



## CITY COUNCIL AGENDA

**Tuesday, May 24, 2016**

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, May 24, 2016, at 5:30 p.m. in the City Council Chambers located at 307 East 4<sup>th</sup> Street, Big Spring, Texas.

**As a courtesy to those in attendance, please place your cell phone on “Silent” or “Vibrate.”**

**Please, no talking during the meeting; take any conversations outside, so others can hear.**

**Thank You!**

**The City of Big Spring City Council reserves the right to consider business out of the posted order, and at any time during the meeting, reserves the right to adjourn into executive session on any of the above posted agenda items which are not listed as executive session items and which qualify to be discussed in closed session under Chapter 551 or the Texas Government Code.**

### Open Session

1. Call to Order McLellan
2. Invocation by Pastor Scott Kirkland of Trinity Baptist Church McLellan
3. Pledge of Allegiance to the United States Flag and to the Texas State Flag McLellan

**“Honor the Texas flag; I pledge allegiance to thee, Texas, one State under God, one and indivisible.”**

**Public Hearing Comments** – The Council will take public input on public hearing items **prior** to any Action. Each member of the public should make remarks **from the podium** and **begin by stating his/her name**. Citizens will be limited to **three minutes**, unless waived by the Mayor for **all** speakers. No individual will be allowed to speak more than once, until every citizen wishing to comment has done so.

### Announcements & Public Hearings

4. **Public Hearing** – Specific Use Permit for a Single-Family (SF-3) Dwelling District to Allow for a Private Community Center as 5-7 Johnston

Outlined in Section 7-2(15) of the Zoning Ordinance, More Specifically, the Subject Property Occupies All of Block 14 in the Bauer Addition (St Thomas Church)

**Disposition of Minutes**

5. Approval of the Minutes of the Regular Meeting of May 10, 2016 8-12 Davis

**Consent Items**

6. Final Reading of an Ordinance Amending Ordinance Number 043-2015 which adopted the Annual Budget for the City of Big Spring for the Fiscal Year Beginning October 1, 2015 and Ending September 30, 2016 to Increase the Motel Tax Fund Budget for the Purpose of Re-Roofing the Big Spring Auditorium; Providing for Severability; Providing for Publication; and Providing an Effective Date 13 Wegman

**Routine Business**

7. Vouchers for 05/12/16 \$ 767,752.93 Marquez  
Vouchers for 05/19/16 \$ 578,858.22

**New Business**

8. First Reading of a Resolution Providing for the Issuance of a Specific Use Permit (SUP16-01) Without Term in a Single-Family (SF-3) Zoning District to Allow for a Private Community Center as Authorized in Article 7, Section 7-2 Entitled, "Specific Use Permits," Subchapter B(15) of the Zoning Ordinance; the Subject Property is Located in All of Block 14 in the Bauer Addition (St. Thomas Church), Which is Bounded by 7<sup>th</sup> Street to the North, Scurry Street to the West, Father Delaney Street to the South, and Main Street to the East; Providing for Severability; and Providing an Effective Date 14-18 Johnston
9. Consideration and Approval of an Agreement with the Texas Department of Transportation for Fabrication and Installation of Two Signs for William B Crooker Memorial Highway Along US 87 in Howard County; and Authorizing the City Manager or His Designee to Execute Any Necessary Documents 19-23 Darden
10. Consideration and Approval Authorizing the City Manager to Negotiate an Interlocal Agreement with Texas Parks and Wildlife Department for Continued Operation of the Big Spring State Park; and Authorizing the Mayor to Execute Any Necessary Documents 24-26 Darden

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|-----|---|-------|----------|
| 11. | Consideration and Approval of a Lease Agreement with Relocation Rescue, Inc. for Construction and Operation of an Animal Rescue Shelter; and Authorizing the City Manager, or His Designee, to Execute Any Necessary Documents  | 27-42 | Darden   |
| 12. | Consideration and Approval of an Agreement with Online Information Services, Inc. for Credit Checks for New Water Utility Customers; Subject to Review by the City Attorney; and Authorizing the City Manager or His Designee to Execute Any Necessary Documents  | 43-88 | Moore    |
| 13. | First Reading of an Ordinance Amending Chapter 16 of the Code of Ordinances Entitled “Public Utilities,” Article 3 Entitled “Utility Services Charges,” Section 16-60.9 Entitled “Deposit Required” to Establish a Tiered Deposit Base on the Customer’s Credit Rating; Providing for Severability; Providing for Publication; and Providing an Effective Date  | 81-83 | Moore    |
| 14. | First Reading of an Ordinance Amending Ordinance Number 043-2015 Which Adopted the Annual Budget for the City of Big Spring, for the Fiscal Year Beginning October 1, 2015 and Ending September 30, 2016 to Increase the Utility Fund Budget for the Purpose of Contracting with a Credit Check Company; Providing for Severability; Providing for Publication; and Providing an Effective Date   | 84    | Moore    |
| 15. | Approval and Acceptance of a Texas Regional Advisory Council EMS Training Grant and Authorizing the City Manager or His Designee to Execute Any Necessary Documents   | 85    | Ferguson |
| 16. | First Reading of a Resolution of the City Council of the City of Big Spring, Howard County Texas, Authorizing the City to Enter Into an Interlocal Agreement with the Texas Department of Transportation for the Closure of East 3 <sup>rd</sup> Street From Runnels Street to Gregg Street and One Lane of East 4 <sup>th</sup> Street From Scurry Street to Main Street for the Funtastic Fourth Festival From June 24 <sup>th</sup> Through June 26 <sup>th</sup> ; Contingent Upon the Approval of County Commissioners to Close Facilities; and Upon Indemnification and Presentation of Insurance Coverage by Downtown Revitalization Association that Complies with the Specifications Required of the City by TxDOT Under the Agreement; Authorizing the Mayor to Execute the Agreement; and Authorizing the City Manager or His Designee to Take All Necessary Actions Under the Agreement | 86-93 | Gordon   |

**City Manager’s Report**

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|-----|--|--------|
| 17. | Items of Public Interest                   | Darden |
| 18. | Planning & Zoning Commission – One Opening | Darden |

**Council Input**

19. Input McLellan

**Executive Session**

20. Adjourn into Executive Session in Accordance with Section 551.071(1) to Consult with the City Attorney Concerning Pending or Contemplated Litigation McLellan

21. Reconvene in Open Session and Take Any Necessary Action McLellan

22. Adjourn McLellan

I hereby certify that this agenda was posted on the official bulletin boards at the Big Spring City Hall Building, 310 Nolan Street, Big Spring, Texas. Given by order of the City Council and Posted on Friday, May 20, 2016 at \_\_\_\_\_ p.m. in accordance with Title 5, Texas Government Code, Chapter 551.

In addition, this agenda and supporting documents are posted on the City of Big Spring’s website, [www.mybigspring.com](http://www.mybigspring.com), in accordance with legal requirements.

  
\_\_\_\_\_  
Mandy Haynes, Legal Assistant

THE MEETING FACILITY IS ACCESSIBLE TO DISABLED PERSONS. ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATIONS OR HEARING-IMPAIRED PERSONS WISHING TO HAVE AN INTERPRETER SHOULD CONTACT TAMI DAVIS AT 264-2513. REQUESTS FOR AN INTERPRETER SHOULD BE MADE AT LEAST 48 HOURS IN ADVANCE OF THE MEETING TIME.

**Agenda Removal Notice** - This public notice was removed from the official posting board at the Big Spring City Hall Building, 310 Nolan Street, Big Spring, Texas on

May \_\_, 2016 at \_\_\_\_\_ a.m./p.m.

By: \_\_\_\_\_



## Memo

**Meeting Date:** May 24, 2016

**To:** The Mayor and City Council members

**From:** Roxanne Johnston, City Planner

**Subject:** A Specific Use Permit (without term) in a Single-Family (SF-3) Dwelling District to allow for a Private Community Center.

**Location:** 603 Main St., located southwest of the intersection of Main Street and 7<sup>th</sup> Street. More specifically, this tract occupies all of Block 14 in the Bauer Addition (St. Thomas Church) in north central Big Spring.

**Purpose:** Approval of this request would allow the applicant multiple uses associated with private community centers.

**Contacts:** Roxanne Johnston, City Planner 432-264-2319  
Nati Saldivar  
PJ Dominguez

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### Background and Analysis:

On May 17, 2016, the Planning and Zoning Commission voted unanimously to recommend approval of the aforementioned Specific Use Permit. Mr. Weaver, a member of the Commission, excused himself from the discussion and voting due on this item to a personal connection to the property owner.

The applicants are requesting that the entire block at the aforementioned property, which formerly housed a church and accessory buildings for the church, be overlaid with a Specific Use Permit without term in order to operate as a private community center.

The property associated with this request is zoned Single-Family Dwelling (SF-3) which only allows private community centers through City Council approval of a Specific Use Permit process as found in Chapter 15, Article 7, Section 7-2 subsection 15 of the Zoning Ordinance. A private community center at this location would allow the applicants the ability to locate offices, hold fundraisers for two community-based non-profit groups; and also provide a variety of educational opportunities through classes

and demonstrations. (Note: A complete list of requested uses through this Specific Use Permit application is listed on the application, which is attached to this report).

In Article 2, Section 2-1 entitled "Definition of Words and Terms," a private community center is defined as:

*"A building designed for private use and generally including areas for indoor activities that may include sports, reading, social events and similar activities."*

Historically, since this property was formally operated for religious purposes, many of the activities requested by the applicants were allowed throughout the entire property such as those related to wedding ceremonies and fundraising, to name a few examples.

Had the applicants sought a zone change, the least intensive zoning category that would allow the uses as a private community center would be a Multi-Family Dwelling District. A Specific Use Permit is more restrictive since it allows City Council to impose specific conditions on the property that would protect adjacent properties. Conditions are not allowed through the zone change process.

Specific Use Permits without term do not run with the land. They are effective until repealed by the City Council. Should this request be approved, then in order to continue the uses, a new Specific Use Permit application would need to be submitted and final approved gained through the City Council if the applicants no longer operated within the property. Additionally, no new uses may be introduced without approval. Any outdoor functions that fall under a special event category may need to be approved through a separate permitting process, such as request for temporary street closures, alcohol sales and/or vendor-related permitting.

This property has been recognized by the Texas Historical Society as a historical landmark since 1988. The Specific Use Permit request does not involve altering neither the exterior nor interior of the former church.

**General Information:**

Existing Zoning: Single Family Dwelling (SF-3)

Existing Land Use: Vacant, former St. Thomas Church

Surrounding Zoning/Land Use:

North:	Single-Family Dwelling (SF-3)	Low density Single-family residences
South:	Single-Family Dwelling (SF-3)	Low density Single-family residences
East:	Single-Family Dwelling (SF-3)	Low density Single-family residences
West:	Single-Family Dwelling (SF-3)	Low density Single-family residences

Thoroughfares/Streets: Main Street, Father Delaney Street, 6<sup>th</sup> and 7<sup>th</sup> Streets are all local streets designed to handle neighborhood traffic at low speeds.

Zoning History: The property contains no special zoning overlays, but was recorded through the Texas Historical Society as a Texas Historic Landmark in 1988. The property could lose this designation in the event the exterior structure is significantly altered or if the integrity of the exterior building is compromised through interior changes.

Applicable Regulations: Allowed uses for this property can be found in Article 6, Section 6-6 of the Zoning Ordinance, titled “SF-3, Single-Family Dwelling District”

Development Standards: **Zoning Ordinance, Article 4 and Appendix C**

*Minimum Lot Area-5000 sq ft*

*Minimum Lot Dimensions- 50X100feet*

*Minimum Front Yard- 25 ft*

*Minimum Side Yard- 5’*

*Minimum Rear Yard- 10’*

*Maximum Floor Area Ratio- 35% \**

*Note:* The above development standards are for Single-Family development only.

**Special Information**

Traffic Concerns: Traffic entering and exiting the site will fluctuate depending on events. Any event where street closures are requested would first require advance City approval.

Parking Requirements: **Zoning Ordinance, Article 4, Section 4-9**  
*“One (1) space for each dwelling unit for single-family residence...”* There are no parking requirements for accessory structures.

Notifications Required: Yes

Notifications Sent: 21

Responses in Favor: 0

Responses in Opposition: 0

**Attachments:** Excerpt from zoning map, highlighting subject property; and Specific Use Permit Application provided by the applicants

STATE OF TEXAS :  
COUNTY OF HOWARD :  
CITY OF BIG SPRING :

The City Council of the City of Big Spring, Texas, met in a regular meeting in the City Council Chambers located at 307 E. 4<sup>th</sup>, Big Spring, Texas, at 5:30 p.m., May 10, 2016, with the following members present:

LARRY MCLELLAN	Mayor
JUSTIN MYERS	Mayor Pro Tem
RAUL MARQUEZ	Councilmember
CARMEN HARBOUR	Councilmember
STEVE WAGGONER	Councilmember
RAUL BENAVIDES	Councilmember
JIM DEPAUW	Councilmember

Same and constituting a quorum; and

TODD DARDEN	City Manager
KAYE EDWARDS	City Attorney
JOHN MEDINA	Assistant City Manager/ Human Resource Director
DON MOORE	Finance Director/City Secretary
CRAIG FERGUSON	Fire Chief
CHAD WILLIAMS	Police Chief
JIM LITTLE	Airpark Director
TIM GREEN	Municipal Court Judge
DEBBIE WEGMAN	Community Services Director

## **INVOCATION & PLEDGE OF ALLEGIANCE**

Monsignor Bernard Gully, Holy Trinity Catholic Church, gave the invocation and Mayor McLellan led the Pledge of Allegiance to the American and Texas Flags.

## **ANNOUNCEMENTS & PUBLIC HEARINGS**

### **PROCLAMATION – MOTORCYCLE SAFETY AND AWARENESS MONTH**

Mayor McLellan read a proclamation for motorcycle safety and awareness month.

## **DISPOSITION OF MINUTES**

### **APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF APRIL 26, 2016**

Motion was made by Councilmember DePauw, seconded by Councilmember Harbour, with all members of the Council voting “aye” approving the above listed minutes.

## CONSENT ITEMS

FINAL READING OF AN ORDINANCE AMENDING NUMBER 043-2015 WHICH ADOPTED THE ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016 BY INCREASING THE LANDFILL FUND BUDGET FOR THE PURPOSE OF PURCHASING A LOADER; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 15 OF THE CODE OF ORDINANCES ENTITLED "SUBDIVISION REGULATIONS OF THE CITY OF BIG SPRING," AUTHORIZING THE PLANNING AND ZONING COMMISSION TO ACT AS A FINAL DECISION-MAKING BODY FOR SUBDIVISION REQUESTS AND VARIANCES, EXCEPT THAT THE CITY COUNCIL SHALL REMAIN THE FINAL DECISION-MAKING BODY FOR THE APPEALS PROCESS; ELIMINATING THE SKETCH PLAT REQUIREMENTS AND ASSOCIATED FEES; REQUIRING A "CERTIFICATION OF HOWARD COUNTY CLERK" SIGNATURE BLOCK ON FINAL PLATS; AND PROVIDING CLARIFICATION OF PLAN SUBMITTAL REQUIREMENTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE AMENDING ARTICLE 2 OF THE CITY OF BIG SPRING ZONING ORDINANCE, SECTION 2-1 ENTITLED "DEFINITIONS," BY ADDING A NEW SUBSECTION 93a TO DEFINE "PLAZA"; AMENDING ARTICLE 6 ENTITLED "DISTRICT REGULATION," SECTION 6-6 ENTITLED "DISTRICTS AND PERMITTED" BY AMENDING SUBSECTION (A)(2) UNDER THE HEADING "CA-CENTRAL AREA DISTRICT" TO INCLUDE "PLAZA," AS A PERMITTED USE; AND DIRECTING THAT APPENDIX B, SUBSECTION B BE AMENDED TO REFLECT THE AMENDMENTS HEREIN PROVIDED; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE AMENDING THE CITY OF BIG SPRING ZONING ORDINANCE ARTICLE 6, ENTITLED "DISTRICT REGULATIONS" BY ADDING A NEW SECTION 6-7, ENTITLED "FENCES," TO ESTABLISH PROCEDURES AND STANDARDS FOR SEPARATION BETWEEN ZONING USES AND DISTRICTS FOR NEW DEVELOPMENT: AND ADDING A NEW SECTION 6-8, ENTITLED "VISUAL CLEARANCE ON CORNER LOTS," TO ALLOW IMPROVED VISIBILITY AND SAFETY AT INTERSECTIONS; AND AMENDING ARTICLE 7, ENTITLED "SPECIAL APPLICATIONS," BY ADDING A NEW SECTION 7-4, ENTITLED "ADMINISTRATIVE ADJUSTMENTS," TO AUTHORIZE THE BUILDING OFFICIAL TO DETERMINE UP TO TEN (10%) PERCENT VARIANCE IN NUMERICAL STANDARDS SET FORTH IN ARTICLE 6 AND UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE APPROVING Z16-01, A REZONE OF THE PORTER ADDITION, LOTS 1-3, BLOCK 4, BIG SPRING, HOWARD COUNTY, TEXAS

FROM TWO-FAMILY (2F) TO LIGHT COMMERCIAL (LC); PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE AMENDING CHAPTER SIX OF THE CODE OF ORDINANCES ENTITLED "CEMETERIES, PARKS AND RECREATION" BY AMENDING ARTICLE 4 ENTITLED "PARKS AND RECREATION," DIVISION 3 ENTITLED "CITY PARK PAVILION AREAS," SECTION 6-90 ENTITLED "RESERVATIONS, HOURS OF USE AND RENTAL FEES," SUBSECTIONS (B) AND (C) TO REMOVE HEART OF THE CITY PAVILION FROM THE LIST OF RENTABLE PAVILIONS IN CITY PARKS; REPEALING SECTION 201 REGARDING FEES AND DEPOSITS IN ITS ENTIRETY; AND ADDING A NEW ARTICLE 13 ENTITLED "HEART OF THE CITY PLAZA" TO PROVIDE REGULATIONS CONCERNING HEART OF THE CITY PLAZA RENTALS AND CONSUMPTION OF ALCOHOL ON THE PREMISES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

ACCEPTANCE OF THE ZONING BOARD OF ADJUSTMENTS AND APPEALS BOARD MEETING MINUTES FOR THE MEETING OF APRIL 6, 2016

ACCEPTANCE OF THE BOARD OF ADJUSTMENTS AND APPEALS BOARD MINUTES FOR THE MEETING OF MAY 19, 2010

ACCEPTANCE OF THE BIG SPRING MCMAHON-WRINKLE AIRPORT AND INDUSTRIAL PARK DEVELOPMENT BOARD MINUTES FOR THE MEETING OF MARCH 17, 2016

Motion was made by Mayor Pro Tem Myers, seconded by Councilmember Marquez, with all members of the Council voting "aye" approving the second and final reading of the above listed ordinances and minutes.

## **BIDS**

AWARD BID FOR A FRONT END LOADER FOR THE LANDFILL AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember Waggoner, seconded by Councilmember DePauw with Councilmembers Marquez, Harbour, Myers, McLellan, Waggoner and Benavides voting "aye" awarding the above captioned bid to Yellowhouse Machinery in the amount of \$146,012.26. Councilmember DePauw, being opposed, voting "nay" for passage of same. Motion passes six to one.

## **ROUTINE BUSINESS**

Councilmember DePauw reviewed the vouchers in the amount of \$737,507.97 (4/28/16) and \$1,035,408.63 (5/05/16). Motion was made by Councilmember DePauw, seconded by Mayor Pro Tem Myers, with all members of the Council voting “aye” approving the above listed vouchers.

## **NEW BUSINESS**

**EMERGENCY READING OF AN ORDINANCE CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE GENERAL ELECTION WHICH WAS HELD ON THE 7<sup>TH</sup> DAY OF MAY, 2016, FOR THE PURPOSE OF ELECTING MAYOR AND COUNCILMEMBER DISTRICT FIVE**

Motion was made by Councilmember Waggoner, seconded by Councilmember DePauw, with all members of the Council voting “aye” approving the above captioned canvassing ordinance declaring Larry McLellan as Mayor and Raul Benavides as Councilmember District 5.

