

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

EL PASO COUNTY TAX ASSESSOR-COLLECTOR DEALER CONTRACT

This contract is made by and between the County of El Paso, a political subdivision of the State of Texas (“*COUNTY*”), on behalf of the El Paso County Tax Assessor-Collector, and FINN’S DISCOUNT AUTO (GDN: P106049) (“*DEALER*”).

I. RECITALS

WHEREAS, Chapter 520 of the Texas Transportation Code permits a county tax assessor-collector to deputize an individual or business entity as a dealer deputy, with the approval of the commissioner’s court; and

WHEREAS public convenience will be furthered by authorizing DEALER to act as a dealer deputy of the Tax Assessor-Collector in the processing of title application/motor vehicle sales tax receipts, (“*receipts*”); and

WHEREAS, the Texas Department of Motor Vehicles has created the WebDealer program as means for dealers and tax assessor-collectors to collaborate to process new and/or used vehicle registrations electronically; and

WHEREAS, DEALER agrees to allow its place of business at 7352 Alameda Ave., El Paso TX 79915 to be used as a contracted deputy office of the El Paso County Tax Assessor-Collector for the issuance of receipts.

NOW THEREFORE, the Parties agree as follows:

II. COUNTY DUTIES

2.1 COUNTY will supply DEALER with appropriate instructions and materials (e.g., blank receipts and supplies) in order to issue issuance receipts to the public. However, in no case will COUNTY issue DEALER any number of receipts when such issuance will cause DEALER's inventory of receipts to exceed the amount authorized in this Agreement.

2.2 The County Tax Assessor-Collector will continue to review, approve, and/or reject all title/registration applications and issue receipts when appropriate.

2.3 Financial Policies

2.3.1 The Tax Office will continue to collect the same fees for its services as it has in the past, unless a change is authorized or mandated by the Legislature or TxDMV (as defined in Paragraph 3.1 below) rule.

2.3.2 The Tax Assessor will collect \$2.30 as part of the new processing and handling fee for each receipt the Dealer issues under Transportation Code Chapter 502. The Tax Assessor-Collector will continue to collect all other fees authorized by Transportation Code sections §501.138 and §520.006 and other Texas statutes.

III. DEALER DUTIES

3.1 Technical Support. DEALER will look to the Texas Department of Motor Vehicles (“*TxDMV*”), or its own resources, for technical support with respect to the WebDealer Program. DEALER RELEASES El Paso County and the El Paso County Tax-Assessor Collector from responsibility for technical support. DEALER participates in the WebDealer program at its own risk. DEALER will follow all technical guidance provided by the TxDMV.

3.2 Capital Costs and Equipment. DEALER will be responsible for all capital/equipment costs associated with participating in the program, including an appropriate internet connection. **DEALER will supply all equipment and software needed, at DEALER’s sole cost and expense, to comply with DEALER Title Application reporting requirements of this contract.**

3.3 Dealer Fees. DEALER may not charge extra fees to consumers for participation in the WebDealer program except as a part of documentary fees added to the buyer’s retail sales contract as specifically authorized by section 348.006 of the Texas Finance Code and Title 7, Texas Administrative Code Rule 84.205 or other Texas Law or Regulation and as amended or modified by the Texas Legislature or the Texas Department of Motor Vehicles. DEALER may also continue to charge fees specifically authorized by other Texas Law including, Texas Finance Code §348.005. Pursuant to Title 43, Texas Administrative Code Rule 217.168(a), the County Tax Assessor-Collector may, upon request from DEALER, authorize DEALER to charge additional fees for each title or registration transaction processed. **DEALER may not add an extra line- item for WebDealer participation in any sales contract.**

3.4 Unless otherwise agreed to, in writing, electronic registrations under this Agreement shall be limited to only new and/or used vehicles sold by the Dealer at their licensed location(s). DEALER will maintain its franchised, new-dealer status at all times this Agreement is in force. Used or Pre-owned vehicles may be transferred and registered electronically under this Agreement.

3.5 All electronic applications processed by DEALER will provide, at a minimum, the information required by Title 43, Rule 217.4 of the Texas Administrative Code.

3.6 Electronic reports will be provided to the County through the WebDealer Program. However, in the event that electronic reports are not received by the County Tax Assessor-Collector, DEALER will report to the County Tax Assessor-Collector as directed. If so directed, DEALER will report according to the written instructions of COUNTY. The reports may include appropriate copies of all receipts issued; the number of receipts processed; the license plate receipt issued and/or voided; full payment for taxes and fees collected; and such other information as COUNTY may reasonably require.

3.7 DEALER shall have its president, or other management-level person in charge of local operations, and all employees of DEALER that handle or in any way assist in the issuance of receipts take an oath of deputation to be given by the County Tax Assessor-Collector. DEALER shall not allow any of its officers, agents, or employees to participate in any manner in the handling or issuance of receipts until each such officer, agent or employee has been deputized by the County Tax Assessor- Collector.

