

**Carson City
Agenda Report**

Date Submitted: January 6, 2012

Agenda Date Requested: January 19, 2012

Time Requested: consent agenda

To: Carson City Board of Supervisors

From: Carson City District Attorney

Subject Title: For possible action: To approve an Intrastate Interlocal Contract between the State of Nevada Acting By and Through Its Department of Public Safety, Records and Technology Division, Records Bureau and the Carson City District Attorney's Office to provide and receive access to the Nevada Criminal Justice Information System and the State's Law Enforcement Message Switch.

Staff Summary: Adoption of this agreement will allow the Carson City District Attorney's Office to continue to access the Nevada Criminal Justice Information System through the State's Law Enforcement Message Switch for criminal justice purposes.

Type of Action Requested:

(check one)

☐ Resolution

☐ Ordinance

☒ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve an Intrastate Interlocal Contract between the State of Nevada Acting By and Through Its Department of Public Safety, Records and Technology Division, Records Bureau and the Carson City District Attorney's Office to provide and receive access to the Nevada Criminal Justice Information System and the State's Law Enforcement Message Switch.

Explanation for Recommended Board Action: Adoption of this agreement will allow the Carson City District Attorney's Office to continue to access the Nevada Criminal Justice Information System through the State's Law Enforcement Message Switch for criminal justice purposes.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 179A

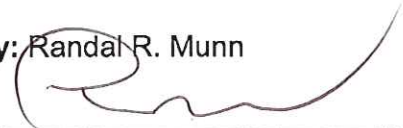
Fiscal Impact: none

Funding Source: n/a

Supporting Material:

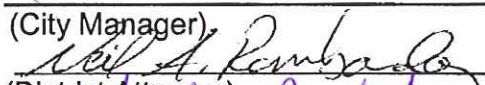
Prepared By: Randal R. Munn

Reviewed By: Randal R. Munn



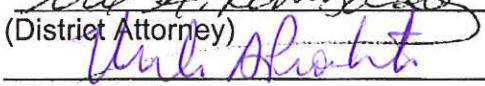
(City Manager)

Date: 1/10/12



(District Attorney)

Date: 1/10/12



(Finance Director)

Date: 1/10/12

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

DEPARTMENT OF PUBLIC SAFETY
RECORDS & TECHNOLOGY DIVISION, RECORDS BUREAU
333 WEST NYE LANE, SUITE 100, CARSON CITY, NEVADA 89706
PHONE (775) 684-6262 FAX (775) 684-6265
(hereinafter "State")

and

CARSON CITY DISTRICT ATTORNEY'S OFFICE
885 EAST MUSSER STREET, SUITE 2030, CARSON CITY, NEVADA 89701
PHONE (775) 887-2070 FAX (775) 887-2129
(hereinafter "User")

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, THE AUTHORITY GRANTED TO THE **State** to enter into this contract with the **User** is pursuant to NRS chapter 179A; 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 upon approval and shall remain in full force and effect until terminated by either party as provided for in this contract, including, but not limited to, the incorporated Attachment A: Scope of NCJIS **User** Agreement. This Contract will be reviewed at each compliance audit by the NCJIS Audit Staff.
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 the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF NCJIS USER AGREEMENT

7. **CONSIDERATION.** The **State** agrees to provide the services set forth in paragraph (6) pursuant to the provisions of NRS chapter 179A. The **User** agrees, in return, to comply with those items and requirements as set forth in paragraph (6).

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.

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 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 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. 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).

22. 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.

23. 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.

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

USER

By: _____

Title: _____

Date: _____

By: _____

Representative from Political Subdivision
Approving Agreement (If necessary)

