

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: July 16, 2019 06

Item Details

Presenter(s): John M. Brown, Director
Department(s): Parks, Recreation, and Cultural Resources

Requested Motion

Motion to approve agreement with Background Investigative Bureau LLC (BIB) to conduct background checks on volunteers and instructors associated with programs offered by Parks, Recreation, and Cultural Resources and to allow Legal Department to make minor changes to agreement as needed.

Approval Recommended?

PRCR recommends approval.

Item Details

This is an agreement with BIB to perform background checks on our volunteers and instructors associated with our programs. It's part of our ongoing efforts to provide the highest quality and safest program possible. This continues to provide us with another tool to full vet and certify those who wish to serve as volunteers and instructors in programs. The contract is coming to Council due to the indemnification clause as well as the auto renew provision which allows automatic renewal in subsequent years. The Legal Department is available to answer any questions related to these clauses.

Attachments

- Background Check Agreement



Background Investigation Bureau, LLC Subscriber Agreement

This Agreement (the "Agreement") is made and entered into as of July 1, 2019 (the "Effective Date"), by and between **Background Investigation Bureau, LLC**, with its principal place of business located at 9710 Northcross Center Court, Huntersville NC 28078 (hereinafter referred to as "BIB"), and **Town of Apex**, a North Carolina municipal corporation, with its principal place of business located at **73 Hunter Street, Apex, North Carolina 27502** (hereinafter referred to as "Subscriber").

WHEREAS, Subscriber desires to obtain a limited license from BIB to access Data from BIB for the purpose of conducting lawful background screening and other employment related screening functions.

WHEREAS, BIB is willing to grant Subscriber access to BIB Data and Services through the use of the BIB System and Interface on a fee basis. In order to obtain said Data through the Services that BIB offers, Subscriber is willing to comply with the terms, provisions, covenants, addendums and exhibits of this Agreement.

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged by both parties, BIB and the Subscriber, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions.

- a. **"Data"** means all electronic data or information obtained by BIB.
- b. **"Database"** means a BIB computer system where the Data is stored.
- c. **"System"** means processes, procedures, operations, methodologies and IP Rights applied to Data from the Databases to produce the Services.
- d. **"Interface"** means any system that delivers or allows access to Services via any type of communication or Access Software between BIB and Subscriber.
- e. **"Services"** means information generally relating to one or more of the following, including, without limitation, criminal records, civil records, motor vehicle records (Driving Records), credit reports, address records, Address History Trace, personal identifier records, financial records, educational records, employment records, personal reference information, educational records, controlled substance screening reports and records, occupational health screening services reports, or other publicly or privately held records or other information gathered by BIB.
- f. **"Occupational Health Screening Services"** means screening and medical tests conducted to determine if workers are medically and physically able to pass medical certification examinations (to determine if a worker meets specific medical fitness standards as mandated by state and federal regulations; e.g. aviators and commercial drivers) and to assess if workers meet established standards and conditions of employment like drug testing to investigate if a worker has used controlled substances (herein **"Controlled Substance Screening Services"**).
- g. **"User ID"** means the combination of a unique User Name and Password.
- h. **"Access Software"** means software, whether developed by Subscriber or from a third party vendor, including web browsers that Subscriber uses to process or access Data obtained from BIB.
- i. **"IP Rights"** means present and future rights in and to trade secrets, patents, copyrights, trademarks, service marks, work product, know-how, business processes, algorithms, software, technology and other proprietary and intellectual property rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations developed by BIB.
- j. **"Consumer Information"** means information or data about a particular person, including, but not limited to, Social Security Number (SSN), date of birth, driver's license information, driving records/motor vehicle history, credit history, compensation information, current and past address information, current and past employer information, criminal record history, drug/alcohol testing history and any other non-public personal information and other confidential consumer information.
- k. **"Consumer Report"** means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604 [§ 1681b].

l. **“Agreement”** means this Subscriber Agreement entered into by the parties, together with any and all EXHIBITs attached hereto and made a part hereof by reference, and any and all amendments or modifications made hereto pursuant to mutual written agreement of the parties.

m. **“Address History Trace”** means a process that provides validation of the social security number entered, along with performing a name and address history trace based upon the same social security number that returns any Personal Identifying Information obtained from various private sources that includes, but is not limited to, names, addresses, phone numbers, and date of birth that have been associated with the social security number.

n. **“FCRA”** means Fair Credit Reporting Act.