**ADMINISTER OATH OF OFFICE TO DULY ELECTED COUNCILMEMBERS**

Judge Green administered the oath of office to Mayor McLellan and Councilmember Benavides.

**DISCUSSION AND APPROVAL OF LENGTH OF TERM WITH ELECTRICAL PROVIDER PROPOSED BY PRIORITY POWER MANAGEMENT, LLC AND AUTHORIZING THE MAYOR TO NEGOTIATE FINAL CONTRACT PRICING AND EXECUTE ANY NECESSARY DOCUMENTS**

After a brief discussion, motion was made by Councilmember DePauw, seconded by Councilmember Benavides, with Councilmembers Harbour, Myers, McLellan, Waggoner, Benavides and DePauw voting “aye” approving the above captioned contract for 96 months. Councilmember Marquez, being opposed, voting “nay” for passage of same. Motion passes six to one.

**FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NUMBER 043-2015 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016 TO INCREASE THE MOTEL TAX FUND BUDGET FOR THE PURPOSE OF RE-ROOFING THE BIG SPRING AUDITORIUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

Motion was made by Councilmember Benavides, seconded by Councilmember Marquez, with all members of the Council voting “aye” approving the above captioned ordinance.

**CONSIDERATION AND APPROVAL OF AN AGREEMENT FOR AUDIT SERVICES WITH BOLINGER, SEGARS, GILBERT AND MOSS, LLP AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS**

Motion was made by Councilmember Waggoner, seconded by Mayor Pro Tem Myers, with all members of the Council voting “aye” approving the above captioned agreement.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF THE BIG SPRING ECONOMIC DEVELOPMENT CORPORATION HELD ON MARCH 15, 2016 AND SPECIAL MEETING HELD ON MARCH 28, 2016

Motion was made by Councilmember Harbour, seconded by Mayor Pro Tem Myers, with all members of the Council voting “aye” approving the above captioned minutes.

**CITY MANAGER’S REPORT**

Todd Darden announced that the budget work session to discuss Council input on the budget will be June 21, 2016 following a regular council meeting and then the budget work sessions will begin the week of July 28, 2016.

**COUNCIL INPUT**

Mayor McLellan and several Councilmembers thanked everyone who participated in the election and thanked Code Enforcement for working many cases.

**EXECUTIVE SESSION**

QUARTERLY UPDATE – ADJOURN INTO EXECUTIVE SESSION IN ACCORDANCE WITH SECTION 551.087 TO DISCUSS OR DELIBERATE REGARDING COMMERCIAL OR FINANCIAL INFORMATION THAT THE GOVERNMENTAL BODY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE GOVERNMENTAL BODY SEEKS TO HAVE LOCATE, STAY, OR EXPAND IN OR NEAR THE TERRITORY OF THE GOVERNMENTAL BODY AND WITH WHICH THE GOVERNMENTAL BODY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS AT 6:42 P.M.

RECONVENE IN OPEN SESSION AND TAKE ANY NECESSARY ACTION AT 7:32 P.M.

No action taken.

**ADJOURN**

Mayor McLellan adjourned the meeting at 7:32 p.m.

CITY OF BIG SPRING, TEXAS

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 043-2015 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016 TO INCREASE THE MOTEL TAX FUND BUDGET FOR THE PURPOSE OF RE-ROOFING THE BIG SPRING AUDITORIUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS** the City Council adopted the annual 2015-16 budget for the City of Big Spring, Texas on September 21, 2015; and

**WHEREAS** funding for re-roofing the Big Spring Auditorium was not included in such budget.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS, THAT:**

**SECTION 1.** The Motel Tax Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2015 and ending September 30, 2016 is hereby increased by the amount of \$36,200 for the purpose of re-roofing the Big Spring Auditorium into the expense fund (110-040-530-6202) from the existing fund balance.

**SECTION 2.** The remaining portions of Ordinance Number 043-2015 shall remain in full force and effect.

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 4.** The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

**SECTION 5.** This ordinance shall be in force and effective from and after its publication as required by law.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the **10<sup>th</sup>** day of **May, 2016** with all members of the Council voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the **24<sup>th</sup>** day of **May, 2016** with all members of the Council voting “aye” for the passage of same.

ATTEST:

\_\_\_\_\_  
Larry McLellan, Mayor

\_\_\_\_\_  
Tami L. Davis, Assistant City Secretary

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF BIG SPRING, TEXAS, AUTHORIZING A SPECIFIC USE PERMIT (SUP16-01) WITHOUT TERM IN A SINGLE-FAMILY (SF-3) ZONING DISTRICT TO ALLOW FOR A PRIVATE COMMUNITY CENTER AS AUTHORIZED IN ARTICLE 7, SECTION 7-2 ENTITLED, "SPECIFIC USE PERMITS," SUBCHAPTER B(15) OF THE ZONING ORDINANCE; THE SUBJECT PROPERTY IS LOCATED IN ALL OF BLOCK 14 OF THE BAUER ADDITION (ST. THOMAS CHURCH), WHICH IS BOUNDED BY 7<sup>TH</sup> STREET TO THE NORTH, SCURRY STREET TO THE WEST, FATHER DELANEY STREET TO THE SOUTH, AND MAIN STREET TO THE EAST; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Big Spring has received a request for a Specific Use Permit without term for a private community center in all of Block 15 of the Bauer Addition (St. Thomas Church); and

**WHEREAS**, the Planning and Zoning Commission held a public hearing on Tuesday, May 17, 2016 as required by law and gave its final approval and recommendation that the City Council allow the Specific Use Permit for a private community center; and

**WHEREAS**, proper notice of the Public Hearing was published and mailed to all parties that are required by law to be notified;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS THAT:**

**SECTION 1.** A Specific Use Permit without term for a private community center in a Single-Family (SF-3) Dwelling District is hereby approved and issued specifically to Nati Saldivar and PJ Dominguez.

**SECTION 2.** Allowed uses on the premises include a rental facility for special events to the public, photo sessions, food fundraisers, alcohol sales at properly permitted special events only, a meeting hall, continued education and physical education classes/demonstrations, cultural awareness and heritage classes, art and music classes/demonstrations, main office for the North Side Movement and LULAC, flea and farmer's markets, youth events including movies, book readings and dances, food pantry, water slide, holiday events, outdoor festivals, fundraising drives (collection and distribution of), storage, special events such as casino night, game night, car washes, huaca (washer) tournament, petting zoo, small community carnival, family oriented entertainment, castle competition, mud pie competitions, speed dating, and any other special events. Possible voting poll for Precinct 1.

**SECTION 2.** Should any section, paragraph, sentence, clause, phrase or word of this resolution be declared unconstitutional or invalid for any purpose, the remainder of this resolution shall not be affected thereby.

**SECTION 3.** This resolution shall take effect immediately from and after its publication and passage upon one reading in accordance with the provisions of the Charter of the City of Big Spring and it is accordingly so ordained.

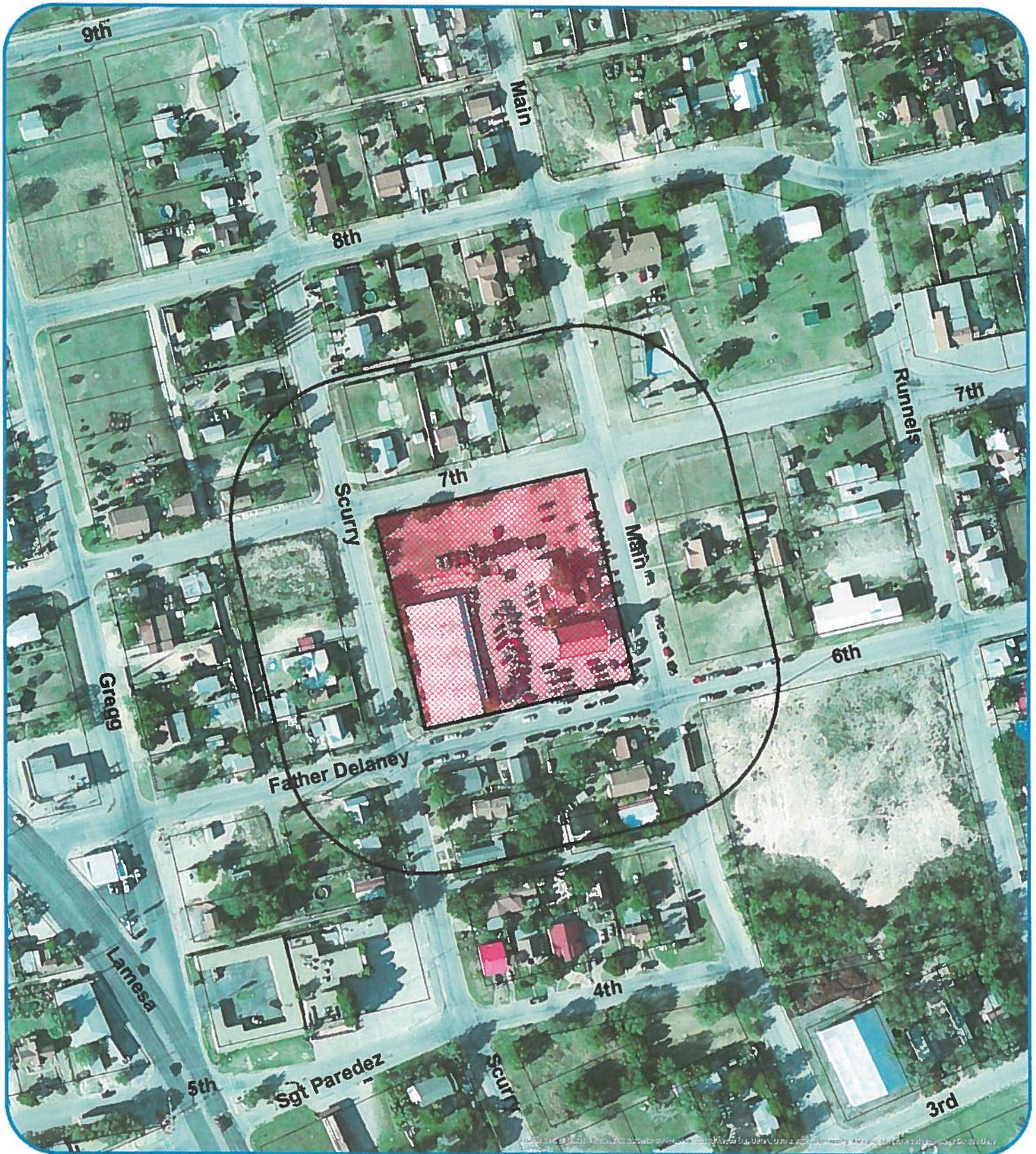
**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the **24<sup>th</sup>** day of **May, 2016**, with all members present voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the **14<sup>th</sup>** day of **June, 2016**, with all members present voting “aye” for the passage of same.

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

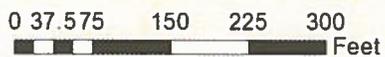
\_\_\_\_\_  
Tami Davis, Asst. City Secretary



**Legend**

**Requesting a Specific Use Permit- (SUP:16-01)  
 Community Center (Private) in Single-Family Dwelling (SF-3)  
 Location: Blk 14, Bauer Addn- St. Thomas Church**

Subject Property:

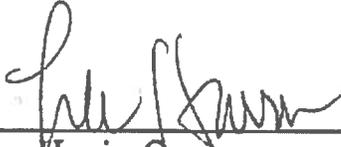




May 4, 2016

**RE: Representative Authorization**

I, Lee Harris, owner of said property known as **ST. THOMAS**, located at 601 N. Main, Big Spring, Texas, County of Howard. I hereby give authorization to PJ Dominguez and Nati Saldivar as representatives of said property. As representatives, they can conduct business to acquire the Specific Use Permit.

  
\_\_\_\_\_  
Lee Harris, Owner

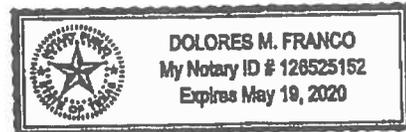
5-5-16  
\_\_\_\_\_  
Date

State of Texas County of Howard

The foregoing instrument was acknowledged before me this 5th day of May 2016

by \_\_\_\_\_  
Dolores M. Franco

Notary Name Here, Notary Public  
My Commission Expires May 19, 2020



STATE OF TEXAS           §  
COUNTY OF HOWARD      §

**NAMED MARKER OR MEMORIAL MARKER HIGHWAY SIGN AGREEMENT**

**THIS AGREEMENT (the Agreement)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the City of Big Spring, acting by and through its duly authorized officials, hereinafter called the "Local Government."

**WITNESSETH**

**WHEREAS**, Texas Transportation Code, §225.004 establishes that a local government may purchase and furnish to the department a suitable locally identifying memorial marker; and if the director approves the size and type of a marker, the department, on request, may erect the marker at a place most suitable to the department's maintenance operations. The department shall maintain the grounds for a marker and repair or replace a marker; and

**WHEREAS**, the Local Government desires assistance from the State with providing highway marker signs or plaques in accordance with the Texas Manual on Uniform Traffic Control Devices and the State's procedures for designating the William B Crooker Memorial Highway along US 87 in Howard County to be hereinafter identified as the "Project;" and

**WHEREAS**, the Local Government proposes to furnish two signs to the State as identified on "Attachment A"; and

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

**AGREEMENT**

**Article 1. Contract Period**

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Project or unless terminated or modified as hereinafter provided.

**Article 2. Scope of Work**

1. The State will fabricate and/or install the sign(s), as is identified on "Attachment A".
2. The State will install (2) signs, furnish sign supports and make the sign installations, as is identified on "Attachment A".
3. The Local Government will provide two signs to the State with a fixed value of \$11,865.00.
4. In the event it becomes necessary to replace one or more of these signs or their supports due to age, vandalism or damage, it will be the responsibility of the State to pay the costs for such replacement.

**Article 3. Termination**

This agreement may be terminated by any of the following conditions:

1. By mutual written agreement and consent of all parties.
2. By the State upon determination that construction of the Project is not feasible or is not in the best interest of the State and the traveling public.
3. By any party, upon the failure of the other parties to fulfill the obligation as set forth herein. Termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the State and Local Government under this agreement.

**Article 4. Relationship of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**Article 5. Amendments**

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by the Local Government and the State.

**Article 6. Legal Construction**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Article 7. Sole Agreement**

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

**Article 8. Notices**

All notices required under this agreement by one party to the other parties shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

<b><i>County or City:</i></b>	<b><i>State:</i></b>
City of Big Spring – City Hall 310 Nolan Street Big Spring, TX 79720	Texas Department of Transportation 4250 North Clack Street Abilene, TX 79601

Notice shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. The parties hereto may change the above address by sending written notice of such change to the other parties in the manner provided herein.

**Article 9. Signatory Warranty**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE COUNTY or CITY OF BIG SPRING, TEXAS**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Typed or Printed Name and Title \_\_\_\_\_  
\_\_\_\_\_

**THE STATE OF TEXAS**

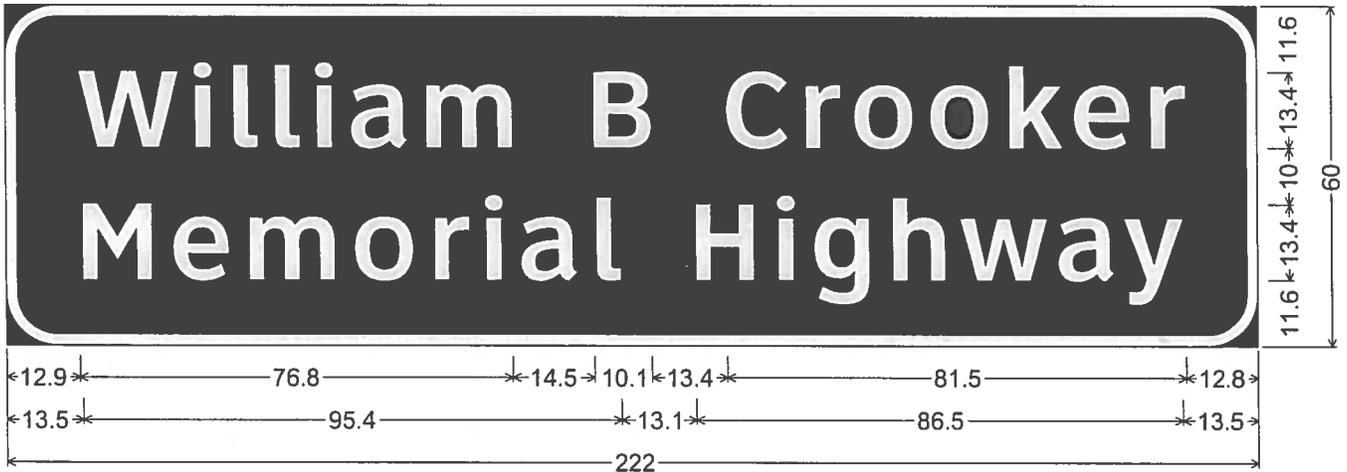
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Abilene District Engineer

Date: \_\_\_\_\_

## **ATTACHMENT A**

### **Description and Location of Named or Memorial Marker Signs**



9.0" Radius, 2.0" Border, White on Brown;

"William B Crooker" ClearviewHwy-5-W-R; "Memorial Highway" ClearviewHwy-5-W-R;

**INTERLOCAL AGREEMENT  
BIG SPRING STATE PARK  
LOCAL SUPPORT FOR OPERATIONS**

As authorized by the Interlocal Cooperation Act, Government Code, Chapter 791, this Interlocal Agreement (Agreement) is made by and between the Texas Parks and Wildlife Department ("TPWD"), an agency of the State of Texas, and City of Big Spring ("City"), a home rule city, regarding City support for the continued operation of Big Spring State Park.

**WHEREAS**, the mission of TPWD is to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations (TEX. PARKS & WILD. CODE §§1.011, §11.043(c)(6), §13.001, §13.005); and

**WHEREAS**, TPWD owns and operates a 381.99 acre facility in Howard County known as Big Spring State Park ("the Park"); and

**WHEREAS**, TPWD is authorized to receive donations of gifts or property in support of TPWD's mission and purpose, (TEX. PARKS & WILD. CODE §11.026, §13.003); and

**WHEREAS**, the Park provides economic, recreational, cultural and natural resource benefits to the citizens of and visitors to the City; and

**WHEREAS**, the City desires to provide operational funding support to TPWD to ensure the continued public access to the Park; and

**WHEREAS**, TPWD will utilize the funds provided for the operation and maintenance of the site; and

**NOW, THEREFORE**, the City and TPWD (individually and collectively referred to herein as "a party" or "the parties" respectively), agree as follows:

**1. CITY RESPONSIBILITIES**

The City shall provide the following to TPWD, collectively referred to herein as "the City's contribution" in support of the Park:

- a. The City shall provide at least \$20,000 to TPWD between September 1 and November 15 of each calendar year to support the operation and maintenance of the Park.
- b. The City shall provide law enforcement patrol services to the Park.

**2. TPWD RESPONSIBILITIES**

- a. TPWD shall continue to provide public access to the site, promote and operate the Park as a unit of the State Park system.

- b. TPWD will maintain a minimum of one employee position at the Park.
- c. TPWD will use the funds provided by the City exclusively for the operation and maintenance of the Park.

### 3. NOTIFICATION AND COMMUNICATION

All notices and written communications shall be addressed as follows:

If to TPWD:

Director, State Parks Division  
Texas Parks and Wildlife Department  
4200 Smith School Rd.  
Austin, Texas 78744

If to the City:

City Manager  
City of Big Spring  
310 Nolan Street  
Big Spring, Texas 79720-2657

The City and TPWD may change the place of communication by written notification to the other party hereto. All notices and submissions of materials and information required by the Agreement may be delivered by email or regular mail.

### 4. GENERAL

- a. All financial obligations of TPWD hereunder are subject to the availability of funds and to such direction and instructions as may have been or are hereafter provided by the State Legislature.
- b. Because the value of the City's contribution exceeds \$500.00, the acceptance of the Project is subject to acknowledgement by the Texas Parks and Wildlife Commission voting in public session as required by the Texas Open Meetings Act.
- c. The City acknowledges and agrees that in anticipation of the City's contribution, TPWD will expend resources that may not have expended by TPWD but for the agreement by the City to make the City's contribution.
- d. All amendments to this Agreement must be in writing signed by all parties.
- e. This Agreement is made and shall be interpreted under the laws applicable in the State of Texas and venue will be in Travis County, Texas.
- f. This Agreement is not assignable without the prior written consent of the parties.

