

# VENDOR CONTRACT

Between \_\_\_\_\_ and  
(Company Name)

## THE INTERLOCAL PURCHASING SYSTEM (TIPS)

For

Online Auction Systems and/or Auctioneer Services

CONTRACT #2102716

## General Information

The vendor contract shall include the contract, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS contract, TIPS, at its sole discretion, will decide which provision will prevail. Other documents to be included are the awarded vendor's proposals, task orders, purchase orders and any adjustments which have been issued.

The following pages will constitute the contract between the successful vendors(s) and TIPS. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TIPS, they will be incorporated into the final contract.

The Vendor Contract ("Contract") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region VIII Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This contract consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

### Definitions

**PURCHASE ORDER** is the TIPS member's approval providing the authority to proceed with the negotiated delivery order under the contract. Special terms and conditions as agreed to between the vendor and TIPS member will be added as addendums to the PO. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

**PREMIUM HOURS** are defined as those hours not included in regular hours or recognized holidays. Premium hours are to be approved by the TIPS member for each delivery order and noted in the delivery order proposal as a line item during negotiations.

**REGULAR HOURS** are defined as those hours between the hours of 7 AM and 6 PM Monday thru Friday.

## Terms and Conditions

### Freight

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

### Warranty Conditions

All supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be an authorized dealer, distributor or manufacturer for all products. All equipment proposed shall be new unless clearly stated in writing.

### Customer Support

The Vendor shall provide timely and accurate customer support to TIPS members. Vendors shall respond to such requests within one (1) working day after receipt of the request. Vendor shall provide training regarding products and services supplied by the Vendor unless otherwise clearly stated in writing at the time of purchase. (Unless training is a line item sold or packaged and must be purchased with product.)

### Contracts

**All contracts and agreements** between Vendors and TIPS Members shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised.

**Contracts for purchase** will normally be put into effect by means of a purchase order(s) executed by authorized agents of the participating government entities.

**Davis Bacon Act** requirements will be met when Federal Funds are used for construction and/or repair of buildings.

### Tax exempt status

A taxable item sold, leased, rented to, stored, used, or consumed by any of the following governmental entities is exempted from the taxes imposed by this chapter:(1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States;(4) the State of Texas; (5) a Texas county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit

exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state. Texas Tax Code § 151.309.

### **Assignments of contracts**

No assignment of contract may be made without the prior written approval of TIPS. Payment can only be made to the awarded Vendor or vendor assigned dealer.

### **Disclosures**

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in the TIPS program.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

### **Renewal of Contracts**

The contract is for one (1) year with an option for renewal for 2 consecutive years. Total term of contract can be up to 3 years if sales are reported through the contract and both parties agree.

### **Shipments**

The Vendor shall ship ordered products within five (5) working days after the receipt of the order. If a product cannot be shipped within that time, the Vendor shall notify TIPS and the requesting entity as to why the product has not shipped and shall provide an estimated shipping date, if applicable. TIPS or the requesting entity may cancel the order if estimated shipping time is not acceptable.

### **Invoices**

The Vendor or vendor assigned dealer shall submit invoices, to the TIPS participant. Each invoice shall include the TIPS participant's purchase order number. The shipment tracking number or pertinent information for verification of TIPS participant receipt shall be made available upon request. The Vendor or vendor assigned dealer shall not invoice for partial shipments unless agreed to in writing in advance by TIPS and the TIPS participant.

### **Payments**

The TIPS participant will make payments directly to the Vendor or vendor assigned dealer at net 30 days after receiving invoice.

## Pricing

The Vendor contracts to provide pricing to TIPS and its participating governmental entities that is the lowest pricing available to like cooperative purchasing customers and the pricing shall remain so throughout the duration of the contract.

The Vendor agrees to promptly lower the cost of any product purchased through TIPS following a reduction in the manufacturer or publisher's direct cost to the Vendor. Price increases will be honored. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase.

All pricing submitted to TIPS shall include the participation fee to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to customer. The normal fee is 2%, but can be negotiated with the Vendor.

## Participation Fees

Vendor or vendor assigned dealer contracts to pay the participation fee for all contract sales to TIPS on a monthly scheduled report. Vendor must login to the TIPS database and use the "Submission Report" section to report sales. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS contract. Failure to pay the participation fee will result in termination of contract. Please contact TIPS at [tips@tips-usa.com](mailto:tips@tips-usa.com) or call (866) 839-8477 if you have questions about paying fees.

## Indemnity

- 1. Indemnity for Personality Contracts.** Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's performance of this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.
- 2. Indemnity for Performance Contracts.** The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's work under this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Vendor further agrees to indemnify and

hold harmless and defend TIPS, TIPS member(s), officers and employees, from and against all claims and suits for injuries (including death) to an officer, employee, agent, subcontractor, supplier or equipment lessee of the Vendor, arising out of, or resulting from, Vendor's work under this contract whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.

