CITY OF PORT SAINT LUCIE
CONTRACT #20130091
Online Auction Services

This CONTRACT, executed this 12th day of November, 2014, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, and **The Public Group LLC**, a Utah limited liability company, *1506 South 40 East #350, Provo UT 84606,* Telephone No. (800) 591-5546 ext 151, Fax No. (801) 932-7001, hereinafter called "Auctioneer", party of the second part.

RECITALS

All notices or other communications hereunder shall be in writing and shall be deemed duly given if sent by certified mail with return receipt request, or by email (with proof of confirmation) and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Contract.

City Contract Supervisor: David Pollard
Office of Management and Budget
City of Port Saint Lucie
121 SW Port St. Lucie, Blvd.
Port St. Lucie, FL. 34984
Telephone: 772-871-5223/ Fax: 772-871-7337
Email: davep@cityofpsl.com

City Contract Administrator: Brenda Leo
Office of Management & Budget
City of Port St. Lucie
121 SW Port St. Lucie, Blvd.
Port St. Lucie, FL. 34984
Telephone: 772-871-5222/ Fax: 772-871-7337
Email: bleo@cityofpsl.com

Contractor: Eric Heaps
The Public Group LLC
1506 South 40 East #350
Provo, UT 84605
Telephone: 800-591-5546 ext 151/ Fax: (801) 932-7001
Email: erich@thepublicgroup.com

SECTION I
DESCRIPTION OF SERVICES TO BE PROVIDED

The specific work that the Contractor has agreed to perform is described in its response to the Bid Specifications #20130091 – Onsite and Online Auction Services, including all addenda, which is hereby incorporated by this reference. This contract is for Online Auction Services. City's use of Contractor's online auction services to sell surplus property is subject to the Public Surplus Seller Agreement, attached as Exhibit 1 and incorporated by this reference. Collection of payments will be provided by Public Processing, LLC, as described in Contractor's response to the to the Bid Specifications #20130091 – Onsite and Online Auction Services, and is subject to the Public Processing, LLC Agreement for Payment Processing, attached as Exhibit 2 and incorporated by this reference.

Contractor Requirements – Contractor shall provide City with an online auction service that allows City to sell surplus property, with the following requirements:

- Auctions shall be open to the public;
- Sale of property shall be made only to the highest responsible bidder.
- Ensure that all parties involved are notified that all items are being sold "as is".
- Maintain an email list of prospective buyers. The Contractor shall email information on a regular basis to prospective buyers to ensure interest in the process and to ensure participation from a wide variety of persons;
- Maintain an active website and post auction brochure with a sales schedule on said website. Website must be ADA compliant;
- Include the City of Port Saint Lucie's items on Contractor's website;
- Maintain records considered necessary to the City other than those provided by the Contractor.

Public Processing, LLC Requirements –

- Receive all payments for sold auction items. Payment will include sales price, buyer's premium of 10%, and any applicable sales taxes.
- Collection of applicable sales tax and restitution to the State in accordance with all requirements

Coordination

- The Public Group, LLC shall designate a coordinator or representative to be the point of contact regarding any scheduling, planning, etc.
- The City of Port Saint Lucie reserves the right to request replacement of designated representative if it finds that the individual is not responsive or compatible.

City Responsibilities

- The City does not guarantee any amount of receipts for any auction under this bid;
- The City reserves the right to require a minimum sales price on all auction items;

- The City reserves the right to dispose of surplus property by means other than through Contractor's services when deemed to be in the best interest of the City;
- The City shall provide the Certificate(s) of Ownership and all other documents necessary to effect transfer of title of motor vehicles, trailers, and equipment. At the option of the Contractor, vehicles may not be offered at auction unless the Certificate of Ownership or the Florida Division of Motor Vehicles document requirements and all other documents necessary to facilitate a transfer of title for motor vehicles, trailers, and equipment are submitted prior to sale;
- The City reserves the right to request a replacement of designated representative if it finds that the representative assigned to their account is unresponsive.
- David Pollard and/or his designees shall be the designated Contract Supervisor for this contract.

Auction Reports – Contractor will submit a computer generated report no later than the tenth (10^{th}) day of the month following the auction. The electronic report shall include a completed description of all items as follows:

- Number of lots sold;
- Buyer's name and phone number;
- Sales price;
- Commission charges and net proceeds;
- Lot description including City property number and tracking numbers from the report submitted by the City.

Interpretation of the Approximate Quantities - The Contractor's attention is called to the fact that any estimate of quantities of work to be done and materials to be furnished under the specifications as shown on the proposed form (or elsewhere) is approximate only and not guaranteed by the City. The City does not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities, nor shall the Contractor plead misunderstanding or deception because of such estimate of quantities or of the character, location of the work, or other condition pertaining thereto.

SECTION II
TIME OF PERFORMANCE

Contract period will begin on July 1, 2014 and continue for five years (initial term), ending on June 30, 2019 unless terminated in accordance with provisions of Section XVIII.. The Contractor will be required to commence work under this Contract within ten (10) calendar days after the start date identified in this Contract. In the event all work required in the bid specifications has not been completed by the specified date, the Contractor agrees to provide work as authorized by the Contract Supervisor until all work specified in the bid specifications has been rendered.

SECTION III
COMPENSATION

The Contractor will charge a 10% Buyer's Premium, (the "Buyer's Premium is defined as 10% of the purchase price), on all sales. The fee of 10% Buyer's Premium shall be charged and retained by the Contractor as their fee for auction and payment processing services and the initial onsite training service. In no event shall the total fee be less than as stated, due and payable the day of sale. Public Processing will process payment to the City within 30 business days from the date payment is received from a buyer.

The City declares that; (1) it is the sole and legal owner of all the real and/or personal property listed; (2) the real and/or personal property is free from any and all liens, adverse claims, encumbrances; and (3) it has full authority to sell and to dispose of said property in accordance with this Contract and will give marketable title to said property.

The Contractor agrees to use its best efforts to obtain the best possible price for property listed by City and to do all things necessary to affect such sale. It is understood and agreed that the Contractor by this Contract assumes no liability for the loss by fire, theft, destruction or damage to the property to be sold or to the premises where the sale is to be conducted.