- g. This Agreement sets forth the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings not specifically set forth herein. This Agreement may not be modified or changed other than by an agreement in writing executed by all of the parties hereto.
- h. If a party is unable to carry out its responsibilities under this Agreement by reason of events outside the control of that party, including, but not limited to, natural disaster, civil disturbance, acts of public enemies, acts of the Texas Legislature, or other government action, the parties will immediately initiate discussions regarding the impact of these events on the Project and the appropriate response. Notwithstanding any such discussions, these events shall constitute good cause for termination of this Agreement.
- i. Each signatory to this Agreement is an independent entity and is not an agent, partner, joint venture participant or otherwise responsible for the acts, omissions, or conduct of any other party.
- j. By signing this Agreement, the City certifies that it does not hold a commercial license issued by TPWD, not including a hunting lease license.

**5. CONSENT TO BREACH NOT WAIVER**

No term or provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by an authorized representative of TPWD. Any consent by a party to or waiver of a breach by the other party, whether express or implied, will not constitute a consent to or waiver of or excuse for any other different or subsequent breach.

**6. TERM OF AGREEMENT**

This agreement takes effect upon signing by both parties and shall remain in effect until December 31, 2020.

**Texas Parks and Wildlife Department**

\_\_\_\_\_  
Brent Leisure, Director, State Parks

\_\_\_\_\_  
Date

**City of Big Spring**

\_\_\_\_\_  
Larry McLellan, Mayor

\_\_\_\_\_  
Date

**LEASE AGREEMENT  
BETWEEN THE CITY OF BIG SPRING AND  
RELOCATION RESCUE, INC.**

This Lease is made and entered into by and between the City of Big Spring, a Texas home rule municipality (hereinafter referred to as the "Lessor") and, **Relocation Rescue, Inc.**, a non-profit organization, organized under and pursuant to the laws of the State of Texas (hereinafter referred to as the "Lessee"), with the understanding and agreement that the civic purposes of Lessee to be conducted on the premises serve a valid public purpose by promoting the health, welfare and maintenance of abandoned or neglected animals within the City.

**ARTICLE 1.  
PREMISES**

For and in consideration of the mutual covenants in this Lease, Lessor has leased, demised and rented unto Lessee the following described real property:

Approximately one (1) acre of land located at 3802 South Service Rd, Big Spring, Texas, 79720, as further depicted on Exhibit "A," which is attached hereto and incorporated by reference.

**ARTICLE 2.  
TERM**

This Lease is to be for a term of ten (10) years commencing on the 25<sup>th</sup> day of May, 2016 and expiring on the 24<sup>th</sup> day of May, 2026.

**ARTICLE 3.  
RENT**

Lessee shall pay to Lessor at Lessor's address hereinafter stated in the City of Big Spring, Howard County, Texas, annually, in advance the sum of \$ 1.00 during the term of this lease. The first such annual rental payment shall be due on the effective date of this lease and subsequent payments on the same date of each succeeding year.

**ARTICLE 4.  
UTILITIES**

Lessee shall pay all utility charges, including but not limited to, electric, gas, water service, sewer service and trash service.

**ARTICLE 5.  
AUTHORIZED USE**

Lessee hereby authorizes Lessor to utilize the leased premises for operation of an animal rescue facility. The parties desire to facilitate efforts to reduce or eliminate euthanasia of stray or abandoned animals; provided however, neither Lessee, its employees, agents, nor volunteers shall assume or interfere with the responsibilities or duties of the Big Spring Animal Control Division.

**ARTICLE 6.  
CONSTRUCTION, DEMOLITION, AND/OR ALTERATIONS**

Any demolition or alterations to the structure(s) located on the premises must be authorized in advanced, in writing by the Public Works Director, and are subject to all state and local accessibility standards and all building regulations, and shall be made at Lessee's sole cost and expense unless otherwise agreed in writing by both Parties. Any newly constructed building(s) and/or alterations made to the demised premises shall become property of Lessor at the end of this Lease. New construction of buildings or alterations made without the written consent of the Public Works Director, shall be removed at the option of, and in a manner acceptable to, Lessor. This clause shall not apply to moveable fixtures, manufacturing equipment, machines, furniture, service equipment or any trade fixtures of Lessee, which shall remain Lessee's property. Lessee agrees that any damages that may be caused by the installation or removal of moveable fixtures, manufacturing equipment and machines, furniture, service equipment or any trade fixtures will be repaired as soon as practical by Lessee at Lessee's sole

expense.

**ARTICLE 7.  
CONDITION, USE AND PEACEFUL POSSESSION**

Lessee may peacefully have, hold and enjoy the demised premises provided Lessee abides by the covenants, terms and conditions herein contained. Lessee agrees that the Premises have not been used for some time and are not in condition for public use. Lessee also specifically agrees and understands that the Leased premises is not currently in compliance with state or federal accessibility rules and regulations. Therefore, Lessee specifically agrees that it will not open the building for public use unless and until the building has been certified as accessible by the Public Works Director. Lessee agrees that only its Board members, employees or volunteers will be allowed inside the Leased premises and that Lessee will take any and all steps necessary to accommodate any of its officers, employees, agents or volunteers that need access to the building. If any such person cannot be accommodated, Lessee agrees to immediately cease use of the Premises until such accommodation can be made.

**ARTICLE 8.  
MAINTENANCE**

- (a) **Acceptance**. Lessee agrees to accept the building in its current condition and Lessor shall not be obligated to make any alterations or repairs throughout the term of the Lease.
- (b) **Maintenance**. Lessee shall throughout the term of this Lease and any renewal period, and at its own expense:
  - 1. Maintain and or repair the roof, exterior walls, foundation and all structural elements, including plumbing and electrical in accordance with all Federal, State, and local rules, regulations, and laws;

2. Maintain the leased premises in good order and condition, including routine maintenance and maintenance of all non-structural and structural elements of the building(s), and upon termination of this Agreement to return said Leased premises in good order and condition; and
  3. Keep the interior and exterior of the Leased premises clean and free of trash, litter tall grass, weeds, and junked automobiles and to promptly and properly dispose of animal waste as not create a nuisance or health hazard. Lessee shall abide by all applicable rules and recommendations of the Environmental Protection Agency, the Texas Commission on Environmental Quality, the Texas Department of Agriculture, the Texas Department of Transportation, and any other public agency concerning the use, storage, and disposal of hazardous chemicals. Lessee further agrees to abide by the manufacturer's directions in regards to the use, storage, and disposal of all pesticides, herbicides, and other chemicals plus their containers.
- (c) **Neglect of Property.** Should Lessee fail to keep the Leased premises clean and free of hazards, Lessor may, after three (3) days' written or posted notice, arrange for the cleanup of the littered or hazardous area. Such cleanup shall be charged to Lessee and payable on demand. Failure to render proper payment for such cleanup and/or general disregard for the considerations and restrictions listed in this Lease are grounds for termination of this Lease.
- (d) **Right to Inspect.** Lessor shall be entitled from time to time to inspect the Leased premises and to point out any deficiencies in Lessee's maintenance or repair of same.
- (e) **Prompt Maintenance.** Lessee agrees to promptly repair and restore said Leased premises to remedy those deficiencies in a reasonable and prompt manner.

(f) **Satisfactory Condition.** Lessee acknowledges that the signing of this lease constitutes a conclusive admission that Lessee has inspected the Leased premises and has found them in a condition to meet their purposes. The Leased premises is being leased “as is.” Lessee agrees and stipulates that he/she has examined the Leased premises and determined that it is fit for the purpose for which he/she intends to use it. Lessee agrees that Lessor has made no representations of any kind regarding the condition of the Leased premises and further acknowledges that: **THE LEASE OF THE LEASED PREMISES IS WITHOUT WARRANTY OF ANY KIND INCLUDING THAT IT IS FIT FOR ANY PARTICULAR PURPOSE.**

**ARTICLE 9.  
INSURANCE**

Lessee shall, at its own cost, secure and maintain fire and extended coverage insurance upon all buildings and contents of building(s) now or hereafter situated on the Leased premises.

**ARTICLE 10.  
INDEMNIFICATION**

Lessee further agrees to indemnify and hold Lessor, its officers, agents, and employees, free and harmless from any claims for damages or injury, including death, to persons or property, or any liability incurred as a result of the exercise of the privileges conferred by this Lease, and agrees to reimburse Lessor for any expenses incurred in the defense of any such claim, including reasonable attorney’s fees and court costs actually incurred.

**ARTICLE 11.  
LAWS AND REGULATIONS**

Lessee will comply with all laws, ordinances, orders, rules and regulations enacted or promulgated by any federal, state, municipal or other agency or public authority having jurisdiction with respect to the use, condition or occupancy of the demised premises.

**ARTICLE 12.  
NONDISCRIMINATION COVENANT**

Lessee, in exercising any of the rights or privileges herein granted shall not discriminate based upon race, color, religion, national origin or disability or permit discrimination against any person or group of persons in any manner prohibited by law.

**ARTICLE 13.  
DAMAGE OR DESTRUCTION TO LEASED PREMISES**

If the leased premises, or any part thereof (including any leasehold improvements), shall be damaged or destroyed, the Lessee shall, to the extent of the insurance proceeds available, promptly repair or replace the same and any insurance proceeds received with respect to such damage or destruction shall be applied in payment of the expenses of such repair or replacement and any excess insurance proceeds shall belong to Lessee. In repairing or replacing the leased premises pursuant to this provision, Lessee agrees to first have the plans and specifications for such repair or replacement approved by the Lessor and to obtain any and all performance and payment bonds and building permits as are required by Lessor. Lessee shall warrant unto the Lessor that all items and materials used in altering, repairing or replacing the demised premises are, at the time of installation, free and clear of any liens, mortgages or encumbrances, and shall indemnify and save the Lessor harmless from and against any and all claims with respect thereto. If such a substantial portion of the demised premises is destroyed so that the Lessee cannot reasonably continue to utilize said premises until the same are repaired or replaced, then the Lessee may elect either to repair or replace the same to the extent of the insurance proceeds available (in which case the rent payable hereunder shall be abated until such time as the Lessee can reasonably resume operation of its business, and the term hereof shall be extended for a period equal to the rent abatement period), or not to repair or replace the same and to terminate

this Lease, whereupon the full amount of all insurance proceeds shall be paid to the Lessor.

**ARTICLE 14.  
RENEWAL OPTION**

At the termination of the initial term of this Agreement, Lessee, if not in default hereunder, shall have and is hereby granted two (2) successive options to extend this agreement for a period of ten (10) years each upon the same terms and conditions as set forth in this Agreement. Lessee must provide notice of intent to extend lease at least sixty (60) days prior to the expiration of the initial term of the lease or if the lease is in an option year, (60) days prior to the end of the option year. Should Lessee fail to deliver the required notice within the sixty (60) day period as required then, this lease shall be subject to termination at the discretion of Lessor.

**ARTICLE 15.  
SUBLEASE; ASSIGNMENT**

Lessee shall not be entitled to sublease any portion of the demised premises or assign this lease without the prior written approval of the Lessor.

**ARTICLE 16.  
EVENTS OF DEFAULT**

The following shall be deemed to be events of default by Lessee under this Lease:

- a) **Nonpayment.** Failure to pay any installment of the rent, if such failure continues for a period of ten (10) days from the due date.
- b) **Noncompliance with Lease.** Failure to comply with any term, provision, or covenant of this lease, other than the payment of rent, which failure continues for more than twenty (20) days after written notice thereof to Lessee.
- c) **Assignment.** Assignment or attempted assignment of the lease for the benefit of creditors.
- d) **Insolvency.** Filing of a petition under any section or chapter of the National Bankruptcy

Act, as amended, or under any similar law or statute of the United States or any state thereof; or if Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder and such adjudication shall not be vacated or set aside or stayed within the time permitted by law.

- e) **Receivership**. Appointment of a receiver or trustee for all or substantially all of the assets of Lessee and such receivership shall not be terminated or stayed within the time permitted by law.
- f) **Abandonment**. If Lessee deserts or vacates any substantial portion of the premises for a period of five (5) or more days.

### **Remedies**

Upon the occurrence of any event of default specified above, Lessor shall have the option to pursue one or more of the following remedies without any notice or demand whatsoever:

- a) **Termination**. Terminate this lease in which event Lessee shall immediately surrender the premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession and expel or remove Lessee and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination, whether through inability to release the premises on satisfactory terms or otherwise.
- b) **Expulsion**. Enter upon and take possession of the premises and expel or remove Lessee and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor, and if

Lessor so elects, relet the premises on such terms as Lessor shall deem advisable and receive the rent thereof; and Lessee hereby agrees to pay to Lessor on demand any deficiency that may arise by reason of such reletting. No reentry or taking possession of the premises by Lessor shall be construed as an election on its part to terminate this lease, unless written notice of such intention be given to Lessee. Notwithstanding any such reletting or reentry or taking possession, Lessor may at any time thereafter elect to terminate this lease for previous default.

- c) **Enforce Obligations.** Enter upon the premises by force if necessary, without being liable for prosecution or any claim for damages therefor, and do whatever Lessee is obligated to do under the terms of this lease; and Lessee hereby agrees to reimburse Lessor on demand for any expenses which Lessor may incur in thus effecting compliance with lessee's obligations under this lease, and Lessee further agrees that Lessor shall not be liable for any damages resulting to Lessee from such action.
- d) **Multiple Remedies.** Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to lessor hereunder or of any damages accruing to Lessor by reason of the violation of any of the terms, provisions, and covenants herein contained. Lessor's acceptance of rent following an event of default hereunder shall not be construed as Lessor's waiver of such event of default.
- e) **Non-Waiver of Defaults.** No waiver by Lessor of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and

covenants herein contained. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

- f) **Recovery of Damages.** The loss or damage that Lessor may suffer by reason of termination of this lease or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken by Lessor following possession. Should Lessor at any time terminate this lease for any default, in addition to any other remedy Lessor may have, Lessor may recover from Lessee all damages Lessor may incur by reason of such default, including cost of recovering the premises and the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of said term, all of which amounts shall be immediately payable from Lessee to Lessor.
- g) No act or thing done by Lessor or its agents during the term hereby granted shall be deemed an acceptance of a surrender of the premises, and no agreement to accept a surrender of the premises shall be valid unless the same be made in writing and subscribed by Lessor.

#### **ARTICLE 17. HOLDING OVER**

Should Lessee, or any of its successors in interest, hold over the premises, or any part thereof, after the expiration of the term of this lease, unless otherwise agreed in writing, such holding over shall constitute and be construed as tenancy from month to month only, at a rental equal to the rent payable for the last month of the term of this lease plus fifty percent (50%) of such amount. The inclusion of the preceding sentence shall not be construed as Lessor's consent

for Lessee to hold over.

**ARTICLE 18.  
TERMINATION BY LESSEE**

Lessee shall have the right to terminate this Lease in its entirety by giving thirty (30) days advance written notice to the Lessor of such termination.

**ARTICLE 19.  
NON-WAIVER OF RIGHTS**

Continued performance by either party hereto pursuant to the terms of the Lease after a default of any of the terms, covenants and conditions herein shall not be deemed a waiver of any right to terminate this Lease for any subsequent default and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

**ARTICLE 20.  
ATTORNEY'S FEES**

In the event of any court action between Lessor and Lessee or a sub-lessee to enforce any of the provisions or rights hereof, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney's fees in such amount as the court may determine.

**ARTICLE 21.  
PARKING**

Lessee, its employees, agents, clients, and guests shall have reasonable use of designated public parking areas, subject to the rights of Lessor to change such designations and to impose reasonable rules and regulations for the use of such area.

**ARTICLE 22.  
APPLICABLE LAW**

This Lease shall be construed in accordance with the laws of the State of Texas. Venue for any cause of action related to this lease shall be in Howard County Texas. If any covenant,

condition or provision contained in this Lease is held to be invalid by any Court of competent jurisdiction such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

**ARTICLE 23.  
HAZARDOUS WASTE**

Lessee shall not permit the storage of Hazardous or Industrial waste upon the leased premises. Hazardous waste is defined for the purposes of this lease as any waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency. Industrial waste is waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation.

**ARTICLE 24.  
NOTICES**

Notwithstanding anything in this Lease to the contrary, any notices or demands pursuant to the terms of this Lease shall be in writing and shall be deemed served and received when delivered personally, or when deposited in the United States mail, postage prepaid, return receipt requested by certified mail addressed to Lessor or Lessee as follows:

Lessor at:                   City Manager  
                                  City of Big Spring  
                                  310 Nolan Street  
                                  Big Spring, TX.79720

Lessee at:                   Relocation Rescue, Inc.  
                                  Kelly Stadler  
                                  5508 Hwy 290 West  
                                  Suite 240  
                                  Austin, TX 78735

**ARTICLE 25.  
ENTIRE AGREEMENT**

This Lease, together with all exhibits attached hereto constitutes the entire agreement

between the parties hereto with respect to the subject matter hereof, and any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.

IN WITNESS WHEREOF, the parties hereto have executed these presents in triplicate originals this \_\_\_\_ day of \_\_\_\_\_, 2016.

**THE CITY OF BIG SPRING**

\_\_\_\_\_  
Todd Darden, City Manager

ATTEST:

\_\_\_\_\_  
Tami Davis, City Secretary

**RELOCATION RESCUE, INC.**

\_\_\_\_\_  
Kelly Stadler, President

EXHIBIT A



**PROPOSED AREA = APPROX 1 ACRE**

**BUILDING A = 7,240 SQ FT**

**BUILDING B = 2,668 SQ FT**

**BUILDING C = 632 SQ FT**



## EXHIBIT B

### 1. General Insurance Conditions

The following conditions shall apply to all insurance policies obtained by Lessee for the purpose of complying with this Agreement.

#### 1.1. Satisfactory Companies

Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

#### 1.2. Named Insureds & Loss Payable Endorsements

All insurance policies required herein shall be drawn in the name of Lessee, with City, its councilmembers, board and commission members, officials, agents, guests, invitees, consultants, and employees named as additional insureds. For Fire and Extended Coverage on buildings and improvements, all policies shall have loss payable endorsements for both Parties according to their respective interests.

#### 1.3. Waiver of Subrogation

Lessee shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its councilmembers, board and committee members, officials, agents, guests, invitees, consultants, and employees.

#### 1.4. Certificates of Insurance

At or before the time of execution of this Agreement, Lessee shall furnish the City's Finance Director with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days of advance notice in writing of cancellation, non-renewal, or material change in the policy, of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Finance Director upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Finance Director at City Hall, 310 Nolan St., Big Spring, TX 79720.

#### 1.5. Lessee's Liability

The procurement of such policy of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this Agreement. Lessee's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

## 2. Types and Amounts of Insurance Required

Lessee shall obtain and continuously maintain in full effect at all times during the term hereof, at Lessee's sole expense, insurance coverages as follows with limits not less than those set forth below:

### 2.1. Commercial General Liability

This policy shall be a comprehensive occurrence-type policy and shall protect the Lessee and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than the Lessee's employees) and damage to property of the City or others arising out of the act of omission of the Lessee or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Lessee under the paragraph of this Agreement entitled "Indemnification," including lease liability, completed operations, products, liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premise/operations, and independent contractors (to remain in force for two (2) years after final payment).

Coverage shall be as follows:

**\$1,000,000**          General Aggregate

**\$500,000**          Each Occurrence

## Donald Moore

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**From:** Cox, Ethan [Ethan.Cox@cityofdenton.com]  
**Sent:** Monday, April 04, 2016 2:26 PM  
**To:** Donald Moore  
**Subject:** RE: Online Utility Exchange?

Donald,  
I've included my responses in red font in your email below. Thanks!

Ethan

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**From:** Donald Moore [mailto:dmoore@mybigspring.com]  
**Sent:** Monday, April 04, 2016 10:06 AM  
**To:** Cox, Ethan <Ethan.Cox@cityofdenton.com>  
**Subject:** Online Utility Exchange?