2. No Joint Venture or Partnership.

This Agreement shall not create a joint venture, partnership, principal-agent, employer-employee or similar relationship between BIB and Subscriber. BIB shall provide Services as an independent contractor to the Subscriber. Neither party shall have the right to obligate or bind the other in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties. This Agreement is nonexclusive in all respects, and either party may provide similar services to third parties and receive similar services from third parties.

3. Term and Termination.

a. This Agreement shall commence on the Effective Date and shall have a term of one (1) year from the date hereof. Notwithstanding the foregoing, this Agreement shall automatically renew and continue on an annual basis for additional one (1) year terms, until either party gives notice pursuant to provision 3(b) (the initial term and any renewal, collectively referred to as “Term”).

b. Either party shall have the right to terminate this Agreement upon thirty (30) days written notice. Either party shall have the right to immediately terminate this Agreement if the other party commits a material breach hereof and such breach is not cured within thirty (30) days after receipt of written notice of such breach from the non-breaching party.

4. Grant of License, Services.

a. **Limited License.** BIB hereby grants to Subscriber a limited, non-exclusive, non-transferable license to use the Data obtained by Subscriber from BIB through the use of BIB’s System’s and Services. Data can only be used by Subscriber and Subscriber’s authorized users for such purposes, and in such forms, as are expressly authorized hereunder, and are subject to, the terms and conditions set forth within this Agreement.

b. Notwithstanding anything herein to the contrary, the Data that is accessed from BIB has been created and maintained by, among others, various private entities and public government agencies that are not under the control of BIB. Responsibility for the accuracy and the currency of the Data rests solely with the various entities and government agencies and other contributors who create and maintain said Data.

c. Subscriber recognizes that the information Subscriber requests from BIB is secured by and through fallible human sources and that for the fee charged, BIB cannot be an insurer of the accuracy of the information.

d. **Services Generally.** BIB will at all times exercise its best efforts to deliver Services to Subscriber in an expeditious and efficient manner, but it shall have no obligation or liability to Subscriber for any delay or failure under this Agreement for causes, including any force majeure, not related to BIB or its employees.

e. **Use of Subscriber Information.** The Services BIB will provide to Subscriber in connection with this Agreement will require Subscriber to furnish sensitive Consumer Information to BIB. Both Subscriber and BIB recognize the sensitivity and confidentiality of the Consumer Information and warrant that this information will not be used for any purpose other than a permissible purpose as required under the Fair Credit Reporting Act, Drivers Privacy Protection Act, Gramm-Leach-Bliley Act or any other federal, state, local law or regulation, including any law and regulation from the Equal Employment Opportunity Commission.

f. **Occupational Health Screening Services.** In the event Subscriber chooses to utilize any of the Occupational Health Screening Services including Controlled Substance Screening Services (drug testing) BIB will do so under the following circumstances:

i. Subscriber shall ensure that all candidates and/or employees who are tested or screened have executed a written consent for any test in advance and that the consent specifically authorizes BIB to obtain results of any screen or drug test and communicate those results to Subscriber via BIB’s Interface and releases any and all claims against BIB on account of or related to any screen and communication of the results of any screen, test or retest.

ii. Subscriber recognizes that information relating to the Occupational Health Screening Services or Controlled Substance Screening Services may be considered confidential medical information under the Americans with Disabilities Act and other federal, state or local laws. BIB may furnish a separate User ID for Subscriber to access the results.

iii. Subscriber will ensure that all information communicated via BIB's Interface or otherwise communicated to Subscriber, is accessed, transmitted, communicated, used and maintained only as allowed by federal, state and local law, including the American's with Disabilities Act; and

5. User ID.

a. Subscriber will be provided a confidential User ID. Subscriber must obtain from BIB a unique User ID for each Subscriber authorized user. Subscriber has the sole responsibility to keep the User ID secure. Subscriber's User ID must be protected in such a way that this sensitive information is known only to key personnel that are employed by Subscriber. Under no circumstances should unauthorized persons be given knowledge of Subscriber's User ID. The User ID should not be posted in any manner within Subscriber's facility. Subscriber's User ID is not to be released by telephone to any unauthorized caller by either party to this Agreement and/or their respective employees and/or representatives.

b. Subscriber shall notify BIB immediately so that BIB can issue new User ID's when any of the following circumstances occur: (i) Any company personnel who has access to the Interface is terminated from, or leaves, Subscriber's employment, is transferred, and/or is assigned job duties such that access to the Interface is no longer required; (ii) Subscriber becomes aware of or suspects questionable or unauthorized activity regarding access to the Interface; (iii) Subscriber becomes aware of any potential compromise of Subscriber's business systems that may expose BIB to security vulnerabilities.

