

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHERRY HILLS
VILLAGE APPOINTING KEVIN T. ELLMANN AS THE PRESIDING
MUNICIPAL JUDGE AND APPROVING A PROFESSIONAL SERVICES
AGREEMENT**

WHEREAS, the City Council of the City of Cherry Hills Village (the "City") is authorized by Section 7.1(b) of the City's Home Rule Charter ("Charter") and Section 2-4-40 of the City's Municipal Code to appoint a Municipal Judge to preside over the City of Cherry Hills Village Municipal Court for a term to be at the pleasure of City Council; and

WHEREAS, Judge John F. (Jeff) Welborn has served the City as an Alternate Municipal Judge for the City from 2015 to 2019, and was appointed by City Council to serve as the Cherry Hills Village Presiding Municipal Judge effective November 5, 2019; and

WHEREAS, after continuous service as a municipal judge of the City for over ten years, Judge Welborn notified City Council of his intention to retire from that service, creating a vacancy in the position of Presiding Municipal Judge; and

WHEREAS, City Council has regretfully accepted Judge Welborn's resignation effective as of October 31, 2025; and

WHEREAS, after interviewing respondents to a request for proposal for municipal judge services that the City issued on September 17, 2025, City Council desires to appoint Kevin T. Ellmann to the position of Presiding Municipal Judge; and

WHEREAS, City Council desires to memorialize the terms and conditions of Kevin T. Ellmann's appointment through the attached professional services agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, THAT:

Section 1. Appointment of Kevin T. Ellmann. The City Council hereby: (1) appoints Kevin T. Ellmann to the position of Presiding Municipal Judge effective November 1, 2025, to serve at the pleasure of City Council; (2) approves the Professional Services Agreement for the Presiding Municipal Judge between the City of Cherry Hills Village and Kevin T. Ellmann ("Agreement") in substantially the same form as attached hereto as **Attachment A**, subject to minor modifications approved by the City Attorney, and (3) authorizes the Mayor to execute the Agreement in final form.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the City Council.

Introduced, passed and adopted at the regular meeting of the City Council this 21st day of October, 2025, by a vote of 5 yes and 0 no.

(SEAL)

Kathleen O'Brown
Kathleen Brown, Mayor

ATTEST:

Laura Gillespie
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

Kathie B. Guckenberger
Kathie B. Guckenberger, City Attorney

Attachment A to Resolution 29, Series 2025



**CITY OF CHERRY HILLS VILLAGE
PROFESSIONAL SERVICES AGREEMENT
(Judicial Services - Presiding Municipal Judge)**

THIS AGREEMENT ("Agreement") is made this 21st day of October, 2025, by and between **Kevin T. Ellmann** (the "Presiding Municipal Judge" or "Judge") and the **CITY OF CHERRY HILLS VILLAGE, COLORADO**, a home rule municipal corporation of the State of Colorado (the "City"), each of which are referred to individually as a "Party" and collectively as the "Parties."

RECITALS AND REPRESENTATIONS

WHEREAS, the City is authorized by Section 7.1(b) of the Home Rule Charter ("Charter") and Section 2-4-40 of the Cherry Hills Village Municipal Code ("Code") to appoint a Presiding Municipal Judge to preside over the Municipal Court; and

WHEREAS, pursuant to Section 7.1(b) of the Charter, the Municipal Court shall be presided over and its functions exercised by one or more municipal judges, appointed by the Council for a term to be at the pleasure of the Council, with the municipal judges receiving compensation in an amount to be fixed by the City Council from time to time; and

WHEREAS, Kevin T. Ellmann has held himself out to be qualified to serve as a municipal judge for the City in compliance with Section 2-4-40(b) of the Code, and City Council desires to appoint Kevin T. Ellmann to the position of Presiding Municipal Judge; and

WHEREAS, the Presiding Municipal Judge desires to accept the appointment under the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promise and covenants set forth below, the City and the Presiding Municipal Judge agree as follows:

- 1. APPOINTMENT.** Pursuant to Resolution 29, Series 2025 adopted by the City Council contemporaneously with the approval of this Agreement, Kevin T. Ellmann is appointed to serve as the Presiding Municipal Judge for the City's Municipal Court effective November 1, 2025. The City may appoint, at the City's expense, other judges as the City determines to be in its best interest.
- 2. EFFECTIVE DATE; SERVICE AT THE PLEASURE OF CITY COUNCIL; NOTICE REQUIRED FOR RESIGNATION.** This Agreement will commence on November 1, 2025 ("Effective Date") and the Presiding Municipal Judge shall serve at the pleasure of City Council. The Presiding Municipal Judge may resign from such position upon 60 days' advance written notice to the Mayor and City Manager, which notice may be via electronic mail, unless a shorter notice period is agreed to by City Council. The Presiding Municipal Judge shall provide the City with a current electronic mail address.
- 3. DUTIES.** The Presiding Municipal Judge promises to perform the duties required by and set forth in Section 7.1 of the Charter and Chapter 2, Article IV of the Code (the "Services"). While fulfilling these duties, the Presiding Municipal Judge is expected to:

- A. Preside over and attend all court dates for arraignment and trials, unless other arrangements have been made for coverage, and prepare in advance for such matters.
- B. Conduct arraignments, trials, hearings, sentencings, and case dispositions. Issue written and/or oral findings and judgments when necessary.
- C. Manage the courtroom to ensure efficiency, orderliness, and justice.
- D. Ensure that all defendants understand their rights and, if applicable, knowingly waive their rights.
- E. Explain the law and legal systems to defendants, provided that in no case shall such explanation imply any requirement to provide legal advice.
- F. Evaluate evidence, testimony, and legal pleadings.
- G. Interpret and apply appropriate ordinances, municipal code provisions, and regulations.
- H. Impose fines and penalties as prescribed by the Code or ordinances. Assess and oversee collection of penalties.
- I. Order and enforce contempt, failure to appear, abatement of nuisance, and other requirements of the Code or City ordinances.
- J. Consult with the City as requested to support the City in the ongoing development and administration of the municipal court.
- K. Provide City Council with annual communication about the Court performance, including a self-evaluation if requested.
- L. Review, evaluate, and advise City Council as requested on possible municipal code updates to modernize the City Code.
- M. Maintain, at his own expense, qualifications required by the Charter and Code. The Judge shall provide the City with a copy of his current license to practice law prior to the execution of this Agreement and on or before November 1 of each subsequent year in which this Agreement is in effect.
- N. Enroll, at his own expense, in judicial training programs that, in the opinion of the City and the Judge, will enhance or maintain the Judge's expertise in performing the Services.

The City will not instruct the Presiding Municipal Judge as to how to conduct court sessions or how to adjudicate the cases that come before him.

The Presiding Municipal Judge agrees at all times during the duration of this Agreement to comply with the Colorado Municipal Court Rules, the Constitutions and applicable laws of the United States and the State of Colorado, and the ordinances, resolutions and regulations of the City.

4. CONFLICTS OF INTEREST.

- a. Consistent with the Colorado Rules of Professional Conduct, including without limitation, Rules 1.7, 1.9, and 1.10 of those Rules, and to avoid any conflicts of interest or the appearance of impropriety in his performance of the Services, the Presiding Municipal Judge voluntarily warrants and agrees that as of the Effective Date of this Agreement, and for the duration of this Agreement, neither he nor his law firm or members or associates thereof will accept or participate in any cases in which he or they represent defendants in municipal courts in the State of Colorado, and will withdraw from any such pending cases on or before the Effective Date. The Parties acknowledge and agree that City Council's appointment of the Presiding Municipal Judge and approval of this Agreement is subject to and conditioned upon the Presiding Municipal Judge's initial and

ongoing compliance with this Paragraph 4, which operates as a condition precedent, and that failure to comply with this term will constitute a material breach of this Agreement.

- b. The Presiding Municipal Judge shall refrain from any activities that might constitute a conflict of interest, including but not limited to representing parties adverse to the City, representing officials or employees of the City, representing applicants for permits, licenses, or other approvals from the City, and representing any parties having financial or legal dealings with the City.
5. **INDEPENDENT CONTRACTOR.** The Presiding Municipal Judge shall perform the Services as an independent contractor, shall make no representation that he is a City employee for any purpose, and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee, or other relationship with the City. This Agreement does not require the Presiding Municipal Judge to work exclusively for the City, and nothing contained herein shall be construed to limit the right of the Presiding Municipal Judge to engage in other employment or independent contractor positions, whether in the legal field or otherwise, provided that such employment or position does not create a conflict of interest with the performance of the Presiding Municipal Judge's duties to the City pursuant to applicable laws or rules and as set forth in Paragraph 4 of this Agreement. This Agreement shall not be interpreted as the City dictating or directing the Presiding Municipal Judge's performance or the time of performance beyond a range of mutually agreeable court sessions and special projects or services, but shall be interpreted as the Presiding Municipal Judge's offer and the City's acceptance of terms and conditions for performance of the Services. Notwithstanding the foregoing, if the City wishes to expand or change the current court sessions, it will coordinate the new schedule with the Presiding Municipal Judge's availability; however, the City will make the final decision concerning the dates and times of the Municipal Court sessions.