The terms of the above-mentioned sale will be posted on each sale by City as follows:

- Buyer(s) shall accept everything on an "As Is" basis with no warranties expressed or implied;
- Buyer(s) shall make payment in full the day of the auction;
- Buyer(s) shall remove all items the day of the auction unless otherwise provided for;
- A 10% Buyer's premium shall be charged and retained by the Contractor as their fee;
- Payment from the buyer to the City must occur within 5 business days of the date the auction closes.

The Contract is binding upon the parties hereto and their heirs, successors and assigns.

SECTION IV
CONFORMANCE WITH BID

It is understood that the materials and/or work required herein are in accordance with the bid made by the Contractor pursuant to the Invitation to Bid and Specifications on file in the Office of

Management and Budget of the City. All documents submitted by the Contractor in relation to said bid, and all documents promulgated by the City for inviting bids are, by reference, made a part hereof as if set forth herein in full.

SECTION V
INDEMNIFICATION/INSURANCE

The Contractor agrees to indemnify, defend, and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligent acts, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the contract. As consideration for this indemnity provision the Contractor shall be paid the sum of ten dollars ($10.00), which will be added to the contract price, and paid prior to commencement of work.

The Contractor shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that may be obtained pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its sovereign immunity pursuant to Section 768.28, Florida Statutes, under its self insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least $100,000 each accident, $100,000 each disease/employee, $500,000 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage should apply on a primary basis. Should scope of work performed by Contractor qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	$1,000,000
Personal/advertising injury	$1,000,000
Products/completed operations aggregate	$2,000,000
General aggregate	$2,000,000
Fire damage	$100,000 any 1 fire
Medical expense	$10,000 any 1 person

Coverage is to be written on an occurrence form basis and shall apply as primary. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interest's provision as provided under the standard ISO form separation of insurers clause. There shall be no exclusion for Mold, Silica or Respirable Dust or Bodily Injury or Property Damage arising out of heat, smoke, fumes or ash from a hostile fire.

Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, added to its Commercial General Liability policy and Business Auto policy. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, municipality of the State of Florida, its officers, employees and agents, and Contract # 20130091 for Online Auction Services shall be listed as additionally insured.**" Said policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage there under. Said liability insurance must be accepted by and approved by the City as to form and types of coverage. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Contractor shall be required, upon receipt of thirty (30) days written notice from the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsements including Completed Operations coverage should be attached to the Certificate of Insurance.

The Contractor shall agree to maintain Business Automobile Liability at a limit of liability not less than $500,000 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage should apply on a primary basis.

The Contractor shall agree to maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than $1,000,000 per Occurrence. When a self-

insured retention (SIR) or deductible exceeds $10,000, City reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Proposer warrants the retroactive date equals or precedes the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP), Proposer shall agree to purchase a SERP with a minimum reporting period not less than three (3) years.

The Contractor shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Contractor enter into such a Contract on a pre-loss basis.

It shall be the responsibility of the Contractor to ensure that all subcontractors comply with the same insurance requirements referenced above and any additional insurance requirements needed to perform the scope of work as described herein.

All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Contract.

The Contractor may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on "Non-Follow" form, the City shall be endorsed as an "Additional Insured."

. SECTION VI
PERFORMANCE AND PAYMENT BONDS

The failure on the part of the Contractor to execute the Contract and/or punctually deliver the required Insurance Certificates and other documentation will be cause for the annulment of the award.

SECTION VII
PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS

Subject to the laws of the State of Florida and of the United States, neither Contractor nor any Subcontractor, supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

SECTION VIII
WORK CHANGES

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the Buyer's Premium and time for completion. Any and all changes must be authorized by a written change order signed by Director of OMB or his designee as representing the City or the City Manager or his designee as representing the City. Work shall be changed and the Buyer's Premium and completion time shall be modified only as set out in the written change order. Any adjustment in the Buyer's Premium resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties. Any dispute concerning work changes which is not resolved by mutual agreement shall be decided by the City Manager who shall reduce the decision to writing. The decision of the City shall be binding to all parties, final and conclusive.

SECTION IX
COMPLIANCE WITH LAWS

The Contractor shall give and otherwise comply with, all notices required by all applicable laws, ordinances and codes. Further, Contractor shall, at Contractor's sole cost and expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and work performed pursuant to the Contract, and any other amendments or change orders thereto to comply with all local, state and federal laws and regulations. Contractor will comply with the requirements of 28 C.F.R. § 35.151.

SECTION X
CLEANING UP
N/A

SECTION XI
NOTICE OF PERFORMANCE
N/A

SECTION XII
DELIVERY DOCUMENTATION
N/A

SECTION XIII
INSPECTION AND CORRECTION OF DEFECTS

If, the inspection conducted by the Contract Supervisor reveals that the work performed is not satisfactory, or substandard, then the Contract Supervisor shall, as soon as practical, inform the

representative or contact person of the respective parties hereto, of the specific findings of the inspection. The City shall provide the Contractor with the opportunity to correct, remedy or fix within a reasonable time frame but no longer than ten (10) days from the date of being informed of the unfavorable inspection the items deemed unsatisfactory or substandard, at no additional charge to the City. Such examination, inspection, or tests made by the Contract Supervisor, shall not relieve Contractor of the responsibility or obligation to remedy any deviation, deficiency, or defect in the work performed.

SECTION XIV
ADDITIONAL REQUIREMENTS

In the event of any conflict between the terms and conditions, appearing on any purchase order issued relative to this Contract, and those contained in this Contract and the Specifications herein referenced, the terms of this Contract and Specifications herein referenced shall apply. If there is a conflict between the Contract and specifications, the Contract will control.

SECTION XV
LICENSING

Contractor warrants that he possesses all licenses and certificates necessary to perform required work and is not in violation of any laws. Contractor warrants that his license and certificates are current and will be maintained throughout the duration of the Contract.

SECTION XVI
SAFETY PRECAUTIONS

Precaution shall be exercised at all times for the protection of persons, including employees, member of the public and property. The safety provisions of all applicable laws and building and construction codes shall be observed.

SECTION XVII
ASSIGNMENT

Contractor shall not delegate, assign or subcontract any part of the work required to be performed under this Contract or assign any monies due Contractor hereunder without first obtaining the written consent of the City.

