

**CIVIL FINGERPRINT BASED BACKGROUND CHECK
USER 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

CITY OF ELY
Agency
501 MILL STREET
Address
ELY, NV 89301
City, State Zip

Contact Email

(775)289-2430
Telephone Number

(775)289-1463
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 Civil Fingerprint Based Background Check program (PROGRAM), pursuant to NRS Chapter 179A. The Criminal Justice Information Services 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. 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 so the AUTHORIZED RECIPIENT may submit the APPLICANT's fingerprints to receive the APPLICANT's Criminal History Record Information (CHRI) information.
- c. AUTHORIZED PERSONNEL: Employees who have access or proximity to CHRI and who are employed by the AUTHORIZED RECIPIENT.
- d. AUTHORIZED PERSONNEL LIST: An individual or group of individuals, submitted to and approved by the CSA, who play a part in making the determination for suitability or eligibility to work or volunteer for your agency.

- e. **AUTHORIZED RECIPIENT**: Government/Non-Governmental, private for profit/non-profit agency authorized by federal statute, federal executive order, or state statute which has been approved by the United States Attorney General to receive CHRI for non-criminal justice purposes.
 - 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 responsible for determining the hiring and/or suitability of the APPLICANT based on the fingerprint response.
 - f. **BACKGROUND WAIVER**: 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. These forms must be maintained on file for an audit cycle in accordance with the Nevada Criminal Justice Information Administrative Policies (POLICY).
 - g. **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.
 - h. **CONTRACTOR**: Government agency, a private business, non-profit organization or individual that is not itself an AUTHORIZED RECIPIENT with respect to the particular non-criminal justice purpose, who has entered into a contract with the AUTHORIZED RECIPIENT to perform non-criminal justice administrative functions requiring access to CHRI. Must be approved in writing by the CSA.
 - i. **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.
 - j. **FBI**: Federal Bureau of Investigations.
 - k. **POINT-OF-CONTACT**: An employee of the AUTHORIZED RECIPIENT who shall act as the designated liaison between the AUTHORIZED RECIPIENT and the CSA.
 - l. **OUT-SOURCING (as used in Paragraph 8 – Obligations and Duties of Both Parties)**: CONTRACTOR performing non-criminal justice administrative functions (storage, destruction etc.) involving access to Interstate Identification Index information or access to Nevada Criminal Justice Information System (NCJIS) information.
 - m. **SECURED RECORDS ENVIRONMENT**: A secure file, safe or other security device, such as a locked file cabinet only accessible by the AUTHORIZED RECIPIENT/AUTHORIZED PERSONNEL. This includes securing the area to be out of public view and access.
 - n. **TRAINING (as used in Paragraph 8 – Obligations and Duties of Both Parties)**: Training by which the AUTHORIZED RECIPIENT understands and acknowledges 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; and
 - 4) CHRI must be destroyed by shredding or burning
2. **CONTRACT TERM**. This Contract 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 in writing as set forth in this Agreement.

3. **GROUNDS FOR 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.
4. **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.
5. **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.
6. **INCORPORATED STANDARDS.** The parties agree the services to be performed shall be performed in accordance with the most current edition of any and all applicable rules, regulations, standards, policies, procedures and law. This Contract incorporates, by reference, the most current version of the Nevada Criminal Justice Information Administrative Policies (POLICY) and the most current version of the following standards, which can be obtained through the Federal Bureau of Investigation website <https://www.fbi.gov/>:
 - a. SECURITY and MANAGEMENT CONTROL OUTSOURCING STANDARD FOR NON-CHANNELERS;
 - b. SECURITY and MANAGEMENT CONTROL OUTSOURCING STANDARD FOR NON-CHANNELERS/RESPONSIBILITIES
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 Wavier authorizing the release of CHRI to the AUTHORIZED RECIPIENT as outlined in POLICY.
 - b. The AUTHORIZED RECIPIENT must maintain the signed Fingerprint Background 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 shall be accessible upon demand. The CSA agrees to provide the AUTHORIZED RECIPIENT with a fingerprint-based response regarding CHRI available at that time.