The Presiding Municipal Judge's business operations shall not be combined with the City by virtue of this Agreement, and the City will not provide any training to the Presiding Municipal Judge beyond that minimal level required for the performance of the Services. The Parties acknowledge and agree that the Presiding Municipal Judge may require some assistance or direction from the City in order for the Services to meet the City's contractual expectations.

6. **LIABILITY FOR EMPLOYMENT-RELATED RIGHTS AND COMPENSATION.** The City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to the Presiding Municipal Judge or any other liabilities whatsoever, unless otherwise specifically provided herein. Except as provided in Chapter 2, Article IV of the City's Municipal Code, the City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Presiding Municipal Judge including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation, disability, injury, or health; professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

PRESIDING MUNICIPAL JUDGE ACKNOWLEDGES THAT PRESIDING MUNICIPAL JUDGE IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS FROM THE

CITY. PRESIDING MUNICIPAL JUDGE FURTHER ACKNOWLEDGES THAT PRESIDING MUNICIPAL JUDGE IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS. PRESIDING MUNICIPAL JUDGE ALSO ACKNOWLEDGES THAT PRESIDING MUNICIPAL JUDGE IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

7. **ADMINISTRATIVE SUPPORT.** The City, through the legislative appropriation of funds for the operation of the municipal court, shall at all times provide suitable facilities for the conduct of the public sessions of the municipal court, as well as the administrative functions of the office of the clerk of the municipal court. The City shall have the exclusive right to designate the courtroom facilities and the location of the office of the municipal court staff. Notwithstanding the foregoing, the Parties acknowledge and agree that, except as set forth in this Agreement and Section 7.1 of the Charter, the Presiding Municipal Judge will be responsible for ensuring he has access to all professional equipment and resources necessary to perform the duties and functions set forth herein, including but not limited to legal research systems, databases, and materials.
8. **LIMITED PURPOSE.** This Agreement shall in no manner limit or restrict the powers, duties and prerogatives of the Presiding Municipal Judge under applicable statutes or the other ordinances or regulations of the City. If such conflict arises, the offending provision or provisions of this Agreement shall be null and void, and entirely severable from the other provisions of this Agreement.
9. **COMPENSATION.** The Presiding Municipal Judge shall be paid for performing the Services at the following rates, which are not dependent upon the outcome of the matters he will decide:
 - Regular court sessions: **Eight Hundred Seventy-Five Dollars and No Cents (\$875.00).**
 - Jury trials outside of regular court sessions: **One Hundred Seventy-Five Dollars (\$175.00) per hour.**
 - Special projects or services outside of regular court sessions or trials (as identified in Paragraphs 3.J, 3.K, and 3.L of this Agreement): **One Hundred Sixty Dollars (\$160.00) per hour.**

Special projects or services, such as meetings with City Council and staff and providing insight into Code provisions or court operations, must be requested by the City Council or City Manager in writing, which may be via electronic mail, prior to their performance.

The Judge shall submit an invoice for the judicial services to the City's Director of Finance and Administration within thirty (30) days following the end of a calendar month in which Services are rendered, and the City shall pay all compensation due and owed, based on Services rendered in that month, at regular intervals consistent with the City's normal accounts payable practices. Services billed at an hourly rate shall be billed in increments of one-tenth (0.1) of an hour per task. The rates set forth herein shall be effective for the duration of this Agreement, without modification unless agreed by the Parties in writing.

10. **REIMBURSABLE EXPENSES AND COSTS.** The Presiding Municipal Judge is not entitled to reimbursement for vehicle mileage expenses, training, continuing education, or any other personal expenses or costs associated with performing the duties associated with this Agreement.

11. CODE OF JUDICIAL CONDUCT. The Presiding Municipal Judge promises to comply with the Colorado Code of Judicial Conduct, as adopted and amended by the Supreme Court of Colorado, during the performance of judicial duties as authorized by law. The Office of Attorney Regulation Counsel will determine any grievance or complaint.

12. CITY CODE OF ETHICS. The Presiding Municipal Judge promises to abide by the City's Code of Ethics, as set forth in Chapter 2, Article IX of the City's Municipal Code, as may be amended from time to time.

13. APPOINTMENT SUBJECT TO PROVISIONS OF MUNICIPAL CHARTER AND CODE. The Presiding Municipal Judge will, during the performance of his duties, be bound by this Agreement and the provisions of the Charter and Code, as may be amended from time to time.

14. CRIMINAL JUSTICE INFORMATION ("CJI") SECURITY ADDENDUM. The Presiding Municipal Judge acknowledges that, at times, he will need to view Criminal Justice Information ("CJI"). CJI shall only be accessed on computers provided to the Presiding Municipal Judge by the City. The CJIS Security Addendum, attached hereto as **Exhibit A**, is hereby incorporated herein by this reference. The Municipal Judge will execute the attached copy of the CJIS Security Addendum upon executing this Agreement.

