

## **A G R E E M E N T**

**THIS AGREEMENT** is by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **GOVDEALS, INC.**, a Delaware corporation registered to do business in Colorado, whose address is 100 Capitol Commerce Blvd., Suite 110, Montgomery, AL 36117 (“Contractor”).

### **RECITAL**

**WHEREAS**, the City desire to sells its surplus property to the public and the Contractor desires to work with the City to facilitate the sale of the City’s surplus property through the use of the Contractor’s website and allow the Contractor to collect and remit proceeds from those sales to the City.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

**1. SERVICES TO BE PERFORMED:**

**A.** Contractor, under the general direction of, and in coordination with, the City’s Executive Director of General Services or other designated supervisory personnel (the “Manager”) agrees to perform the services described on attached **Exhibit A** (the “Statement of Work” or “SOW”).

**B.** If the City is not satisfied with the Contractor’s performance of the services described in the SOW, the City will so notify Contractor within thirty (30) days after Contractor’s performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City’s notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the service in its sole discretion. In the event that City finally rejects any service, Contractor will refund to City all fees paid by City with respect to such service.

**2. GRANT OF LICENSE; RESTRICTIONS:**

**A.** Contractor hereby grants to City a non-exclusive, non-transferable right and license to (a) to use the hosted software in accordance with the applicable documentation and install as necessary, display, perform, and use the software; and (b) use all intellectual property rights necessary to use the software as authorized in subparagraph (a).

**B.** Title to and ownership of the Software will remain with Contractor. City will not reverse engineer or reverse compile any part of the Software without Contractor’s prior written consent. City will not remove, obscure or deface any proprietary notice or legend contained in the Software or documentation without Contractor’s prior written consent.

**C.** Contractor will provide the City with access to hosted versions of the software product(s) identified in Exhibit A. Contractor will, during all periods in respect of which the City has subscribed for hosted software, provide support to the City (and, where

applicable, directly to users of the City's own services and products who access the hosted software) in accordance with Exhibit A.

3. **TERM:** The term of the Agreement is from July 1, 2015 through July 31, 2020.

4. **COMPENSATION AND PAYMENT:**

A. **Revenue Contract.** This is a revenue contract with no expenditure of funds by the City. The Contractor will be arranging for the sale of surplus City property, collecting the revenue from the sale of that property and remitting those funds to the City on a monthly basis. The Contractor will be charging the buyers of City surplus property a premium fee equal to ten percent (10%) of the purchase price, exclusive of taxes, which will be added on to the sales price and collected from the buyers.

B. **Reimbursement Expenses:** The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.

5. **STATUS OF CONTRACTOR:** It is understood and agreed that the status of Contractor shall be that of an independent contractor and a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2(C) of the Charter of the City; and it is not intended, nor shall it be construed, that Contractor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. Contractor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Manager with any City agency, or any person or firm under contract with the City doing work which affects Contractor's work.

6. **TERMINATION:**

A. The City has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice. However, nothing herein shall be construed as giving Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

B. If this Agreement is terminated by the City, Contractor shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which Contractor performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. The City shall be entitled to an immediate prorated refund of any prepaid fees for services not provided as of the date of termination.

C. Upon termination of this Agreement by the City, Contractor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any

act incidental thereto, except for compensation for work satisfactorily performed as described herein.

7. **EXAMINATION OF RECORDS:** Contractor agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of Contractor, involving transactions related to this Agreement.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

9. **INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies

that the certificate of insurance attached as Exhibit **B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**C. Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**D. Waiver of Subrogation:** For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**G. Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**H. Business Automobile Liability:** Contractor shall maintain Business  
Automobile

Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

**I. Additional Provisions:**

- (A) For Commercial General Liability, the policy must provide the following:
- (i) That this Agreement is an Insured Contract under the policy;
  - (ii) Defense costs are outside the limits of liability;
  - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (B) For claims-made coverage:
- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (C) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**10. DEFENSE AND INDEMNIFICATION.**

**A.** Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

**C.** Contractor shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. **REPRESENTATION AND WARRANTY:** Contractor represents and warrants that:

A. All services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

B. all services will conform to applicable specifications and the Exhibits attached hereto;

12. **COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).

13. **TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115..

14. **ASSIGNMENT:** Contractor covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager. Any attempts by Contractor to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of Contractor hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager. A change in control of Contractor shall not constitute an assignment hereunder.

15. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and Contractor that any person other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**16. NO AUTHORITY TO BIND CITY TO CONTRACTS:** Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

**17. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement, including any exhibit attached hereto (each of which is specifically incorporated herein) is intended as the complete integration of all understandings between the parties. No prior contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

**18. SEVERABILITY:** The parties agree that if any provision of this Agreement or any portion thereof is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected.