**Attorney's Fees--Texas Local Government Code § 271.159 is expressly referenced.**

Pursuant to §271.159, TEXAS LOC. GOV'T CODE, in the event that any one of the Parties is required to obtain the services of an attorney to enforce this Agreement, the prevailing party, in addition to other remedies available, shall be entitled to recover reasonable attorney's fees and costs of court.

**Multiple Vendor Awards**

TIPS reserves the right to award multiple vendor contracts for categories when deemed in the best interest of the TIPS membership. Bidders scoring 80% or above will be considered for an award. Categories are established at the discretion of TIPS.

**State of Texas Franchise Tax**

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

**Miscellaneous**

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the contract or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS participants will submit any orders at any time. TIPS reserves the right to request additional proposals for items already on contract at any time.

**Purchase Order Pricing/Product Deviation**

If a deviation of pricing/product on a purchase order occurs, TIPS is to be notified within 24 hours of receipt of order.

**Cancellation for non-performance or contract deficiency**

TIPS may terminate any contract if TIPS Members have not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. TIPS reserves the right to cancel the whole or any part of this contract due to failure by awarded vendor to carry out any obligation, term or condition of the contract. TIPS may issue a written deficiency notice to awarded vendor for acting or failing to act in any of the following:

- Providing material that does not meet the specifications of the contract;

- Providing work and/or material that was not awarded under the contract;
- Failing to adequately perform the services set forth in the scope of work and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving TIPS reason to believe that awarded vendor will not or cannot perform the requirements of the contract; and/or
- Performing work or providing services under the contract prior to receiving a TIPS reviewed purchase order for such work.

Upon receipt of the written deficiency, awarded vendor shall have ten (10) days to provide a satisfactory response to TIPS. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by awarded vendor under this contract shall become the property of the TIPS Member on demand.

#### **TIPS Member Purchasing Procedures**

Purchase orders are issued by participating TIPS member to the awarded vendor indicating on the PO "Contract Number". Purchase Order is emailed to TIPS at [tipspo@tips-usa.com](mailto:tipspo@tips-usa.com).

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS to report monthly).

#### **Form of Contract**

The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a vendor submitting an offer requires TIPS and/or TIPS Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

Vendor contract documents: TIPS will review proposed vendor contract documents. Vendor's contract document shall not become part of TIPS's contract with vendor unless and until an authorized representative of TIPS reviews and approves it.

#### **Licenses**

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. TIPS reserves the right to stop

work and/or cancel contract of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

### **Novation**

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. TIPS reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of awarded vendor.

### **Site Requirements (when applicable to service or job)**

**Cleanup:** Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

**Preparation:** Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order.

Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

**Registered sex offender restrictions:** For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or reasonably expected to be present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

**Safety measures:** Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

### **Smoking**

Persons working under contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

### **Invoices**

The awarded vendor shall submit invoices to the participating entity clearly stating "Per TIPS Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.

## **Marketing**

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this contract by awarded vendor must have prior approval from TIPS.

## **Supplemental agreements**

The entity participating in the TIPS contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS members and employees shall not be made party to any claim for breach of such agreement.

## **Survival Clause**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

## **Legal obligations**

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded contract thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

## **Audit rights**

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Contract. TIPS and Region 8 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 8 ESC or TIPS.



## **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and fully particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

## **Services**

When applicable, performance bonds will be required on construction or labor required jobs over \$100,000 and payment bonds on jobs over \$25,000 or awarded vendor will meet the TIPS member's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds will not require that a fee be paid to TIPS. The actual cost of the bond will be a pass through to the TIPS member and added to the purchase order.

## **Scope of Services**

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member and Awarded vendor. It is okay if the TIPS member provides a general scope, but the awarded vendor should provide a written scope of work to the TIPS member as part of the proposal. Once the scope of the job is agreed to, the TIPS member will issue a PO with the estimate referenced as an attachment along with bond and any other special provisions agreed to for the TIPS member. If special terms and conditions other than those covered within this solicitation and awarded contracts are required, they will be attached to the PO and shall take precedence over those in the base contract.

## **Project Delivery Order Procedures**

The TIPS member having approved and signed an interlocal agreement, or other TIPS membership document, may make a request of the awarded vendor under this contract when the TIPS member has services that need to be undertaken. Notification may occur via phone, the web, email, fax, or in person.

Upon notification of a pending request, the awarded vendor shall make contact with the TIPS member as soon as possible, but must make contact with the TIPS member within two working days.

## **Scheduling of Projects**

Scheduling of projects (if applicable) will be accomplished when the TIPS member issues a purchase order that will serve as "the notice to proceed". The period for the delivery order will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items. When the tasks have been completed the awarded vendor shall notify the client and have the TIPS member inspect the work for acceptance under the scope and terms in the PO. The TIPS

member will issue in writing any corrective actions that are required. Upon completion of these items, the TIPS member will issue a completion notice and final payment will be issued.