SECTION XVIII
TERMINATION

The City may terminate this Contract with or without cause by giving the Vendor/Contractor thirty (30) days notice in writing. Upon delivery of said notice, the Contractor shall discontinue all services in connection with the performance of this contract and cancel all related existing third party contracts. Termination of the Contract by the City pursuant to this paragraph shall terminate all of the City's obligations hereunder and no charges, penalties or other costs shall be due Contractor except for work timely completed.

SECTION XIX
LAW AND VENUE

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce this Contract shall be in St. Lucie County, Florida.

SECTION XX
APPROPRIATION APPROVAL

The Contractor acknowledges that the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. The Contractor agrees that, in the event such appropriation is not forthcoming, the City may terminate this Contract and that no charges, penalties or other costs shall be assessed.

SECTION XXI
RENEWAL OPTION

In the event Contractor offers in writing, prior to the termination of this Contract, to provide the identical services required in this Contract for the identical period of time in the subsequent calendar period for the amount stated in this Contract, and the City agrees that said services are required and that the cost is acceptable, then the City, without additional bidding or negotiation, may, with the mutual agreement of the Contractor, extend this Contract for one additional five (5) year term.

NOTE: Contractor may exercise the option to renew by submitting a written submission three (3) months prior to the termination of the Contract period.

SECTION XXIII
ENTIRE CONTRACT

The written terms and provisions of this Contract shall take precedence over any and all prior and contemporaneous verbal or written statements of any official or other representative of the City. Any such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or Contract documents.

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IN WITNESS WHEREOF, the parties have executed this Contract at Port St. Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By: _____
City Manager

By: _____
Authorized Representative of The Public Group LLC

State of: Utah

County of: Utah

Before me personally appeared: Patricia Ann Macfarland
(please print)

Please check one:

Personally known _____

Produced Identification: Utah Drivers license
(type of identification)

Identification No.: 161693980

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that (he/she) executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 29th day of October, 2014.

_____
Notary Signature

Notary Public: State of Utah at Large.

My Commission Expires: 1/30/2017.

TROY BRENT HOLDEN
Notary Public
State of Utah
Comm. No. 662585
My Comm. Expires Jan 30, 2017

(*seal*)

Public Surplus
Seller Agreement

The Public Group, LLC, a Utah limited liability company that sometimes does business as "Public Surplus" (**"Public Surplus"**, **"We" "Us"**), provides online bid boards, auctions and stores and facilitates other online transactions on www.publicsurplus.com and other websites (collectively, the **"Site"**) for governmental bodies and others (**"Sellers"**, **"City"** or **"You"**) to sell surplus goods and other property and assets to buyers of all types (**"Buyers"**). As a condition to accessing and using the Site and receiving the benefit of Public Surplus' services provided through the Site and otherwise (the **"Services"**), Public Surplus requires that You review and accept this Seller Agreement (this **"Agreement"**).

BY REGISTERING TO USE THE SITE AND THE SERVICES, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WITH PUBLIC SURPLUS. IF YOU DO NOT AGREE TO ACCEPT THIS AGREEMENT, YOU MAY NOT ACCESS THE SITE OR OTHERWISE USE THE SERVICES OR THE SITE. YOU AGREE THAT YOU HAVE RECEIVED GOOD AND VALUABLE CONSIDERATION IN EXCHANGE FOR ENTERING INTO THIS AGREEMENT.

1. ACCESSING OUR SITE AND USING OUR SERVICES

1.1. Eligibility. You may only use our Services if You are at least 18 years of age, are mentally competent, and can form legally binding contracts under applicable law. You may not assign or transfer Your account or user identification to any other party.

1.2. Seller Affirmations in Connection with Offers and Sales. In using our Site and Services, You agree as follows:

(a) No contingency to Your sales offer exists other than those stated in the listing at the time of sale.

(b) You will be responsible for delivering property sold using Your username and password.

(c) You are fully capable of transferring title to the property offered for sale in a timely manner.

(d) You are a real person or entity, with a verifiable address, telephone number and email address as provided to Us.

(e) You are dealing in good faith and are not attempting to defraud, cheat, or wrong Public Surplus or any Buyer.

1.3. Accuracy and Nature of Your Information. You are solely responsible for all information You provide to Us or other users on our Site ("Your Information"). We act as a passive conduit for the online distribution and publication of Your Information. You agree that Your Information (i) will not be false, inaccurate, or misleading; (ii) will not violate any law, statute, ordinance or regulation; and (iii) will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing. In providing Your Information, You grant to Us a non-exclusive, worldwide, perpetual, irrevocable,

royalty-free, sub-licensable (through multiple tiers) right to use and exercise the copyright, publicity, and database rights You have in Your Information for purposes of facilitating the communications and transactions made through our Site.

1.4. Fees. Public Surplus charges no fees for the City to register to list property for sale on the Site. However, You will owe a transaction fee for each sale through the Site. Other fees may apply for other Services as shown on the Site. Our fees may change from time to time. You are responsible for paying all fees and any applicable taxes associated with transactions effected through the Site in a timely manner and with a valid payment method. If Your payment method fails or Your account is past due, We may collect fees owed using other collection mechanisms.

1.5. No Disruption to Our Site or Services. You agree not to attempt any action that may disrupt our Site or our Services. Among other things, You agree that (i) Your Information and all other input on our Site will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other software, devices, files or routines that may damage, interfere with, copy, reproduce, intercept or expropriate any system, data or personal information; (ii) You will not create liability for Us or cause Us to lose (in whole or in part) the services of our Internet Service Providers or other vendors; (iii) You will not use our Site to obtain e-mail addresses for bulk e-mail solicitations or otherwise; (iv) You will not reverse engineer any of our Services, programs, or infrastructure; (v) You will not use any robot, spider, other automatic device, or manual process to monitor, copy or reproduce our web pages or the content contained herein without our prior express written permission; and (vi) You will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure.

1.6. User Password. During the registration process, You will select a username and a password. You agree that You are solely responsible for preserving the confidentiality of Your username and Your password, and You will be responsible for all activities and charges related to the use of Your username and password, including unauthorized use. You agree not to furnish Your username, password or other information to any other party for use of the Site and the Services. You agree to notify Public Surplus immediately of any unauthorized use of Your personal password or username and any other breach of security regarding the Services.