3.8 DEALER shall, prior to hiring new employees, submit a NOTICE OF INTENT TO HIRE (Exhibit A) and a fully executed and notarized Personal Inquiry Waiver and Authorization for Release of Confidential Information in order for the County Tax Assessor-Collector to submit for background check. Once a new employee has passed background check, DEALER shall assign employee to the Office of the County Tax Assessor-Collector on a training schedule agreed upon between the DEALER and the County Tax Assessor-Collector. At any time during the minimum time of training, the Director of Motor Vehicle Registration and

Titling Division of the El Paso County Tax Assessor-Collector's Office reserves the right to approve a DEALER employee for performance of the duties and responsibilities pursuant to this Agreement. The DEALER shall pay the employees for the total time they are engaged in the training provided pursuant to this paragraph.

3.9 DEALER shall, in writing, designate one or more of its officers, agents or employees, who has been deputized, to serve as a receiving agent for DEALER. COUNTY will not furnish any receipts or supplies for the account of DEALER other than directly to DEALER's designated receiving agent(s). DEALER ASSUMES FULL LIABILITY FOR THE SAFEKEEPING OF ALL RECEIPTS, SUPPLIES, AND EQUIPMENT FURNISHED BY COUNTY, OR THE TEXAS DEPARTMENT OF MOTOR VEHICLES, TO DEALER'S DESIGNATED RECEIVING AGENT. DEALER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY OF EL PASO AND THE EL PASO COUNTY TAX ASSESSOR-COLLECTOR FOR ANY AND ALL LIABILITIES, DAMAGES, LOSSES, OR EXPENSES INCURRED DUE TO DEALER'S NEGLIGENCE OR DEALER'S FAILURE TO PERFORM ITS DUTIES UNDER THIS AGREEMENT. IN ADDITION, DEALER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY OF EL PASO AND THE EL PASO COUNTY TAX ASSESSOR-COLLECTOR FOR ANY AND ALL LIABILITIES, DAMAGES, LOSSES, OR EXPENSES INCURRED DUE TO DEALER'S MISUSE OF LICENSE PLATES OR OTHER FRAUDULENT ACTIVITY RELATED TO VEHICLE REGISTRATION AND TITLING.

3.10 DEALER shall collect and report the taxes and fees prescribed by the El Paso County Tax Assessor-Collector, or Texas law, for each receipt issued. All State and County fees collected for the issuance of receipts by DEALER shall not be co-mingled with any other funds in the possession of DEALER. DEALER shall transfer such funds via electronic bank transfer (e.g., wire or ACH) as soon as the transaction is approved by the Tax Assessor-Collector. DEALER will be responsible for any applicable bank fees associated with the transfer of such funds.

3.11 DEALER may not accept individual checks, on COUNTY's behalf, in payment of fees for the issuance of receipts. DEALER may accept individual checks on its own behalf and at its own risk. In general, all DEALER payments for taxes and fees, owing to COUNTY, under this Agreement shall be by electronic transfer. However, with *prior written approval* from office of the County Tax-Assessor Collector, DEALER may submit a company check for payment of taxes and/or fees *prior* to releasing license plates and registration stickers.

3.12 DEALER is subject to audit by the El Paso County Tax Assessor-Collector, the El Paso County Auditors, the Texas Department of Motor Vehicles, the Comptroller of the State of Texas, or any certified public accountant designated by any one or more of the same. Such audit may occur at any time during the normal business hours of DEALER at the place of business of DEALER as designated in this contract without prior notification. Such audit may also occur at any other time or place in El Paso County, Texas upon 24 hours notification. If the audit is to be conducted at any place other than the place of business of DEALER as designated in this contract, DEALER's receiving agent shall be present and shall make available at the place of the audit all supplies, forms, and equipment required. If an audit reveals an inventory discrepancy, DEALER shall be liable for the maximum registration and sales tax value at the time of loss, as determined by the County Tax Assessor-Collector. The date and time of loss as well as the maximum registration and sales tax value, determined by the County Tax Assessor-Collector shall be presumed correct.

3.13 Dealer shall post a bond as financial guarantee of its duties and obligations under this contract and pursuant to Texas Transportation Code section 520.0071 (a)(3). The bond shall guarantee: the faithful performance of the duties of DEALER; that all funds are accounted for and paid over to COUNTY; that all

receipts, supplies, license plate (if assigned inventory), and equipment coming into the possession or control of DEALER by virtue of this contract are properly accounted for. The bond shall be in the amount of \$100,000.00 naming the El Paso County Tax Assessor- Collector as obligee on the bond. Any such bond shall extend for a minimum of one year and shall be renewed by DEALER before the expiration date and shall be issued by a surety company acceptable to COUNTY. The Tax Assessor Collector may waive the bond requirement, under this paragraph, if DEALER does not maintain an inventory of license plates or receipts.