**Support Requirements**

If there is a dispute between the awarded vendor and TIPS member, TIPS or its representatives will assist in conflict resolution or third party (mandatory mediation), if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence.

## Special Terms and Conditions

It is the intent of TIPS to contract with a reliable, high performance vendor to supply products and services to government and educational agencies. It is the experience of TIPS that the following procedures provide TIPS, the Vendor, and the participating agency the necessary support to facilitate a mutually beneficial relationship. The specific procedures will be negotiated with the successful vendor.

- **Contracts:** All vendor purchase orders must be emailed to TIPS at tipspo@tips-usa.com. Should an agency send an order direct to vendor, it is the vendor's responsibility to forward the order to TIPS at the email above within 24 business hours and confirm its receipt with TIPS.
  - **Promotion of Contract:** It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor and not through TIPS contract is not acceptable to the terms and conditions of this contract and will result in removal of Vendor from Program. Vendor is expected to use marketing funds for the marketing and promotion of this contract.
  - **Daily Order Confirmation:** All contract purchase orders will be approved daily by TIPS and sent to vendor. The vendor must confirm receipt of orders to the TIPS member (customer) within 24 business hours.
  - **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, then updated pricing must be posted by 1<sup>st</sup> of each month.
  - **Back Ordered Products:** If product is not expected to ship within 3 business days, customer is to be notified within 24 hours and appropriate action taken based on customer request.
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Check one of the following responses to the General Terms and Special Terms and Conditions:

( ) We take no exceptions/deviations to the general and/or special terms and conditions.

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

( ) We take the following exceptions/deviations to the general and/or special terms and conditions. All exceptions/deviations must be clearly explained. Reference the corresponding general or special terms and conditions that you are taking exceptions/deviations to. The proposer must clearly state if you are adding additional terms and conditions to the general or special terms and conditions. Provide details on your exceptions/deviations below:



# The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Karen Walton Internal Support Specialist	Address	Region VIII Education Service Center	Address
Email	Karen.Walton@tips-usa.com		4845 US Highway 271	
Phone	(903) 575-2761		North	Contact
Fax	(866) 929-4402	Contact	Pittsburg, TX 75686	
Bid Number	2102716		Kim Thompson, TIPS	Department
Title	Online Auction Systems and/or Auctioneer Services		Office Manager	Building
Bid Type	RFP	Department		Floor/Room
Issue Date	8/1/2016 08:01 AM (CT)	Building		Telephone
Close Date	9/9/2016 03:00:00 PM (CT)	Floor/Room		Fax
Need by Date		Telephone	+1 (866) 839-8477	Email
		Fax	+1 (866) 839-8472	
		Email	bids@tips-usa.com	

## Supplier Information

Company	Public Surplus
Address	PO Box 50676
	Provo, UT 84605
Contact	
Department	
Building	
Floor/Room	
Telephone	1 (801) 932-700
Fax	1 (901) 932 7001
Email	
Submitted	9/6/2016 12:53:12 AM (CT)
Total	\$0.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Zackary Corbett

Email zackaryc@thepublicgroup.com

## Supplier Notes

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## Bid Notes

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## Bid Activities

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## Bid Messages

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Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	No
2	Yes - No	Highly Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB? Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	No
3	Yes - No	The Vendor can provide services and/or products to all 50 US States?	Yes
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	
5	Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)	<p>The Public Group offers an acclaimed online auction application, Public Surplus, which will allow the agency to enjoy significant returns from the sale of excess property while minimizing associated costs. This application is designed to meet the unique needs of government agencies. Public Surplus is the most comprehensive and easy-to-use online auction service available.</p> <p>The online auction application, Public Surplus, for the disposition of surplus property currently makes its services available to any government agency in the United States of America.</p> <p>We have a proven record of providing online auction services to over 5,000 agencies including state entities, cities, counties, public utilities, and cities. This includes numerous contracts in place in which the optional extensions have been executed until they were exhausted and required to go out to bid.</p>
6	Primary Contact Name	Primary Contact Name	Zackary Corbett
7	Primary Contact Title	Primary Contact Title	Product Manager
8	Primary Contact Email	Primary Contact Email	zackaryc@thepublicgroup.com
9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8019327000
10	Primary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	

11	Primary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
12	Secondary Contact Name	Secondary Contact Name	Bradley Milligan
13	Secondary Contact Title	Secondary Contact Title	Support Manager
14	Secondary Contact Email	Secondary Contact Email	bradleymilligan@thepublicgroup.com
15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8019327000
16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Brian Donnelly
19	Admin Fee Contact Email	Admin Fee Contact Email	briandonnelly@thepublicgroup.com
20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8019327000
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	Brian Donnelly
22	Purchase Order Contact Email	Purchase Order Contact Email	briandonnelly@thepublicgroup.com
23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8019327000
24	Company Website	Company Website (Format - www.company.com)	
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	
26	Primary Address	Primary Address	3520 North University Avenue
27	Primary Address City	Primary Address City	Provo
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	UT
29	Primary Address Zip	Primary Address Zip	84604
30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	Online Auction Services
31	Yes - No	Do you wish to be eligible to participate in a TIPS contract in which a TIPS member utilizes federal funds on contracts exceeding \$100,000? (Non-Construction) (If YES, vendor should download the Federal Regulations for Contracts document from the Attachments section, fill out the form and submit the document in the "Response Attachments" FEDERAL FUNDS section.) (Vendor must also download the Suspension or Debarment Certificate document from the Attachments section, fill out the form and submit the document in the "Response Attachments" SUSPENSION OR DEBARMENT section.)	No

