

RESOLUTION NO. 519 - 2009

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A SERVICE AGREEMENT WITH WEST GOVERNMENT SERVICES, FOR DATABASE ACCESS, AT A COST NOT TO EXCEED \$4,500.00.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to execute the Service Agreement, which is attached hereto and incorporated herein by reference, with West Government Services, for database access.

Section 2 - That an amount, not to exceed the sum of \$4,500.00, be and hereby is approved for payment to West Government Services, from account # 1101-505506-71299, pursuant to the terms of the Agreement.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 7, 2009


MAYOR

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: July 13, 2009-1t

R-519-2009

West Government Services ("WEST")
West Renewal/Conversion Form
610 Opperman Drive, P.O. Box 64833
St. Paul, MN 33164-1803
Tel: 651/687-8000

**WEST GOVERNMENT SERVICES
(FORMERLY CHOICEPOINT GOVERNMENT SERVICES LLC)
SUBSCRIBER RENEWAL/CONVERSION FORM AND SERVICE AGREEMENT**

NOTE: INCOMPLETE OR INCORRECT INFORMATION MAY RESULT IN A DELAY OR DENIAL OF YOUR FORM
To submit your form:

- Please type or print all information requested and fax to Glenn Martin 1-866-815-9900
- For questions, please call: Representative Name Glenn Martin Phone 859-533-4355 ID# 0212917

The information submitted on this Subscriber Renewal/Conversion Form and Service Agreement ("Agreement") will be used to determine eligibility in accessing information provided by West Government Services ("West"). West reserves the right to reject this Agreement for any reason whatsoever without explanation or recourse against West and/or its employees or officers. Additionally, the Subscriber hereby authorizes West to independently verify the information provided herein.

ORGANIZATION INFORMATION (ALL ITEMS ARE MANDATORY)

WEST GOVERNMENT SERVICES ACCOUNT #: 17557

PURCHASE ORDER #:

AGENCY NAME: Lexington Police Department

MAIN OFFICE PHONE (NOT EXT):
859-258-3600

MAIN FAX:

WEBSITE (IF APPLICABLE):

CURRENT PHYSICAL ADDRESS (P.O. BOX OR PRIVATE MAIL BOX NOT PERMITTED): 150 East Main Street

CITY: Lexington

STATE: KY

ZIP CODE: 40507

IF LOCATED AT THE ABOVE ADDRESS LESS THAN 90 DAYS, PROVIDE MOST RECENT PRIOR ADDRESS BELOW

PHYSICAL ADDRESS (P.O. BOX OR PRIVATE MAIL BOX NOT PERMITTED):

CITY:

STATE:

ZIP CODE:

West Government Services Products

Product	# of Users	Total Monthly Charges
CLEAR Investigator	2	\$375
Contract Term: July 1, 2009 to June 30, 2010		

Total Monthly Charges: \$375

*** As outlined in the Service Agreement, AutoTrack XP will continue to be available through September 30 2009 ***

Total Monthly Charges ("Charges") begin on the first day of the month following the end date of Subscriber's previous rate plan for those on a fixed rate plan and on the first day of the month following the date that West accepts Subscriber's order for those currently on a transactional rate plan ("Effective Date"). If the Subscriber commits to a 12, 24 or 36 month term, the Charges will be billed as set forth below. Upon conclusion of such term Charges will be billed thereafter at up to then-current rates. Charges and Excluded Charges may be modified as set forth in the Service Agreement

GM Subscriber's Initials for 12 Month Term Subscriber agrees to commit to a term of 12 months.

Subscriber's Initials for 24 Month Term Subscriber agrees to commit to a term of 24 months and the Charges for the second 12 months not to increase by more than _____ % over the Charges for the first 12 months.

Subscriber's Initials for 36 Month Term Subscriber agrees to commit to a term of 36 months and the Charges for the second 12 months not to increase by more than 5% over the Charges for the first 12 months and the Charges for the third 12 months not to increase by more than 5% over the Charges for the second 12 months.