Ethan,  
Thank you for the return phone call. It would really help if you could answer the following questions.

1. Do you like their service? **Yes. It has helped us streamline our identity theft prevention, credit issuance, and debt collection efforts.**
2. Do you use it for setting deposit amounts and if so what are the deposit amounts? **Yes. For customers with good credit, we waive the deposit. If their credit is "fair," we assess a deposit equal to one month's average utility bill, and for "high risk," we assess two times the monthly average.**
3. Do you know how the City Ordinance's were changed, or know what ordinance govern deposits and credit checks? **Yes. I partnered with our legal department to revise our collection ordinance and policies prior to implementing Online Utility Exchange. I've attached a link to our code of ordinances. The applicable verbiage is in Subpart A, Chapter 26, Sections 1-13.**  
[https://www.municode.com/library/tx/denton/codes/code\\_of\\_ordinances?nodeId=SPACOOOR\\_CH26UT](https://www.municode.com/library/tx/denton/codes/code_of_ordinances?nodeId=SPACOOOR_CH26UT)
4. Do you apply deposits to the bill after so many months of good payment history? **Yes. We refund after 12 consecutive months of online payment.**
5. Has using Online Utility Exchange decrease
6. Do you require the person who opens the account in their name lives at the address, and if so, do you require any proof? **No. We simply require them to be financially responsible for the cost of service.**
7. Do you get authorization of the Landlord to put the utility account in a person's name, in the case of renters? **No. We try to stay out of the middle of landlord/tenant relationships.**
8. Are landlords responsible for payment of renter defaults? **No. The debt is the sole responsibility of the person utilizing the service.**
9. Do you know anything about a federal law which limits the deposit amount a city or water district can require, based on the poverty rate? **I have not heard of that. If you are able to locate such a law, I would be very interested in seeing it.**

Sincerely,

Donald Moore, CPA  
Finance Director and City Secretary

**Donald Moore**

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**From:** Dottie Crockett [dcrockett@ci.dumas.tx.us]  
**Sent:** Tuesday, March 29, 2016 10:20 AM  
**To:** 'Donald Moore'  
**Subject:** RE: Questions on Credit Checks with Online Utility Exchange

[https://www.municode.com/library/tx/dumas/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH74UT\\_ARTVSERERACH\\_BIPR\\_DIV3DE\\_S74-221GASE](https://www.municode.com/library/tx/dumas/codes/code_of_ordinances?nodeId=PTIICOOR_CH74UT_ARTVSERERACH_BIPR_DIV3DE_S74-221GASE)

Here is the link to the deposit ordinance. Let me know if it doesn't work for you.

*Dottie Crockett*

Finance Director  
City of Dumas  
P.O. Box 438  
Dumas, Texas 79029  
[dcrockett@ci.dumas.tx.us](mailto:dcrockett@ci.dumas.tx.us)  
806-935-4101 x100

*Aspire to Inspire.....before you Expire*

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**From:** Donald Moore [<mailto:dmoore@mybigspring.com>]  
**Sent:** Tuesday, March 29, 2016 9:49 AM  
**To:** [dcrockett@ci.dumas.tx.us](mailto:dcrockett@ci.dumas.tx.us)  
**Subject:** Questions on Credit Checks with Online Utility Exchange

Dottie,  
Thanks so much for your help. Here are the questions I am asking, with some of the answers I received from you. If you would email me your ordinance which you used to change the deposits, that would be great. If you can add any answers, or change some, that would also be nice.

1. Satisfaction with Online Utility Exchange? **Yes**
2. Do you use it for setting deposit amounts and if so what are the deposit amounts? **Yes \$50 to \$300**
3. Do you know how the City Ordinance's were changed, or know what ordinance govern deposits and credit checks? **Yes, and er**
4. Do you apply deposits to the bill after so many months of good payment history? **Yes after 2 years of perfect payment history.**
5. Has using Online Utility Exchange decrease the City's bad debt for Utilities? **Yes, decreased write offs by 42%.**
6. Do you require the person who opens the account in their name life at the address, and if so, do you require any proof? **We dc deposit and a signed agreement to pay. We have landlords that will leave utilities in their name for their tenants.**
7. Do you get authorization of the Landlord to put the utility account in a person's name, in the case of renters? **That depends or for their properties.**
8. Are landlords responsible for payment of renter defaults? **No.**

Sincerely,  
  
Donald Moore, CPA

Credit Checks For new Utility Customers  
 Tabulation Sheet  
 4/14/2016

Vendors	Setup Fee	Product	Price Per time	Min Monthly	Web Access	1st Year total	2n Year
1 Equifax	\$ 1,000.00	PosID with Credit Score	\$ 1.50	\$ 100.00	\$ -	\$ 2,350.00	\$ 1,350.00
2 Online Utilities	\$ -	Utility Product	\$ 2.85	\$ -	\$ -	\$ 2,565.00	\$ 2,565.00
3 FirstCheck	\$ -	Discounted Credit Check	\$ 7.50	\$ -	\$ -	\$ 6,750.00	\$ 6,750.00
4 Experian -Refused to give prices unless the City paid for membership. Would not listen to local government purchasing requirements.							



## SUBSCRIBER SERVICE AGREEMENT

This Subscriber Service Agreement ("Agreement") is entered into by ONLINE Information Services, Inc., hereafter referred to as "ONLINE", a North Carolina corporation, d/b/a the ONLINE Utility Exchange and CITY OF BIG SPRING hereafter referred to as "Subscriber", 310 Nolan Street, Big Spring, TX 79720 a Texas corporation as of Tuesday, April 12, 2016.

ONLINE and Subscriber agree as follows:

1. **Services.** Through the ONLINE Utility Exchange, ONLINE will furnish services to Subscriber involving the supply of business and consumer information, consumer reports, credit worthiness scores, fraud detection, information pertaining to unpaid utility bills and other services that ONLINE may, from time to time, make available to Subscriber ("Services"). Any mention of rights or obligations to ONLINE within this agreement shall also apply to Experian, Trans Union, Equifax, Core Logic, LexisNexis, Background Data, and Rapid Courts ("Data Providers").
2. **Charges to Subscriber.**
  - A. Subscriber agrees to pay ONLINE for all charges for each Subscriber inquiry, including "no record found", submitted to ONLINE as outlined in SCHEDULE A "ONLINE Charges to Subscriber."
  - B. Bureau/Jurisdiction Surcharges and Fees. Subscriber acknowledges that Data Providers may impose additional surcharges for access to files that are affiliate owned or that reside in certain States or Counties. Additionally certain jurisdictions charge court fees for accessing public record information. Examples of these charges include Equifax Affiliate owned files, California Privacy Act Surcharges, and Alaska and Colorado State surcharges, and County Court fees. In the event that a file/report is accessed which has such a surcharge or fee ONLINE will pass that Surcharge/Fee along to the Subscriber.
  - C. Subscriber acknowledges that the pricing in Schedule A is based upon volume representations made by Subscriber during the negotiation of this agreement. In the event that Subscriber fails to meet these volume expectations, ONLINE reserves the right to adjust its charges to accurately reflect the volume used by Subscriber.
  - D. Subscriber agrees that ONLINE aggregates data from third party sources and from time to time the cost to ONLINE to provide the services may increase. ONLINE reserves the right to adjust Subscriber's pricing to reflect any such change with a 30 day notice to Subscriber prior to the change becoming effective.
  - E. Subscriber agrees that on each annual contract renewal the per inquiry price will increase by 2.5% of the then current price being paid by the Subscriber. This new per inquiry price will be reflected on the first invoice after the contract renewal with no additional notice to Subscriber.
  - F. Subscriber will be solely responsible for all federal, state and local taxes levied or assessed in connection with ONLINE's performance of the Services, other than income taxes assessed with respect to ONLINE's taxable net income, for which income taxes ONLINE will be solely responsible.
3. **Invoicing/Billing.**
  - A. Subscriber agrees that the pricing in Schedule A is based on Subscriber setting up and paying their monthly invoice via an automated payment method, either credit card or ACH.
  - B. All billing is processed monthly between the 1<sup>st</sup> and the 5<sup>th</sup> for the previous month's services.
  - C. ONLINE will process the automated payment and deliver to Subscriber an invoice marked "Paid in Full".
  - D. All invoices will be delivered via electronic mail to the email addresses designated by Subscriber.
  - E. Subscriber agrees that, if their automated payment method is declined, ONLINE may charge a Non-Sufficient Funds fee, not to exceed \$25.00.
  - F. A service charge of 2% of the unpaid balance will be charged on all accounts not paid by the 1st day of the month following the invoice date.
  - G. Services will be immediately terminated when account reaches 60 days past due. Services will not be reinstated until the full outstanding balance is paid in full and a valid automated payment method is setup with ONLINE.
  - H. If account remains unpaid for 90 days the account will be referred to collections and/or legal proceedings initiated. Subscriber agrees to pay ONLINE's cost and expenses, including reasonable attorney fees, to recover any unpaid balance owed by Subscriber.

#### 4. Subscriber Use.

- A. Subscriber hereby certifies and warrants that it will request and use consumer information received from ONLINE solely in connection with credit transactions involving the consumer as to whom such information is sought, or for other "permissible purposes" as defined by the Fair Credit Reporting Act, 15 U.S.C. Section 1681 *et seq.* (together with any successor or replacement statutory provisions, "FCRA")
- B. Subscriber hereby certifies and warrants that it will request and use the fraud prevention portion of the service in compliance with a "permitted purpose" under the Gramm Leach Bliley Act, specifically fraud prevention and detection.
- C. As many ONLINE services contain information from the Social Security Administration's Death Master File ("DMF"), Subscriber acknowledges its obligation to restrict Subscriber's use of deceased flags or other indicia within ONLINE's services to legitimate fraud prevention or business purposes in compliance with applicable laws, rules and regulations and consistent with Subscriber's applicable Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*) or Gramm-Leach-Bliley Act (15 U.S.C. § 6801 *et seq.*) use. Subscriber certifies it will not take any adverse action against any consumer without further investigation to verify the information from the deceased flags or other indicia within ONLINE's services.
- D. Subscriber may be given access to information from state departments of motor vehicles. Subscriber hereby certifies and warrants that it will request and use the provided information only for an approved permissible purpose under the Drivers Privacy Protection Act, specifically fraud prevention and/or to affect collection of a debt.
- E. If Subscriber obtains Social Security Numbers or Drivers License Numbers (SSNs) through the services, Subscriber certifies it will not use the SSNs for any purpose other than, fraud prevention and/or to affect collection of a debt.
- F. All such information shall be maintained by Subscriber in strict confidence and disclosed only to employees whose duties reasonably relate to the legitimate business purposes for which the information is requested, and Subscriber will not disclose, sell or otherwise distribute to third parties any information received hereunder, except as otherwise required by law; provided, however, that if Subscriber has purchased a consumer report from ONLINE in connection with a consumer's application for credit, and the consumer makes a timely request of Subscriber, Subscriber may share the contents of that report with the consumer as long as it does so without charge.
- G. Subscriber acknowledges that it has received and reviewed a copy of the "Credit Scoring Services." (See Exhibit "A".)
- H. Subscriber shall request consumer reports from ONLINE by electronic means. Each request will contain sufficient identifying information concerning the consumer about who the consumer report is requested to enable ONLINE to deliver the consumer report.
- I. ONLINE reserves the right to modify the standard inquiry format to be used by Subscriber and Subscriber agrees to abide by such modifications.
- J. Subscriber hereby certifies that it will properly dispose of any customer information obtained from the use of the services to include the destruction or erasure of electronic media, the burning, pulverizing, or shredding of papers containing the customer information so that the information cannot practicably be read or reconstructed.
- K. Subscriber may elect to receive Credit, Criminal, DMV and other consumer Information for the purpose of evaluating a potential or current employee's background. Information received by Subscriber may include data from Equifax, Experian, Trans Union, or other Data Providers. If Subscriber elects to receive Employment Reports Subscriber acknowledges the following:
  - i. A clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report (to include credit and criminal) may be obtained for employment purposes.
  - ii. The consumer has authorized in writing the procurement of the Employment Report by the subscriber.
  - iii. To include on their application for employment a signed authorization and release section giving permission for the Subscriber to pull an Employment Report to investigate the applicant.
  - iv. To keep documentation on the applicant (Signed Employment Application, Copy of Employment Report) on file in their office for 5 years.
  - v. Subscriber agrees that Employment Reports will be the only consumer reporting products pulled to screen employment applicants.
  - vi. Subscriber acknowledges that before taking any adverse action based in whole or in part on the Employment Report (if an offer is not extended to applicant based on information contained within the Employment Report), a copy of the report which contains the applicant's rights under the Fair Credit Reporting Act must be given to the applicant.
  - vii. The information from ONLINE's Employment Reports will not be used in violation of any applicable federal or state equal employment opportunity law or other regulation. Subscriber hereby acknowledges receipt of "Notice to Users of Consumer Reports: Obligations of Users under FCRA". (See Exhibit "B".)
- L. California and Vermont Users
  - i. Subscriber agrees to comply with all applicable provisions of the California Credit Reporting Agencies Act. Subscriber certifies that it \_\_\_\_\_ IS or  X  IS NOT a "Retail Seller", as defined in Section 1802.3 of the California Civil Code, doing business in California and issues credit to consumers who appear in person that it will instruct its employees and agents to inspect a photo identification of the consumer at the time the application is submitted in person. This paragraph does not apply to an application for credit submitted by mail.
  - ii. Subscriber acknowledges that it has received and reviewed a copy of the "Requirements for California and Vermont Users." (See Exhibit "C")
- K. Subscriber further agrees that it will be solely responsible to ensure and require that each of its users meets and complies with applicable federal, state and local laws, rules, and regulations relating to its use of the Services and to the provision to ONLINE of Subscriber's Records. Relevant laws include but are not limited to:

- i. Establishing reasonable procedures to insure that its employees will not request Data Services relating to themselves, their families, friends, or request consumer information on other persons other than as permitted by the FCRA, ONLINE, and this Agreement.
  - ii. Where adverse action is taken against a consumer that is based in whole or in part on the information contained in a consumer report provided by ONLINE, consistent with the responsibilities under the Fair Credit Reporting Act, Subscriber shall notify the Consumer to direct consumer inquiries to the CRA that provided the report and contained on the adverse action notice for such report.
- L. Record Retention.** *The Federal Equal Opportunities Act states that a creditor must preserve all written or recorded information connected with an application for 60 months. In keeping with the ECOA, the credit reporting agency requires that you retain the credit application and, if applicable, a purchase agreement for a period of not less than 60 months. When conducting an investigation, particularly following a breach or a consumer complaint that your company impermissibly accessed their credit report, the credit reporting agency will contact you and will request a copy of the original application signed by the consumer or, if applicable, a copy of the sales contract. "Under Section 621 (a) (2) (A) of the FCRA, any person that violates any of the provisions of the FCRA may be liable for a civil penalty of not more than \$2,500 per violation."*

**5. ONLINE Use.**

- A. The ONLINE Utility Exchange acknowledges its qualification as a specialty consumer reporting agency according to the Fair Credit Reporting Act: § 603 Definitions; rules of construction [15 U.S.C. § 1681a]: "(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."**
- B.** As a consumer reporting agency, ONLINE may only use Subscriber's records for purposes consistent with applicable federal, state, and local laws, rules, and regulations' in the identification of credit risk and/or to recover unpaid accounts.
- C.** ONLINE shall not sell or furnish to any third party a list of consumers' names and addresses identified as a current or previous customer of Subscriber, nor will ONLINE extract directly from or otherwise identify on any third party's list a list of Subscriber's customers identified as a customer list of Subscriber. In no event shall ONLINE distribute a list of Subscriber's current or previous customers outside of the uses defined in this agreement.
- D.** ONLINE shall use commercially reasonable efforts to promptly and accurately process and incorporate into its database any record updates or consumer dispute verifications furnished to it by Subscriber, in accordance with the requirements of the FCRA or other applicable state or federal law. In the event that ONLINE deems any record updates or verification response of Subscriber to be incomplete, internally inconsistent, or otherwise inaccurate, ONLINE, in its sole discretion, may revise the item of information to conform with information supplied by the consumer, reject the record update or verification response and delete the information from its database, or make any other revisions that it deems necessary or appropriate.

**6. FCRA Requirements**

- A.** Although the FCRA primarily regulates the operations of consumer reporting agencies, it also affects Subscriber as a user of information. ONLINE has included a copy of the FCRA with Subscriber's membership kit and it is posted at <http://www.ftc.gov/us/statutes/fcradoc.pdf>. ONLINE suggests that Subscriber and Subscriber's employees become familiar with the following sections in particular:

- § 604. Permissible Purposes of Reports
- § 607. Compliance Procedures
- § 615. Requirement on users of consumer reports
- § 616. Civil liability for willful noncompliance
- § 617. Civil liability for negligent noncompliance
- § 619. Obtaining information under false pretenses
- § 621. Administrative Enforcement
- § 623. Responsibilities of Furnishers of Information to Consumer Reporting Agencies
- § 628. Disposal of Records

- B.** Each of these sections is of direct consequence to users who obtain reports on consumers. See Exhibit "B" for "Notice to Users of Consumer Reports: Obligations of Users under the FCRA".
- C.** As directed by law, consumer reports may be issued only if they are to be used for extending credit, review or collection of an account, employment purposes, underwriting insurance or in connection with some other legitimate business transaction such as in investment, partnership, etc. It is imperative that Subscriber identifies each request for a report to be used for employment purposes when such report is ordered. Additional state laws may also impact Subscriber's usage of reports for employment purposes.
- D.** ONLINE strongly endorses the letter and spirit of the Federal Fair Credit Reporting Act. ONLINE believes that this law and similar state laws recognize and preserve the delicate balance between the rights of the consumer and the legitimate needs of commerce.

- E. In addition to the Federal Fair Credit Reporting Act, other federal and state laws addressing such topics as computer crime and unauthorized access to protected databases have also been enacted. As a prospective user of consumer reports, ONLINE expects that Subscriber will comply with all relevant federal statutes and the statutes and regulations of the states in which Subscriber operates. The FCRA provides that any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under Title 18 of the United States Code, or imprisoned not more than two years, or both.

**7. Conditions.** Subscriber recognizes that ONLINE's Services require open sharing of information between Subscribers.

- A. Subscriber agrees to furnish to ONLINE, information from its records about its current and/or previous customers with whom it has established accounts. Such information will be furnished and updated no less frequently than at monthly intervals, unless otherwise agreed in writing. Subscriber hereby certifies that all information furnished to ONLINE shall be complete and accurate. Subscriber therefore has the option to, make a list of all current customers, including the service address, telephone number, place of employment and employment telephone number (hereafter referred to as Utility Exchange Data), as well as a list of all current or previous customers who have unpaid utility bills more than 30 days old (hereafter referred to as Utility Exchange Data). Subscriber agrees that each account will be accompanied by the Social Security Number of the guarantor of the bill and, in the case of married parties or joint responsibility by more than one guarantor, the Social Security Number of each party who is responsible for payment of the bill.
- B. Subscriber agrees they are a Data Furnisher as defined by the Fair Credit Reporting Act and will comply with the "Obligations of Furnishers" as attached in Exhibit "D".
- C. Subscriber agrees to notify ONLINE within 30 days of receipt of payment on any account which is part of ONLINE's Utility Exchange Data.
- D. Subscriber shall respond to any consumer disputes initiated by consumer within five (5) working days from receipt of dispute. Subscriber shall re-verify disputed information through either voice communication, electronic mail, or through other means as mutually agreed in writing. Subscriber certifies that all information supplied by it on any automated or manual basis in response to a consumer dispute verification request sent to it by ONLINE shall be complete and accurate. If in response to a consumer dispute verification request received from ONLINE, Subscriber desires to change any information relating to an account it has previously reported, Subscriber shall update the account information on both the verification response and in its own internal records to conform to such change. Subsequent customer record updates provided by Subscriber shall reflect such change.
- E. In the event that Subscriber fails to contribute Utility Exchange Data to the ONLINE Utility Exchange within 180 days of the effective date of this agreement, ONLINE shall consider the Subscriber to be a Non-Data Contributing Subscriber and shall impose a Non Data Contributor Surcharge of an additional \$.25 per inquiry.