**19. CONFLICT OF INTEREST:**

**A.** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein; and Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**B.** Contractor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given Contractor written notice which describes the conflict. Contractor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

**20. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of General Services or Designee  
201 West Colfax Avenue, Dept. 1107  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**21. DISPUTES:** All disputes of whatever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b), et seq. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Paragraph 1 hereof.

**22. GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

**23. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

**24 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** While present on City property for purposes of this Agreement Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.

**25. CONFIDENTIAL INFORMATION; OPEN RECORDS:**

**A. City Information:** Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data.



“Proprietary Data” shall mean any materials or information which may be designated or marked “Proprietary” or “Confidential”, and which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

**B. Use and Protection of Proprietary Data or Confidential Information:**

(i) Except as expressly provided by the terms of this Agreement, Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to Contractor any right or license to use such data except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Manager and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

(ii) Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

(iii) Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted data received from, or on behalf of City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

**C. Employees and Sub-Contractor:** Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. Contractor shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

**D. Disclaimer:** Notwithstanding any other provision of this Agreement, the City furnishes Proprietary Data and confidential information on an “as is” basis, without any

support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Contractor agrees to contact the City immediately.

**E. Contractor's Information:** To the extent applicable in this Agreement, the City understands and agrees that the Contractor's software and documentation including, but not limited to, source code, object code, the interface requirements document(s), acceptance test procedures, the Statement of Work, the software design, Contractor's buyer database, structure and organization, software screens, the user interface and the engineering know-how implemented in the software (collectively "Contractor Confidential Information") constitute the valuable properties and trade secrets of Contractor, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to Contractor a competitive advantage. The City agrees during the term of this Agreement and any license granted hereunder, and thereafter, to hold the Contractor Confidential Information including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for the City's exercise of the license rights granted hereunder, and except as required by law. The parties understand that all the material provided or produced by the City under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. (2003). In the event of a request to the City for disclosure of such information, the City shall advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

## **26. LEGAL AUTHORITY:**

**A.** Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken to enter into this Agreement.

**B.** The persons signing and executing this Agreement on behalf of the respective Parties do hereby warrant and guarantee that they are fully authorized to execute this Agreement and to validly and legally bind the respective Parties to all the terms, performances

and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement.

**27. NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the Parties acknowledge that they and their respective counsel have had the opportunity to review this Agreement, and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

**28. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** In the event of any conflicts between the language of this Agreement and the exhibits, the language of the Agreement shall control

**29. SURVIVAL OF CERTAIN PROVISIONS:** The Parties understand and agree that all terms and conditions of this Agreement together with the exhibits and attachments hereto which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**30. INUREMENT:** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

**31. TIME IS OF THE ESSENCE:** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

**32. FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, vendors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.

**33. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**34. CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**35. COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

**36. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**37. PCI/DSS COMPLIANCE:**

A. The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program/CISP, MasterCard's Security Data Program and SDP Rules, and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations (generally "Association"), and further covenants and agrees to maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS), MasterCard Site Data Protection (SDP), and (where applicable) the VISA Payment Application Best Practices (PABP) (collectively, the "Security Guidelines"). Contractor represents and warrants that all of the hardware and software components that it utilizes for the City or uses under this Agreement is and will be PCI DSS compliant under current standards which are required of the City. All service providers that Contractor uses under the Agreement must be recognized by VISA as compliant with PABP. Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers, agents, business partners, contractors, subcontractors and any person or entity that may have access to credit card information under this Agreement maintain compliance with the Security Guidelines and comply in full with the terms and conditions set out herein.

B. The Contractor shall not retain or store CVV2/CVC2 data subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind, Contractor shall immediately notify the City in writing, and shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.

C. Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of the Contractor's system(s) that interface with or utilize credit card information in any manner or form of collection are Payment Card Industry Data Security Standards (PCI DSS) compliant.

D. The Contractor must provide regular (at least annual) results of a network scan for all Internet or IVR payment acceptance modules that verify PCI DSS compliance, or in the City's sole discretion, allow the City's contracted PCI DSS compliance auditor full access to the Contractor's system(s) at any time to provide this verification to the City. Any cost associated with the City's contracted PCI DSS compliance auditor will be paid by the City.. If any Association requires an audit of the Contractor or any of Contractor's Service Providers, agents, business partners, contractors or subcontractors due to a data security compromise event related to this Agreement, Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to the Contractor, the Contractor shall pay the City's reasonable costs relating to such audit, including attorney's fees. No review, approval, or audit by the City shall relieve the Contractor from liability under this section or under other provisions of this Agreement.