1.7. Obligation to Ensure Compliance with this Agreement. You agree that You will take all steps necessary to ensure that Your employees, contractors, and agents comply with the covenants, terms , and provisions of this Agreement, including but not limited to the covenants contained in sections 1.5 and 7.8 of this Agreement. You acknowledge that You will be responsible and liable for any damages, claims, liabilities, and expenses of any kind suffered by Public Surplus or any of Our affiliated companies arising from any and all actions or failures to act taken by any party using Your username and password or taken by Your employees, contractors, or agents, whether or not in accordance with the terms or intent of this Agreement.

1.8. Consent to E-Mail Correspondence from Public Surplus. You hereby agree that We may send future correspondence to You via electronic mail ("e-mail") that notifies You of sales opportunities or other matters that We believe may interest You. Any e-mail correspondence to You (i) will be clearly and conspicuously identified as sent by Public Surplus; and (ii) will clearly and conspicuously display a functioning return e-mail address to enable You to reply to Public Surplus.

1.9. Electronic Signature. You are notified by this statement that Your consent to these terms and conditions by checking the box indicating Your agreement to be bound to these terms, meets the requirements of Section 101(c) (1) (C) (ii), the Consumer Consent Provision, of the Electronic Signatures in Global and National Commerce Act (ESIGN). You may print these terms and conditions, but they are subject to change by Us. Changes to the terms and conditions will be effective from the time they are placed on our Site, in the terms and conditions section of the Site, or any other section where they may appear.

2. SELLER UNDERSTANDINGS AND OBLIGATIONS

In listing or offering items for sale on our Site or otherwise accessing our Site and Services in any way, You represent, warrant and agree to the following:

2.1. Shipment. At the close of an auction in which You have a winning bidder, You agree to make the property immediately available for pickup and/or shipment.

2.2. Deposits. We reserve the right to require an earnest money deposit prior to or during the listing on certain items at our sole discretion. Any such deposits will be retained and applied in Public Surplus' discretion.

2.3. Legal Compliance. You will comply with all applicable laws, statutes, ordinances and regulations regarding Your use of our Site and Services and the offer and sale of property. Offering property for sale with the intent not to complete the transaction, causing disruption to the sale process on our Site, and not completing transactions will be considered in most jurisdictions as fraud and may be prosecuted to the fullest extent of the law.

3. PAYMENT PROCESSING SERVICES

3.1. Payment Processing Services Under Separate Agreement with Affiliate. In the event that You elect to have Our affiliate, Public Processing, LLC, a Nevada limited liability company (**"Public Processing"**), receive and process on Your behalf payments made by Buyers (the **"Processing Services"**), You agree to the provisions set forth in this Agreement and in a separate agreement with Public Processing.

4. LIABILITY LIMITATIONS AND RELEASES

4.1. Absence of Liability. You will not hold Public Surplus responsible for actions or inactions of Buyers or other users, including the failure of a Buyer to take delivery or make payment for an item. You acknowledge that We are not a traditional auctioneer and We are not the Buyer of property sold through our Site. Instead, the Site provides a marketplace for users to offer, sell, and buy items of all kinds in a variety of pricing formats and venues. We are not involved in the actual transaction between You and Buyers. We have no control over and do not guarantee such things as the quality,

safety or legality of items advertised, the truth or accuracy of listings, the ability of Buyers to purchase and make payment for items, or the completion of a sale by You, even upon a successful bidding and acceptance process. Without limitation of the generality of the foregoing, We will not be liable for lost profits or any special, incidental or consequential damages arising out of or in connection with the Site, our Services, or this Agreement.

4.2. Disclaimer of Warranties. THE SITE AND SERVICES, INCLUDING ALL CONTENT, FUNCTIONS, MATERIALS, AND INFORMATION ON OR ACCESSED THROUGH THE SITE OR SERVICES, ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. PUBLIC SURPLUS DISCLAIMS ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, DATA ACCURACY, SYSTEM INTEGRATION, OR QUIET ENJOYMENT. PUBLIC SURPLUS DOES NOT WARRANT THAT THE SERVICES, FUNCTIONS, FEATURES OR CONTENT WILL BE FUNCTIONAL, TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. PUBLIC SURPLUS MAKES NO WARRANTY THAT SALES WILL BE COMPLETED THROUGH THE SITE OR THAT THE SITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, EXPRESSLY DISCLAIMS ANY WARRANTIES OR GUARANTEES THAT BY LISTING THE LISTED ASSETS, THE LISTED ASSETS WILL BE SOLD. PUBLIC SURPLUS MAKES NO WARRANTY OF ANY KIND REGARDING ANY LISTED ASSETS OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES. PUBLIC SURPLUS EXPRESSLY DISCLAIMS ANY ENDORSEMENT OR WARRANTY OF ANY LISTED ASSETS SOLD ON OR THROUGH THE SITE OR THE SERVICES, AND ANY RESPONSIBILITY FOR ANY MISREPRESENTATIONS OR BREACHES COMMITTED BY ANY BUYER OR OTHER USER.

4.3. Interruption of Service. Public Surplus is not responsible for any damages or losses related to any system errors or interruptions affecting its Site and the processing of any solicitations, requests, offers, bids, auctions, or sales. You understand and acknowledge that the Site and our Services may be unavailable unexpectedly.

4.4. Third Party Links. The Site may contain links to other websites or resources for Your convenience in locating related information and services. You acknowledge and agree that Public Surplus is not responsible or liable for (i) the availability or accuracy of such sites or resources, or (ii) the content, advertising or products on or available from such sites or resources. The inclusion of any link on the Site does not imply that Public Surplus endorses the linked site. You use the links at Your own risk.

4.5. Release. If You have a dispute with a Buyer or any other Seller or user of our Site, You release Us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. You will settle all disputes with other users of our Site without our involvement, and We will have no liability whatsoever arising from communications made or transactions effected through our Site. If You are a California resident, You waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release,

which if known by him or her must have materially affected his or her settlement with the debtor."

5. PRIVACY

We do not sell or rent Your personal information to third parties for their marketing purposes without Your explicit consent. We use Your information only as described in Public Surplus' Privacy Policy. We view protection of privacy as a very important community principle. We store and process Your information on computers located in the United States that are protected by physical as well as technological security devices. You can access and modify the information You provide Us. For a complete description of how We use and protect Your personal information, see Public Surplus' Privacy Policy. If You object to Your Information being transferred or used in this way please do not use our services.