**8. Term and Termination.**

- A. This Agreement is for a period of 12 months from the effective date and will automatically renew annually unless terminated by either party in writing at least 30 days prior to the then current expiration date.
- B. Notwithstanding the foregoing, if Subscriber is delinquent in the payment of charges, violates the FCRA or other applicable law or violates a material term of this Agreement, ONLINE may, at its election, discontinue providing the Services to Subscriber and terminate this Agreement immediately by written notice to the Subscriber.
- C. Notwithstanding anything to the contrary in this Agreement, if the continued provision of the Services or any affected component thereof becomes impossible, impractical, or undesirable due to a change in applicable federal, state, or local laws or regulations, as determined by ONLINE in its reasonable judgment, or due to circumstances imposed by ONLINE's third party vendors or Data Providers, ONLINE may either (a) cease to provide the Services or any affected component thereof within, or pertaining to persons residing within, the affected jurisdiction, or (b) establish new prices which apply to ONLINE's Services or any affected component thereof when provided or delivered within, or pertaining to persons residing within, the affected jurisdiction, which prices will be reasonably calculated to cover the costs incurred by ONLINE in complying with the applicable laws or regulations or circumstances imposed by third party Data Providers and will become effective on the date specified in such notice unless Subscriber objects in writing, in which case ONLINE may exercise its rights under clause (a) above. ONLINE will attempt to provide written notice of its actions as far in advance of the effective date as reasonably possible under the circumstances.
- D. **No Damages or Indemnification for Termination.** Neither party shall be liable to the other party for any costs or damages of any kind, including direct, special, exemplary, punitive, indirect, incidental or consequential damages, or for indemnification, solely on account of the lawful termination of this Agreement, even if informed of the possibility of such damages.

**9. Warranties.**

- A. **ONLINE Utility Exchange.** Subject to Section 18 "Excusable Delays" hereof, ONLINE warrants to Subscriber that ONLINE will use commercially reasonable efforts to deliver the Services promptly. Subscriber acknowledges that the Services involve information provided to ONLINE by fallible human sources and that for the fee charged for the Services,

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Initial

ONLINE cannot and will not be an insurer or guarantor of the accuracy or reliability of the Services, data contained in its database, or data provided with the Services. THE WARRANTY IN THE FIRST SENTENCE OF THIS PARAGRAPH IS THE ONLY WARRANTY ONLINE HAS GIVEN SUBSCRIBER WITH RESPECT TO THE SERVICES AND SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ONLINE MIGHT HAVE GIVEN SUBSCRIBER WITH RESPECT THERETO, INCLUDING, FOR EXAMPLE AND WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- B. Credit Scoring.** ONLINE's Credit Scoring Vendors warrant that these Credit Scoring Models are empirically derived and demonstrably and statistically sound and that to the extent the population to which the Credit Scoring Model is applied is similar to the population sample on which the Credit Scoring Model was developed, the Credit Scoring Model score may be relied upon by Subscriber to rank consumers in the order of the risk of unsatisfactory payment such consumers might present to Subscriber. ONLINE's Credit Scoring Vendors further warrant that so long as they provide the Credit Scoring Model, they will comply with regulations promulgated from time to time pursuant to the Equal Credit Opportunity Act, 15 USC Section 1691 *et seq.* THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES ONLINE'S CREDIT SCORING VENDORS HAVE GIVEN SUBSCRIBER WITH RESPECT TO THEIR CREDIT SCORING MODEL AND SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ONLINE'S CREDIT SCORING VENDORS MIGHT HAVE GIVEN SUBSCRIBER WITH RESPECT THERETO, INCLUDING, FOR EXAMPLE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Subscriber's rights under the foregoing Warranty are expressly conditioned upon Subscriber's periodic revalidation of the Credit Scoring Model in compliance with the requirements of Regulation B as it may be amended from time to time (12 CFR Section 202 *et seq.*). ONLINE shall not be deemed to have made (nor shall ONLINE be liable or responsible for in any respect for the application or enforcement of) any warranty set forth in this Section 9.B.
- C. Criminal Reports.** With respect to criminal reports available from ONLINE, neither ONLINE nor any division thereof nor any of its employees or officers or directors, makes any warranty, expressed or implied, including warranties of merchantability and fitness for a particular purpose or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, product, or process disclosed, or represents that its use would not infringe on privately owned rights. Subscriber hereby acknowledges that ONLINE does not create or maintain these records or information, and that ONLINE relies on third party sources including, but not limited to, data providers, state departments, state repositories, correctional institutions, the courts and other information sources. Subscriber understands ONLINE is not responsible for the content or accuracy of such records or information and ONLINE suggests that these searches should only be used as a preliminary inquiry. The records obtained from these searches must be used in complete compliance with the Fair Credit Reporting Act, Fair Housing Laws, and any other state or federal laws governing the use of public records. Although every effort is made to assure the accuracy of the information contained in these reports the Subscriber releases, indemnifies and holds harmless ONLINE to the fullest extent allowed by law with respect to Subscriber's receipt and/or use for any reason, of any information provided by ONLINE. Subscriber acknowledges that data entry errors or incomplete records may result in the return of incorrect results. ONLINE cannot offer legal advice on how to use the information contained in these reports and is not responsible for any action taken by Subscriber based on this information.

**10. Limitation of Liability.** Subscriber acknowledges that ONLINE maintains a database, updated on a periodic basis, from which Subscriber solicits information, and that ONLINE does not undertake a separate investigation for each inquiry or request for Services made by Subscriber. Subscriber also acknowledges that ONLINE provides Subscriber access to national consumer reporting agencies and various products and services available to Subscriber from these repositories through ONLINE. With regard to limitation of liability, any mention of ONLINE shall also apply to Experian, Trans Union, Equifax, LexisNexis, Core Logic, Rapid Courts, and Background Data (Data Providers). Subscriber also acknowledges that the prices ONLINE charges Subscriber for the Services are based upon ONLINE's expectation that the risk of any loss or injury that may be incurred by use of the Services will be borne by Subscriber and not ONLINE. Subscriber therefore agrees that it is responsible for determining that the Services are in accordance with ONLINE's obligations under this Agreement. If Subscriber reasonably determines that the Services do not meet ONLINE's obligations under this Agreement, Subscriber shall so notify ONLINE in writing within ten (10) days after receipt of the Services in question. Subscriber's failure to so notify ONLINE shall mean that Subscriber accepts the Services as is, and ONLINE shall have no liability whatsoever for the Services. Unless ONLINE disputes Subscriber's claim, ONLINE shall, at its option, either re-perform the Services in question or issue Subscriber a credit for the amount Subscriber paid for the nonconforming Services. This re-performance or credit constitutes Subscriber's sole remedy and ONLINE's maximum liability for any breach of this Agreement by ONLINE. If, notwithstanding the above, liability is imposed on ONLINE, then Subscriber agrees that ONLINE's total liability for any or all of Subscriber's losses or injuries from ONLINE's acts or omissions under this Agreement, regardless of the nature of the legal or equitable right claimed to have been violated, shall not exceed the amount paid by Subscriber to ONLINE under this Agreement during the six month period preceding the alleged breach by ONLINE of this Agreement. Subscriber covenants that it will not sue ONLINE for any amount greater than permitted by this Agreement. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL ONLINE HAVE ANY OBLIGATION OR LIABILITY TO SUBSCRIBER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES INCURRED BY THE SUBSCRIBER (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS OR DAMAGES TO BUSINESS REPUTATION), REGARDLESS OF HOW SUCH DAMAGES ARISE AND REGARDLESS OF WHETHER OR NOT THE SUBSCRIBER WAS ADVISED SUCH DAMAGES MIGHT ARISE.

**11. Hold Harmless.** Subscriber agrees that some of the information it will have access to maybe provided by third parties to include Equifax, Experian, Trans Union, LexisNexis, Core Logic, Rapid Courts, and Background Data (Data Providers). Without limitation of its obligations of indemnification to ONLINE under this Agreement or under applicable law, Subscriber shall indemnify save

and hold ONLINE's Suppliers, their officers, directors, employees, agents, contractors and subcontractors harmless for any and all injuries, damages, claims, costs and expenses arising out of Subscriber's use of the Services.

- 12. Indemnification.** Subscriber shall indemnify, defend and hold ONLINE and ONLINE Utility Exchange harmless from and against any and all claims, losses, damages, costs and expenses, including reasonable attorney fees, which may be asserted against or incurred by ONLINE or ONLINE Utility Exchange, based upon the use by Subscriber of the Services or other information furnished by ONLINE for purposes not permitted by law. Subscriber shall be liable for its own acts of negligence, and Subscriber shall hold ONLINE harmless and indemnify ONLINE for any claims, damages, loss, cost, expense or liability (including reasonable attorney's fees) incurred by ONLINE as a result of Subscriber's negligence in the furnishing of data to ONLINE, Subscriber's failure to perform any of its obligations described in this Agreement or any other breach by Subscriber of its obligations under this Agreement, or Subscriber's failure to comply with the FCRA.
- 13. Access Security.** Subscriber acknowledges that it has received and reviewed a copy of the "Access Security Requirements." (See Attachment E.)

  - A. Subscriber will notify ONLINE immediately as any approved User leaves or is terminated so that the User can be deactivated from the ONLINE system.**
- 14. Intellectual Property.** Subscriber acknowledges that ONLINE has expended substantial time, effort and funds to create and deliver the Services and compile its consumer reporting database. The Services and the data in ONLINE's Consumer Reporting databases are and will continue to be ONLINE's exclusive property. Nothing contained in this Agreement shall be deemed to convey to Subscriber or to any other party any right, title or interest, including any patent, copyright or other proprietary right, in or to the Services or data in ONLINE's Consumer Reporting database. Subscriber will not use or permit its employees, agents and subcontractors to use, the trademarks, service marks, logos, names, or any other of ONLINE's or its affiliates' proprietary designations, whether registered or unregistered, without ONLINE's prior written consent. Under no circumstances will Subscriber attempt in any manner, directly or indirectly, to discover or reverse engineer any confidential and proprietary criteria developed or used by ONLINE, its Data Providers, or its credit scoring vendors.
- 15. Non-Solicit Clause.** During the term of this agreement and for a period of 1 year subsequent to the termination of this agreement, neither party shall: (i) solicit, or encourage any organization directly or indirectly controlled by its management, Board, or shareholders, to solicit, any employee of the opposing party or any of its subsidiaries to leave the employ of the opposing party or any of its subsidiaries, (ii) solicit for employment, hire or engage as an independent contractor, or permit any organization directly or indirectly controlled by its management, Board, or shareholders, to solicit for employment, hire or engage as an independent contractor, any person who was employed by the opposing party or any of its subsidiaries at any time during the term of the Employee's employment with the other party or any of its subsidiaries; provided, that this clause shall not apply to any individual whose employment with the opposing party or any of its subsidiaries has been terminated for a period of one year or longer.
- 16. Waiver.** Either party may at any time waive compliance by the other with any covenant or condition contained in this Agreement, but only by written instrument signed by the party waiving such compliance. No such waiver, however, shall be deemed to constitute the waiver of any such covenant or condition in any other circumstance or the waiver of any other covenant or condition.
- 17. Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assignees. This Agreement may not be assigned, transferred, shared or divided in whole or in part by Subscriber without prior written consent; such consent shall not be unreasonably withheld.
- 18. Audit Rights.** Subscriber understands that ONLINE and each of ONLINE's Data Providers require the right to audit usage by Subscriber for compliance with the requirements of the Federal Fair Credit Reporting Act. Subscriber herein agrees to cooperate fully with any compliance audit by ONLINE or ONLINE's Data Providers and to provide ONLINE any required documentation or other information necessary for such an audit in a timely and reasonable manner.
- 19. Excusable Delays.** Neither party shall be liable for any delay or failure in its performance under this Agreement (other than for payment obligations hereunder) if and to the extent that such delay or failure is caused by events beyond the reasonable control of the party including, without limitation, acts of God or public enemies, labor disputes, equipment malfunctions, computer downtime, software defects, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes.
- 20. Dispute Resolution.** With the exception of any action taken under paragraphs 1 and 4 or any alleged violation of paragraph 9, 10 and 16 of this Agreement, the parties will resolve any dispute arising out of or relating to this Agreement in a binding arbitration conducted under the auspices of the American Arbitration Association. Disputes arising out of or resulting from actions taken under paragraphs 1, 4 or 9, 10 and 16 may be resolved informally by the parties through the courts.

**21. Site Inspection.** Subscriber agrees to an inspection of its premises by an independent Third Party Inspection Agency. The inspection is to be completed, in a timely manner, before any services will be set up with our company. Subscriber's Application Fee will be applied to cover the cost of the Inspection Fee. Subscriber also agrees that this fee is non-refundable.

**22. Continuance of Business.** In the event that Subscriber's business is sold or relocates to a different location, it is the Subscriber's obligation to notify ONLINE, in writing, of these changes, within 72 business hours of the effective date of the transaction or the relocation.

**23. Notifications.** Subscriber and ONLINE agree that any notifications to the other as it pertains to this Agreement shall be sent to the following contacts.

ONLINE Information Services, Inc.  
J.W. Blair, President  
P.O. Box 1489  
Winterville, NC 28590  
Fax: (800) 838-9830

City of Big Spring  
Subscriber Company Name  
Subscriber Contact Name, Title  
310 Nolan Street  
Subscriber Mailing Address  
Big Spring, TX 79720  
Subscriber City, State, Zip  
Fax: 432-263-8310

**24. Severability.** This Agreement shall be deemed to be severable and, if any provision is determined to be void or unenforceable, then that provision will be deemed severed and the remainder of the Agreement will remain in effect.

**25. Contract in Entirety; Law.** This Agreement sets forth the entire understanding and agreement between ONLINE and Subscriber concerning the Services, and supersedes any prior or contemporaneous oral or written agreements or representations. It may be modified only by a written amendment executed by both parties. This Agreement shall be interpreted in accordance with the laws of the State of Texas.

**26. Effective Date.** This Agreement is effective beginning April 12, 2016.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the parties' authorized representatives have executed this Agreement on the date indicated below.

Subscriber hereby certifies to have read and understand the "FCRA Requirements" notice and "Access Security Requirements" and will take all reasonable measures to enforce them within Subscribers facility. Subscriber certifies that a permissible purpose exists to use all Services accessed from ONLINE in accordance with the Fair Credit Reporting Act and the applicable service agreement. Subscriber also certifies that information obtained from ONLINE will be used for the purpose(s) listed below and no other. Subscriber will not resell the report to any third party.

**PERMISSIBLE PURPOSE/APPROPRIATE USE:** Describe the **specific purpose(s)** (a clear definition) for which **ONLINE** Services and consumer data will be used. (An answer like "Checking Credit" is not a permissible purpose.):

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Subscriber: City of Big Spring

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

**ONLINE Information Services, Inc.**  
**dba/ ONLINE Utility Exchange**

By: \_\_\_\_\_

Michael Gibson

Date: \_\_\_\_\_

Address: PO Box 1489  
 Winterville, NC 28590  
[www.ONLINEUtilityExchange.com](http://www.ONLINEUtilityExchange.com)

Telephone: (866) 630-6400  
 Fax: (800) 838-9830

**Address of Principal Business Office:**

310 Nolan Street

Big Spring, TX 79720

**Mailing Address (If Different):**

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE A  
ONLINE Charges to Subscriber**

Please denote beside each product what level user should have access. Please note that if Administrator (Admin) level is assigned, Supervisors (Super) and Users (User) will not have access to those products. And likewise if a Supervisor level is assigned Users will not have access to those products. If you desire for all individuals at your organization to have access to a product please set the Access Level for that product to User.

		<b>User/Super/Admin</b>
<b><u>ONLINE Utility Exchange Pricing:</u></b>		<b><u>Access Level</u></b>
ONLINE Utility Exchange Report:	<u>\$ 2.85</u> Per Report	<u>User</u> _____
Monthly Access Fee	<u>\$ 30.00</u> Per Month	
Adverse Action/Score Disclosure Letter Service	<u>\$ 1.50</u> Per Letter Sent by Online	_____
	<u>\$ 0.00</u> Per Letter Sent by Subscriber	_____

**Business Report Pricing:**

Business Intelliscore Report	<u>\$ 16.50</u> Per Report	_____
Business Profile Report	<u>\$ 32.00</u> Per Report	
Business Profile w/ Intelliscore Report	<u>\$ 36.00</u> Per Report	

**Employment Screening Reports Pricing**

Employment Credit Report	<u>\$15.00</u> Per Report	
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**Employment Criminal Report Pricing:**

National Criminal Search	<u>\$20.00</u> Per Report	_____
Statewide Instant Search	<u>\$12.00</u> Per Report	
County Search (Non-Instant)	<u>\$20.00</u> Per Report Plus Court Fees	
Non-Instant State Search	<u>\$17.00</u> Per Report	
National Sex Offender Only Search	<u>\$10.00</u> Per Report	

**Additional Report Pricing:**

Full Credit File with Score	<u>\$ 4.00</u> Per Report	
ONLINE People Search	<u>\$ 0.35</u> Per Search	
Collection Report	<u>\$ 4.00</u> Per Report	
Social Search	<u>\$ 1.80</u> Per Search	

OFFICE USE:	
Cr Source: _____	CF _____
Ev Source: _____	CR _____ EV _____

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**SCHEDULE A Continued  
ONLINE Charges to Subscriber**

**State Department of Motor Vehicles Search for Employment Purposes**

STATE	PRICE	STATE	PRICE	NON INSTANT STATE	PRICE
Alabama	\$17.00	Montana	\$15.00	Alaska	\$12.00
Arkansas	\$20.00	Nebraska	\$10.00	Delaware	\$22.00
Arizona	\$15.50	New Jersey	\$19.00	Hawaii	\$30.00
Colorado	10.00	New Mexico	\$14.00	Iowa	\$16.00
Connecticut	\$25.00	Nevada	\$15.00	Missouri	\$10.00
Dist. Of Columbia	\$20.00	New Hampshire	\$19.00	Washington	\$20.00
Florida	\$17.00	New York	\$14.00	Wyoming	\$12.00
Georgia	\$15.00	North Carolina	\$15.00		
Idaho	\$16.00	North Dakota	\$10.00		
Illinois	\$19.00	Ohio	\$12.00		
Indiana	\$15.00	Oklahoma	\$35.00		
Kansas	\$16.00	Rhode Island	\$27.00		
Kentucky	\$13.00	South Carolina	\$15.00		
Louisiana	\$23.00	South Dakota	\$12.00		
Maine	\$14.00	Tennessee	\$14.00		
Maryland	\$19.00	Texas	\$15.00		
Massachusetts	\$15.00	Utah	\$16.00		
Michigan	\$15.00	Vermont	\$24.00		
Minnesota	\$12.00	Virginia	\$14.00	<b>State</b>	
Mississippi	\$21.00	West Virginia	\$16.00	Wisconsin	\$14.00

**\*\*\*\*\*Note: If Tax exempt, please provide certificate\*\*\*\*\***

Subscriber agrees to the above pricing schedule for reports pulled from ONLINE Information Services, Inc.

\_\_\_\_\_  
(Subscriber's Name)

\_\_\_\_\_  
(Subscriber's Signature)

\_\_\_\_\_  
(Date)

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Initial

## Exhibit "A"

### Credit Scoring Services

Subscriber is a credit grantor that purchases Consumer Reports from ONLINE pursuant to the Agreement in connection with credit transactions involving the consumer subjects of such Consumer Reports. As an enhancement to the basic Consumer Report, ONLINE has offered Subscriber the opportunity to purchase one or more credit risk scores provided by Trans Union, Equifax, or Experian; including, but not limited to, Fair Isaac & Co. (FICO) and Vantage score models. Use of these scoring models may require additional addendums and be subject to additional terms of use.