Fixed rate pricing does not apply to copies of "Premium Reports" within AutoTrackXP, which currently consist of (1) National and Florida criminal records and motor vehicle accident reports (MVRs), (2) InfoUSA Reports, and (3) Dun & Bradstreet Reports. The Premium Report options will be turned off to prevent access from the menu. If you require Premium Reports, please notify your account representative to have them invoiced in addition to the fixed rate contract price.

Logging of Accounts: Authorized law enforcement agencies may request that account log in information be "blind logged". If you have questions regarding this option, you may contact your account representative. Authorized law enforcement agencies choosing blind logging initial where indicated for **Blind Logging**. All other entities should initial where indicated for **Standard Logging**.

_____ Standard Logging

_____ **Blind Logging (THIS CHOICE IS PERMITTED FOR AUTHORIZED LAW ENFORCEMENT AGENCIES ONLY)**

_____ If you initiated **Blind Logging** as a law enforcement agency, you may request that access be limited to certain IP addresses that you identify. By initialing in the space provided, you are requesting that access be limited to certain IP addresses.

If you elected **Standard Logging** or **Blind Logging** limited to certain IP addresses, please provide below the internet protocol (IP) address, addresses or range of IPs. If you have multiple IP addresses, please provide each IP address. Or, if your IP address is a contiguous range of IP addresses, please provide the full range. Failure to provide all IP addresses may result in problems accessing data.

If you do not know your company's IP address(es), try the following:

1. Contact your network administration, firewall or security team
2. Contact your Internet Service Provider, ISP (i.e. Cable, DSL, Satellite, etc.)
3. Log on to www.whatismyip.com (NOTE: If you have multiple IP addresses, this tool will only detect one IP address.)

Notes (Internal Use Only):

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SERVICE AGREEMENT

This Agreement is entered into between West Government Services and its affiliates and subsidiaries ("WEST"), and the entity first set forth herein ("Subscriber") and shall replace any previous service agreements entered into by the parties.