6. Fees, Invoicing and Payment.

a. The fees for Services shall be as set forth in the BIB fee schedule, which will be made available to Subscriber prior to the Date of this Agreement and may change from time-to-time. A copy of which is attached and incorporated by reference. BIB reserves the right to change and charge the fees, as set forth in the BIB fee schedule. Prior to a change in fees BIB shall notify Subscriber in writing of the pending change. Upon receipt of a change in fees notice, Subscriber shall have thirty (30) days in which to terminate this Agreement without penalty.

b. Subscriber understands that Subscriber is liable for any and all charges by anyone using Subscriber's User ID to access Data and Services from BIB. This includes any instance when the User ID is compromised as a result of the action, inaction, nonfeasance or misfeasance of Subscriber and/or its employees, even though Subscriber may be without fault, but does not include any instance when the User ID is compromised as a result of any acts or omissions of BIB or its employees or agents.

c. Subscriber agrees to pay BIB the applicable charges for the various Services rendered to Subscriber as specified in BIB's Pricing Schedule in effect at the time of the Services, which may change from time to time. BIB will submit an invoice to Subscriber on a monthly basis. Payment shall be due thirty (30) calendar days following the BIB invoice date. All accounts not paid in full by the due date shall be in arrears and may be assessed a late charge of 1.5% per month on the outstanding balance (\$25.00 minimum) or any part thereof. Subscriber shall not be penalized for non-payment of any disputed amounts while such disputes are being resolved. Subscriber will be solely responsible for all federal, state and local taxes levied to or assessed against Subscriber in connection with Subscriber's use of the Services.

d. Subscriber agrees that BIB reserves the right to suspend Subscriber access to BIB Services and/or revoke direct billing status if Subscriber is more than thirty (30) calendar days late in payment (30 calendar days after the payment is due). Should Subscriber's check be returned for non-sufficient funds or Subscriber fails to make timely payment more than thirty (30) calendar days after payment is due, Subscriber's account may be suspended until payment is received in full or suspended without notice. A returned check charge of \$40.00 will apply to all checks returned unpaid by the bank.

7. Confidentiality.

a. BIB and Subscriber hereby agree, and will contractually require that their respective subcontractors, officers, directors, employees, consultants, representatives and agents ("Related Parties") agree, that during the term of this Agreement and thereafter, except as permitted in this Agreement, NC law, or expressly in writing by BIB and Subscriber, BIB and Subscriber and their respective Related Parties shall not use, disclose, distribute, make known or communicate any Confidential Information to any person, firm or enterprise, except to such Related Parties and to a party's legal and financial advisors, each subject to a duty of confidentiality. A party ("Disclosing Party") may disclose the other party's ("Non-disclosing Party") Confidential Information as required to comply with any validly issued subpoena, court order, or state statute governing the release of public records, provided that, prior to compliance with any such order, and at the request of Non-disclosing Party, the Disclosing Party will cooperate with Non-disclosing Party to obtain a protective order. The Disclosing Party further agrees to provide Non-disclosing Party written notice of the Disclosing Party's receipt of a validly issued subpoena or court order seeking or ordering disclosure of Non-disclosing Party's confidential records within a reasonable time prior to the Disclosing Party's planned disclosure of the requested information in order to allow Non-disclosing Party a reasonable opportunity to quash the subpoena or obtain a protective order. Non-disclosing Party, upon the Disclosing Party's breach of this section, may seek injunctive relief against the Disclosing Party and/or against the party seeking disclosure of Non-disclosing Party's Confidential Information. The provisions of this section shall survive termination of this Agreement for as long as the information in question remains "Confidential Information" as defined below.

b. As used herein, the term "Confidential Information" means, without limitation: (i) any information relating to either party's product plans, specifications, designs, System design, processes and procedures, search methodologies, algorithms, development, costs, pricing or trademarks, or relating to its finances, marketing plans, business opportunities, personnel, research, product design,

customer service processes and procedures, IP Rights or know-how; (ii) any information relating to the identity of clients; or (iii) any information designated by the disclosing party as confidential. Subscriber and BIB agree that they have no obligation to keep confidential any information that: (iv) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (v) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (vi) is independently developed by the receiving party; (vii) is lawfully obtained from a third party who has the right to make such disclosure; (viii) is released for publication by the disclosing party in writing; or (ix) is subject to disclosure pursuant to Chapter 132 of the North Carolina General Statutes governing public records.