3.14 In the event that DEALER goes out of business or otherwise terminates services under this Agreement, DEALER shall retain all unused receipts and plates, if applicable, and make prompt arrangements to return them to COUNTY. In the event DEALER declares bankruptcy, under any provision of law, DEALER shall immediately notify COUNTY, in writing. Upon such notification, or upon learning of a formal bankruptcy filing, COUNTY may at its sole discretion: (1) terminate this Agreement in which case DEALER shall immediately return all unused receipts; or (2) continue performance under this Agreement. If COUNTY elects to continue performance, COUNTY has not waived its right to terminate under subparagraph (1), above.

IV. GENERAL TERMS

4.1 This writing represents the entire agreement between the parties. This agreement may not be modified except in writing acknowledged by each party. Breach of any obligation to be performed by DEALER shall constitute a breach of the entire agreement and shall give COUNTY the right to immediately terminate this agreement. The parties agree that no breach by DEALER shall be considered an insubstantial breach. Upon termination of this contract pursuant to this paragraph, COUNTY shall notify DEALER of the termination in writing. If mailed, any notice shall be deemed received by the dealer on the 3rd day after its mailing. Within 24 hours after the receipt by DEALER of any such notice, DEALER shall return all receipts, equipment, supplies, taxes, and fees owed to COUNTY. Either party hereto may voluntarily terminate this contract upon 30 days' written notice to the other party. On or before the effective date of termination DEALER shall return to COUNTY all outstanding inventory of Point-of-Sale receipts, plates, supplies and payment for receipts issued and a final report as provided for in paragraph 2 hereof.

4.2 In the event that any audit, report, or investigation of DEALER reveals that any receipts, plates, or funds are missing or otherwise unaccounted for, COUNTY shall be entitled to claim the financial guarantee under paragraph 3.13, above, and apply the proceeds against the actual damages incurred by COUNTY or any of its agents, employees, or public officials. In the event that this contract is terminated by COUNTY for breach by DEALER and DEALER fails to return all receipts, plates, supplies, or funds within the time allowed in paragraph 3.10, COUNTY shall be entitled to retain the entire proceeds of the financial guarantee as liquidated damages or, in the alternative, shall be entitled to seek recovery of its actual damages.

4.3 This agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are performable in El Paso County, Texas. Any litigation arising from the performance or enforcement of this agreement shall lie in a court of appropriate jurisdiction sitting in El Paso County, Texas.

4.4 DEALER may not assign this agreement.

4.5 The term of this Agreement is one (1) year from the date of the execution of the Agreement or upon the receipt of the financial guarantee in paragraph 3.13, whichever occurs later. This agreement shall automatically renew for successive one (1) year terms until terminated by either party by providing the other party with 30 days' written notice of that party's intent not to renew this Agreement.

4.6 Either Party may cancel this Agreement at any time by providing the other Party 30 days' written notice. In the event of cancellation, the Parties will take reasonable steps to "wind-down" operations under paragraph 3.10 and 3.14 of this Agreement.

4.7 This contract constitutes the entire agreement of the parties and supersedes all prior agreements, written or oral.

4.8 Any time a deputized employee is no longer employed with the Dealer Deputy, the Deputy shall notify the County Tax Assessor-Collector in writing within five (5) business days of the employee's last working day by using the NOTICE REGARDING EMPLOYEE SEPARATION (Exhibit B). Failure of the Dealer Deputy to provide the information required in this paragraph shall constitute a Breach of the obligations to be performed by the Dealer Deputy Contract.

4.9 This Agreement does not create an employee-employer relationship between the parties.

(Signature Page and Exhibits Follow)

AGREED and EXECUTED on the dates noted below.

COUNTY OF EL PASO:

By: _____
Ricardo Samaniego, El Paso County Judge

Date: _____

TAX ASSESSOR-COLLECTOR:

By: _____
Ruben P. Gonzalez, El Paso County Tax Assessor-Collector

Date: _____

DEALER:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A



Ruben P. Gonzalez
El Paso County Tax Assessor-Collector
301 Manny Martinez Dr., 1st floor · El Paso, TX 79905
Phone (915) 273-3430

NOTICE OF INTENT TO HIRE

To: The Honorable Ruben P. Gonzalez,
El Paso County Tax Assessor-Collector

Date: _____

Dealership Name: _____

GDN: _____

Name of Employee: _____

Dealer Deputy Manager/Owner Signature

Title

Accepted by: _____

County Tax Office Signature/Date

Title

Include the "Personal Inquiry Waiver and Authorization for Release of Confidential Information form", and a copy of their driver's license with this notice.

EXHIBIT B



Ruben P. Gonzalez
El Paso County Tax Assessor-Collector
301 Manny Martinez Dr., 1st floor · El Paso, TX 79905
Phone (915) 273-3430

NOTICE REGARDING EMPLOYEE SEPARATION

To: The Honorable Ruben P. Gonzalez,
El Paso County Tax Assessor-Collector

Date: _____

Dealer Name: _____

Name of Employee: _____

Last day working will be/was: _____

I hereby submit this notice regarding the status of the above-mentioned employee who is no longer employed in this office.

Manager/Owner Signature

Title

Accepted by: _____
County Tax Office Signature

Title