Subscriber recognizes that all credit risk scores offered hereunder are statistical scores and may not be predictive as to any particular individual. No such score is intended to characterize any individual as to credit capability. Subscriber recognizes that factors other than credit risk scores should be considered in making a credit decision, including the Credit Report, the individual credit application, economic factors, and various other pertinent information. A statement of the factors that significantly contributed to the credit risk score may accompany the score. If so, such information may be disclosed to the consumer as the reason for taking adverse action, as required by Regulation B. However, the credit risk score itself is proprietary and may not be used as the reason for adverse action under Regulation B. In addition, under the Fair Credit Reporting Act, credit risk scores are not considered part of the consumer's file. Accordingly, Subscriber agrees only to disclose the actual credit risk score to the consumer when accompanied by the corresponding reason codes or otherwise required by law.

SUBSCRIBER HAS MADE ITS OWN ANALYSIS OF THE CREDIT RISK SCORE OR SCORES SELECTED BY SUBSCRIBER, INCLUDING THE RELIABILITY OF USING SUCH SCORES IN CONNECTION WITH SUBSCRIBER'S CREDIT DECISION. ONLINE AND ITS AGENTS SHALL NOT BE LIABLE FOR ANY LOSS, COSTS, DAMAGES, OR EXPENSE INCURRED BY SUBSCRIBER RESULTING FROM SUBSCRIBER'S USE OF CREDIT RISK SCORES, OR THE INACCURACY THEREOF. IN NO EVENT SHALL ONLINE NOR ITS AGENTS BE LIABLE TO SUBSCRIBER FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES FOR A CLAIM BY SUBSCRIBER RESULTING FROM SUBSCRIBER'S USE OF ANY CREDIT RISK SCORE. THE TOTAL AGGREGATE LIABILITY OF ONLINE AND ITS AGENTS FOR A CLAIM BY SUBSCRIBER RELATED TO SUBSCRIBER'S USE OF ANY CREDIT RISK SCORE SHALL NOT EXCEED THE SURCHARGE PAID BY SUBSCRIBER FOR THE CREDIT RISK SCORE TO WHICH SUCH CLAIM RELATES.

**Subscriber certifies that in using the FICO/VANTAGE Credit Scoring Models that:**

- A. Subscriber will only use the permissible purpose as outlined within ONLINE's Subscriber Service Agreement (hereinafter referred to as "Agreement") and the Application for Service in accordance with the FCRA to obtain the information derived from the Fair Isaac and Company Scoring Model (hereinafter referred to as "FICO") or the Vantage Scoring Model.
- B. Subscriber will limit Subscriber's use of the scores and reason codes solely to use in Subscriber's own business with no right to transfer or otherwise sell, license, sublicense or distribute said scores or reason codes to third parties.
- C. Subscriber will maintain internal procedures to minimize the risk of unauthorized disclosure and agree that such scores and reason codes will be held in strict confidence and disclosed only to those employees with a "need to know" and to no other person.
- D. Notwithstanding any contrary provision of the Agreement, Subscriber may disclose the scores provided to Subscriber under the Agreement to the consumer, when accompanied by the corresponding reason codes, in the context of bona fide lending transactions and decisions only as required by law.
- E. Subscriber will comply with all applicable laws and regulations in using the scores and reason codes purchased from ONLINE.
- F. Subscriber or any of its employees, agents or subcontractors will not use any trademarks, service marks, logos, names, or any other proprietary designations, whether registered or unregistered, of the Data Providers or Fair, Isaac and Company, or their affiliates without such entity's prior written consent.
- G. Subscriber will not in any manner, directly or indirectly attempt to discover or reverse engineer any confidential and proprietary criteria developed or used by the Data Providers/Fair, Isaac in performing the FICO/Vantage Scoring Model.
- H. Subscriber understands that Data Providers/FICO warrants that the FICO/Vantage Scoring Model are empirically derived and demonstrably and statistically sound and that to the extent the populations to which the FICO/Vantage Scoring Models are applied is similar to the population sample on which the FICO/Vantage Scoring Models were developed, the FICO/Vantage score may be relied upon by Subscriber to rank consumers in the order of the risk of unsatisfactory payment such consumers might present to Subscribers. FICO/Vantage further warrant that so long as FICO/Vantage provide the FICO/Vantage Model it will comply with regulations promulgated from time to time pursuant to the Equal Credit Opportunity Act, 15 USC Section 1691 *et seq.* THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES DATA PROVIDERS, FICO, OR VANTAGE HAVE GIVEN SUBSCRIBER WITH RESPECT TO FICO/VANTAGE SCORING MODELS AND SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, DATA PROVIDERS, FICO, OR VANTAGE MIGHT HAVE GIVEN SUBSCRIBER WITH RESPECT THERETO, INCLUDING, FOR EXAMPLE, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Subscriber's rights under the foregoing Warranty are expressly conditioned upon each

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respective Subscriber's periodic revalidation of the FICO/Vantage Scoring Model in compliance with the requirement of Regulation B as it may be amended from time to time (12 CFR Section 202 *et seq.*).

- I. Subscriber agrees that the aggregate liability of the Data Providers/FICO to the Subscriber is equal to the lesser of the Fees paid by ONLINE to the Data Providers/FICO for the FICO/Vantage Scoring Models resold to the pertinent Subscriber during the six (6) month period immediately preceding the Subscriber's claim, or the fees paid by the pertinent Subscriber to ONLINE under the Agreement during said six (6) month period and excluding any liability of the Data Providers/FICO for incidental, indirect, special or consequential damages of any kind.

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## Exhibit “B”

All users of consumer reports must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

### NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Consumer Financial Protection Bureau's (CFPB) website at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the CFPB's website. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.** The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

#### I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

##### A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)(2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)
- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making “prescreened” unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of “prescreened” information are described in Section VII below.

##### B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

##### C. Users Must Notify Consumers When Adverse Actions Are Taken

The term “adverse action” is defined very broadly by Section 603. “Adverse actions” include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

#### 1. Adverse Actions Based on Information Obtained From a CRA

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If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

## **2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies**

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b) (1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

## **3. Adverse Actions Based on Information Obtained From Affiliates**

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b) (2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

## **D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files**

When a consumer has placed a fraud alert, including one relating to identify theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A (h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

## **E. Users Have Obligations When Notified of an Address Discrepancy**

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed. Federal regulations are available at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

## **F. Users Have Obligations When Disposing of Records**

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. Federal regulations are available at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

## **II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES**

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations prescribed by the CFPB. Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g) (1) (D) ("Notice to the Home Loan Applicant").

## **III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES**

### **A. Employment Other Than in the Trucking Industry**

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If the information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b) (2). The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

#### **B. Employment in the Trucking Industry**

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

#### **IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED**

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation.
- This must be made in a written statement that is mailed or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

#### **V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS**

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

#### **VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION**

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in regulations) the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or a permitted by statute, regulation, or order).

#### **VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS**

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(1), 604(c), 604(e), and 615(d).

This practice is known as “prescreening” and typically involves obtaining from a CRA a list of consumers who meet certain pre-established criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer’s CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.
- In addition, the CFPB has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The relevant regulation is 12 CFR 1022.54.

## VIII. OBLIGATIONS OF RESELLERS

### A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  - (1.) the identify of all end-users;
  - (2.) certifications from all users of each purpose for which reports will be used; and
  - (3.) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller.
 Resellers must make reasonable efforts to verify this information before selling the report.

### B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

### C. Fraud Alerts and Resellers

Section 605A (f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

## IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The CFPB’s website, [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore), has more information about the FCRA, including publications for businesses and the full text of the FCRA.

### Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	Section 609 15 U.S.C. 1681g	Section 620 15 U.S.C. 1681r
Section 603	Section 610 15 U.S.C. 1681h	Section 621 15 U.S.C. 1681s
15 U.S.C. 1681	Section 611 15 U.S.C. 1681i	Section 622 15 U.S.C. 1681s-1
15 U.S.C. 1681a	Section 612 15 U.S.C. 1681j	Section 623 15 U.S.C. 1681s-2
Section 604 15 U.S.C. 1681b	Section 613 15 U.S.C. 1681k	Section 624 15 U.S.C. 1681t
Section 605 15 U.S.C. 1681c	Section 614 15 U.S.C. 1681l	Section 625 15 U.S.C. 1681u
Section 605A 15 U.S.C. 1681c-A	Section 615 15 U.S.C. 1681m	Section 626 15 U.S.C. 1681v
Section 605B 15 U.S.C. 1681c-B	Section 616 15 U.S.C. 1681n	Section 627 15 U.S.C. 1681w
Section 606 15 U.S.C. 1681d	Section 617 15 U.S.C. 1681o	Section 628 15 U.S.C. 1681x
Section 607 15 U.S.C. 1681e	Section 618 15 U.S.C. 1681p	Section 629 15 U.S.C. 1681y
Section 608 15 U.S.C. 1681f	Section 619 15 U.S.C. 1681q	

## Exhibit "C"

### Requirements for California and Vermont Users

#### California Users:

Provisions of the California Consumer Credit Reporting Agencies Act, as amended effective July 1, 1998, will impact the provision of consumer reports to Subscriber under the following circumstances: (a) if Subscriber is a "retail seller" (defined in part by California law as "a person engaged in the business of selling goods or services to retail buyers") and is selling to a "retail buyer" (defined as "a person who buys goods or obtains services from a retail seller in a retail installment sale and not principally for purpose of resale") and a consumer about whom Subscriber is inquiring is applying, (b) in person and (c) for credit. Under the foregoing circumstances, ONLINE, before delivering a Consumer Report to Subscriber, must match at least three (3) items of a consumer's identification within the file maintained by the Data Providers with the information provided to Data Provider's via ONLINE by Subscriber in connection with the in-person credit transaction. Compliance with this law further includes Subscriber's inspection of the photo identification of each consumer who applies for in-person credit, mailing extensions of credit to consumer responding to a mail solicitation at a specified address, taking special actions regarding a consumer's presentment of a police report regarding fraud, and acknowledging consumer demands for reinvestigations within certain time frames.

If Subscriber is a "retail seller," Subscriber certifies that it will instruct its employees to inspect a photo identification of the consumer at the time an application is submitted in person. If Subscriber is not currently, but subsequently becomes a "retail seller," Subscriber agrees to provide written notice to ONLINE prior to ordering Consumer Reports in connection with an in-person credit transaction, and agrees to comply with the requirements of the California law as outlined in this Attachment, and with the specific certifications set forth herein.

Subscriber certifies that, as a "retail seller," it will either (a) acquire a new Subscriber number for use in processing Consumer Report inquiries that result from in-person credit applications covered by California law, with the understanding that all inquiries using this new Subscriber number will require that Subscriber supply at least three items of identifying information from the applicant; or (b) contact ONLINE sales representative to ensure that Subscriber's existing Subscriber number is properly coded for these transactions.

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#### Vermont Users:

Subscriber acknowledges that it subscribes to receive various information services from ONLINE, Inc. in accordance with the Vermont Fair Credit Reporting Statute, 9 V.S.A. §2480e (1999), as amended (the "VFCRA") and the Federal Fair Credit Reporting Act, 15, U.S.C. 1681 et. Seq., as amended (the "FCRA") and its other state law counterparts. In connection with Subscriber's continued use of ONLINE services in relation to Vermont consumers, Subscriber hereby certifies as follows:

Vermont Certification. Subscriber certifies that it will comply with the applicable provisions under Vermont law. In particular, Subscriber certifies that it will order certain information relating to Vermont residents, that are Consumer Reports as defined by the VFCRA, only after Subscriber has received prior consumer consent in accordance with the VFCRA § 2480e and applicable Vermont Rules. Subscriber further certifies that the attached copy § 2480e of the Vermont Fair Credit Reporting Statute was received from ONLINE.

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#### Vermont Fair Credit Reporting Statute, 9 V.S.A § 2480e (1999)

##### § 2480e. Consumer consent

- (a) A person shall not obtain the credit report of a consumer unless:
  - (1) the report is obtained in response to the order of a court having jurisdiction to issue such an order; or
  - (2) the person has secured the consent of the consumer, and the report is used for the purpose consented to by the consumer.
- (b) Credit reporting agencies shall adopt reasonable procedures to assure maximum possible compliance with the subsection (a) of this section
- (c) Nothing in this section shall be construed to affect:
  - (1) the ability of a person who has secured the consent of the consumer pursuant to subdivision (a) (2) of this section \_\_\_\_\_ to include in his or her request to the consumer permission to also obtain credit reports, in connection with the same transaction or extension of credit, for the purpose of reviewing the account, increasing the credit line on the account, for the purpose of taking collection action on the account, or for other legitimate purposes associated with the account; and
  - (2) the use of credit information for the purpose of prescreening, as defined and permitted from time to time by the Federal Trade Commission.

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**VERMONT RULES**  
**\*\*\* CURRENT THROUGH JUNE 1999 \*\*\***  
**AGENCY 06. OFFICE OF THE ATTORNEY GENERAL**  
**SUB-AGENCY 031. CONSUMER PROTECTION DIVISION**  
**CHAPTER 012. Consumer Fraud—Fair Credit Reporting**  
**RULE CF 112 FAIR CREDIT REPORTING**  
**CVR 06-031-012, CF 112.03 (1999)**  
**CF 112.03 CONSUMER CONSENT**

- (a) A person required to obtain consumer consent pursuant to 9 V.S.A. §§ 2480e and 2480g shall obtain said consent in writing if the consumer has made a written application or written request for credit, insurance, employment, housing or governmental benefit. If the consumer has applied for or requested credit, insurance, employment, housing or governmental benefit in a manner other than in writing, then the person required to obtain consumer consent pursuant to 9 V.S.A. §§2480e and 2480g shall obtain said consent in writing or in the same manner in which the consumer made the application or request. The terms of this rule apply whether the consumer or the person required to obtain consumer consent initiates the transaction.
- (b) Consumer consent required pursuant to 9 V.S.A. §§ 2480e and 2480g shall be deemed to have been obtained in writing if, after a clear and adequate written disclosure of the circumstances under which a credit report or credit reports may be obtained and the purposes for which the credit report or credit reports may be obtained, the consumer indicates his or her consent by providing his or her signature.
- (c) The fact that a clear and adequate written consent form is signed by the consumer after the consumer's credit report has been obtained pursuant to some other form of consent shall not affect the validity of the earlier consent.

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## Exhibit “D”

All furnishers of information to consumer reporting agencies must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau’s website, [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

### NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C. § 1681s-2. State law may impose additional requirements on furnishers. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is available at the website of the Consumer Financial Protection Bureau (CFPB): [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore). A list of the sections of the FCRA cross-referenced to the U.S. Code is at the end of this document. Section 623 imposes the following duties upon furnishers:

#### Accuracy Guidelines

The FCRA requires furnishers to comply with federal guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. Federal regulations and guidelines are available at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore). Section 623(e).

#### General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a) (1) (A) and (a) (1) (C).

#### Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a) (2).

#### Duties after Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified by the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a) (1) (B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a) (3).

Furnishers must comply with federal regulations that identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Under these regulations, furnishers must complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a “credit repair organization.” Section 623(a) (8). Federal regulations are available at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore). Section 623(a) (8).

#### Duties after Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b) (1) (A) and (b) (1) (B).
- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Sections 623(b) (1) (C) and (b) (1) (D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b) (2).
- Promptly modify or delete the information, or block its reporting. Section 623(b) (1) (E).

#### Duty to Report Voluntary Closing of Credit Accounts

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If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnished information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a) (4).

#### **Duty to Report Dates of Delinquencies**

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a) (5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a) (5).

#### **Duties of Financial Institutions When Reporting Negative Information**

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a) (7). The CFPB has prescribed model disclosures, 12 CFR Part 1022, App. B.

#### **Duties When Furnishing Medical Information**

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a) (9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

#### **Duties when ID Theft Occurs**

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623(a) (6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each CRA of the correct information and must thereafter report only complete and accurate information. Section 623(a) (2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher may not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The CFPB's website, [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore), has more information about the FCRA, including publications for businesses and the full text of the FCRA.

#### **Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:**

Section 602 15 U.S.C. 1681 Section 615 15 U.S.C. 1681m  
Section 603 15 U.S.C. 1681a Section 616 15 U.S.C. 1681n  
Section 604 15 U.S.C. 1681b Section 617 15 U.S.C. 1681o  
Section 605 15 U.S.C. 1681c Section 618 15 U.S.C. 1681p  
Section 605A 15 U.S.C. 1681c-A Section 619 15 U.S.C. 1681q  
Section 605B 15 U.S.C. 1681c-B Section 620 15 U.S.C. 1681r  
Section 606 15 U.S.C. 1681d Section 621 15 U.S.C. 1681s  
Section 607 15 U.S.C. 1681e Section 622 15 U.S.C. 1681s-1  
Section 608 15 U.S.C. 1681f Section 623 15 U.S.C. 1681s-2  
Section 609 15 U.S.C. 1681g Section 624 15 U.S.C. 1681t  
Section 610 15 U.S.C. 1681h Section 625 15 U.S.C. 1681u  
Section 611 15 U.S.C. 1681i Section 626 15 U.S.C. 1681v  
Section 612 15 U.S.C. 1681j Section 627 15 U.S.C. 1681w  
Section 613 15 U.S.C. 1681k Section 628 15 U.S.C. 1681x  
Section 614 15 U.S.C. 1681l Section 629 15 U.S.C. 1681y

## Exhibit “E”

### Access Security Requirements

The following information security controls are required to reduce unauthorized access to consumer information. It is your company's responsibility to implement these controls. ONLINE reserves the right to make changes to these Access Security Requirements without prior notification. The information provided herewith provides minimum baselines for information security

In accessing ONLINE's services, Subscriber agrees to follow these security requirements. These requirements are applicable to all systems and devices used to access, transmit, process, or store ONLINE data.

#### **1. Implement Strong Access Control Measures**

- 1.1 All credentials such as Subscriber Code number, Subscriber Code passwords, User names/identifiers (user IDs) and user passwords must be kept confidential and must not be disclosed to an unauthorized party. No one from ONLINE will ever contact you and request your credentials.
- 1.2 If using third party or proprietary system to access ONLINE's systems, ensure that the access must be preceded by authenticating users to the application and/or system (e.g. application based authentication, Active Directory, etc.) utilized for accessing ONLINE's data/systems.
- 1.3 If the third party or third party software or proprietary system or software, used to access ONLINE data/systems, is replaced or no longer in use, the passwords should be changed immediately.
- 1.4 Create a unique user ID for each user to enable individual authentication and accountability for access to ONLINE's infrastructure. Each user of the system access software must also have a unique logon password.
- 1.5 User IDs and passwords shall only be assigned to authorized individuals based on least privilege necessary to perform job responsibilities.
- 1.6 User IDs and passwords must not be shared, posted, or otherwise divulged in any manner.
- 1.7 Develop strong passwords that are:
  - Not easily guessable (i.e. your name or company name, repeating numbers and letters or consecutive numbers and letters)
  - Contain a minimum of eight (8) alphabetic and numeric characters for standard user accounts
  - For interactive sessions (i.e. non system-to-system) ensure that passwords/passwords are changed periodically (every 90 days is recommended)
- 1.8 Passwords (e.g. subscriber code passwords, user password) must be changed immediately when:
  - Any system access software is replaced by another system access software or is no longer used
  - The hardware on which the software resides is upgraded, changed or disposed
  - Any suspicion of password being disclosed to an unauthorized party (see section 4.3 for reporting requirements)
- 1.9 Ensure that passwords are not transmitted, displayed or stored in clear text; protect all end user (e.g. internal and external) passwords using, for example, encryption or a cryptographic hashing algorithm also known as "one-way" encryption. When using encryption, ensure that strong encryption algorithm are utilized (e.g. AES 256 or above).
- 1.10 Implement password protected screensavers with a maximum fifteen (15) minute timeout to protect unattended workstations. Systems should be manually locked before being left unattended.
- 1.11 Active logins to credit information systems must be configured with a 30 minute inactive session timeout.
- 1.12 Ensure that personnel who are authorized access to credit information have a business need to access such information and understand these requirements to access such information are only for the permissible purposes listed in the Permissible Purpose Information section of the membership application.
- 1.13 Subscriber must NOT install Peer-to-Peer file sharing software on systems used to access, transmit or store ONLINE data.
- 1.14 Ensure that Subscriber employees do not access their own credit reports or those reports of any family member(s) or friend(s) unless it is in connection with a credit transaction or for another permissible purpose.
- 1.15 Implement a process to terminate access rights immediately for users who access ONLINE credit information when those users are terminated or when they have a change in their job tasks and no longer require access to that credit information.
- 1.16 Implement a process to perform periodic user account reviews to validate whether access is needed as well as the privileges assigned.
- 1.17 Implement a process to periodically review user activities and account usage, ensure the user activities are consistent with the individual job responsibility, business need, and in line with contractual obligations.
- 1.18 Implement physical security controls to prevent unauthorized entry to Subscriber's facility and access to systems used to obtain credit information. Ensure that access is controlled with badge readers, other systems, or devices including authorized lock and key.