Under this Paragraph 14, the Municipal Judge may only access CJI on City computers. Therefore, only City computers are subject to the attached CJIS Security Addendum.

15. ANNUAL APPROPRIATIONS. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

16. ENTIRE AGREEMENT. This Agreement and any City Charter provision, ordinance, or state statute (if applicable) governing the conduct and terms of the appointment of the Presiding Municipal Judge constitutes the entire agreement between the Parties.

17. NOTICE. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first-class United States Mail, to the party at the address set forth below.

If to the City:

City of Cherry Hills Village Attn: City Manager 2450 E. Quincy Avenue Cherry Hills Village, Colorado 80113	Kevin T. Ellmann 3740 Dacoro Lane, Suite 200 Castle Rock, CO 80109
With Copy to: Cherry Hills Village City Attorney Michow Guckenberger McAskin LLP 5299 DTC Boulevard, Suite 300 Greenwood Village, CO 80111	With Copy to: (none)

18. **SEVERABILITY.** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.
19. **AMENDMENTS.** The terms and conditions of this Agreement may be modified only by written amendment executed by the Presiding Municipal Judge and the City.
20. **GOVERNING LAW AND VENUE.** This Agreement must be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement must be in the appropriate court for Arapahoe County, Colorado.
21. **NO WAIVER.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
22. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be construed to waive, limit, or modify any judicial or governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
23. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
24. **PROTECTION OF PERSONAL IDENTIFYING INFORMATION.** If the Services include or require the City to disclose to the Presiding Municipal Judge any personal identifying information as defined in C.R.S. § 24-73-101, Presiding Municipal Judge shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party service providers.
25. **RELEASE OF INFORMATION.** The Presiding Municipal Judge shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services.
26. **PERSONAL SERVICE; NO ASSIGNMENT.** This agreement is personal in nature, and neither this Agreement nor any of the rights or obligations of the Presiding Municipal Judge hereto shall be assigned, delegated, or subcontracted.
27. **NO THIRD-PARTY BENEFICIARIES.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of the Presiding Municipal Judge. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
28. **AUTHORITY.** The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Cherry Hills Village and the Presiding Municipal Judge and bind the respective Parties.
29. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the

Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

30. FORCE MAJEURE. Neither the Presiding Municipal Judge nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

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Signature page follows

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CITY OF CHERRY HILLS VILLAGE

Kathleen Brown
Kathleen Brown, Mayor
Pursuant to Resolution 29, Series 2025

Date: 10/21/25

ATTEST:

Laura Gillespie
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

Kathie B. Guckenberger
Kathie B. Guckenberger, City Attorney

PRESIDING MUNICIPAL JUDGE

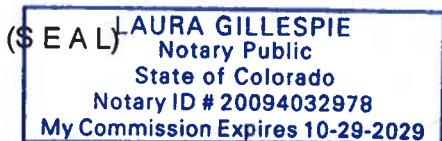
Kevin T. Ellmann
Kevin T. Ellmann

Date: 10/28/25

STATE OF COLORADO)
COUNTY OF ARAPAHOE) ss.
)

The foregoing Presiding Municipal Judge Professional Services Agreement was subscribed, sworn to and acknowledged before me this 28th day of October, 2025, by Kevin T. Ellmann.

My commission expires: 10/29/29



Laura Gillespie
Notary Public

EXHIBIT A

FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM

Legal Authority for and Purpose and Genesis of the Security Addendum

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security

addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§ 20.33 Dissemination of criminal history record information.

- a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:
 - 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
 - 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
 - 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power

and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security which have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as “security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.”

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1.00 Definitions

1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2.00 Responsibilities of the Contracting Government Agency.

2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

3.00 Responsibilities of the Contractor.

3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4.00 Security Violations.

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

- a. Investigate or decline to investigate any report of unauthorized use;
- b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Information Security Officer

Criminal Justice Information Services Division, FBI

1000 Custer Hollow Road

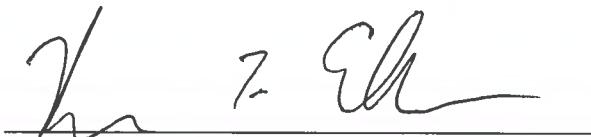
Clarksburg, West Virginia 26306

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

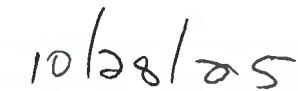
CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.



Printed Name/Signature of Contractor



Date



Printed Name/Signature of Contractor Representative

Date



Organization and Title of Contractor Representative