AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **LIQUIDITY SERVICES OPERATIONS, LLC DBA GOVDEALS,** a Delaware limited liability company whose address is 6931 Arlington Rd. Suite 200, Bethesda, Maryland 20814 (the "Contractor"), jointly ("the Parties").

RECITALS:

A.   The Parties entered into Agreement dated September 23, 2015 (the "Agreement") 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.

B.   The Parties wish to amend the Agreement to extend the term and revise and add Sections to the Agreement.

NOW THEREFORE, in consideration of the premises and the Parties' mutual covenants and obligations, the Parties agree as follows:

1.   All references to "…Exhibit A…" in the Agreement shall be amended to read: "…Exhibit A and A-1…" as applicable. The scope of work marked as **Exhibit A-1** attached to this Amendatory Agreement is hereby incorporated by reference.

2.   Section 3 of the Agreement entitled **TERM** is amended to read as follows:

"**3**.   **TERM:** The term of the Agreement is from July 1, 2015 through July 31, 2025."

3.   Section 7 of the Agreement entitled **EXAMINATION OF RECORDS AND AUDITS** is amended to read as follows:

"7.   **EXAMINATION OF RECORDS AND AUDITS**. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability

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Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

4.   Section 23 of the Agreement entitled **NO DISCRIMINATION IN EMPLOYMENT** is amended to read as follows:

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

5.   Section 37 of the Agreement entitled **PCI DSS COMPLIANCE** is amended to read as follows:

"**37.   PCI DSS COMPLIANCE**

37.1   If Contractor is directly involved in the processing, storage, or transmission of cardholder data on behalf of the City as part of this Agreement, this Section applies. Any Contractor who provides or has access to software, systems, hardware, or devices which process and/or interact with payment card information or payment cardholder data must be compliant with the current version of the Payment Card Industry Data Security Standard (PCI DSS).

37.2   Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection Rules (SDP), and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations ("Association"), and further covenants and agrees to maintain compliance with the PCI DSS, SDP, and (where applicable) the Payment Application Data Security Standard (PA-DSS) (collectively, the "Security Guidelines"). Contractor represents and warrants that all of the hardware and software components utilized for the City or used under this Agreement is now, and will be PCI DSS compliant during the term of this Agreement. All service providers that Contractor uses under the Agreement must be recognized by Visa as PCI DSS compliant. Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers (as defined by the PCI Security Council), 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 in this Section. Contractor further certifies that the equipment, as described herein, will be deployed in a manner that meets or exceeds the PA DSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards. Contractor shall demonstrate its compliance

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with PCI DSS by annually providing the City an executed Attestation of Compliance (AOC). Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of Contractor's system(s) that interface with or utilize credit card information in any manner or form of collection are PCI DSS compliant. If the Contractor is a service provider involved in the processing, storage or transmission of cardholder data or sensitive authentication data (collectively "Data Handling") on behalf of the City that would result in Data Handling being included in the City's PCI scope through connected software or components, then the Contractor must provide a PCI Responsibility Matrix ("Matrix") to be attached to this Agreement as an exhibit. The Matrix must identify where responsibility resides for each PCI control requirement, whether it be with the Contractor, the City or shared by both. Any PCI control requirements that do not apply should be indicated along with any pertinent notes.

37.3 Contractor shall not retain or store CAV2/CVC2/CVV2/CID or such data prohibited by PCI DSS 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 notify the City in writing consistent with the Data Incident response notification requirements of this Agreement, and shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.

37.4 If any Association requires an audit of 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 Contractor, 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 Contractor from liability under this section or under other provisions of this Agreement.

37.5 In addition to all other defense and indemnity obligations undertaken by Contractor under this Agreement, 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 Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by 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 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

LIQUIDITY SERVICES OPERATIONS, LLC DBA GOVDEALS, INC.
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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 Contractor shall maintain compliance with PCI DSS and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

6.   A new Section 39, **ADA,** is added to this Agreement to read as follows:

"39.   All Contractor provided public-facing digital experiences must be fully compliant with Section 508 of the Rehabilitation Act of 1973 and fully meet the WCAG 2.0 Level AA guidelines, prior to launching to the public. These digital experiences must also be tested, both manually and automated, prior to launch and then subsequently each year to confirm and maintain that accessibility. Manual testing should be completed by City approved individuals with varying disabilities (i.e. blind, Deaf or hard of hearing, and/or have mobility or dexterity limitations). Upon completion of all testing, a review will be done by the city's web accessibility coordinator to confirm completion of all accessibility requirements. Finally, all digital experiences must include a statement somewhere on the site that the experience is accessible, will maintain accessibility, and will provide a mechanism for users to submit feedback about accessibility issues."