1. **SERVICE.** WEST provides nationwide public record information, document retrieval and related services ("Services") using its proprietary databases and information obtained from third parties ("Third Parties"). Subscriber hereby subscribes to Services for use as a factor in making its business decisions and agrees to pay to WEST the applicable rates and charges set forth herein. If you are an existing customer, AutoTrackXP services will not be available after September 30, 2009.
2. **PERFORMANCE.** WEST will use reasonable efforts to deliver Services requested by Subscriber and to access, update, augment and maintain its compilation of information gathered from selected public records and other sources used in the provision of Services hereunder. Subscriber accepts all information "AS IS" West, may, at its option, exclude certain product components and features from the products and features set forth herein if West is contractually bound or otherwise required to do so by a contributor of data or if the product components or features are enhanced or released after the effective date of this agreement. Subscriber's access to and use of any such excluded components and features shall be billed to Subscriber at then current rates in addition to the Subscriber's Total Monthly Charges.
3. **SUBSCRIBER CREDENTIALS.** Subscriber acknowledges and understands that WEST will only allow Subscriber to access the Services if Subscriber's credentials can be verified in accordance with WEST internal credentialing procedures, including completion of a Vendor Reference Release Form. Subscriber shall notify WEST immediately of any changes to the information on Subscriber's application for Services and, if at any time Subscriber no longer meets such procedures, WEST may terminate this Agreement.
4. **CHARGES TO SUBSCRIBER.** Subscriber shall be responsible for payment for all Services obtained through Subscriber's access identification code. Payment by Subscriber is due and payable thirty (30) days from the date of invoice. If payments are past due more than thirty (30) days from the date of invoice, WEST may terminate this Agreement. Subscriber is responsible for payment of all collection costs and attorney fees incurred by WEST through its efforts to collect on balance(s) owed by Subscriber. All remittances shall be sent to the "remit to" address on the invoice. Subscriber is responsible for all excluded charges as incurred which currently includes but is not limited to Premium Reports such as National and Florida criminal records and motor vehicle accident reports (MVRs), InfoUSA Reports, and Dun & Bradstreet Reports ("Excluded Charges"). WEST will review Subscriber's actual monthly charges based upon then-current usage charges. In the event Subscriber's actual charges during a month exceed the then-current fixed rate monthly charges by more than three times, West may limit access to live gateways for the remainder of the month.
5. **OWNERSHIP.** Subscriber acknowledges that WEST and/or Third Parties retain all right, title, and interest under applicable contractual, copyright and related laws in the databases and information contained therein and used to provide Services hereunder. Subscriber shall use such information consistent with such right, title and interest and notify WEST of any threatened or actual infringement thereof.
6. **SUBSCRIBER USE LIMITATIONS - END USER.** Subscriber acknowledges that this Agreement grants Subscriber a limited license in exchange for payment of the fees and charges set forth herein, and Subscriber shall keep confidential and not reproduce, retransmit, republish or otherwise transfer for commercial purpose any information that Subscriber receives from Services, except to employees in the United States of America whose duties reasonably relate to the legitimate business purposes for which the information is requested. Subscriber warrants that it is the end user of the information, and agrees to limit use and dissemination of information from Services solely to the business use(s) stated by Subscriber in the application and online. Subscriber acknowledges that WEST is providing data to support Subscriber's own processes and decisions, and Subscriber should not deny any service or access based solely on data or results provided by WEST. Subscriber is responsible for any denial of services or access and Subscriber will not deny such service or access without first conducting an appropriate review and adjudication process.
7. **SUBSCRIBER USE LIMITATIONS - FAIR CREDIT REPORTING ACT.** Subscriber agrees not to use any WEST Services for consumer credit purposes, consumer insurance underwriting, employment purposes, tenant screening purposes, or for any other purpose(s) covered by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq) ("FCRA") or similar state statute.
8. **SUBSCRIBER USE LIMITATIONS - DRIVER'S PRIVACY PROTECTION ACT.** Subscriber agrees to use any WEST data, which is the subject of this Agreement, in strict conformance with the Federal Drivers Privacy Protection Act (18 U.S.C. Section 2721 et seq) and similar state statutes, if applicable and will certify its permissible purpose to WEST.
9. **SUBSCRIBER USE LIMITATIONS - GRAMM-LEACH-BLILEY ACT.** Subscriber agrees to use any WEST data, which is the subject of this Agreement, in strict conformance with the Gramm-Leach Bliley Act (U.S.C. Title 15, Chapter 94, Section 6801 et seq.) and similar state statutes, if applicable and will certify its permissible purpose to WEST.
10. **MVR INFORMATION.** If Subscriber is permitted to purchase motor vehicle records ("MVR Data") from WEST, without in any way limiting Subscriber's obligations to comply with all state and federal laws governing use of MVR Data, the following specific restrictions apply and are subject to change:
 1. Subscriber shall not use any WEST-provided MVR Data, or portions of information contained therein to create or update a file to the end that Subscriber develops its own source of driving history information
 2. As requested by WEST, Subscriber shall complete any state forms that WEST is legally or contractually bound to obtain from Subscriber before serving Subscriber with state MVR Data.
 3. WEST (and certain Third Party vendors) may conduct reasonable and periodic audits of Subscriber's use of MVR Data. Subscriber shall maintain for a period of 3 years a complete and accurate record, including identity and purpose, of every access to any personal information in MVR Data in its system. Further, in response to any audit, Subscriber must be able to substantiate the reason for each MVR Data order.
11. **MISUSE OF SERVICES OR INFORMATION.** Subscriber agrees to take appropriate measures so as to protect against the misuse and/or unauthorized access of WEST's Services through any methods, including unauthorized access through or to Subscriber's user identification numbers or passwords ("Account ID's"). Such misuse or unauthorized access shall include any disclosure, release, viewing or other unauthorized access to information such as social security numbers, driver's license numbers or dates of birth. Subscriber agrees that WEST may temporarily suspend Subscriber's access for up to ten (10) business days pending an investigation of Subscriber's use or access. Subscriber agrees to cooperate fully with any and all investigations. If any misuse or unauthorized access is found, WEST may immediately terminate this Agreement without notice or liability of any kind.
12. **SUBSCRIBER ACCOUNT MAINTENANCE.** Subscriber is responsible for the administration and control of Account ID's by its employees and third parties, and shall identify a security administrator to coordinate with WEST. Subscriber shall manage all Account ID's, and