32	Yes - No	Certification of Residency (Required by the State of Texas) Company submitting bid is a Texas resident bidder?	No
33	Company Residence (City)	Vendor's principal place of business is in the city of?	Provo
34	Company Residence (State)	Vendor's principal place of business is in the state of?	Utah
35	Felony Conviction Notice:	(Required by the State of Texas) My firm is, as outlined on PAGE 5 in the Instructions to Bidders document: (Questions 36 - 37)	(No Response Required)
36	Yes - No	A publicly held corporation; therefore, this reporting requirement is not applicable?	No
37	Yes - No	Is owned or operated by individual(s) who has/have been convicted of a felony? If answer is YES, a detailed explanation of the name(s) and conviction(s) must be uploaded to the "Response Attachments" FELONY CONVICTION section.	No
38	Pricing Information:	Pricing information section. (Questions 39 - 42)	(No Response Required)
39	Yes - No	In addition to the typical unit pricing furnished herein, the Vendor agrees to furnish all current and future products at prices that are proportionate to Dealer Pricing. If answer is NO, include a statement detailing how pricing for TIPS participants would be calculated in the PRICING document that is uploaded to the "Response Attachments" PRICING section.	Yes
40	Yes - No	Pricing submitted includes the TIPS administration fee?	Yes
41	Yes - No	Vendor agrees to remit to TIPS the required administration fee?	Yes
42	Yes - No	Additional discounts to TIPS members for bulk quantities or scope of work?	No
43	Start Time	Average start time after receipt of customer order is ____ working days?	7
44	Years Experience	Company years experience in this category?	16
45	Resellers:	Does the vendor have resellers that it will name under this contract? (If applicable, vendor should download the Reseller/Dealers spreadsheet from the Attachments section, fill out the form and submit the document in the "Response Attachments" RESELLERS section.	No
46	Prices are guaranteed for?	(__ Month(s), __ Year(s), or Term of Contract) (Standard term is "Term of Contract")	Term of Contract



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Line Items

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Response Total: \$0.00

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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](http://www.publicsurplus.com) and other websites (collectively, the "**Site**") for governmental bodies and others ("**Sellers**" 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 You 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. You hereby release Us from any liability arising out of Your breach of this provision. 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."

**4.6. Indemnity.** To the extent permitted by the laws and the constitutions of the state of TIPS or the TIPS member, You agree to indemnify, defend and hold harmless Public Surplus from and against any and all debts, liabilities, obligations, claims, suits, judgments, damages, expenses, including attorney's fees, and demands, made or incurred by any third party arising out of Your

breach or alleged breach of this Agreement or Your violation or alleged violation of any applicable law or any rights of a third party.

## **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 You 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 You 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. Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the state where TIPS or the TIPS member resides. 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. You further agree to the exercise of personal jurisdiction in the state where TIPS or the TIPS member resides in connection with any dispute or claim involving Public Surplus.

**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 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. To the extent permitted by the laws and the constitutions of the state of TIPS or the TIPS member, You will indemnify and hold Us harmless, as provided for previously in this Agreement, from any claim or demand made by a third party due to or arising out of your violation of any law or rights of a third party.

**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. Entire Agreement.** This Agreement constitutes the entire agreement between You and Public Surplus, and supersedes any previous agreements, whether oral or in writing, between You and Public Surplus relating to the subject matter hereof. Public Surplus may, at its sole discretion, remove or change any aspect of this Agreement at any time by providing notice to You.

**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.



**Federal Requirements for Procurement and Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

If the TIPS member anticipate possibly using federal funds for procurement under this potential award and is required to obtain the following compliance assurance.

**1. Will you be subcontracting any of your work under this award if you are successful?**

(Check one)

YES or  NO

**2. If yes, do you agree to comply with the following federal requirements?** (Check one)

YES or  NO

2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Company Name The Public Group

Name of authorized representative Zackary Corbett

Signature of authorized representative *Zackary J. Corbett*

Date 9-5-16



2 CFR PART 200 Contract Provisions

**Required Federal contract provisions of Federal Regulations for Contracts**

The following provisions are required to be in place and agreed if the procurement is funded with federal funds. TIPS or its members are the subgrantee or subrecipient by definition in most cases. Not all provisions herein apply to all contracts. Compliance is required as it applies to the individual purchase contract.