E. In addition to all other defense and indemnity obligations undertaken by the Contractor under this Agreement, the Contractor, to the extent that its performance of this Agreement includes the allowance or utilization by members of the public of credit cards to pay monetary obligations to the City or the Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by the Contractor, shall defend, release, indemnify and save and hold harmless the City against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or the Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any losses associated with fraudulent transaction(s) occurring after a security breach or loss of information with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such credit card data or utilizing a credit card in the performance by Contractor of this Agreement. In furtherance of this, Contractor covenants to defend and indemnify the City and the Contractor shall maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

**38. COOPERATIVE PURCHASING.** The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this Agreement that pricing offered herein to the City and County of Denver may be offered by the Contractor to any other governmental jurisdiction purchasing the same products. The Contractor must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area,

contractual disputes, invoicing, and payment. The City and County of Denver shall not be liable for any costs, damages incurred by any other entity.

**EXHIBITS**

**A-SCOPE OF WORK**

**B-CERTIFICATE OF INSURANCE**

## **EXHIBIT A SCOPE OF WORK**

Online Auction Requirements: The following minimum requirements shall apply:

1. Contractor shall provide a fully hosted website. The City shall have the ability to have a link (optional), which is seamless to the bidding community, from its auction domain name to the Contractor's website, which allows bidders direct access to City auctions with minimal clicks.
2. City shall have the ability to sell surplus property online, 24 hours a day, 7 days a week.
3. City shall have the ability to manage and control all aspects of the auction process online. This includes, but is not limited to creating auction text, uploading photos, uploading City terms and conditions, responding to bidder questions, payment receipt, pickup receipt data as well as having the option to have the Contractor manage many of these aspects.
4. City shall have no obligation or commitment to sell and it is at the City's sole discretion to use the Contractor's auction platform for the sale of City surplus property.
5. Contractor shall provide ongoing training opportunities and documentation for the City and the buyers. Training can be conducted through webinars.
6. Contractor shall provide easily accessible and highly responsive technical support and customer service Monday through Friday from 9 AM to 6 PM MDT. Contractor will endeavor to respond within one-hour, and absolutely shall respond within one business day, to all inquiries from the City and bidders. The City shall have access to an account manager after hours by cell phone if needed to resolve any unforeseen training or support issues. In addition, technical issues identified by the Contractor, which have the potential to disrupt business, must be relayed to the City within one business day of issue identification.
7. Contractor shall require that bidders register and agree to City terms and conditions creating a binding digital signature prior to placing a bid. With the exception of bid deposits which may be required for high value items, Contractor shall not charge a fee, perform a credit check or in any other way prohibit potential bidders from participating in the online auction.
8. City shall have the ability to block bidders from City auctions at the City's sole discretion.
9. All auctions shall use a soft close format where timeframe shall extend for five additional minutes if a bid is received within the last five minutes of auction close. These extensions will continue until no additional bids are received within five minutes remaining of auction close.
10. Contractor shall automatically and instantly notify the City administrator and the winning bidder of auction award by email, which shall include the item description, buyer information (name, address, email, phone, etc.), sale amount including taxes and commission, payment instructions and removal instructions. Contractor shall also

automatically and instantly notify the City administrator and the winning bidder by email that payment has been received and removal is authorized.

11. City administrator shall have online access to bidder profile information in order to call, fax or email any bidder.
12. City administrator shall have the ability to view a detailed bid history of City auctions at any time during the auction or after it closes.
13. Contractor shall provide an auction tool where the City may offer an auction item to the next highest bidder in cases where the highest bidder defaults. Contractor must receive approval from the City administrator prior to making any offers to subsequent bidders.
14. The City reserves the right to set reserve prices on any auction item. The City reserves the right to accept or reject any or all bids and to add to or remove from items currently scheduled to be auctioned. All items will be sold "AS IS, WHERE IS" with no warranty or guarantee express or implied.
15. Contractor shall actively market City auctions to prospective bidders in order to maximize participation and revenue.
16. Contractor shall keep and maintain City auction records for seven (7) years.

#### RESPONSIBILITY FOR PROCEEDS:

Contractor shall collect payments from buyers and remit net proceeds (less commission) to the City.

Contractor shall be responsible for the manner and terms in which payments are accepted for items sold.

Regardless of the manner in which the Contractor accepts payment for items sold at auction and regardless of default or non-payment by buyers pursuant to same, the City shall require payment in full from the Contractor less commission once an item is marked "PAID" by the Contractor.

