communications and Compliance Division
333 West Nye Lane #100
Carson City, Nevada 89706
Phone: (775) 684-6262 ~ Fax: (775) 684-3290
(hereinafter "CSA")

and

Southern Nevada Health District
(Account/s 150206)
Agency
280 South Decatur Boulevard
Address
Las Vegas, NV 89107
City, State Zip
iser@snhd.org
Contact Email

702-759-1201

Telephone Number

Fax Number

(hereinafter "AUTHORIZED RECIPIENT")

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, AUTHORIZED RECIPIENT desires to use the Civil Fingerprint Based Background Check program (PROGRAM), pursuant to the National Child Protection Act of 1993, as amended by the Volunteers for Children Act (NCPA/VCA). The Criminal Justice Information Services Systems Agency (CSA) and AUTHORIZED RECIPIENT desire appropriate safeguards for dissemination of information through the Civil Applicant Fingerprint Response program; and

WHEREAS, it is deemed that the services hereinafter set forth are both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Agreement shall not become effective until and unless approved by appropriate official action of the contracting entity or board of each party.
2. **DEFINITIONS.**
 - a. **STATE:** The State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.

- b. **APPLICANT:** Person signing the Fingerprint Background Waiver and Acknowledgement Form who is the subject of Criminal History Record Information (CHRI) information sought by the AUTHORIZED RECIPIENT.
- c. **AUTHORIZED RECIPIENT:** Governmental, public, private, for-profit, or not-for-profit entity operating within the State of Nevada authorized to submit fingerprint cards and review resultant CHRI as part of the screening process for current and/or prospective employees, volunteers, contractors and vendors who have or may have unsupervised access to children, the elderly or disabled persons for whom AUTHORIZED RECIPIENT provides services or care.
 - 1) The AUTHORIZED RECIPIENT must designate an individual as a Point of Contact (as defined herein) in addition to a group of individuals to receive CHRI for non-criminal justice functions associated with civil fingerprint submissions. This can include, but is not limited to, the Records Custodian or Hiring Authority charged with determining the hiring and/or suitability of the Applicant based on the fingerprint response.
- d. **APPLICANT NOTICE:** Form signed by the APPLICANT providing APPLICANT's name, address and date of birth, as confirmed by a valid identification document (as defined by 18 U.S.C. § 1028), a statement of any conviction, including a description of the crime and the particulars of the conviction, if any exist, and the APPLICANT's acknowledgment that he/she has been informed of the APPLICANT's rights under 42 U.S.C. § 5119a(2) and that, pending the completion of the background check, the employer may deny APPLICANT access to persons to whom the employer provides care. This form must be maintained on file for an audit cycle in accordance with the Nevada Criminal Justice Information Administrative Policies (POLICY).
- e. **BACKGROUND WAIVER:** Form signed by the APPLICANT must be notified in writing their fingerprints will only be used for the purpose for which it was requested. The AUTHORIZED RECIPIENT must allow a reasonable opportunity to complete and challenge the accuracy of their CHRI and notify the APPLICANT on how to obtain a copy of the FBI record set forth in 28 CFR 16.34. This form must be maintained on file for an audit cycle in accordance with the Nevada Criminal Justice Information Administrative Policies (POLICY).
- f. **CHAIN OF CUSTODY:** Complete record of possession of the APPLICANT's fingerprint cards, which starts when the APPLICANT receives custody of the fingerprint cards. The record of possession is a process to protect the integrity of the APPLICANT's fingerprints.
- g. **CRIMINAL HISTORY RECORD INFORMATION (CHRI):** Any notations or other written or electronic evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person that includes identifying information regarding the individual as well as the disposition of any charges.
- h. **FBI:** Federal Bureau of Investigations.
- i. **POINT-OF-CONTACT:** An employee of the AUTHORIZED RECIPIENT who shall act as the designated liaison between the AUTHORIZED RECIPIENT and the CSA.
- j. **SECURED RECORDS ENVIRONMENT:** A secure file, safe or other security device, such as a locked file cabinet only accessible by the AUTHORIZED RECIPIENT. This includes securing the area to be out of public view and access.