**Appendix II to Part 200  
Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

**2 CFR PART 200**

These contract provisions are incorporated by reference or attachment into all contracts with your company when TIPS or its members purchase is with federal funds if you respond to a TIPS competitive procurement request for proposals or bid..

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**Federal Rule (1) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Notice: Pursuant to Federal Rule (1) above, when federal funds are expended by TIPS or its members, TIPS or its members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES ZJC Initial of Authorized Company Official

**Federal Rule (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)**

Pursuant to Federal Rule (2) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. TIPS OR ITS MEMBERS reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the TIPS OR ITS MEMBERS. Any award under this procurement process is not exclusive and the District reserves the right to purchase goods and services from other vendors when it is in the best interest of the District.

Does vendor agree? YES ZJC Initial of Authorized Company Official

**Federal Rule (3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."**



## 2 CFR PART 200 Contract Provisions

Pursuant to Federal Rule (3) above, when federal funds are expended by TIPS OR ITS MEMBERS, for all construction contracts awarded by grantees and their contractors or subgrantees, the proposer certifies that during the term of an award, when federal funds are expended, by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor will be in compliance with Equal Opportunity Employment laws specifically Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

Does vendor agree? YES ZJC Initial of Authorized Company Official

**Federal Rule (4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.**

Pursuant to Federal Rule (4) above, when federal funds are expended by TIPS OR ITS MEMBERS, during the term of an award for all contracts and subgrants for construction or repair, when Federal Funds are expended, by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor will be in compliance with all provisions listed or referenced therein.

Does vendor agree? YES ZJC Initial of Authorized Company Official

**Federal Rule (5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.**

Pursuant to Federal Rule (5) above, when federal funds are expended by TIPS OR ITS MEMBERS, the proposer certifies that during the term of an award by the TIPS OR ITS MEMBERS resulting from this procurement process for construction contracts awarded by grantees and subgrantees the proposer agrees to be in compliance with all requirements listed or referenced therein.

Does vendor agree? YES ZJC Initial of Authorized Company Official

**Federal Rule (6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a**



## 2 CFR PART 200 Contract Provisions

**small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.**

Pursuant to Federal Rule (6) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires that the proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting from this procurement process the vendor agrees to the terms listed and referenced therein.

Does vendor agree? YES     ZJC     Initial of Authorized Company Official

**Federal Rule (7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).**

Pursuant to Federal Rule (7) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires that the proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting from this procurement process the vendor agrees to the terms listed and referenced therein.

Does vendor agree? YES     ZJC     Initial of Authorized Company Official

**Federal Rule (8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award \$25,000 or greater (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.**

Pursuant to Federal Rule (8) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires the proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor certifies that they are not debarred from receiving a contract from the federal government as provided therein.

Does vendor agree they are not debarred as specified above ? YES     ZJC     Initial of Authorized Company Official

**Federal Rule (9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.**

Pursuant to Federal Rule (9) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires the proposer certify that during the term and after the awarded term of an award by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor certifies to the terms included or referenced in Federal Rule 9 above.



**2 CFR PART 200 Contract Provisions**

Does vendor certify to the provisions in Federal Rule (9) above? YES ZJC Initial of Authorized Company Official

**Federal Rule (10) 2 CFR 200.233 Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.**

Pursuant to Federal Rule (10) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires the proposer certify that the awarded vendor retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Does vendor agree? YES ZJC Initial of Authorized Company Official

**Federal Rule (11) 2 CFR §200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]**

Pursuant to Federal Rule (11) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor will be in compliance with mandatory standards and policies relating to Procurement of recovered materials which are listed above.

Does vendor agree they will comply? YES ZJC Initial of Authorized Company Official

Company Name The Public Group

Print name of authorized representative Zackary Corbett

Signature of authorized representative 

Date 9-5-16

Signature above acknowledges all provisions in this four page document and the vendor/proposer/bidder responses herein to the 11 rules.

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**SUSPENSION OR DEBARMENT CERTIFICATE**

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**Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$25,000.00. Contractors receiving individual awards for \$25,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.**

By submitting this offer and signing this certificate, this bidder:

Certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the EDGAR, §200.212 Suspension and debarment.


**Vendor Name:** The Public Group

**Vendor Address:** 3520 North University Avenue

**Vendor E-mail Address:** zackaryc@thepublicgroup.com

**Vendor Telephone:** 801-932-7000 x 153

**Authorized Company Official's Name:** Zackary Corbett

**Signature of Company Official:** 

**Date:** 9-5-16



FELONY CONVICTION NOTICE

Statutory citation covering notification of criminal history of contractor is found in the Texas Education Code #44.034. Following is an example of a felony conviction notice:

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION

Complete only one of the three below: A or B or C.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Official: Zackary Corbett  
Print Authorized Company Official's Name

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

Signature of Authorized Company Official: 

B. My firm is not owned nor operated by anyone who has been convicted of a felony:

Signature of Authorized Company Official: 

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): \_\_\_\_\_

Details of Conviction(s): \_\_\_\_\_

Signature of Authorized Company Official: \_\_\_\_\_

# CONTRACT Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in compliance with the terms, specifications and conditions at the prices quoted unless noted in writing. The undersigned further certifies that he or she is an authorized agent of the company and has authority to negotiate and contract for the company named below.