notify WEST promptly if any Account ID becomes inactive or invalid. Subscriber shall follow the policies and procedures of WEST with respect to account maintenance as same may be communicated to Subscriber from time to time

13. **SECURITY EVENT.** In the event that Subscriber learns or has reason to believe that WEST data has been disclosed or accessed by an unauthorized party, Subscriber will immediately give notice of such event to WEST. Furthermore, in the event that Subscriber has access to or acquires individually identifiable information (e.g., social security numbers, driver's license numbers or dates of birth) in relation to the Agreement, the following shall apply: Subscriber acknowledges that upon unauthorized acquisition of such individually identifiable information (a "Security Event"), Subscriber shall, in compliance with law, notify the individuals whose information was disclosed that a Security Event has occurred. Also, Subscriber shall be responsible for any other legal obligations which may arise under applicable law in connection with such a Security Event and shall bear all additional costs associated with resolving the Security Event
14. **CHANGES IN USE OR ACCESS.** WEST may, at any time, impose restrictions and/or prohibitions on the Subscriber's use of or access to the Services or certain data. Subscriber understands that such restrictions or changes in access may be the result of a modification in WEST policy, a modification of Third Party agreements, a modification in industry standards, a Security Event or a change in law or regulation. Upon written notification by WEST of such restrictions, Subscriber agrees to comply with such restrictions.
15. **INVESTIGATIONS.** Subscriber agrees to cooperate fully with any and all investigations that WEST may conduct as a result of an actual or alleged breach of this Agreement. Violations discovered in any review by WEST will be subject to immediate action including, but not limited to, termination of the account, legal action, and/or referral to federal or state regulatory agencies.
16. **TERM OF CONTRACT.** This Agreement may be terminated by WEST without cause by providing thirty (30) days written notice to Subscriber. Any provision or condition required for the interpretation of this Agreement or necessary for the full observation and performance by each party hereto of all rights and obligations arising prior to the date of expiration or termination, shall survive such expiration or termination
17. **INDEMNIFICATION.** Except as otherwise prohibited by law, Subscriber hereby agrees to protect, indemnify, defend and hold harmless WEST and all Third Parties from and against any and all costs, claims, demands, damages, losses and liabilities (including actual attorneys' fees) arising from or in any way related to (i) the use, access or misuse of information by Subscriber (or any third party receiving such information from or through Subscriber), and (ii) Subscriber's breach of any representation, warranty or other provisions of this Agreement. This shall not be deemed a waiver of sovereign immunity or any other defense available to the Subscriber for any claim by a person or entity that is not covered under this Agreement.