#### **2. Maintain a Vulnerability Management Program**

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- 2.1 Keep operating system(s), firewalls, routers, servers, personal computers (laptops and desktops) and all other systems current with appropriate system patches and updates.
- 2.2 Configure infrastructure such as firewalls, routers, servers, tablets, smart phones, personal computers (laptops and desktops), and similar components to industry best security practices, including disabling unnecessary services or features, and removing or changing default passwords, IDs and sample files/programs, and enabling the most secure configuration features to avoid unnecessary risks.
- 2.3 Implement and follow current best security practices for computer virus detection scanning services and procedures:
  - Use, implement and maintain a current, commercially available anti-virus software on all systems, if applicable anti-virus technology exists. Anti-virus software deployed must be capable to detect, remove, and protect against all known types malicious software such as viruses, worms, spyware, adware, Trojans, and root-kits.
  - Ensure that all anti-virus software is current, actively running, and generating audit logs; ensure that anti-virus software is enabled for automatic updates and performs scans on a regular basis.
  - If you suspect an actual or potential virus infecting a system, immediately cease accessing the system and do not resume the inquiry process until the virus has been eliminated.

### **3. Protect Data**

- 3.1 Develop and follow procedures to ensure that data is protected throughout its entire information lifecycle (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).
- 3.2 ONLINE data is classified Confidential and must be secured to in accordance with the requirements mentioned in this document at a minimum.
- 3.3 Procedures for transmission, disclosure, storage, destruction and any other information modalities or media should address all aspects of the lifecycle of the information.
- 3.4 Encrypt all ONLINE data and information when stored electronically on any system including but not limited to laptops, tablets, personal computers, servers, databases using strong encryption such AES 256 or above.
- 3.5 ONLINE data must not be stored locally on smart tablets and smart phones such as iPads, iPhones, Android based devices, etc.
- 3.6 When using smart tablets or smart phones to access ONLINE data, ensure that such devices are protected via device pass-code.
- 3.7 Applications utilized to access ONLINE data via smart tablets or smart phones must protect data while in transmission such as SSL protection and/or use of VPN, etc.
- 3.8 Only open email attachments and links from trusted sources and after verifying legitimacy.
- 3.9 When no longer in use, ensure that hard-copy materials containing ONLINE data are crosscut shredded, incinerated, or pulped such that there is reasonable assurance the hard-copy materials cannot be reconstructed.
- 3.10 When no longer in use, electronic media containing ONLINE data is rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion, or otherwise physically destroying the media (for example, degaussing).

### **4. Maintain an Information Security Policy**

- 4.1 Develop and follow a security plan to protect the confidentiality and integrity of personal consumer information as required under the GLB Safeguards Rule.
- 4.2 Suitable to complexity and size of the organization, establish and publish information security and acceptable user policies identifying user responsibilities and addressing requirements in line with this document and applicable laws and regulations.
- 4.3 Establish processes and procedures for responding to security violations, unusual or suspicious events and similar incidents to limit damage or unauthorized access to information assets and to permit identification and prosecution of violators. *If you believe ONLINE data may have been compromised, immediately notify ONLINE within twenty-four (24) hours or per agreed contractual notification timeline (See also Section 8).*
- 4.4 The FACTA Disposal Rules requires that Subscriber implement appropriate measures to dispose of any sensitive information related to consumer credit reports and records that will protect against unauthorized access or use of that information.
- 4.5 Implement and maintain ongoing mandatory security training and awareness sessions for all staff to underscore the importance of security in the organization.
- 4.6 When using third party service providers (e.g. application service providers) to access, transmit, store or process ONLINE data, ensure that service provider is compliant with Experian Independent Third Party Assessment (EI3PA) program, and registered in Experian list of compliant service providers. If the service provider is in process of becoming compliant, it is Subscriber responsibility to ensure the service provider is engaged with ONLINE and exception is granted in writing. *Approved certifications in lieu of E/3PA can be found in the Glossary section.*

## **5. Build and Maintain a Secure Network**

- 5.1 Protect Internet connections with dedicated, industry-recognized firewalls that are configured and managed using industry best security practices.
- 5.2 Internal private Internet Protocol (IP) addresses must not be publicly accessible or natively routed to the Internet. Network address translation (NAT) technology should be used.
- 5.3 Administrative access to firewalls and servers must be performed through a secure internal wired connection only.
- 5.4 Any stand-alone computers that directly access the Internet must have a desktop firewall deployed that is installed and configured to block unnecessary/unused ports, services, and network traffic.
- 5.5 Change vendor defaults including but not limited to passwords, encryption keys, SNMP strings, and any other vendor defaults.
- 5.6 For wireless networks connected to or used for accessing or transmission of ONLINE data, ensure that networks are configured and firmware on wireless devices updated to support strong encryption (for example, IEEE 802.11i) for authentication and transmission over wireless networks.
- 5.7 When using service providers (e.g. software providers) to access ONLINE systems, access to third party tools/services must require multi-factor authentication.

## **6. Regularly Monitor and Test Networks**

- 6.1 Perform regular tests on information systems (port scanning, virus scanning, internal/external vulnerability scanning). Ensure that issues identified via testing are remediated according to the issue severity (e.g. fix critical issues immediately, high severity in 15 days, etc.)
- 6.2 Ensure that audit trails are enabled and active for systems and applications used to access, store, process, or transmit ONLINE data; establish a process for linking all access to such systems and applications. Ensure that security policies and procedures are in place to review security logs on daily or weekly basis and that follow-up to exceptions is required.
- 6.3 Use current best practices to protect telecommunications systems and any computer system or network device(s) used to provide Services hereunder to access ONLINE systems and networks. These controls should be selected and implemented to reduce the risk of infiltration, hacking, access penetration or exposure to an unauthorized third party by:
  - protecting against intrusions;
  - securing the computer systems and network devices;
  - and protecting against intrusions of operating systems or software.

## **7. Mobile and Cloud Technology**

- 7.1 Storing ONLINE data on mobile devices is prohibited. Any exceptions must be obtained from ONLINE in writing; additional security requirements will apply.
- 7.2 Mobile applications development must follow industry known secure software development standard practices such as OWASP and OWASP Mobile Security Project adhering to common controls and addressing top risks.
- 7.3 Mobile applications development processes must follow secure software assessment methodology which includes appropriate application security testing (for example: static, dynamic analysis, penetration testing) and ensuring vulnerabilities are remediated.
- 7.4 Mobility solution server/system should be hardened in accordance with industry and vendor best practices such as Center for Internet Security (CIS) benchmarks, NIS, NSA, DISA and/or other.
- 7.5 Mobile applications and data shall be hosted on devices through a secure container separate from any personal applications and data. See details below. Under no circumstances is ONLINE data to be exchanged between secured and non-secured applications on the mobile device.
- 7.6 In case of non-consumer access, that is, commercial/business-to-business (B2B) users accessing ONLINE data via mobile applications (internally developed or using a third party application), ensure that multi-factor authentication and/or adaptive/risk-based authentication mechanisms are utilized to authenticate users to application.
- 7.7 When using cloud providers to access, transmit, store, or process ONLINE data ensure that:
  - Appropriate due diligence is conducted to maintain compliance with applicable laws and regulations and contractual obligations
  - Cloud providers must have gone through independent audits and are compliant with one or more of the following standards, or a current equivalent as approved/recognized by ONLINE:  
ISO 27001, PCIDSS, EI3PA, SSAE 16- SOC 2, or SOC3, FISMA, CAI / CCM assessment

## 8. General

- 8.1 ONLINE may from time to time audit the security mechanisms Subscriber maintains to safeguard access to ONLINE information, systems and electronic communications. Audits may include examination of systems security and associated administrative practices
- 8.2 In cases where the Subscriber is accessing ONLINE information and systems via third party software, the Subscriber agrees to make available to ONLINE upon request, audit trail information and management reports generated by the vendor software, regarding Subscriber individual Authorized Users.
- 8.3 Subscriber shall be responsible for and ensure that third party software, which accesses ONLINE information systems, is secure, and protects this vendor software against unauthorized modification, copy and placement on systems which have not been authorized for its use.
- 8.4 Subscriber shall conduct software development (for software which accesses ONLINE information systems; this applies to both in-house and outsourced software development) based on the following requirements:
  - 8.4.1 Software development must follow industry known secure software development standard practices such as OWASP adhering to common controls and addressing top risks.
  - 8.4.2 Software development processes must follow secure software assessment methodology which includes appropriate application security testing (for example: static, dynamic analysis, penetration testing) and ensuring vulnerabilities are remediated.
  - 8.4.3 Software solution server/system should be hardened in accordance with industry and vendor best practices such as Center for Internet Security (CIS) benchmarks, NIS, NSA, DISA and/or other.
- 8.5 Reasonable access to audit trail reports of systems utilized to access ONLINE systems shall be made available to ONLINE upon request, for example during breach investigation or while performing audits
- 8.6 Data requests from Subscriber to ONLINE must include the IP address of the device from which the request originated (i.e., the requesting client's IP address), where applicable.
- 8.7 Subscriber shall report actual security violations or incidents that impact ONLINE to ONLINE within twenty-four (24) hours or per agreed contractual notification timeline. Subscriber agrees to provide notice to ONLINE of any confirmed security breach that may involve data related to the contractual relationship, to the extent required under and in compliance with applicable law. Telephone notification is preferred at 800-234-7683, Email notification will be sent to [tech@ONLINEis.com](mailto:tech@ONLINEis.com).
- 8.8 Subscriber acknowledges and agrees that the Subscriber (a) has received a copy of these requirements, (b) has read and understands Subscriber's obligations described in the requirements, (c) will communicate the contents of the applicable requirements contained herein, and any subsequent updates hereto, to all employees that shall have access to ONLINE services, systems or data, and (d) will abide by the provisions of these requirements when accessing ONLINE data.
- 8.9 Subscriber understands that its use of ONLINE networking and computing resources may be monitored and audited by ONLINE, without further notice.
- 8.10 Subscriber acknowledges and agrees that it is responsible for all activities of its employees/Authorized users, and for assuring that mechanisms to access ONLINE services or data are secure and in compliance with its membership agreement.
- 8.11 When using third party service providers to access, transmit, or store ONLINE data, additional documentation may be required by ONLINE.

*Record Retention: The Federal Equal Credit Opportunity Act states that a creditor must preserve all written or recorded information connected with an application for 25 months. In keeping with the ECOA, ONLINE requires that you retain the credit application and, if applicable, a purchase agreement for a period of not less than 60 months. When conducting an investigation, particularly following a consumer complaint that your company impermissibly accessed their credit report, ONLINE will contact you and will request a copy of the original application signed by the consumer or, if applicable, a copy of the sales contract.*

*"Under Section 621 (a) (2) (A) of the FCRA, any person that violates any of the provisions of the FCRA may be liable for a civil penalty of not more than \$3,500 per violation."*

### **Internet Delivery Security Requirements**

In addition to the above, following requirements apply where Subscriber and their employees or an authorized agent/s acting on behalf of the Subscriber are provided access to ONLINE provided services via Internet ("Internet Access").

### **General requirements:**

1. The Subscriber shall designate in writing, an employee to be its Head Security Designate, to act as the primary interface with ONLINE on systems access related matters. The Subscriber's Head Security Designate will be responsible for establishing, administering and monitoring all Subscriber employees' access to ONLINE provided services which are delivered over the Internet ("Internet access"), or approving and establishing Security Designates to perform such functions.

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Initial

2. The Subscriber's Head Security Designate or Security Designate shall in turn review all employee requests for Internet access approval. The Head Security Designate or its Security Designate shall determine the appropriate access to each ONLINE product based upon the legitimate business needs of each employee. ONLINE shall reserve the right to terminate any accounts it deems a security threat to its systems and/or consumer data.
3. Unless automated means become available, the Subscriber shall request employee's (Internet) user access via the Head Security Designate/Security Designate in writing, in the format approved by ONLINE. Those employees approved by the Head Security Designate or Security Designate for Internet access ("Authorized Users") will be individually assigned unique access identification accounts ("User ID") and passwords/passphrases (this also applies to the unique Server-to-Server access IDs and passwords/passphrases). ONLINE's approval of requests for (Internet) access may be granted or withheld in its sole discretion. ONLINE may add to or change its requirements for granting (Internet) access to the services at any time (including, without limitation, the imposition of fees relating to (Internet) access upon reasonable notice to Subscriber), and reserves the right to change passwords/passphrases and to revoke any authorizations previously granted. *Note: Partially completed forms and verbal requests will not be accepted.*
4. An officer of the Subscriber agrees to notify ONLINE in writing immediately if it wishes to change or delete any employee as a Head Security Designate, Security Designate, or Authorized User; or if the identified Head Security Designate Security Designate or Authorized User is terminated or otherwise loses his or her status as an Authorized User.

### **Roles and Responsibilities**

1. Subscriber agrees to identify an employee it has designated to act on its behalf as a primary interface with ONLINE on systems access related matters. This individual shall be identified as the "Head Security Designate." The Head Security Designate can further identify a Security Designate(s) to provide the day to day administration of the Authorized Users. Security Designate(s) must be an employee and a duly appointed representative of the Subscriber and shall be available to interact with ONLINE on information and product access, in accordance with these ONLINE Access Security Requirements. The Head Security Designate Authorization Form must be signed by a duly authorized representative of the Subscriber. Subscriber's duly authorized representative (e.g. contracting officer, security manager, etc.) must authorize changes to Subscriber's Head Security Designate. The Head Security Designate will submit all requests to create, change or lock Security Designate and/or Authorized User access accounts and permissions to ONLINE's systems and information (via the Internet). Changes in Head Security Designate status (e.g. transfer or termination) are to be reported to ONLINE immediately.
2. As a Client to ONLINE's products and services via the Internet, the Head Security Designate is acting as the duly authorized representative of Subscriber.
3. The Security Designate may be appointed by the Head Security Designate as the individual that the Subscriber authorizes to act on behalf of the business in regards to ONLINE product access control (e.g. request to add/change/remove access). The Subscriber can opt to appoint more than one Security Designate (e.g. for backup purposes). The Subscriber understands that the Security Designate(s) it appoints shall be someone who will generally be available during normal business hours and can liaise with ONLINE's Security Administration group on information and product access matters.
4. The Head Designate shall be responsible for notifying their corresponding ONLINE representative in a timely fashion of any Authorized User accounts (with their corresponding privileges and access to application and data) that are required to be terminated due to suspicion (or actual) threat of system compromise, unauthorized access to data and/or applications, or account inactivity.

### **Designate:**

1. Must be an employee and duly appointed representative of Subscriber, identified as an approval point for Subscriber's Authorized Users.
2. Is responsible for the initial and on-going authentication and validation of Subscriber's Authorized Users and must maintain current information about each (phone number, valid email address, etc.).
3. Is responsible for ensuring that proper privileges and permissions have been granted in alignment with Authorized User's job responsibilities.
4. Is responsible for ensuring that Subscriber's Authorized Users are authorized to access ONLINE products and services.
5. Must disable Authorized User ID if it becomes compromised or if the Authorized User's employment is terminated by Subscriber.
6. Must immediately report any suspicious or questionable activity to ONLINE regarding access to ONLINE's products and services.
7. Shall immediately report changes in their Head Security Designate's status (e.g. transfer or termination) to ONLINE.
8. Will provide first level support for inquiries about passwords/passphrases or IDs requested by your Authorized Users.
9. Shall be available to interact with ONLINE when needed on any system or user related matters.

**Glossary**

<b>Term</b>	<b>Definition</b>
<b>Computer Virus</b>	A Computer Virus is a self-replicating computer program that alters the way a computer operates, without the knowledge of the user. A true virus replicates and executes itself. While viruses can be destructive by destroying data, for example, some viruses are benign or merely annoying.
<b>Confidential</b>	Very sensitive information. Disclosure could adversely impact your company.
<b>Encryption</b>	Encryption is the process of obscuring information to make it unreadable without special knowledge.
<b>Firewall</b>	In computer science, a Firewall is a piece of hardware and/or software which functions in a networked environment to prevent unauthorized external access and some communications forbidden by the security policy, analogous to the function of Firewalls in building construction. The ultimate goal is to provide controlled connectivity between zones of differing trust levels through the enforcement of a security policy and connectivity model based on the least privilege principle.
<b>Information Lifecycle</b>	(Or Data Lifecycle) is a management program that considers the value of the information being stored over a period of time, the cost of its storage, its need for availability for use by authorized users, and the period of time for which it must be retained.
<b>IPAddress</b>	A unique number that devices use in order to identify and communicate with each other on a computer network utilizing the Internet Protocol standard (IP). Any All participating network devices- including routers, computers, time-servers, printers, Internet fax machines, and some telephones- must have its own unique IP address. Just as each street address and phone number uniquely identifies a building or telephone, an IP address can uniquely identify a specific computer or other network device on a network. It is important to keep your IP address secure as hackers can gain control of your devices and possibly launch an attack on other devices.
<b>Peer-to-Peer</b>	A type of communication found in a system that uses layered protocols. Peer-to-Peer networking is the protocol often used for reproducing and distributing music without permission.
<b>Router</b>	A Router is a computer networking device that forwards data packets across a network via routing. A Router acts as a junction between two or more networks transferring data packets.
<b>Spyware</b>	Spyware refers to a broad category of malicious software designed to intercept or take partial control of a computer's operation without the consent of that machine's owner or user. In simpler terms, spyware is a type of program that watches what users do with their computer and then sends that information over the internet.
<b>Subscriber Code</b>	Your seven digit ONLINE account number.
<b>Experian Independent Third Party Assessment Program</b>	The Experian Independent 3rd Party Assessment is an annual assessment of an Experian Reseller's ability to protect the information they purchase from Experian. EI3PAsr.' requires an evaluation of a Reseller's information security by an independent assessor, based on requirements provided by Experian. EI3PAsr.' also establishes quarterly scans of networks for vulnerabilities.
<b>ISO 27001/27002</b>	IS 27001 is the specification for an ISMS, an Information Security Management System (it replaced the old BS7799-2 standard) The ISO 27002 standard is the rename of the ISO 17799 standard, and is a code of practice for information security. It basically outlines hundreds of potential controls and control mechanisms, which may be implemented, in theory, subject to the guidance provided

	within ISO 27001.
<b>PCIDSS</b>	The Payment Card Industry Data Security Standard (PCI DSS) is a proprietary information security standard for organizations that handle cardholder information for the major debit, credit, prepaid, e-purse, ATM, and POS cards.
<b>SSAE 16 SOC 2, SOC3</b>	Statement on Standards for Attestation Engagements (SSAE) No. 1 SOC 2 Report on Controls Related to Security, Availability, Processing Integrity, Confidentiality, and Privacy. The SOC 3 Report, just like SOC 2, is based upon the same controls as SOC 2, the difference being that a SOC 3 Report does not detail the testing performed (it is meant to be used as marketing material).
<b>FISMA</b>	The Federal Information Security Management Act (FISMA) is United States legislation that defines a comprehensive framework to protect government information, operations and assets against natural or man-made threats. FISMA was signed into law part of the Electronic Government Act of 2002.
<b>CAI/CCM</b>	Cloud Security Alliance Consensus Assessments Initiative (CAI) was launched to perform research, create tools and create industry partnerships to enable cloud computing assessments. The Cloud Security Alliance Cloud Controls Matrix (CCM) is specifically designed to provide fundamental security principles to guide cloud vendors and to assist prospective cloud customers in assessing the overall security risk of a cloud provider.