Company Name: The Public Group

Mailing Address: 3520 North University Avenue

City: Provo

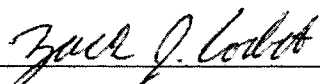
State: UT

Zip: 84604

Telephone Number: 801-932-7000 X 153

Fax Number: 801-932-7001

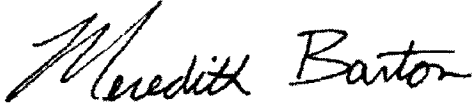
Email Address: zackaryc@thepublicgroup.com

Authorized Signature: 

Printed Name: Zackary Corbett

Position: Product Manager

This contract is for a total TERM of one year with the option of two additional years. Vendors shall honor the participation fee for any sales made based on the TIPS contract. Failure to pay the fee will be grounds for termination of contract and will affect the award of future contracts.

 OCTOBER 27, 2016  
TIPS Authorized Signature Date

 OCTOBER 27, 2016  
Approved by Region VIII ESC Date



References
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**\*\* Must have at least 3 References. References must be School, City, County, University, State Agency or Other Government.**

Organization	City	State	Contact Name	Contact Phone
City of Chandler	Chandler	AZ	Janet McFaul	(480) 782-2421
Loudoun County	Leesbug	VA	April Coates	(703) 777-0228
State of Connecticut	Hartford	CT	Veronica Coty	(860) 571-7445
State of Washington	Tumwater	WA	Jonathan Franklin	(360) 407-1915

# The Public | Group™

## The Public Group Online Auction Proposal

### TIPS Request for Proposal for Online Surplus Auction Services

Derek MacFarland  
President  
(801) 932-7000 office

Zackary Corbett  
Product Manager  
Ph: (801) 932-7000 Ext. 153  
Fax: 801-932-7001  
E-mail: [zackaryc@thepublicgroup.com](mailto:zackaryc@thepublicgroup.com)

The Interlocal Purchasing  
System RFP

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*\*Note\* Any font that is in italics throughout the response comes directly from ADOT's RFP. We format it this way to make it easy for the agency to see what question our answer is responding to.*

## Introduction

To Whom it May Concern:

**The Public Group, LLC**, is pleased to respond to the request for proposal from TIPSfor Online Auction Services and offer our solution to the challenges currently faced by your agency. We understand that the agency

desires a response in providing Internet based surplus auction sales of excess agency inventory.

The Public Group offers an acclaimed online auction application, **Public Surplus**, which will allow the agency to enjoy significant returns from the sale of excess property while minimizing associated costs. This application is designed to meet the unique needs of government agencies. **Public Surplus** is the most comprehensive and easy-to-use online auction service available.

The online auction application, **Public Surplus**, for the disposition of surplus property currently makes its services available to any government agency in the United States of America.

We have a proven record of providing online auction services to over 5,000 agencies including state entities, cities, counties, public utilities, and cities. This includes numerous contracts in place in which the optional extensions have been executed until they were exhausted and required to go out to bid.

We focus on doing business with clients that are innovative and see the benefit of using online auctions from an economic and staffing standpoint. Our dedicated sales and support staff attend government trade shows and discuss our services and the benefit of online auctions via telephone with government clients. We do not expand our sales business beyond that which our support staff can handle. Our growth comes from providing the best customer support in the industry. Many of our new clients are word of mouth referrals that come to us from other users of our system. As the nation continues to adopt online practices for bidding and auction processes, The Public Group will continue to be the leader in the industry assisting agencies every step of the way.

The Public Group's online auction application, **Public Surplus**, is completely web-driven. The only requirement the agency will need to manage for conducting an auction is to supply digital pictures of the items to be sold and upload them via a web browser. The Public Group will supply a dedicated customer support representative to provide onsite assistance with the loading of assets to the auction site if the agency requires assistance.

There is no software to install or maintain, and The Public Group takes full responsibility in keeping the auction site up and running 24 hours a day, 7 days a week, 365 days per year. The Public Group's staff assigned to your account will be available for consultation with site staff on an as-needed basis between 5:00 AM and 5:00 PM, Pacific (PT) Monday through Friday.

The Public Group has over fifteen (15) years of experience in the online auction business and extensive knowledge of how to use diverse advertising media in potential markets to attract bidders who are seeking the type of surplus property the agency has for sale. Providing first class customer service is the goal of The Public Group.

The Public Group will provide all training, manuals and on-site/online sessions the agency requires in order to be comfortable using our system. There will not be any additional charges for training and setting up of the system. The Public Group will also provide dedicated customer support representatives to assist with any additional training and assistance needed throughout the entire usage of Public Surplus.