8. Waiver of Liability, Limitation of Liability, and Indemnification.

a. Notwithstanding anything herein to the contrary, the Data that is accessed from BIB has been created and maintained by, among others, various government agencies that are not under the control of BIB. Responsibility for the accuracy and the currency of the Data rests solely with the various government agencies and other contributors who create and maintain said Data.

b. Subscriber recognizes that the Data Subscriber obtains from BIB is secured by and through fallible human sources and that for the fee charged, BIB cannot be an insurer of the accuracy of the information. Subscriber specifically waives any claim or claims against BIB and BIB subcontractors, officers, directors, employees, consultants, representatives and agents arising out of or relating to the accuracy or completeness of the Data, except in the event of gross negligence by BIB.

c. BIB's liability for any claims not waived pursuant to this Agreement is limited, at BIB's option, to BIB's reperformance of the Services in question or a credit for the amount paid by Subscriber for such Services. In no event shall BIB's liability to Subscriber exceed the amount paid by Subscriber for Services during the six months preceding BIB's alleged breach or wrongful act. This subsection (c) shall not apply in the event of gross negligence by BIB, its officers, directors, employees, consultants, representatives or agents.

d. To the extent allowed by law, Subscriber shall indemnify, defend and hold harmless BIB and BIB, subsidiaries, subcontractors, officers, directors, employees, contractors, consultants, representatives and agents from any and all claims, actions, demands, liabilities, settlements, costs, damages or liability, whatsoever, that arise out of, are related to, or are caused in whole or in part, by the fraudulent, willful and wanton, negligent, or wrongful act, error or omission of Subscriber or its employees or agents, including any act or omission in violation of this Agreement.

9. DISCLAIMER.

BIB SERVICES ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND FROM ANYONE AND HEREBY SPECIFICALLY DISCLAIMS SAID WARRANTIES. THIS DISCLAIMER INCLUDES WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BIB MAKES NO WARRANTY AS TO THE QUALITY, ACCURACY, COMPLETENESS, TIMELINESS AND VALIDITY OF THE SERVICES PROVIDED.

10. Insurance

Each Party shall maintain throughout the term of this Agreement a policy of professional liability and/or error and omissions/Public Officials coverage with a single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. The insurance required herein shall be issued by an insurance company authorized to do business in all states necessary to ensure effective coverage under this agreement ~~and be written with a carrier that maintains an A.M. Best rating of at least A-~~ Each party agrees to produce upon request of the other party certificates of insurance evidencing such coverage.

11. Ownership of Proprietary Information.

BIB's System, Database, IP Rights and Proprietary or Confidential Information, including all modifications and enhancements thereto, shall remain the sole exclusive property of BIB. Subscriber's Proprietary or Confidential Information shall remain the sole and exclusive property of Subscriber. Each party acknowledges that any use or disclosure of the other party's Proprietary or Confidential Information, other than as specifically provided for in this Agreement, may result in irreparable injury and damage to the non-using or non-disclosing party. Accordingly, each party hereby agrees that, in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-using or non-disclosing party shall be entitled, upon proper legal showing, to apply for suitable relief in addition to any other remedies that may be available.

12. Compliance with Laws.

a. BIB and Subscriber agree to perform the obligations under this Agreement in material compliance with all laws, rules, regulations, orders and other legally-binding pronouncements of any governmental authority, foreign or domestic, applicable to and governing each party's performance of its obligations hereunder.

b. BIB and Subscriber each represent and warrant that each shall comply with all applicable federal, state and local statutes, regulations and ordinances governing the disclosure, use and distribution of Data and information furnished by BIB under all Services the Subscriber utilizes. Subscriber certifies that Subscriber will comply with 15 U.S.C. §1681 et. Seq. as summarized in EXHIBIT "A" ("Notice to Users of Consumer Reports: Obligations of Users Under the FCRA"). Subscriber further certifies that Subscriber will not use information obtained from BIB in violation of any federal or state equal opportunity employment laws or regulations. Subscriber understands that the Fair Credit Reporting Act (FCRA), Drivers Privacy Protection Act (DPPA) and Gramm-Leach-Bliley Act, codified at 15 U.S.C. § 6801, et. seq. and any laws and regulations promulgated by the Equal Employment Opportunity Commission (EEOC) are subject to change, and Subscriber agrees to comply will all future modifications to said Acts.