Title: _____

Date: _____

DEPARTMENT OF PUBLIC SAFETY

By: _____

Title: Chief, Records & Technology Division

Date: _____

By: _____

APPROVED AS TO FORM:
Deputy Attorney General

Date: _____

ATTACHMENT A: SCOPE OF NCJIS USER AGREEMENT

WITNESSETH

- 1) The Nevada Criminal Justice Information System and the State's Law Enforcement Message Switch (hereinafter referred to as "NCJIS") is a computerized information and electronic message switching system established as a service to all local, state and federal criminal justice and public safety agencies, as well as, other NCJIS approved non-criminal justice governmental agencies. The objective is to maintain an efficient, effective and accurate system, that will provide for the automated exchange of law enforcement, criminal justice, public safety, motor vehicle and drivers license information to all authorized system USERS.
- 2) Through this program, any public or private entity who does not serve in a criminal justice capacity as defined by NRS 179A.020 - 179A.030 or an entity as defined in NRS 432B and 424, will not be given on-line terminal access to criminal history record information. On-line terminal access to wanted person and other law enforcement, public safety, motor vehicle and driver's license information is at the discretion of, and subject to the recommendation of the Criminal Justice Information System (CJIS) Systems Officer (CSO) and approval by the Director of the Department of Public Safety. However, any public or private entity may make application for criminal history record information through the Central Repository for Nevada records of criminal history and/or its Civil Name Check Program which is not regulated by the terms and conditions of this agreement, but available through the Records and Technology Division a Division of the Department of Public Safety, CJIS Systems Agency (hereinafter "CSA") under a separate agreement that was developed for that purpose.
- 3) The CSA, through its CJIS Systems Officer (CSO), will maintain and administer management control, with respect to the NCJIS Administrative Policies, the NCJIS Operating Procedures, system access, terminal and operator configurations, quality control, validations, service evaluations, training requirements, technical and operational security policies, new applications, compliance audits and system discipline. Said management control will include not only NCJIS, but all other automated computer systems or programs that are accessed through NCJIS or administered by the CSA and referenced in this agreement. These are: the National Crime Information Center ("NCIC"), The International Justice and Public Safety Network ("NLETS"), the Western Identification Network ("WIN"), the California Law Enforcement Telecommunications System ("CLETS"), the National Instant Check System ("NICS"), and the National Integrated Automated Fingerprint Identification System ("IAFIS").
- 4) While the CSA, through the CSO, maintains and administers management control of NCJIS, as well as, all programs accessed through NCJIS, the Director of the Department of Public Safety has the final authority.
- 5) In addition, the NCJIS Steering Committee was established to provide assistance in the development of and enhancements to the NCJIS data base. The NCJIS Steering Committee provides recommendations for technical and operational design development. The NCJIS Steering Committee is further broken down into the Northern Technical Subcommittee and Southern Technical Subcommittee comprised of TACs and NCJIS users. Through topics presented at these regional meetings, the NCJIS Steering Committee members act as a conduit of information from all users/contributors to NCJIS for the purpose of bringing information to the CJIS Systems Officer.

NOW THEREFORE, being duly enlightened of the foregoing representations and promises, conditions and other valuable considerations obtained herein or incorporated by reference, the parties, by representation of authorized officials, do mutually covenant as follows:

- 1) Through this program, the CSA agrees to provide the USER with access to NCJIS, through the Nevada State Law Enforcement Message Switcher and through telecommunication lines, as well as, drops and ports of entry, provided that such access and any computer interfaces remain under the management control of a criminal justice agency, a public safety or NCJIS approved governmental agency and the agency abides by the technical security requirements as outlined in policy.
- 2) The CSA agrees to provide training pursuant to policies for all terminal agency and assistant terminal agency coordinators ("TAC" and "ATAC"), other agency personnel and administrators pursuant to policy. The NCJIS Training Policies include the mandatory NCIC training standards for terminal operators, criminal justice practitioners, and agency administrators.
- 3) The USER agrees to abide by all NCJIS administrative policies and operating procedures of NCJIS, including NCIC, NLETS, WIN, CLETS, NICS and IAFIS, as well as, laws and regulations of this state and the Federal government that are adopted by or imposed upon the CSA, to the extent that they are applicable to the information provided under this agreement.
- 4) Financing and budgeting for access to NCJIS shall be accomplished in accordance with the NCJIS Administrative Policies. Agencies that have been approved for terminal access will be responsible to budget funds for the initial connection, additional connections, compatible computer and terminal equipment, continuing line costs, or any costs associated with additional circuitry and technical security between the agency and NCJIS.
- 5) USER agrees to locate all devices, i.e., terminals, printers, etc., with access to NCJIS, or any other systems accessed through the NCJIS, in a secure area out of public view, or where unauthorized access cannot be gained. This includes the use of the sign-on/sign-off function and the security of individual user IDs and passwords.
- 6) Indirect non-terminal agency ("NTA") access to NCJIS or its ancillary systems through an NCJIS Terminal Agency ("TA") can only be made through a formalized user agreement or letter of understanding between the parties, which must include training of applicable non-terminal agency personnel by the TA. All transactions made by the NCJIS TA for the NTA through NCJIS must be done by using the NTA's assigned Originating Agency Identifier ("ORI") or by maintaining a log of the transaction. If records that require hit confirmation are entered by the NCJIS TA for the NTA, then the NCJIS TA must be available to confirm hits 24 hours a day, 7 days a week.
- 7) USER agrees to implement policies and procedures to protect all information obtained through NCJIS or any other systems accessed through the NCJIS from unauthorized access, alteration, or destruction.
- 8) Since the administrative policies of all of the systems accessed through NCJIS remain broad in their interpretation, it is the responsibility of the USER to adopt and implement internal written procedures that are relevant to their agency's use of NCJIS and its ancillary systems. These internal procedures may not be contrary, or in any way, supersede law or the established administrative policies or operating practices relating to these systems.
- 9) USER agrees to limit the use of all information obtained through NCJIS for the authorized purpose for which it was intended and to securely destroy the information when it is no longer needed. USER further acknowledges that the information obtained through NCJIS is susceptible to change, and therefore USER must assure that measures will be take to obtain the most current and accurate information through NCJIS.
- 10) Misuse of any information obtained via NCJIS may be grounds for the imposition of sanctions in the form of cancellation of records and/or discontinuance of service through NCJIS upon confirmation of misuse, continued non-compliance or technical violations occurring against any of the systems.