We provide in-person system training, webinars, online chat, as well as dedicated support representatives to assist with all the agency's needs. Agencies also have access to our online Help section, where there are detailed instructions for how to create and manage auctions.

Our expert team is ready to assist the agency with a wide variety of marketing methods. The Public Group has found that there are several successful ways to increase the revenue and visibility of auctions, in addition to the customary advertisements in periodicals, newspapers and trade publications. Our buyer contact team has spent more than 15 years researching and developing the largest qualified buyer database for government agencies.

TIPSwill benefit directly from this team calling on its valuable auctions to increase revenue where it is needed the most.

Our system provides a detailed audit record of all activity which allows for reallocation of surplus items internally and provides online auctioning for those items that are not internally reallocated.

The Public Group has created a tool that analyzes various metrics, i.e., names, addresses, phone numbers, etc., and sends an alert to our fraud department to evaluate the threat potential and minimize said threat. In addition to our threat protection, the seller has the ability to block any buyer they deem a threat from their criteria, to prevent them from bidding on their auctions. We use address verification with credit cards and bid deposits which greatly reduces the number of default bidders since the buyer will lose their bid deposit if they do not complete the purchase of an auction they won.

This proposal is in all respects fair and in good faith without collusion or fraud and that the signer of the proposal, Zackary Corbett has the authority to bind the principal proponent.

Zackary Corbett – Authorized for Communication and Representation of proposal.  
Surplus Product Manager  
1503 South 40 East Suite 350 Provo, UT 84606  
(801) 932-7000 Ext 153  
801-932-7001

# Scope of Work

For Online Auctioneer Services auctioneer shall supply a fully functional internet auction service for the purpose of selling surplus equipment. Auctioneer shall supply services including:

- All hardware, software and servers needed to operate the online auction service.

**Response:** We provide and maintain all items for the website to function and work properly. The only thing the using agency needs to have on their end is a device (computer, tablet, phone, etc) that has internet access from any web browser.

- Will provide full access of the auction to the members upon request.

**Response:** Each member that registers gets full access to our website and can assign as many users with additional access that they would like to.

- System will be made available to members 24 hours a day, 7 days a week, 365 days a year.

**Response:** Other than scheduled maintenance times, which we inform users of beforehand, our system is available 24 hours a day, 7 days a week, 365 days a year.

- Items for sale by auction will be loaded at any time which best suits the schedule of the member.

**Response:** The using agency is in full control of posting the auctions at their own convenience.

- Auctioneer will provide and absorb all costs of securing a host facility to operate the online auction system.

**Response:** We take on all these costs to maintain and upkeep the website and website hosting.

- Member will not be required to install any additional computer hardware or software at their location. The only requirement of the member will be internet connectivity with a common web browser and a digital camera.

**Response:** Our system does not require any downloads to use the software and as long as the using agency has internet access they can use our system.

- All maintenance and upgrades to the hardware and software systems that the auctioneer provides over the term of the contract shall be made at no cost to the member.

**Response:** We agree to these terms.

- The Auctioneer will supply all operating software and applications needed for the auction site to function properly.

**Response:** Our system provides all this information.

- All internet connectivity will be made through standard internet connections, web browsers and email. The system must allow access from Windows based systems.

**Response:** Our system is accessible from any Windows or Mac system and any normal web browser such as IE, Firefox, Safari, Chrome, etc.

- All maintenance and support, including email and telephone support needed to operate the auction site and live customer service support must be available Monday-Friday between the hours of 8:00 a.m. – 5:00 p.m. Central Standard Time.

**Response:** Each using agency is assigned a customer support representative that is available to them between 8am – 5pm their local time. Our live chat feature is also available from 8am ET – 10pm ET.

- Auctioneer’s system should have simple and uniform methods for bidders to submit bids and have the highest bid price to date posted on the bidding site for all bidders to view.

**Response:** Our system allows bidders to input bids manually or to input a proxy bid which will bid on the system for them automatically anytime before the auction ends.

- Auctioneer’s system must include:
  - Clearly displayed date and time to end the bidding.
  - Capability for the member to set minimum opening bid price.
  - Internal method of recording all bids, identifying the winning bidder, and the second highest bidder.
  - A list of all bids submitted.

**Response:** Our system meets all of this criteria and more including showing ALL bids placed by bidders and the ability for our system to offer the item to the 2<sup>nd</sup> or 3<sup>rd</sup> bidders for the agency if the high bidder defaults on the auction.

- Must have a security system, anti-virus and firewalls capable of preventing hacking of auction information.

**Response:** Our IT department is in full control on monitoring, maintaining and preventing hacking or system downtime.

- Contingency plans to backup information and recover information to include a disaster recovery plan covering internet failure, electricity failure or system failures.

**Response:** We have multiple co-locations with multiple servers in each location so if one facility were to be damaged our other facility can pickup the bandwidth without any interruption of service.

- System must be user friendly in posting auctions and control of auction by member.