6. TERMINATION OR SUSPENSION

Public Surplus reserves the right to suspend or terminate Your access to our Site and Services for any reason or no reason and without notice. Among other reasons, We may suspend or terminate Your access to our Services if (a) You breach any of the provisions of this Agreement; (b) We suspect that You have engaged in fraudulent activity of any kind in connection with our Site; (c) You manipulate the price of any item or interfere with another user's communications or transactions; (d) We are unable to verify or authenticate any information You provide to Us; or (e) We believe that Your actions may cause legal liability for You, our users or Us.

7. MISCELLANEOUS

7.1. Changes to Site and Services. Public Surplus reserves the right, in its sole discretion, to modify, suspend or terminate any aspect of our Site and Services, including, but not limited to, content, auction features, news and information, and product categories without notice.

7.2. Record Keeping. Public Surplus cannot guarantee the preservation or maintenance of records relating to historical auction transactions and bidding activity and encourages the City to keep individual records and an accounting of all activity conducted through our Site.

7.3. Notice and Communication. Unless stated otherwise, all notice and communication with the City will be provided by e-mail to the e-mail address provided by You in Your registration application or via posting on the Site. Notice will be deemed to have been provided 24 hours after the e-mail was transmitted by Public Surplus or the information was posted on the Site.

7.4. This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Any right to trial by jury with respect to any claim, action, suit or proceeding arising out of this Agreement or any of the matters contemplated hereby is waived.

7.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

7.6. Waiver. The failure of Public Surplus to exercise or enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision in the future.

7.7. Independent Contractor Relationship. The relationship between You and Public Surplus is that of an independent contractor. No agency, partnership, joint venture or franchise relationship is implied, intended or created by this Agreement.

7.8. Intellectual Property. All inventions, know how, improvements, discoveries, methods, processes, concepts, designs, ideas, prototypes, samples, drawings, documents, blueprints, specifications, computer or intellectual property programs, methods of doing business, data in Public Surplus' databases (including but not limited to databases containing bidders, Buyers and other users of the Site and their names and contact information), systems, copyrights, trademarks, trade names, software and/or other works conceived of and/or reduced to practice or writing or otherwise relating in any way to the Site or the Services are the exclusive intellectual property of Public Surplus (the **"Public Surplus IP"**). In addition, all content contained on the Site is Public Surplus IP that is copyrighted material, and Public Surplus retains and reserves all rights and interests in the content. Public Surplus IP may be created by one of more of Public Surplus' employee(s) alone or jointly with a user or users of the Site or Services arising from the users' use and development of the Services or as a result of feedback regarding the Site or Services (**"Feedback"**). All right, title, and interest in any Public Surplus IP will belong to Public Surplus and will be subject to the conditions of this Agreement. You hereby irrevocably assign to Public Surplus all right, title, and interest You may acquire in any Public Surplus IP, whether or not generated from Feedback. Public Surplus may, at its option, file an application for intellectual property protection for Public Surplus IP. If any such Public Surplus IP is created with Your participation or Feedback, You agree to cooperate with Public Surplus to assure that such application(s) will cover, to the best of Your knowledge, all related assets, including all features of commercial interest and importance. Public Surplus IP is the sole and exclusive property of Public Surplus and may not be used, copied, reproduced, modified, published, transmitted, distributed, displayed, or sold, or derivative works created, without the prior written consent of Public Surplus. Furthermore, You may not provide access to, or information from, the Site to any other party without Public Surplus' prior written consent.

7.9. Copyrights. The Site may contain copyrighted, trademarked, or other proprietary materials that belong to third parties and are used with the owner's permission. You agree not to copy, modify, distribute, or create any derivative work from such materials without prior written consent from the owner.

7.10. Trademarks. The Site and Public Surplus' tradenames, domain names and logos found on the Site are trademarks or service marks of Public Surplus. No display or use of such marks may be made without the express written permission of Public Surplus. All other designated trademarks or service marks are the property of their respective owners.

7.11. Assignment. This Agreement may not be assigned by You or by operation of law to any other

person, persons, firms or corporations without the express written approval of Public Surplus. However, You agree that this Agreement and all incorporated agreements may be assigned and delegated by Public Surplus in our sole discretion to any party and will be assigned and delegated automatically in the event of a merger of Public Surplus with another party.

7.12. This provision intentionally omitted.

7.13. Survival. The warranties, covenants and representations of the parties to this Agreement will survive termination of this Agreement.

7.14. Headings. Headings are for reference purposes only and in no way affect the interpretation of this Agreement.

7.15. Oral Statements by Representatives. Any oral statement or representation by any representative of Public Surplus changing or supplementing this Agreement or any terms of bidding or sale on the Site, is unauthorized and ineffective and confers no right on You and may not be relied upon by You. No interpretation or purported amendment or change of any provision of this Agreement, including applicable performance requirements, is binding on Public Surplus unless agreed to, in writing, by Public Surplus.

PUBLIC PROCESSING, LLC
AGREEMENT FOR PAYMENT PROCESSING

Public Processing, LLC, a Nevada limited liability company ("**Public Processing**", "**We**" "**Us**") processes payments made by buyers of all types ("**Buyers**") for surplus goods and other property and assets sold by a governmental body or other party ("**Seller**", "**City**" or "**You**") through online bid boards, auctions and stores, and other online transactions on www.publicsurplus.com and other websites (collectively, the "**Site**") operated by our affiliate, The Public Group, LLC, a Utah limited liability company that sometimes does business as "Public Surplus" ("**Public Surplus**").

If elected by You, Public Processing will agree to receive and process payments made by Buyers and forward to You the amounts paid, in accordance with the terms set forth below. As a condition to accessing and using the Site and receiving the benefit of the payment processing services provided through the Site and otherwise (the "**Services**"), Public Processing requires that You review and accept this Agreement for Payment Processing (this "**Agreement**").

BY REGISTERING TO USE THE SITE AND THE SERVICES, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ACCEPT THIS AGREEMENT, YOU MAY NOT ACCESS THE SITE OR OTHERWISE USE THE SERVICES OR THE SITE. YOU AGREE THAT YOU HAVE RECEIVED GOOD AND VALUABLE CONSIDERATION IN EXCHANGE FOR ENTERING INTO THIS AGREEMENT.