- k. **SPECIAL REQUIREMENTS:** Agency requesting access must be trained on the handling of CHRI prior to an account being opened by the CSA or designated personnel. Outsourcing and off-site storage is prohibited per Public Law 103-209, The National Child Protection Act of 1993, as amended by, Volunteers for Children Act.
- l. **TRAINING (as used in Paragraph 8 – Obligations and Duties of Both Parties):** Training by which the AUTHORIZED RECIPIENT understand and acknowledge the following:
- 1) CHRI must be used only for the purpose for which it was provided
 - 2) CHRI cannot be disseminated outside the receiving department, related agencies, or other authorized entities
 - 3) CHRI must be maintained in a secured records environment
 - 4) CHRI must be destroyed by shredding or burning
3. **CONTRACT TERM.** This Agreement shall be effective immediately upon final signature on this Agreement and shall remain in full force and effect for so long as the AUTHORIZED RECIPIENT uses the PROGRAM, unless sooner terminated by either party as set forth in this Agreement.
4. **TERMINATION.** The CSA may immediately suspend or terminate this Agreement if the AUTHORIZED RECIPIENT or its employees, staff or agents violates any provision of this Agreement which the CSA reasonably believes may jeopardize Nevada's access to federal criminal history information. The violation of any substantive requirement or limitation imposed by federal or state statutes, regulations or rules referred to in this Agreement shall be deemed a breach of a material term of the Agreement.
5. **TERMINATION OF PREVIOUS AGREEMENTS.** This Agreement is intended to supersede all previous agreements between the parties on the same subject matter. All previous agreements between the parties on the same subject matter are hereby terminated upon the effective date of this Agreement.
6. **NOTICE.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.
7. **CONSIDERATION.** The Department of Public Safety, Records, Communications and Compliance Division agrees to provide the services set forth in paragraph (8) based on the good and valuable consideration, including but not limited to, the mutual agreements outlined herein. Fees associated with the PROGRAM shall be assessed by the AUTHORIZED RECIPIENT in accordance with the most current fee schedule located on the State of Nevada, Department of Public Safety's website (<http://www.rccd.nv.gov>).

8. **OBLIGATIONS AND DUTIES OF BOTH PARTIES.** The parties agree the services to be performed shall in accordance with the most current edition of any and all applicable rules, regulations, policies, procedures and law.
- a. When fingerprints are submitted through this program, the AUTHORIZED RECIPIENT agrees that prior to submitting fingerprint cards for a background check the AUTHORIZED RECIPIENT must obtain from the Applicant, a signed Fingerprint Background Waiver authorizing the release of CHRI to the AUTHORIZED RECIPIENT as outlined in POLICY.
 - b. The AUTHORIZED RECIPIENT must maintain the signed Fingerprint Background Waiver and Applicant Notice Waiver on file for each APPLICANT for a timeframe designated in writing by the CSA in accordance with the AUTHORIZED RECIPIENT's mandated audit cycle. The AUTHORIZED RECIPIENT agrees that during this period the Fingerprint Background Waiver and Applicant Notice Waiver shall be accessible to the CSA upon demand. The CSA agrees to provide the AUTHORIZED RECIPIENT with a fingerprint-based response regarding CHRI available at that time.
 - c. In response to a properly executed CHRI request, the CSA shall provide the AUTHORIZED RECIPIENT with all currently available CHRI.
 - d. The AUTHORIZED RECIPIENT shall conduct the necessary research in whichever state and local recordkeeping systems are available in order to obtain complete dispositional data for any incomplete CHRI provided by the CSA.
 - e. The AUTHORIZED RECIPIENT shall be solely responsible for determining whether the Applicant has been convicted of, or is under indictment for, a crime that bears upon the Applicant's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.
 - f. The AUTHORIZED RECIPIENT agrees to designate an individual to be the POINT-OF-CONTACT for its agency to act as the liaison to the CSA. The AUTHORIZED RECIPIENT agrees to notify the CSA within 10 business days, or according to current policy, whichever is more restrictive, in the event of any changes to the POINT-OF-CONTACT.
 - g. The AUTHORIZED RECIPIENT agrees to use Livescan or only FBI FD-258 approved fingerprint cards to submit manual civil fingerprint cards.
 - h. CHRI and the information derived therefrom shall be accessible only to the AUTHORIZED RECIPIENT's designated staff responsible for determining the suitability of the APPLICANT.
 - i. The AUTHORIZED RECIPIENT shall not disseminate CHRI and/or the information derived therefrom outside the State of Nevada, including physically or electronically for any purpose. CHRI must stay with the AUTHORIZED RECIPIENT at all times in a secure records environment.
 - j. CHRI received as a result of this Agreement shall be used solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any unauthorized entity, agency or person. The AUTHORIZED RECIPIENT acknowledges that any unauthorized dissemination of CHRI may subject AUTHORIZED RECIPIENT to civil and criminal penalties under NRS 179A.