- c. 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 policy, in the event of any changes to the POINT-OF-CONTACT.
- d. The AUTHORIZED RECIPIENT agrees to use Livescan or only FBI FD-258 approved fingerprint cards to submit manual civil fingerprint cards
- e. CHRI and the information derived therefrom shall be accessible only to the AUTHORIZED RECIPIENT's AUTHORIZED PERSONNEL responsible for determining the suitability of the APPLICANT.
- f. 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.
- g. CHRI received as a result of this Contract 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.
- h. 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.
- i. All CHRI must be maintained in a secure records environment as outlined herein to include, but not be limited to, a secure file, safe or other security device, such as a locked file cabinet only accessible by the AUTHORIZED RECIPIENT.
- j. The AUTHORIZED RECIPIENT shall not disclose fingerprint-based CHRI to any person in response to a request for public records in accordance with Code of Federal Regulations (CFR) Title 28. The AUTHORIZED RECIPIENT agrees to coordinate with the CSA in response to any and all orders of a court of competent jurisdiction or subpoenas immediately upon receipt and/or notification of such a request.
- k. All AUTHORIZED RECIPIENTS (as defined in Paragraph 1e) with access to CHRI must receive training, including but not limited to the requirements outlined in Paragraph 1 - 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 initial 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. Additional training may be provided at the discretion of the CSA.
- l. 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 Contract will be reviewed at each compliance audit conducted by the CSA Nevada Criminal Justice Information System (NCJIS) Audit Staff.

- m. NRS 179A and CFR Title 28 permit the AUTHORIZED RECIPIENT to outsource non-criminal justice criminal history record checks to a Contractor. Responsibilities of outsourcing may include, but are not limited to, document destruction and screening of job applicants for employment suitability determinations. Any AUTHORIZED RECIPIENT wishing to outsource CHRI administrative functions to a Contractor must execute an Outsourcing Agreement between the AUTHORIZED RECIPIENT and the Contractor. The Outsourcing Agreement must be approved and signed by the CSA. If the AUTHORIZED RECIPIENT outsources some or all of their CHRI administrative functions to a Contractor, both parties must be aware of the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the Interstate Identification Index and criminal history information are not compromised. The security program shall include consideration of site security, dissemination and storage restrictions, personnel security, system security, and data security. In addition, all parties will be subject to FBI and State audits and sanctions.
 - n. The AUTHORIZED RECIPIENT must verify with CSA the following have been completed before any work can be outsourced:
 - 1) Received and understands Security and Management Control Outsourcing Standard and Security and Management Control Outsourcing Standard (OS) Responsibilities.
 - 2) Received training including but not limited to the requirements outlined in Definitions, Paragraph 1n, Obligations and Duties of Both Parties, Paragraph 8k and Security and Management Control Outsourcing Standard (OS) Responsibilities.
 - 3) Executed an Outsourcing Agreement with the AUTHORIZED RECIPIENT. Within 10 days of execution, the AUTHORIZED RECIPIENT must provide a copy of the executed Outsourcing Agreement as submitted and approved by the CSA (in accordance with Security and Management Control Outsourcing Standard (as identified in Paragraph 6).
 - o. The AUTHORIZED RECIPIENT agrees to immediately notify the CSA of any violations of this Agreement.
 - p. 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.
 - q. 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, a breach of any material term of this Agreement has occurred.
9. **DATA INTEGRITY**. It is the responsibility of the AUTHORIZED RECIPIENT to ensure that accurate data is provided to the CSA. The CSA will not manipulate or modify data provide by AUTHORIZED RECIPIENT without express written permission from the AUTHORIZED RECIPIENT. The AUTHORIZED RECIPIENT is required and agrees to have a system in place to check the accuracy of the data provided to the CSA. The CSA will maintain and store data in accordance with established NCJIS policies and JusticeLink specifications.

10. **BREACH; REMEDIES.** Failure of either party to perform any obligation of this Agreement shall be deemed a breach. 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. 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. Contract 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 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 Agreement, and in respect to performance of services pursuant to this Agreement, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement 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 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.
16. **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.
17. **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, except as provided for by this Agreement.



CITY OF ELY

501 Mill Street Ely, Nevada 89301

05/07/2019

Authorized personal with access to criminal history reports:

City Clerk: Jennifer Lee

City Attorney: Chuck Odgers

City Utility Clerk/ Licensing: Julie Spear