1. ACCESSING THE SITE AND USING THE SERVICES

1.1. Eligibility. You may only use the Services if You are at least 18 years of age, are mentally competent, and can form legally binding contracts under applicable law. You may not assign or transfer Your account or user identification to any other party.

1.2. Seller Agreement with Public Surplus. By using our Site and the Services, You acknowledge, agree, and confirm that You have agreed to the form of the separate Seller Agreement with Public Surplus on the Site that is required to be accepted by you upon registration upon the Site (the "**Seller Agreement**"). In the event of any inconsistency between the provisions of this Agreement and the Seller Agreement, this Agreement will govern.

1.3. Seller Affirmations in Connection with Offers and Sales. In using the Site and Services, You agree as follows:

1. You will be responsible for delivering property sold using Your username and password.
2. You are fully capable of transferring title to the property offered for sale in a timely manner.

3. You are a real person or entity, with a verifiable address, telephone number and email address as provided to Us.
4. You are dealing in good faith and are not attempting to defraud, cheat, or wrong Public Processing or any Buyer.

1.4. Accuracy and Nature of Your Information. You are solely responsible for all information You provide to Us or other users on the Site ("**Your Information**"). We act as a passive conduit for the online distribution and publication of Your Information. You agree that Your Information (i) will not be false, inaccurate, or misleading; (ii) will not violate any law, statute, ordinance or regulation; and (iii) will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing. In providing Your Information, You grant to Us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (through multiple tiers) right to use and exercise the copyright, publicity, and database rights You have in Your Information for purposes of facilitating the communications and transactions made through the Site.

1.5. Fees. Fees apply for the Services available through the Site. Our fees may change from time to time as specified on the Site or by written communication to You (by e-mail or otherwise). You are responsible for paying all fees and any applicable taxes associated with transactions effected through the Site in a timely manner and with a valid payment method. You agree that the fees and any taxes due may be deducted and retained by Us from any payment amounts processed by Us. If Your payment method fails or Your account is past due, We may collect the fees and taxes owed using other collection mechanisms.

1.6. No Disruption to The Site or Services. You agree not to attempt any action that may disrupt the Site or the Services. Among other things, You agree that (i) Your Information and all other input on the Site will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other software, devices, files or routines that may damage, interfere with, copy, reproduce, intercept or expropriate any system, data or personal information; (ii) You will not create liability for Us or cause Us to lose (in whole or in part) the services of our Internet Service Providers or other vendors; (iii) You will not use the Site to obtain e-mail addresses for bulk e-mail solicitations or otherwise; (iv) You will not reverse engineer any of the Services, programs, or infrastructure; (v) You will not use any robot, spider, other automatic device, or manual process to monitor, copy or reproduce the Site or the content contained herein without our prior express written permission; and (vi) You will not take any action that imposes an unreasonable or disproportionately large load on the Site infrastructure.

1.7. User Password. During the registration process, You will select a username and a password. You agree that You are solely responsible for preserving the confidentiality of Your username and Your password, and You will be responsible for all activities and charges related to the use of Your username and password, including unauthorized use. You agree not to furnish Your username, password or other information to any other party for use of the

Site and the Services. You agree to notify Public Processing immediately of any unauthorized use of Your personal password or username and any other breach of security regarding the Services.

1.8. Obligation to Ensure Compliance with this Agreement. You agree that You will take all steps necessary to ensure that Your employees, contractors, and agents comply with the covenants, terms and provisions of this Agreement, including but not limited to the covenants contained in sections 1.6 and 7.8 of this Agreement. You acknowledge that You will be responsible and liable for any damages, claims, liabilities, and expenses of any kind suffered by Public Processing arising from any and all actions or failures to act taken by any party using Your username and password or taken by Your employees, contractors, or agents, whether or not in accordance with the terms or intent of this Agreement.

1.9. Electronic Signature. You are notified by this statement that Your consent to these terms and conditions by checking the box indicating Your agreement to be bound to these terms, meets the requirements of Section 101(c) (1) (C) (ii), the Consumer Consent Provision, of the Electronic Signatures in Global and National Commerce Act (ESIGN). You may print these terms and conditions, but they are subject to change by Us. Changes to the terms and conditions will be effective from the time they are placed on the Site, in the terms and conditions section of the Site, or any other section where they may appear.

2. SELLER UNDERSTANDINGS AND OBLIGATIONS

In listing or offering items for sale on the Site or otherwise accessing the Site and Services in any way, You represent, warrant and agree to the following:

2.1. Shipment. At the close of an auction in which You have a winning bidder, You agree to make the property available for prompt pickup and/or shipment.

2.2. Deposits. Public Surplus and Public Processing reserve the right to require an earnest money deposit prior to or during the listing on certain items at their sole discretion. Any such deposits will be retained and applied in their discretion.

2.3. Legal Compliance. You will comply with all applicable laws, statutes, ordinances and regulations regarding Your use of the Site and Services and the offer and sale of property. Offering property for sale with the intent not to complete the transaction, causing disruption to the sale process on the Site, and not completing transactions will be considered in most jurisdictions as fraud and may be prosecuted to the fullest extent of the law.

3. PAYMENT PROCESSING SERVICES

3.1. Scope of Payment Processing Services. In the event that You elect to have Us receive and process on Your behalf payments made by Buyers, You agree to the provisions set forth in this Agreement relating thereto. You understand and agree as follows:

1. The Services do not include risk or fraud management, dispute management, collection agency services, or electronic checks;

2. We will not perform Services with respect to transactions prohibited by the applicable laws or by bank, financial institution, or credit card association bylaws or rules;
3. We will not provide Services with incomplete transaction information or if transaction information cannot be confirmed;
4. We will only perform Services for domestic credit cards; and
5. You will not engage any other person to perform Services while we are providing them under this Agreement.