- 11) Authority to access NCJIS criminal history record information or NCIC Interstate Identification Index ("III") is limited to criminal justice agencies and entities as defined in NRS 432B and 424 may be used only for authorized purposes. USER agrees to abide by appropriate purpose code uses as defined in the NCJIS Administrative Policies and NCIC Operating Manual. USER agrees that III will never be inquired upon for non-criminal justice purposes, such as licensing, employment or regulatory purposes unless authorized by the FBI and State statute. Unauthorized disclosure or misuse of data by the USER or its employees can be cause for imposition of sanctions and possible cancellation of service provided by this agreement. The CSA will monitor system use, as necessary, concerning inquiries made of the system to detect possible misuse.
- 12) System integrity and the completeness and accuracy of information entered into the system is paramount and the USER will allow the NCJIS Audit Staff to conduct compliance audits, to review USER's records to assure reliability of stored data and make corrections of non-valid data discovered as a result of the audit. Measures for purging or canceling entries will be adhered to for enhancing reliability of all data. NCJIS compliance audits, as well as, directed audits are also conducted for the purpose of investigating any allegation(s) of misuse regarding NCJIS, or any other system accessed through NCJIS.
- 13) USER agrees to appoint a Terminal Agency Coordinator ("TAC") to represent and speak on behalf of their agency. All requests concerning NCJIS must be coordinated through the TAC. This individual may make recommendations to the USER regarding needed policy changes within the agency that are relevant to NCJIS. The USER may also elect to appoint an Assistant Terminal Agency Coordinator ("ATAC") to assist the TAC with system duties and responsibilities. Both the TAC and ATAC shall meet the minimum qualifications as stated in the NCJIS Administrative Policies. The TAC is responsible for ensuring compliance with all applicable laws, rules, regulations, policies and procedures governing NCJIS and its ancillary systems. The TAC serves as a central point in his/her agency for managing record validations, quality control matters, dissemination of manuals and other NCJIS publications, NCJIS system security matters, agency personnel training, training of all non-terminal agency personnel, agency self-audits, NCJIS compliance audits and any problems concerning NCJIS usage.
- 14) USER agrees to ensure that the TAC is available during hours that are conducive to the administration of NCJIS and to be the liaison between the USER and the NCJIS Staff with regard to NCJIS. If a new TAC is designated or as ATACs change, the USER agrees to immediately notify the CSA in writing.
- 15) USER agrees to provide training within their own agency, pursuant to the NCJIS Training Plan and the mandatory NCIC training standards.
- 16) USER shall ensure that a thorough background screening of personnel is conducted. State and national fingerprint-based record checks must be conducted within 30 days upon initial employment or assignment for all personnel, including appropriate IT personnel, having access to information from NCJIS or its ancillary systems. USER must also screen custodial, support, and/or contractor personnel accessing terminal areas and records storage areas containing said data.
- 17) USER agrees that access will not be granted until all necessary forms, documents and agreements have been satisfactorily completed and/or signed and returned to the CSA. USER agrees to not make any changes in the location of any terminal equipment/device or discontinue or alter service, unless advance notification is made in writing by the TAC or ATAC to the CSA. For additional access, USER agrees to request said access in writing by the TAC or ATAC to the CSA.
- 18) USER agrees that any requests to provide functions and/or make changes in terminal operators, user IDs, etc., requires written notification by the TAC or ATAC to the CSA.

- 19) USER agrees that all correspondence and requests relating to the CSA shall be done through the CSO, Programs Development and Compliance Unit at 333 West Nye Lane, Suite 100, Carson City, Nevada, 89706; or fax (775) 684-6268.
- 20) Any contract or changes to the USER's agency which would affect the operation or management control of NCJIS, such as privatization, must be brought to the attention of the CSA prior to such changes.
- 21) The conditions of this Agreement are not optional and may not be modified.

TERMINATION

The CSA may purge records, suspend or terminate access to NCJIS, when in its reasonable estimation, a violation of a specific term of this agreement or of any substantive requirement or limitation imposed by NCJIS, state or Federal statutes, regulation or rules incorporated into this agreement occurs, of which shall be deemed a breach of terms.

In the event of termination of this agreement, any real or personal property used to carry out the provisions of this agreement shall be disposed of by the party having the responsibility for financing the acquisition and maintenance of such.