c. In cases where Subscriber provides a Consumer Report, where that is legally permissible, as defined by the FCRA, to any third party containing Data and/or information furnished by BIB under all Services obtained by Subscriber from BIB, Subscriber warrants and represents that Subscriber will provide all such third parties with the prescribed notice of their duties and responsibilities as a user of a Consumer Report under the FCRA and all other State and Federal laws, rules and/or regulations.

d. Components of BIB's Address History Trace includes nonpublic personal information, as defined in the Gramm-Leach Bliley Act, codified at 15 U.S.C. § 6801, et. seq. and its implementing regulations (collectively, "GLBA"). Subscriber warrants and represents that Subscriber will not use Consumer Information or nonpublic personal information obtained from the BIB Address History Trace, in whole or in part, in determining a consumer's eligibility for credit, for employment, or for insurance or in any manner that would violate the GLBA or State and Federal laws, rules and/or regulations.

13. Use of Name, Trademarks, Trade Names and Publicity.

Both parties agree that they will not use the name(s), trademarks or trade names of the other party, whether registered or not, in publicity releases or advertising or publicly in any other manner, including company client lists, without securing prior written approval by the other party.

14. Notices.

All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if it is sent by overnight courier, registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth herein, or by facsimile, electronic mail, or hand delivery. Subscriber and BIB are responsible for maintaining with the other a current address, facsimile phone number, email, which, as of the date of this Agreement, are as follows:

To BIB:

Douglas Henry
Background Investigation Bureau, LLC
9710 Northcross Center Court
Huntersville, NC 28078
(704) 439-3900 ph.
(704) 439-3940 fax
dhenry@bib.com

To Subscriber:

Patrick Fitzsimons
Town of Apex
53 Hunter Street
Apex, NC 27502
(919) 249-3346 ph.
(919) 249-3368 fax
patrick.fitzsimons@apexnc.org

15. Governing Law.

This Agreement, any addendums or Exhibits, and their terms and conditions are governed by and shall be construed in accordance with the laws of the State of North Carolina, without regard to conflicts of law provisions. Each Party agrees to accept and acknowledge service of any and all process that may be served in any suit, action, or proceeding. Each Party agrees that any service of process upon it mailed by registered or certified mail, return receipt requested to such Party at the address in the Notices Section above shall be deemed in every respect effective service of process upon such Party in any such suit, action, or proceeding to the degree service is provided in compliance with NC law.

16. Arbitration and Waiver of Jury Trial.

a. Subject to subparagraph (f) below, this paragraph concerns the resolution of any controversies or claims between the Parties, whether arising in contract, tort, by statute, or by common law (including statutory and common law claims for contribution and/or indemnification), including but not limited to controversies or claims that arise out of or relate to: (i) this Agreement (including any renewals, extensions or modifications); or (ii) any document related to this Agreement (collectively a "Claim").

b. At the request of any party to this Agreement, if the Parties cannot in good faith reach an agreement as to any controversy related to or arising out of this Agreement or related document, and at the option of either party, the Parties agree to enter into mediation in good faith with the goal of reaching a satisfactory agreement. The Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions, pursuant to N.C. Gen. Stat. §7A-38.1 shall apply to provide the framework for conducting the mediation.

c. Notwithstanding the foregoing, BIB may bring an action in a court having jurisdiction for recovery of any sums due on an account for goods and for services provided under this Agreement, and either party may bring an action in a court having jurisdiction for injunctive relief.

17. General.

a. Survival. Provisions 7, 8, 9, 11, 15 and 16 of this Agreement shall survive the termination of the contract period and the assignment of this Agreement by Subscriber to any successor in interest or other assignee, except as expressly stated and agreed herein by the parties.

b. Assignment. The Subscriber may not assign this Agreement in whole or in part without the prior written consent of BIB. BIB may, without Subscriber's consent, assign or transfer this Agreement and in such event BIB's assignee or transferee shall have the rights, powers, privileges, and remedies of BIB herein. BIB further agrees any assignment or transfer of this Agreement shall not alter, amend, except or add to the terms of this Agreement in any manner.

c. Force Majeure. Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause of such delay or failure.

d. Waiver. No waiver by BIB and/or Subscriber of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by BIB and/or Subscriber of any right under this Agreement shall be construed as a waiver of any other right. BIB and/or Subscriber shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

e. Headings and Interpretation. The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement. This Agreement shall not be construed or interpreted in favor of or against BIB or Subscriber on the basis of draftsmanship or preparation of the Agreement.