- k. All electronic or digital information relating to or derived from the PROGRAM must be accessible only to the AUTHORIZED RECIPIENT, by means of password protection, encryption or other means of authentication, and shall be maintained in a secure records environment which will be subject to technical security requirements and periodic technical audits by the CSA or its authorized agents.
- l. Outsourcing by the AUTHORIZED RECIPIENT of any non-criminal justice functions is prohibited.
- m. All CHRI must be maintained in a secure records environment as outlined, but not limited to the definition in Definitions, Paragraph 2.
- n. The AUTHORIZED RECIPIENT shall not disclose fingerprint-based CHRI to any person in response to a request for public records in accordance with CFR Title 28. The AUTHORIZED RECIPIENT agrees to coordinate with the CSA in response to any and all order of a court of competent jurisdiction or subpoena immediately upon receipt and/or notification.
- o. All AUTHORIZED RECIPIENTS (as defined in Paragraph 2c) with access to CHRI must receive training, including but not limited to the requirements outlined in Paragraph 2 - Definitions, on the handling of CHRI and must provide a signed training form acknowledging they have been informed of and understand the penalties for the misuse of CHRI. (NRS 179A). Additional information regarding training requirements and criteria are located within POLICY.
 - 1) The CSA shall provide training to designated AUTHORIZED RECIPIENT personnel. Subsequent training of additional authorized personnel is the responsibility of the AUTHORIZED RECIPIENT, to include obtaining a signed training acknowledgment form as outlined herein.
- p. AUTHORIZED RECIPIENT agrees to allow the CSA or its authorized agents to conduct compliance audits, with or without prior notice. The AUTHORIZED RECIPIENT also acknowledges and agrees it will allow any directed audits to be conducted to investigate allegations of misuse of CHRI including, but not limited to, questions of security, confidentiality, destruction and dissemination. This Agreement will be reviewed at each compliance audit conducted by the CSA Nevada Criminal Justice Information System (NCJIS) Audit Staff.
- q. The AUTHORIZED RECIPIENT agrees to immediately notify the CSA of any violations of this Agreement.
- r. Accounts will be terminated for failure to pay and will be sent to collections. Please refer to the State of Nevada, Department of Public Safety's website (<http://www.rccd.nv.gov>) for the most current fee schedule.
- s. The CSA reserves the right to seek collection of all unpaid fees by any legal means available, including the use of collections agents or civil actions. This Agreement may be suspended or terminated by either Party with written notice to the address contained herein when, in the reasonable estimation of the CSA or the AUTHORIZED RECIPIENT, a breach of any material term of this Agreement has occurred.
- t. Accounts will not be opened without a fully executed Agreement and all training, as outlined herein, has been successfully completed.

9. **RETENTION.** The retention period begins effective the date of the signed Fingerprint Background Waiver and Applicant Notice Waiver (as referenced in Paragraph 8). Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
10. **BREACH: REMEDIES.** Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, 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 but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs.
11. **LIMITED LIABILITY.** The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.
12. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
13. **INDEMNIFICATION.** Neither party waives any right or defense to indemnification that may exist in law or equity.
14. **WAIVER OF BREACH.** 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.
15. **SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
16. **ASSIGNMENT.** Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.
17. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. In accordance with 28 CFR and NRS 179A, criminal history record information shall not be released as part of a public records request.

- 18. **CONFIDENTIALITY.** Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

- 19. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to perform the services set forth in paragraph (8).

- 20. **GOVERNING LAW: JURISDICTION.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Agreement.

- 21. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the State of Nevada Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

Southern Nevada Health District
SNHD C2000011

_____ Chief Health Officer
Joseph P. Iser, MD, DrPH, MSc Date Title

Department of Public Safety,
Records, Communications and Compliance Division

_____ Administrator,
Mindy McKay Date Records, Communications and Compliance Division
Title