18. **LIABILITY/WARRANTY.** NEITHER WEST NOR THIRD PARTIES SHALL BE LIABLE TO SUBSCRIBER OR TO ANY PERSON CLAIMING THROUGH SUBSCRIBER OR TO WHOM SUBSCRIBER MAY HAVE PROVIDED SERVICE-RELATED INFORMATION FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED IN WHOLE OR IN PART BY WEST'S OR THIRD PARTIES' NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING, OR DELIVERING SERVICES OR IN OTHERWISE PERFORMING THIS AGREEMENT. SUBSCRIBER ACKNOWLEDGES THAT EVERY BUSINESS DECISION INVOLVES ASSUMPTION OF A RISK, AND THAT NEITHER WEST NOR ANY THIRD PARTY UNDERWRITES THAT RISK IN ANY MANNER WHATSOEVER. IF, NOTWITHSTANDING THE FOREGOING, LIABILITY CAN BE IMPOSED ON WEST OR A THIRD PARTY, THEN SUBSCRIBER AGREES THAT WEST'S AND/OR THIRD PARTIES' AGGREGATE LIABILITY FOR ANY AND ALL LOSSES OR INJURIES ARISING OUT OF ANY ACT OR OMISSION OF WEST AND/OR THIRD PARTIES IN CONNECTION WITH ANYTHING TO BE DONE OR FURNISHED UNDER THIS AGREEMENT, REGARDLESS OF THE CAUSE OF THE LOSS OR INJURY (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL NEVER EXCEED THE COST OF THE SERVICE OR SERVICES TO WHICH A GIVEN CLAIM RELATES AND WHICH WAS CHARGED TO SUBSCRIBER, AND SUBSCRIBER COVENANTS AND PROMISES THAT IT WILL NOT SUE WEST AND/OR THIRD PARTIES FOR AN AMOUNT GREATER THAN SUCH SUM EVEN IF WEST AND/OR THIRD PARTIES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND THAT IT WILL NOT SEEK PUNITIVE DAMAGES IN ANY SUIT AGAINST WEST AND/OR THIRD PARTIES, ALL IN CONSIDERATION OF THE RECEIPT BY SUBSCRIBER OF SERVICES AT THE RATES CHARGED BY WEST HEREUNDER, WHICH ARE FAR LOWER THAN WOULD BE AVAILABLE TO SUBSCRIBER ABSENT THE WAIVERS AND DISCLAIMERS CONTAINED HEREIN. WEST AND THIRD PARTIES DO NOT MAKE AND HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED. WEST AND/OR THIRD PARTIES DO NOT GUARANTEE OR WARRANT THE CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES OR THE COMPONENTS THEREOF. IN NO EVENT SHALL WEST OR THIRD PARTIES BE LIABLE FOR ANY DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, INCURRED BY SUBSCRIBER FROM RECEIPT OR USE OF INFORMATION DELIVERED HEREUNDER, OR THE UNAVAILABILITY THEREOF
19. **ASSIGNMENT** This Agreement and the rights and obligations of each party hereto shall not be assigned without the prior written consent of the other party which consent shall not be unreasonably withheld. Consent shall not be required, however, in connection with an assignment to a subsidiary or affiliate of WEST.
20. **PUBLICITY.** Except as required under the Kentucky Open Records Law, Subscriber will not name WEST or refer to its use of the Services in any press releases, advertisements, promotional or marketing materials, or make any other third party disclosures regarding WEST or Subscriber's use of the Services.
21. **AGREEMENT ENTIRETY.** This Agreement, as amended, sets forth the entire understanding and agreement between WEST and Subscriber regarding the subject matter herein and supersedes any prior or contemporaneous oral or written agreements or representations, except that access to and use of Third Party services may be governed by terms and conditions different than or in addition to those herein. By receipt of such Third Party Services, Subscriber agrees to, and shall comply with, such different and/or additional terms of Third Parties and such changes to this Agreement as WEST shall make from time to time by notice to Subscriber via on-line click wrap amendments or Subscriber bulletins. This Agreement shall be interpreted in accordance with the internal laws of the State of Kentucky

APPROVAL AND SIGNATURE. I certify that I am authorized to execute this Agreement on behalf of the entity listed above. Further, I certify on behalf of such entity, that the above statements are true and correct and agree for the entity to the terms and conditions set forth in the Agreement.

Signature: Jim Newberry

Printed Name: Jim Newberry

Title: Mayor

Date: July 7, 2009