3.2 Buyer Steps & Procedures for Payment. We will receive and process payments on Your behalf only if Buyers make the payments by following the steps, instructions, and procedures included on the Site and sent by e-mail to winning Buyers and in compliance with applicable laws and bank, financial institution, or credit card association rules and procedures (including but not limited to PCI Security Standards). Among other things, the payment for each successful bid must be made (a) to Public Surplus or Public Processing, (b) by certain means (credit cards, wire transfers, etc.) specified on the Site that vary based upon the amount of the payment, (c) in a timely manner as specified on the Site, and (d) in a single payment by a single authorized means (no partial payments, multiple payments, or payment by two different means allowed).

3.3. Sales Tax Processing. If You elect, We will under the conditions specified in this Agreement, agree to receive sales tax payments made by Buyers and remit the sales tax payments to the applicable sales tax authority in the state in which You are located (the "**State**"). You understand and agree as follows:

1. We will receive and remit to the State sales tax amounts paid by Buyers only if and to the extent of the amount of sales tax with respect to a particular transaction is added to the price and other payments otherwise payable by the Buyers.
2. We rely on You to inform us of the applicable sales tax rate and to provide us with Your applicable tax identification number. You hereby authorize and direct Us to remit payment of the sales tax amounts directly to the applicable sales tax authority in the State using the tax identification number that You provide to Us.
3. Except for remitting funds we receive as payment for sales tax to the extent such funds exceed the price and other payments due from the Buyers, We will have no responsibility or liability for ensuring that payments are received and collected as required under all applicable laws or for making payment to any governmental body or authority entitled to sales or use tax payments.
4. We will receive and process sales tax payments on Your behalf only if Buyers make the payments by following the steps, instructions, and procedures included on the Site and sent by e-mail to winning Buyers and in compliance with applicable laws and bank, financial institution, or credit card association rules and procedures.

3.4. Liability and Risk of Loss for Failure to Pay, Charge Backs, and Other Items. You will bear the burden and risk of any and all loss, liability, and exposure arising from any of

the following circumstances: (a) a Buyer does not make a payment, (b) a charge back occurs with respect to a payment made, (c) a payment is not made in good funds, (d) a check does not clear, (e) a refund to a Buyer is made, (f) fraud, deception, misrepresentation, or any other impropriety occurs with respect to a transaction or a payment, (g) the action, inaction, refusal, or delay of any bank, financial institution, or credit card association in processing any payment transaction, (h) the assessment of any fees, fines, or penalties by a bank, financial institution, or credit card association relating to a charge back or other matter, or (i) any other cause results in payment not being credited for a transaction involving Your property,. Because Public Processing is merely processing payments for You, You understand that We assume no responsibility, burden, or risk of loss whatsoever for any of such circumstances. You expressly agree that We may offset the amounts arising from any such circumstances against other amounts payable by Us to You. You also agree that we may charge an extra processing fee if we make refunds relating to sales of Your property. You understand that the level of charge backs, fraud, or other circumstances may cause Us to decide to terminate rendering the Services under this Agreement.

3.5. Public Processing Not A Seller, Nor A Collection Agency; No Consignment. You acknowledge and agree that Public Processing does not (a) assume the role of seller of Your property, (b) make any representations or statements about Your property, (c) act as a collection agency to collect monies unpaid by Buyers, (d) take consignment of Your property, nor (e) undertake or assume any other role or responsibility not contemplated by this Agreement. You agree that You and Your employees and representatives will not make any statements or act in any way inconsistent with Public Processing's limited role under this Agreement.

3.6. Public Processing Payment to You. Public Processing will keep records of all amounts received in good funds on Your behalf. Public Processing will make payment to You monthly (unless otherwise agreed) of amounts received (net of fees, offsets, and any taxes). Unless otherwise agreed by Us, You agree that payment will only be made by Automated Clearing House (ACH) deposits to an account specified and properly maintained by You. You agree to provide promptly the authorizations needed for such ACH deposits and to be responsible and liable for any and all fees relating to such ACH deposits. You also agree to monitor the account and the deposits therein. You will bear the burden of any and all loss, liability, and risk of loss arising from any fraud, theft, mistake, or deception involving such ACH deposits, unless they arise from fraud, mistake, or deception by Us or our employees or agents.

3.7. Minimum Amount Required for Payment. Public Processing will make payment to You, as set forth above, of all amounts received (net of fees, offsets, and any taxes) on Your behalf, so long as the total amount received is $100 or more. We will not make payments to You of less than $100. Where any amount or amounts received on Your behalf total less

than $100, payment will be made to You upon receipt of additional funds that bring Your balance above $99. Public Processing will own the interest on any balance held because it is below $100. When You close Your account with Public Surplus and Us, any remaining balance will be paid to You, regardless of the minimum balance requirements stated above.

4. LIABILITY LIMITATIONS AND RELEASES

4.1. Absence of Liability. You will not hold Public Processing responsible for actions or inactions of Buyers or other users, including the failure of a Buyer to take delivery or make payment for an item. You acknowledge that We and Public Surplus are not traditional auctioneers and We are not the Buyer of property sold through the Site. Instead, the Site provides a marketplace for users to offer, sell, and buy items of all kinds in a variety of pricing formats and venues. We are not involved in the actual transaction between You and Buyers. We have no control over and do not guarantee such things as the quality, safety, or legality of items advertised, the truth or accuracy of listings, the ability of Buyers to purchase and make payment for items, or the completion of a sale by You, even upon a successful bidding and acceptance process. Without limitation of the generality of the foregoing, We will not be liable for lost profits or any special, incidental, or consequential damages arising out of or in connection with the Site, the Services, or this Agreement.

4.2. Disclaimer of Warranties. THE SITE AND SERVICES, INCLUDING ALL CONTENT, FUNCTIONS, MATERIALS AND INFORMATION ON OR ACCESSED THROUGH THE SITE OR SERVICES, ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. PUBLIC PROCESSING DISCLAIMS ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, DATA ACCURACY, SYSTEM INTEGRATION, OR QUIET ENJOYMENT. PUBLIC PROCESSING DOES NOT WARRANT THAT THE SERVICES, FUNCTIONS, FEATURES OR CONTENT WILL BE FUNCTIONAL, TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. PUBLIC PROCESSING MAKES NO WARRANTY THAT SALES WILL BE COMPLETED THROUGH THE SITE OR THAT THE SITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OR GUARANTEES THAT BY LISTING THE LISTED ASSETS, THE LISTED ASSETS WILL BE SOLD. PUBLIC PROCESSING MAKES NO WARRANTY OF ANY KIND REGARDING ANY LISTED ASSETS OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES. PUBLIC PROCESSING EXPRESSLY DISCLAIMS ANY ENDORSEMENT OR WARRANTY OF ANY LISTED ASSETS SOLD ON OR THROUGH THE SITE OR THE SERVICES, AND ANY RESPONSIBILITY FOR ANY MISREPRESENTATIONS OR BREACHES COMMITTED BY ANY BUYER OR OTHER USER.