Contractor shall remit payment to the City by ACH within 10 business days of paid confirmation. Contractor shall notify the City administrator that payment has been made and provide a consignor report detailing each payment.

#### RESPONSIBILITY FOR SALES TAX:

Contractor shall be required to collect appropriate sales tax on all items with the exception of titled vehicles, modular/mobile homes and abandoned/confiscated vehicles. Contractor shall also be required to remit said taxes to the taxing authority as indicated by the City and under the City's state and local tax identification number. Taxes shall be remitted to the taxing authority on a monthly basis or as scheduled by the City. A report of sales tax collected and remitted will be available to the City under the reports section of the website.

#### CUSTOMIZATION AND ADDED SERVICES:



The City may have need for enhancements and additions to the standard auction platform provided by the Contractor. Contractor shall commit to work with the City if changes are required. Some of these additions may be customized reporting tools, integration to existing software and customized branding.

#### SYSTEM ACCESSIBILITY/RELIABILITY:

Contractor's auction platform shall be accessible to both the City and bidders 24 hours a day, 7 days a week. Contractor shall commit to take the system down for maintenance only late at night as to not interrupt service. Contractor's servers shall be located in a secure environment with multiple redundant connections and equipment.

### **FEE INFORMATION**

#### BUYER'S PREMIUM:

Contractor shall receive their fee from a premium charged to buyers based upon the final selling price of auction items according to the following:

Buyer's Premium allowed to be charged for SOLD assets is 10%.

- Buyer's premium shall be charged only on the actual auction sale price. Sales taxes shall not be used as a component of the buyer's premium.

Buyer's premium shown above shall, during the term of the Agreement, be the only compensation allowed to the Contractor. All costs to the Contractor shall be included in this buyer's premium. No additional fees or charges are allowed pursuant to this service (e.g. listing fee, minimum auction fee, training fee, technical support fee, etc.). The Contractor shall not request and the City or buyers shall not provide additional remuneration other than that set out above as a Buyer's Premium.

Contractor will only be paid its auction premium on items that have sold and been paid for.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/1/2016

7/15/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 1801 K Street NW, Suite 200 Washington DC 20006 (202) 414-2400	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
INSURED 1331752 GovDeals, Inc. 100 Capital Commerce Blvd, Suites 110 & 216 Montgomery AL 36117	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Hartford Accident and Indemnity Company	NAIC # 22357
	INSURER B : Hartford Casualty Insurance Company	29424
	INSURER C : Hartford Fire Insurance Company	19682
	INSURER D : ACE Property & Casualty Insurance Co	20699
INSURER E :		
INSURER F :		

**COVERAGES** CERTIFICATE NUMBER: 13561502 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	N	42UUNZW0782	3/1/2015	3/1/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS \$1,000 Comp <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS \$1000 Coll	Y	N	42UUNZW0782	3/1/2015	3/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	N	N	42 RHUZW0509	3/1/2015	3/1/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	42WB CP 8506	3/1/2015	3/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Excess Umbrella	N	N	M00569288 003	3/1/2015	3/1/2016	\$10,000,000 Occurrence \$10,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are Named as Additional Insured with respects to the General Liability and Auto Liability policies.

## CERTIFICATE HOLDER

## CANCELLATION

13561502 City and County of Denver 201 W Colfax Ave # 204 Denver CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

© 1988-2014 ACORD CORPORATION. All rights reserved.

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** GENRL-201523038-00

**Contractor Name:** GOVDEALS INC

By: Roger Gravley

Name: Roger Gravley  
(please print)

Title: President  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**PARTICIPATING ADDENDUM  
 WSCA-NASPO COOPERATIVE PURCHASING PROGRAM  
 Online Surplus Auction Services  
 Administered by the State of New Mexico (hereinafter "Lead State")**

MASTER AGREEMENT  
 Gov Deals, Inc  
 Master Agreement No: 40-000-14-00059  
 (hereinafter "Contractor")

And  
 The City and County of Denver, Colorado  
 (hereinafter "Participating State/Entity")

Page 2 of 3

6. Subcontractors: Reserved

7. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:	Contractor:
By: <i>John Utterback</i>	By: <i>Roger Gravley</i>
Name: <i>John Utterback</i>	Name: Roger Gravley
Title: <i>Purchasing Director</i>	Title: President
Date: <i>8/11/15</i>	Date: <i>8/12/15</i>

For questions on executing a participating addendum, please contact:

WSCA-NASPO

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	<a href="mailto:thay@wsca-naspo.org">thay@wsca-naspo.org</a>