f. Integration and Severance. This Agreement constitutes the entire Agreement between BIB and Subscriber, and it supersedes any and all prior or contemporaneous communications, promises and proposals, whether oral, written or electronic. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

g. Legal Fees. In addition to section 16, subparagraph (e), if any dispute arises between the Subscriber and BIB with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled, to the extent permitted by law, to receive its reasonable attorneys' fees, expert witness fees, and out-of-pocket costs incurred in connection with such proceeding, in addition to any other legal or equitable relief it may be awarded.

h. Amendments. The terms and conditions of this Agreement may be modified at any time for any reason through written authorization signed by both parties.

i. Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one instrument. The parties agree to cooperate fully and execute any additional documents necessary to give full force and effect to this Agreement.

j. E-Verify Compliance. BIB shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). BIB shall require all of its subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

k. Iran Divestment Act. N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this License Agreement BIB hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer and that it will not utilize any subcontractors found on the Final Divestment List.

l. Anti-Human Trafficking. BIB warrants and agrees that no labor supplied by BIB or BIB's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

m. Electronic Signature. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with the Town's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

{The Remainder of this Page Intentionally Left Blank; Signatures Follow}

Authority.

Each party warrants and represents to the other that it has all necessary right and authority to enter into this agreement and to grant to the other party all rights herein granted and the respective signatory below is duly authorized by all necessary and appropriate corporate action to execute the Agreement on behalf of such party.

Town of Apex:

Background Investigation Bureau, LLC:

Authorized Signature

Authorized Signature

Lance Olive

Printed Name

Printed Name

Mayor, Town of Apex

Title

Title

Date

Date

Attest: _____
Donna Hosch, MMC, NCCMC, Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act .

Vance Holloman, Town of Apex Finance Director

EXHIBIT "A"

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.

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. 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

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.

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 have been issued that cover disposal.

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

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 federal 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 as 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 a list of consumers from a CRA who meet certain preestablished 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 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 identity 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, 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-1	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681c-2	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 613	15 U.S.C. 1681k
Section 627	15 U.S.C. 1681w	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y



BIB

Town of Apex Parks and Rec

June 28, 2019

Secure Volunteer Package

\$11.95

Address History Trace – Reveals various names, DOBs and addresses associated with a specific SSN. Information contained in BIB's AHT is aggregated from a variety of public and proprietary sources and is an excellent tool for determining where background searches should be conducted.

County Court Search (Multi-County) – A criminal records search in each unique jurisdiction discovered through BIB's Address History Trace. Jurisdictions are limited to the Subject's past seven (7) year residential history. Records include both felony and misdemeanor offenses and traffic citations when available.

Criminal Record Database – A database search of over 400 million unique criminal records regularly aggregated from over 2,400 different governmental and proprietary sources. Records include full dispositions and are verified through the official court of record before being reported.

Sex Offender Registry Search – A comprehensive database search of registered sex offenders regularly aggregated from all 50 states plus Washington DC, Puerto Rico, and Guam and Native American Tribal Registries.

Security Watch List – A database search of information obtained from over 30 global agencies including the Office of Foreign Assets (OFAC), Interpol, US Department of Justice, US Department of Commerce, US Secret Service, DEA, FBI, FTA, OIG and GSA.

Adverse Action Administrator – BIB will automatically send pre-adverse and adverse FCRA action letters when required.

Credential ID Card – Price includes BIB's credential ID card that will have your organization name, your school location, the volunteer level and your volunteer name.

AEGIS Screening Management Software – (AegisPro)

\$59/per month

AEGIS Screening Management Software enables automation, flexibility, consolidated software applications, electronic ticket support and reporting capabilities. AEGIS is an excellent platform for managing the operational side of client's full background and drug screening program.

Notes:

County Access Fees: Many county courts charge a statutory fee to access their criminal records. Fees generally range from \$2.50 to \$5.00 and in some jurisdictions as much as \$30.00. These fees will be paid by BIB and are included in our pricing with the exception of County searches that require the use of the NY statewide search will incur a \$65.00 access fee.

County Criminal Data: The upper court system is the default county court search. Availability of records maintained by county court systems is often limited to a seven (7) year historical record.

AKA Names: Each additional AKA name will be billed separately.

BIB's AEGIS Screening Management Software fee will be invoiced the first of each month in addition to your per search background screening or drug -screening invoice. For your convenience, you can provide a credit card and/or ACH for your monthly reoccurring payments.

Any questions on how to upgrade your screening management software package, please contact Client Services at 877-439-3900.

Signature

Date