



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** February 20, 2020

RE: *Approval of Interlocal Agreement between Nevada Division of Public and Behavioral Health (DPBH) and the Southern Nevada Health District*

PETITION #35-20

That the Southern Nevada District Board of Health *approves Interlocal Agreement between Nevada Division of Public and Behavioral Health (DPBH) and the Southern Nevada Health District.*

PETITIONERS:

Chad Kingsley, MD, Regional Trauma Coordinator *CK*
John Hammond, BS, EMSTS Manager *JH*
Michael Johnson, PhD., Director of Community Health *MJ*
Fermin Leguen, MD, MPH, Acting Chief Health Officer *FL*

DISCUSSION:

The enactment of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 establishes certain requirements relating to the use, disclosure, and safeguarding of protected health information by persons providing services to covered entities, and both parties have mutually agreed to satisfy such requirements through this agreement.

The Southern Nevada Health District Office of EMS & Trauma System and DPBH have shared interests in providing oversight and system improvement of the Southern Nevada EMS & Trauma System. A data sharing agreement specifying roles, responsibilities and authorized use of the trauma data will formalize existing arrangements regarding data management. It is to the mutual advantage and benefit of both parties to enter into this agreement.

FUNDING:

No funding is required.

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES
 A Contract Between the State of Nevada
 Acting by and Through Its
 Department of Health and Human Services

Agency #1 Name:	Division of Public and Behavioral Health
Address:	4150 Technology Way, Suite 300
City, State, Zip Code:	Carson City, NV 89706
Contact:	Margot Chappel
Phone:	775-684-4041
Email:	mchappel@health.nv.gov

Agency #2 Name:	Southern Nevada Health District
Address:	280 S. Decatur Blvd
City, State, Zip Code:	Las Vegas, NV 89107
Contact:	John Hammond (for Notices, Attn: Contract Administrator, Legal Dept)
Phone:	702-759-1357
Email:	Hammond@snhd.org (for Notices, Contracts@snhd.org)

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, 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 Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 4, Termination*.

Effective from:	Upon Approval	To:	January 20, 2025
-----------------	---------------	-----	------------------

4. **TERMINATION.** This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.

5. **NOTICE.** All notices or other communications required or permitted to be given under this Contract 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.
6. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A:	SCOPE OF WORK AND DELIVERABLES
---------------	--------------------------------

7. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 6, Incorporated Documents* at a cost as noted below:

\$ 0.00	per	N/A
---------	-----	-----

Total Contract or installments payable at:	N/A
--	-----

Total Contract Not to Exceed:	\$ 0.00
-------------------------------	---------

8. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. **INSPECTION & AUDIT.**

A. **Books and Records.** Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

B. **Inspection & Audit.** Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

C. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. 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 Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, 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 the right to seek 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. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.
12. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract 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 Contract after the intervening cause ceases.
13. **INDEMNIFICATION.** Neither party waives any right or defense to indemnification that may exist in law or equity.
14. **INDEPENDENT PUBLIC AGENCIES.** The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract 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 party.
15. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract 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.
16. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract 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 Contract unenforceable.
17. **ASSIGNMENT.** Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.
18. **OWNERSHIP OF PROPRIETARY INFORMATION.** Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.
19. **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.
20. **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 Contract.
21. **FEDERAL FUNDING.** In the event, federal funds are used for payment of all or part of this Contract, Contractor agrees to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:
 - A. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to Executive Orders 12549 and 12689 and Federal Acquisition Regulation subpart 9.4, and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

- B. Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.
 - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), as amended, the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
 - D. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
22. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).
23. **GOVERNING LAW; JURISDICTION.** This Contract 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 Contract.
24. **ENTIRE AGREEMENT AND MODIFICATION.** This Contract 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 Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract 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.
25. **NO PRIVATE RIGHT CREATED.** The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this Contract shall not be construed to create such status. The rights, duties, and obligations contained in the Contract shall operate only between the Parties to this Contract, and shall inure solely to the benefit of the Parties determining and performing their obligations under this Contract.
26. **COUNTERPARTS.** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. Facsimile or electronic transmissions of documents and signatures shall have the same force and effect as originals.


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

Southern Nevada Health District
Public Agency #2

By: _____
Fermin Leguen, MD, MPH Date

Acting Chief Health Officer
Title

Approved as to form:

By: 
Heather Anderson-Fintak, Esq.
Associate General Counsel
Southern Nevada Health District

Division of Public and Behavioral Health
Public Agency #1

for Lisa Sherych Date

Administrator
Division of Public and Behavioral Health
Title

Approved as to form by:

Deputy Attorney General for Attorney General, State of Nevada

On _____
(Date)

ATTACHMENT A

SCOPE OF WORK AND DELIVERABLES

ATTACHMENT A: Scope of Work

This is an agreement between the Division of Public and Behavioral Health (DPBH), within the Nevada Department of Health and Human Services (DHHS) and Southern Nevada Health District (SNHD).

Purpose

The purpose of this agreement is to allow DPBH to receive Trauma Field Triage Criteria (TFTC) data. This data is required to be included in the comprehensive assessment of need required to be completed by DPBH by Assembly Bill (AB) 317 section 8, passed in the 2019 Nevada Legislative Session.

Data Fields

The data fields requested:

- TFTC incident information from the SNHD TFTC database including incident address, transport time, step level, trauma center to which patient was transferred, and date.

Data Security

Data will be maintained at DPBH in a secure network, with access limited to authorized staff within DHHS. Data will not be placed on electronic media such as jump drives. Computers must have password protected screen savers. Hard drives for computers that store or utilize the datasets will be reformatted before further use or destroyed.

Further, DPBH and DHHS will maintain the confidentiality and security of the information in the records in the manner required by relevant Nevada and federal laws. To comply with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, to protect the security, confidentiality, and integrity of protected health information, the Parties will execute a Business Associate Agreement, attached hereto as Exhibit "A-1" to this Attachment A, and expressly incorporated by reference herein.

Under no circumstances shall DPBH or DHHS pass on any of the data it receives from SNHD in whole or in part to any third-party, including other divisions of the State of Nevada, unless SNHD agrees in advance to the involvement of any third-party and is satisfied by the security and confidentiality procedures DPBH and that third-party have established.

No publications made from these data will offer any information that could be used in identifying a particular person within a community. Only aggregated information will be released. DPBH and DHHS will not report numbers or rates on any cell which could threaten confidentiality and/or do not maintain statistical reliability.

All records received under this agreement will be treated by DPBH and DHHS as confidential.

In addition to federal and state laws cited elsewhere in this document, the laws of the State of Nevada shall govern this agreement.

Data will be maintained at DPBH as long as it is required for the purposes outlined above. In the event that this agreement is terminated, or the data is no longer needed, the data will be destroyed or returned to SNHD within 10 calendar days of the termination. Appropriate proof of the destruction of the data will be supplied to SNHD.

How Data Will Be Shared

DPBH will setup a secure network drive through which files can be transferred between SNHD and DPBH. Data will be shared at least once a year and upon reasonable request by DPBH.

ATTACHMENT B: HIPAA Compliance

Confidentiality. The parties shall comply with all federal and state laws, rules, and regulations regarding the confidentiality of patient information, including, but not limited to, compliance with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and the Health Information Technology for Economic and Clinical Health Act, as amended ("HITECH Act"), including all applicable rules, regulations, and official guidance promulgated in connection with HIPAA and the HITECH Act, by the U.S. Department of Health and Human Services or otherwise.