4.3. Interruption of Service. Public Processing is not responsible for any damages or losses related to any system errors or interruptions affecting its Site and the processing of any solicitations, requests, offers, bids, auctions, or sales. You understand and acknowledge that the Site and the Services may be unavailable unexpectedly.

4.4. Third Party Links. The Site may contain links to other websites or resources for Your convenience in locating related information and services. You acknowledge and agree that Public Processing is not responsible or liable for (i) the availability or accuracy of such sites or resources, or (ii) the content, advertising or products on or available from such sites or resources. The inclusion of any link on the Site does not imply that Public Processing endorses the linked site. You use the links at Your own risk.

4.5. Release. If You have a dispute with a Buyer or any other Seller or user of the Site, You release Us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. You will settle all disputes with other users of the Site without our involvement, and We will have no liability whatsoever arising from communications made or transactions effected through the Site. If You are a California resident, You waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

5. PRIVACY

We do not sell or rent Your personal information to third parties for their marketing purposes without Your explicit consent. We use Your information only as described in Public Surplus' Privacy Policy. We view protection of privacy as a very important community principle. We store and process Your information on computers located in the United States that are protected by physical as well as technological security devices. You can access and modify the information You provide Us. For a complete description of how We use and protect Your personal information, see Public Surplus' Privacy Policy. If You object to Your Information being transferred or used in this way please do not use the Services.

6. TERMINATION OR SUSPENSION

Public Processing reserves the right to suspend or terminate Your access to the Site and Services for any reason or no reason and without notice. Among other reasons, We may suspend or terminate Your access to the Services if (a) You breach any of the provisions of this Agreement; (b) We suspect that You have engaged in fraudulent activity of any kind in connection with the Site; (c) You manipulate the price of any item or interfere with another user's communications or transactions; (d) We are unable to verify or authenticate any

information You provide to Us; or (e) We believe that Your actions may cause legal liability for You, our users or Us.

7. MISCELLANEOUS

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7.3. Notice and Communication. Unless stated otherwise, all notice and communication with the City will be provided by e-mail to the e-mail address provided by You in Your registration application or via posting on the Site. Notice will be deemed to have been provided 24 hours after the e-mail was transmitted by Public Processing or the information was posted on the Site.

7.4. This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Any right to trial by jury with respect to any claim, action, suit or proceeding arising out of this Agreement or any of the matters contemplated hereby is waived.

7.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

7.6. Waiver. The failure of Public Processing to exercise or enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision in the future.

7. 7. Independent Contractor Relationship. The relationship between the City and Public Processing is that of an independent contractor. No agency, partnership, joint venture or franchise relationship is implied, intended or created by this Agreement.

7.8. Intellectual Property. All inventions, know how, improvements, discoveries, methods, processes, concepts, designs, ideas, prototypes, samples, drawings, documents, blueprints, specifications, computer or intellectual property programs, methods of doing business, **data in Public Surplus' databases (including but not limited to databases containing bidders, buyers and other users of the Site and their names and contact information),** systems, copyrights, trademarks, trade names, software and/or other works conceived of and/or reduced to practice or writing or otherwise relating in any way to the Site or the Services are the exclusive intellectual property of Public Surplus (the **"Public Surplus IP"**). In addition, all content contained on the Site is Public Surplus IP that is copyrighted material, and Public Surplus retains and reserves all rights and interests in the content. Public Surplus IP may be created by one or more of Public Surplus' employee(s) alone or jointly with a user

or users of the Site or Services arising from the users' use and development of the Services or as a result of feedback regarding the Site or Services **("Feedback")**. All right, title, and interest in any Public Surplus IP will belong to Public Surplus and will be subject to the conditions of this Agreement. You hereby irrevocably assign to Public Surplus all right, title, and interest You may acquire in any Public Surplus IP, whether or not generated from Feedback. Public Surplus may, at its option, file an application for intellectual property protection for Public Surplus IP. If any such Public Surplus IP is created with Your participation or Feedback, You agree to cooperate with Public Surplus to assure that such application(s) will cover, to the best of Your knowledge, all related assets, including all features of commercial interest and importance. Public Surplus IP is the sole and exclusive property of Public Surplus and may not be used, copied, reproduced, modified, published, transmitted, distributed, displayed, or sold, or derivative works created, without the prior written consent of Public Surplus. Furthermore, You may not provide access to, or information from, the Site to any other party without Public Surplus' prior written consent.

7.9. Copyrights. The Site may contain copyrighted, trademarked, or other proprietary materials that belong to third parties and are used with the owner's permission. You agree not to copy, modify, distribute, or create any derivative work from such materials without prior written consent from the owner.

7.10. Trademarks. The Site and Public Processing' tradenames, domain names and logos found on the Site are trademarks or service marks of Public Processing. No display or use of such marks may be made without the express written permission of Public Processing.

7.11. Assignment. This Agreement may not be assigned by You or by operation of law to any other person, persons, firms or corporations without the express written approval of Public Processing. Any purported assignment in violation of this provision will be void. However, You agree that this Agreement and all incorporated agreements may be assigned and delegated by Public Processing in our sole discretion to any party and will be assigned and delegated automatically in the event of a merger of Public Processing with another party.

7.12. This provision intentionally omitted.

7.13. Survival. The warranties, covenants and representations of the parties to this Agreement will survive termination of this Agreement.

7.14. Headings. Headings are for reference purposes only and in no way affect the interpretation of this Agreement.

7.15. Oral Statements by Representatives. Any oral statement or representation by any representative of Public Processing changing or supplementing this Agreement or any terms of bidding or sale on the Site, is unauthorized and ineffective and confers no right on You and may not be relied upon by You. No interpretation or purported amendment or change of any provision of this Agreement, including applicable performance requirements, is binding on Public Processing unless agreed to, in writing, by Public Processing.