7.   A new Section 40 is added to the Agreement, entitled "**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**", to read as follows:

"**40.   NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

a.   This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b.   The Contractor certifies that:

(1)   At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2)   It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c.   The Contractor also agrees and represents that:

(1)   It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City."

8. As herein amended, the Agreement is affirmed and ratified in each and every particular.

9. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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Contract Control Number: GENRL-202054366-01
Alfresco Contract Control Number: GENRL-201523038-01
Contractor Name: LIQUIDITY SERVICES OPERATIONS LLC dba GovDeals, Inc.

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:**

Attorney for the City and County of Denver

By: By:
_____   _____

                                             By:
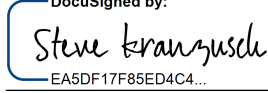   _____

Contract Control Number: GENRL-202054366-01
Alfresco Contract Control Number: GENRL-201523038-01
Contractor Name: LIQUIDITY SERVICES OPERATIONS LLC dba GovDeals, Inc.

DocuSigned by:

By: _Steve Kranzusch_
EA5DF17F85ED4C4...

Name: _Steve Kranzusch_
(please print)

Title: _VP & General Manager_
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A-1
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 videos, uploading City terms and conditions, releasing auctions, 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 a representative to manage the documenting (descriptions, photographs, videos, etc.) and the uploading (auction creation on govdeals.net) for all vehicles and equipment located at the City's four major vehicle fleet operation centers (Police, Fire, Denver International Airport and the Department of Transportation and Infrastructure) on at least a monthly basis or as agreed upon by the City and Contractor.

6. Contractor shall provide easily accessible and highly responsive technical support and customer service Monday through Friday from 9 AM to 6 PM MST. 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 to resolve any unforeseen training or support issues. In addition, technical issues identified by the Contractor, which have the potential to disrupt business, shall be relayed to the City within one business day of issue identification. Any significant scheduled upgrades or changes to the website or platform shall be communicated to the City at least five (5) business days prior to implementation.

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 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 shall 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 automatically and instantly notify the City administrator and the winning bidder of payment receipt by email, which shall include the item description, buyer information (name, address, email, phone, etc.), removal instructions and a Bill of Sale attachment.

11. City administrator shall have online access to buyer profile information in order to call, fax or email any buyer.

12. 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.

13. 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.

14. Contractor shall actively market City auctions to prospective bidders in order to maximize participation and revenue.

15. City administrator shall have the ability to view a detailed record of City auctions at any time during the auction or after it closes. Auction records shall include, but not be limited to inventory id, description, serial #, department, location, sale date, buyer information and sold amount.

16. Contractor shall keep and maintain detailed City auction records for seven (7) years.

17. Contractor shall provide ongoing training opportunities and documentation for the City and the bidders. Training can be conducted through webinars.

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 Contractor less commission once an item is marked "PAID" by Contractor.

Contractor shall remit payment to the City by ACH within <u>10</u> 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 and remit appropriate sales tax on all items with the exception of titled vehicles, modular/mobile homes and abandoned/confiscated vehicles. 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:

<u>Buyer's Premium allowed to be charged for SOLD assets is 10%.</u>
- 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.

ANNUAL VOLUME BASED REBATE:

Contractor shall provide a monetary volume-based rebate to the City annually. Rebate shall be a percentage of Contractors fee calculated from total sales for the previous 12 months and follow the rebate fee schedule below. Contractor shall remit rebate payment, if applicable, to the City annually by ACH within <u>30</u> business days of the commencement date (month and day) of Agreement.

<div align="center">ANNUAL REBATE FEE SCHEDULE</div>

Volume Sold (Sales)	Rebate
< $2 Million (M)	0.0%
$2 M to < $3 M	0.5%
$3 M to < $4 M	1.0%
$4 M to < $5 M	1.5%
> $5 M	2.0%