UTILITY EXCHANGE
Subscriber Service Application

Company Name: City of Big Spring
Office Address: 310 Nolan Street
Big Spring, TX 79720
County: Howard
Main Phone Number: 432-264-2345
Office Hours: 8:00am to 5:00pm Days of the week: M-F
Mailing Address:
Company Website:

Affiliated or Parent Company Information

Affiliated or Parent Company:
Address:
City:
State: Zip:
Contact Name: Phone: ( )

BANK REFERENCE

Bank Name:
Address:
City:
State: Zip:
Bank Contact: Phone: ( )
Account Number(s):

2 BUSINESS REFERENCES

(1)Business Name:
Address:
City:
State: Zip:

Initial

Contact Person: \_\_\_\_\_ Phone: ( \_\_\_\_\_ ) \_\_\_\_\_

(2)Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: ( \_\_\_\_\_ ) \_\_\_\_\_

**PLEASE ANSWER THE FOLLOWING QUESTIONS**

Industry: \_\_\_\_\_

How long has company been in existence: \_\_\_\_\_years \_\_\_\_\_months

Will you be printing and storing reports? (Please check one) \_\_\_\_\_ Yes \_\_\_\_\_No  
(If you will be printing and storing the ONLINE Utility Exchange Reports you are required to have them stored in a locking file cabinet)

Is your computer server in a locked room? (Please check one) \_\_\_\_\_Yes \_\_\_\_\_No

Do you have permanent signage at your office location that matches the company name on the Subscriber Agreement? (Please check one) \_\_\_\_\_Yes \_\_\_\_\_No

Do you lease or own your office location? (Please check one) \_\_\_\_\_Own \_\_\_\_\_Lease  
(If you lease your office location, please provide a copy of your signed lease.)

Is office location a Commercial Building or Residence? \_\_\_\_\_

Do you have investigation License? (Please check one) \_\_\_Yes \_\_\_No

Estimated # of Credit Reports you will access monthly: \_\_\_\_\_

How will you access the Credit Report? (Please check one) \_\_\_ Personal Computer \_\_\_ Other

Is the company Tax Exempt? \_\_\_\_\_Yes \_\_\_\_\_No If Yes, please provide tax exemption form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Date

Thank you for completing the application.

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Initial

## **New Customer Setup Form**

If you have any questions regarding how to fill out this form please contact your ONLINE Account Executive at (866) 630-6400.

### **BILLING/MONTHLY PAYMENT METHOD**

Credit Card: Y / N

Bank Draft: Y / N

Web Access Start Date: \_\_\_\_\_

Exchange Data Upload: Y/N

### **CUSTOMER INFORMATION SOFTWARE (CIS):**

Software Vendor: \_\_\_\_\_

Version: \_\_\_\_\_

Will you be using the interface? Y / N

If ONLINE does not have an interface with your CIS provider currently please contact your ONLINE Account Executive to inquire about having one developed.

### **ACCESS SECURITY REQUIREMENT**

ONLINE requires clients to utilize ONLINE's IP Address Restriction security feature. This prevents someone from obtaining user credentials and accessing information from outside your company's physical location. If you do not have static IP Addresses ONLINE has an alternate solution. Please check option below.

IP Address: \_\_\_\_\_

IP Address Range: \_\_\_\_\_ - \_\_\_\_\_

I do not have static IP Addresses \_\_\_\_.

### **DEPOSIT DECISIONING**

**Please fill out what you want your Score break points to be for your different deposit decisions.** ONLINE has developed a default range setup. The default range setup is typically a good place for a utility to start when they may not have been using credit scores previously. Overtime you can utilize ONLINE's Statistical Reports and Score Adjust features to make changes. Please Check the Option Below

**ONLINE'S DEFAULT SCORING** \_\_\_\_\_

**CUSTOMIZE AS FOLLOWS** \_\_\_\_\_  
(Message Examples: Maximum, 2x Avg. Mo. Usage, Etc.)

**Green:** 0.0%- 10.0% Waive Deposit

**Green:** \_\_\_\_\_ % - \_\_\_\_\_ %

**Deposit Message:** \_\_\_\_\_

**Yellow:** 10.1% - 25.0% 1X Average Monthly Usage

**Yellow:** \_\_\_\_\_ % - \_\_\_\_\_ %

**Deposit Message:** \_\_\_\_\_

**Red:** 25.1% - 100.0% 2X Average Monthly Usage

**Red:** \_\_\_\_\_ % - \_\_\_\_\_ %

**Deposit Message:** \_\_\_\_\_

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Initial

There will be cases when a credit file will be unscorable. An example would be for an applicant who maybe really young and may not have established enough credit yet. ONLINE has developed additional options to handle these types of credit files. Please circle your choices below.

**No Score is Forced Decision:** Yes/No (If Yes is chosen, complete options below)

**No Score No Credit History:** Red / Yellow / Green

**No Score All Previous Credit History is Equally Positive and Negative:** Red / Yellow / Green

**No Score All Previous Credit History is Positive:** Red / Yellow / Green

**No Score All Previous Credit History is Negative:** Red / Yellow / Green

**No Score Previous Credit History is more Positive than Negative:** Red / Yellow / Green

**No Score Previous Credit History is more Negative than Positive:** Red / Yellow / Green

ONLINE has developed client options on what decisions are returned on credit files which contain bankruptcy information. If you choose any option other than Default below, when a Bankruptcy, meeting your criteria, is on a credit file it will override the credit score decision and return the light decision you choose below.

**Bankruptcy 7 Active:** Default / Red / Yellow / Green

**Bankruptcy 7 Discharged/Dismissed:** Default / Red / Yellow / Green

**Max Years to Consider Chapter 7:** \_\_\_\_\_ years

**Bankruptcy 13 Active:** Default / Red / Yellow / Green

**Bankruptcy 13 Discharged/Dismissed:** Default / Red / Yellow / Green

**Max Years to Consider Chapter 13:** \_\_\_\_\_ years

ONLINE has developed additional logic which looks for specific types of accounts by industry on the credit file that you may want to force to a Red Light decision regardless of the credit score. If you choose anything other than Default it will override the credit score decision.

**Unpaid Utility Debts:** Default / Red

**Unpaid Telecomm Debts:** Default / Red





# Customer Contacts

**Inspection Contact Person:** Name: \_\_\_\_\_  
PH: \_\_\_\_\_  
Email: \_\_\_\_\_

**Alternate Inspection Contact:** Name: \_\_\_\_\_  
PH: \_\_\_\_\_  
Email: \_\_\_\_\_

**Training Contact:** Name: \_\_\_\_\_  
PH: \_\_\_\_\_  
Email: \_\_\_\_\_

**Administrative Contact:** Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
PH: \_\_\_\_\_  
FX: \_\_\_\_\_  
Email: \_\_\_\_\_

Receive Billing Y/N  
Receive Announcements Y/N

**Alternate Administrative Contact:** Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
PH: \_\_\_\_\_  
FX: \_\_\_\_\_  
Email: \_\_\_\_\_

Receive Billing: Y/N  
Receive Announcements: Y/N

**Accounts Payable Contact:** Name: \_\_\_\_\_  
(Responsible for Accounts Payable) Title: \_\_\_\_\_  
PH: \_\_\_\_\_  
FX: \_\_\_\_\_  
Email: \_\_\_\_\_

Receive Billing: Y/N  
Receive Announcements: Y/N

**Technical Contact:** Name: \_\_\_\_\_  
(Responsible for IT/Data) Title: \_\_\_\_\_  
PH: \_\_\_\_\_  
FX: \_\_\_\_\_  
Email: \_\_\_\_\_

Receive Billing: Y/N  
Receive Announcements: Y/N

(At least one contact must be setup to receive the monthly emailed invoice)

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Initial



## Recurring Monthly Payment Authorization Form

Schedule your payments to be automatically deducted from your bank account, or charged to your Visa, MasterCard, American Express or Discover Card. Just complete and sign this form to get started!

### Here's How Recurring Payments Work:

You authorize regularly scheduled charges to your checking/savings account or credit card. You will be charged each billing period for the total amount due for that period. A paid in full invoice will be emailed to you and the charge will appear on your bank or credit card statement. You agree that no prior-notification will be provided. If the payment date changes, you will receive notice from us at least 10 days prior to the payment being collected.

### Please complete the information below:

I \_\_\_\_\_ authorize ONLINE Information Services, Inc. on behalf of \_\_\_\_\_ (Company) to charge/debit our account indicated below on the 5<sup>th</sup> business day of each month for payment of our ONLINE Information Services invoices.

Billing Address \_\_\_\_\_ Phone# \_\_\_\_\_  
City, State, Zip \_\_\_\_\_ Email \_\_\_\_\_

#### Checking/ Savings Account

Checking       Savings  
Name on Acct \_\_\_\_\_  
Bank Name \_\_\_\_\_  
Account Number \_\_\_\_\_  
Bank Routing # \_\_\_\_\_  
Bank City/State \_\_\_\_\_



#### Credit Card

Visa       MasterCard  
 Amex       Discover  
Cardholder Name \_\_\_\_\_  
Account Number \_\_\_\_\_  
Exp. Date \_\_\_\_\_  
CVV (3 digit number on back of card) \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

I understand that this authorization will remain in effect until I cancel it in writing, and I agree to notify ONLINE in writing of any changes in my account information or termination of this authorization at least 15 days prior to the next billing date. If the above noted payment dates fall on a weekend or holiday, I understand that the payments may be executed on the next business day. For ACH debits to my checking/savings account, I understand that because these are electronic transactions, these funds may be withdrawn from my account as soon as the above noted periodic transaction dates. In the case of an ACH Transaction being rejected for Non Sufficient Funds (NSF) I understand that ONLINE may at its discretion attempt to process the charge again within 30 days, and agree to an additional \$25.00 charge for each attempt returned NSF which will be initiated as a separate transaction from the authorized recurring payment. I acknowledge that the origination of ACH transactions to my account must comply with the provisions of U.S. law. I certify that I am an authorized user of this credit card/bank account and will not dispute the scheduled transactions with my bank or credit card company, provided the transactions correspond to the terms indicated in this authorization form.

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING CHAPTER SIXTEEN 16 OF THE BIG SPRING CITY CODE OF ORDINANCES ENTITLED "PUBLIC UTILITIES," ARTICLE 3 ENTITLED "UTILITY SERVICE CHARGES," SECTION 16-60.9 ENTITLED "DEPOSIT REQUIRED" TO ESTABLISH A TIERED DEPOSIT BASED ON THE CUSTOMER'S CREDIT RATING; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City will contract with a Credit Check Company to assist in receiving credit scores;

WHEREAS, the City will be able to determine a deposit for water utility service based on the customer's credit score; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS, THAT:

**SECTION 1.** Chapter 16 of the City of Big Spring Code of Ordinances entitled "Public Utilities," Article 3 entitled "Utility Service Charges," Section 16-60.9 entitled "Deposit Required" is hereby amended to read in its entirety as follows:

**Sec. 16-60.9. Deposit Required.**

(A) **Residential Water Accounts** – Utility deposits for new residential water service are determined pursuant to the credit rating of the applicant requesting service as follows:

- (1) **Good Credit Rating** – A deposit of Fifty Dollars (\$50.00) shall be required for all new residential water service customers and all previous customers seeking transfer of service who have been delinquent in the payment of their water bills no more than one (1) time during the twelve (12) month period immediately preceding the date of the request for such transfer. No additional deposit shall be required of customers seeking to transfer service and who have not been delinquent in payment of their water bills for the twelve (12) month period immediately preceding the date of the request for such transfer.
- (2) **Moderate Credit Rating** – A deposit of One-Hundred Dollars (\$100.00) shall be required for all new residential water service customers and all previous customers seeking transfer of service who have been delinquent in the payment of their water bills no more than one (1) time during the twelve (12) month period immediately preceding the date of the request for such transfer. No additional deposit shall be required of customers seeking to transfer service and who have not been delinquent in payment of their water bills for the twelve (12) month period immediately preceding the date of the request for such transfer.

- (3) **Poor Credit Rating or Refusal to Authorize Credit Check** – A deposit of One-Hundred-Fifty Dollars (\$150.00) shall be required for all new residential water customers and all previous customers seeking transfer of service who have been delinquent in the payment of their bills no more than one (1) time during the twelve (12) month period immediately preceding the date of the request for such transfer. No additional deposit shall be required of customers seeking to transfer service and who have not been delinquent in payment of their water bills for the twelve (12) month period immediately preceding the date of the request for such transfer.
- (4) **Habitual Late Payers** – Regardless of credit rating, a deposit of One-Hundred-Fifty Dollars (\$150.00) shall be required for all new residential water customers and all previous customers seeking to transfer service who have been delinquent in the payment of their bills two (2) or more times during the twelve (12) month period immediately preceding the date of the request for such transfer.

(B) **Commercial Water Accounts** – A deposit of Seventy-Five Dollars (\$75.00) shall be required for all new commercial water service customers and all previous customers seeking a transfer of service who have been delinquent in the payment of their water bills during the preceding twelve (12) month period immediately preceding the date of the request for such transfer. No additional deposit shall be required of commercial customers seeking to transfer service and who have not been delinquent in payment of their water bills for the twelve (12) month period immediately preceding the date of the request for such transfer.

(C) **Refund of Deposits** – Accounts that have been paid in full monthly, on or before the due date, for any twelve (12) consecutive months of service will be credited the full deposit required of the account holder under this section.

**SECTION 2.** Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall be affected thereby.

**SECTION 3.** Any ordinance that conflicts with this ordinance is hereby repealed to the extent of such conflict.

**SECTION 4.** The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

**SECTION 5.** This ordinance shall be in force and effective from and after its publication as required by law.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 10<sup>th</sup> day of May, 2016 with all members of the Council voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 24<sup>th</sup> day of May, 2016 with all members of the Council voting “aye” for the passage of same.

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Larry McLellan, Mayor

ATTEST:

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Tami L. Davis, Assistant City Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 043-2015 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016 TO INCREASE THE UTILITY FUND BUDGET FOR THE PURPOSE OF CONTRACTING WITH A CREDIT CHECK COMPANY; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS** the City Council adopted the annual 2015-16 budget for the City of Big Spring, Texas on September 21, 2015; and

**WHEREAS** funding for credit checks to be ran at the water office was not included in such budget.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS, THAT:**

**SECTION 1.** The Utility Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2015 and ending September 30, 2016 is hereby increased by the amount of \$1,250 for the purpose of contracting with a credit check company into the expense fund (405-002-735-5521-15) from the existing fund balance.

**SECTION 2.** The remaining portions of Ordinance Number 043-2015 shall remain in full force and effect.

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

**SECTION 4.** The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

**SECTION 5.** This ordinance shall be in force and effective from and after its publication as required by law.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 10<sup>th</sup> day of May, 2016 with all members of the Council voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 24<sup>th</sup> day of May, 2016 with all members of the Council voting “aye” for the passage of same.

ATTEST:

\_\_\_\_\_  
Larry McLellan, Mayor

\_\_\_\_\_  
Tami L. Davis, Assistant City Secretary



## TEXAS J REGIONAL ADVISORY COUNCIL

PO Box 7964 • Midland, Texas 79707 • (325) 456-2370

[txjracs@midland-memorial.com](mailto:txjracs@midland-memorial.com)      [www.texasjracs.org](http://www.texasjracs.org)

May 16 2016

Big Springs FD/EMS

To Whom It May Concern:

The Texas "J" Regional Advisory would like to congratulate you on being awarded \$9,045 in EMS/County Assistance Funds which is now a reimbursed funding. This is your official letter to authorize you to submit invoices with canceled checks for the amount and TXJRAC will reimburse you after the next meeting. If you need assistance with any more information pertaining to this transaction, please contact the TXRAC office.

Congratulations again and thank you for your support,

Danny Updike  
TXJRAC Executive Director  
325-456-2370  
[txjracs@midland-memorial.com](mailto:txjracs@midland-memorial.com)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, HOWARD COUNTY TEXAS, AUTHORIZING THE CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE CLOSURE OF EAST 3<sup>RD</sup> STREET FROM RUNNELS TO GREGG STREET AND ONE LANE OF EAST 4<sup>TH</sup> STREET FROM SCURRY STREET TO MAIN STREET FOR THE FUNTASTIC FOURTH FESTIVAL FROM JUNE 24<sup>TH</sup> THROUGH JUNE 26<sup>TH</sup>; CONTINGENT UPON THE APPROVAL OF COUNTY COMMISSIONERS TO CLOSE FACILITIES; AND UPON INDEMNIFICATION AND PRESENTATION OF INSURANCE COVERAGE BY DOWNTOWN REVITALIZATION ASSOCIATION THAT COMPLIES WITH THE SPECIFICATIONS REQUIRED OF THE CITY BY TXDOT UNDER THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO TAKE ALL NECESSARY ACTIONS UNDER THE AGREEMENT.**

WHEREAS, the City Council of the City of Big Spring finds it is in the best interest of the public safety of the citizens of the City of Big Spring to enter into such an agreement with TxDOT;

**NOW THEREFORE BE IT RESOLVED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS, THAT:**

- 1) The City shall enter into the Temporary Closure of State Right of Way Agreement in the manner and according to the terms set forth in the Interlocal Agreement attached hereto as Exhibit "A" (hereinafter the "Agreement") if:
  - a. County Commissioners agree to close County Facilities on Friday, June 24, 2016 for the event; and
  - b. Downtown Revitalization Association indemnifies the City of Big Spring and provides insurance coverage that complies with the specifications required by TxDOT under the Agreement.
- 2) The Mayor is hereby authorized to execute the Agreement; and
- 3) The City Manager is hereby authorized to take any actions or execute any other documents he deems necessary to accomplish the duties and responsibilities of this City pursuant to such Agreement.

**PASSED AND APPROVED** on first reading at a regular meeting of the City Council on the 24<sup>th</sup> day of May, 2016, with all members present voting “aye” for the passage of same.

**PASSED AND APPROVED** on second and final reading at a regular meeting of the City Council on the 14<sup>th</sup> day of June, 2016, with all members present voting “aye” for the passage of same.

\_\_\_\_\_  
Larry McLellan, Mayor

ATTEST:

\_\_\_\_\_  
Tami Davis, Assistant City Secretary

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of \_\_\_\_\_, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

**WITNESSETH**

**WHEREAS**, the State owns and operates a system of highways for public use and benefit, including \_\_\_\_\_, in \_\_\_\_\_, County; and

**WHEREAS**, the local government has requested the temporary closure of \_\_\_\_\_ for the purpose of \_\_\_\_\_, from \_\_\_\_\_ to \_\_\_\_\_ as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

**WHEREAS**, the Event will be located within the local government's incorporated area; and

**WHEREAS**, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

**WHEREAS**, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the \_\_\_\_\_ City Council passed Resolution / Ordinance No. \_\_\_\_\_, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

**WHEREAS**, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

**WHEREAS**, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

**AGREEMENT**

**Article 1. CONTRACT PERIOD**

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

**Article 2. EVENT DESCRIPTION**

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

**Article 3. OPERATIONS OF THE EVENT**

**A.** The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

**B.** The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.

**C.** The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.

**D.** The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

**E.** The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.

**F.** The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.

**G.** The local government hereby assures the State that there will be appropriate passage

allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

**H.** The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

**Article 4. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**Article 5. TERMINATION**

**A.** This agreement may be terminated by any of the following conditions:

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

**B.** The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

**Article 6. DISPUTES**

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

**Article 7. RESPONSIBILITIES OF THE PARTIES**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**Article 8. INSURANCE**

**A.** Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period

that the local government and/or its contractors are encroaching upon the State right of way.

**B.** In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

**Article 9. AMENDMENTS**

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

**Article 10. COMPLIANCE WITH LAWS**

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

**Article 11. LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Article 12. NOTICES**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

Local Government:	State:
_____	Texas Department of Transportation
_____	_____
_____	_____
_____	_____

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

**Article 13. SOLE AGREEMENT**

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

**IN TESTIMONY WHEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE CITY OF** \_\_\_\_\_

Executed on behalf of the local government by:

Traffic-Traffic\_Closure Incorporated (TEA30A)

Agreement No. \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_  
City Official

Typed or Printed Name and Title \_\_\_\_\_  
\_\_\_\_\_

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_ Date \_\_\_\_\_  
District Engineer