**Response:** We constantly improve our system to make it as easy as possible and hear from our clients that our system is the most user friendly available.

- System must support a method for member to withdraw or cancel an auction without

penalty. The auctioneer shall describe its system of notifying bidders if an auction is being withdrawn or canceled.

**Response:** Our system allows buyers and the using agency to retract a bidders bid at any time. Our system also allows the using agency to cancel or retract their auction at anytime. The agency simply hits the “stop” button next to the auction and then inputs the reason for stopping the auction and once it is stopped the buyers that bid on the item will receive an e-mail notifying them that the auction was stopped and the reason it was stopped.

- System must allow auctioneer to be able to post the members individual terms and conditions for payment.

**Response:** All users create their own terms and conditions and then buyer agrees to these terms before they bid on the item. The agency has the ability to add, change or remove these terms at their own convenience.

- System for collecting payments from bidders. Auctioneer agrees to accept electronic payments, cash, wire transfers or cashiers checks.

**Response:** We allow our using agencies to decide which method of payments they wish to accept but we offer payments via Credit Card, Wire Transfer, Money Order, Cashier's Checks, Cash.

- System must generate “paid” notices electronically when payment is received.

**Response:** Our system automatically does this once a payment is made and we also send an e-mail to the selling agency of the payment being made.

- System must be able to provide detailed financial and summary reports of all transaction to the member.

**Response:** Our system has 10 standard reports that all users are able to access as part of our system that will show them all details of the transactions and different information based on what the agency is looking for.

- Auctioneer must have a system for processing complaints or disputes for bidding and payments.

**Response:** We do our processing through PayPal and work with them directly on refunds, complaints or disputes from buyers about auction payment.

- Auctioneer must have documented process for marketing and promoting auctioning site to entice bidders.

**Response:** We do numerous marketing techniques of an agency's auctions and this information can be found on page of our confidential section.

Auctioneers proposal should explain the following:

- **History/Experience with Internet Auctioning**

**Response:** We have over 15 years or experience in this industry and discuss this in our introduction. We have



also provided news releases directly from some of our agencies showing our experience working with numerous government clients.

A. City of Houston

Scott Erdo

[scott.erdo@houstontx.gov](mailto:scott.erdo@houstontx.gov)

(832) 393-9781

**Article Title:** City auction helps close growing budget shortfall

HOUSTON -- An auction of aging City vehicles is proving to be a financial windfall for Houston as it works to bridge a growing budget shortfall.

The City doing everything it can to cut costs and generate revenue, including auctioning off its aging fleet of vehicles, with starting prices as a low as \$500.

It's proving to be a financial windfall, according to Christopher Newport from the City of Houston's Administration and Regulatory Affairs Department.

"Our customers go as far north as Wisconsin, as far east as Arizona [and] as far west as California," said Newport. "Many of them are repeat customer from right here in the City of Houston."

The vehicles are sold through the [Public Surplus](#) website. The City has sold old fire engines, aging police cars and tractors. It has sold close to 400 vehicles since July. That has brought in more than \$1 million for Houston's bottom line.

"Any time you talk about increasing the return to the taxpayer dollar by 278 percent you're obviously on the right track," Newport said.

The program is expected to gain popularity with the public "A lot of people don't have the credit to go to a car lot, or they don't have the money to go to a car lot," said Cristyl Marshall, a Houston resident. "If they can help themselves two ways -- a cheaper car and putting [money] back into the City -- I mean, you can't beat that," she said.

The online auctions started last summer. They have been so successful the City plans to expand it by selling as much as 97 percent of its aging fleet.

**B. City of Albuquerque, NM**

David Harper

[dharper@cabq.gov](mailto:dharper@cabq.gov)

505-857-8676

To whom it may concern:

Public Surplus has been our web-based auction since 2007. Since then, our revenue has increased about \$400,000 to \$500,000 a year. Customer service has been excellent in regards to reports, reconciling and customer communication. The program is simple and user friendly. It is easy to use all around and is an enjoyable auction website. We would definitely recommend it to all Government surplus based companies and entities

C. City of Mesa  
Yvonne Brown  
[yvonne.brown@mesaaz.gov](mailto:yvonne.brown@mesaaz.gov)  
480-644-2686

The City of Mesa started using Public Surplus as a tool to increase our sale of surplus property in February 2012. The representatives from Public Surplus provided training over the phone and in person. When we first started listing items our representative came to our location to assist with our listings. She offered suggestions on how to create our listings so that the largest number of bidders would be drawn to them. The representatives are available to assist with any questions or situations that we encounter. The use of Public Surplus has dramatically increased our sale of agency surplus items, which in turn reduces the shelf time of the surplus items. The process of listing items on Public Surplus is quick and not as complicated as other online selling options. With the bidder paying the "bidder's premium", it is easy to clearly see what our organization receives for each item by not having to deal with additional listing fees. Our relationship with Public Surplus is a "Win Win" situation.

- **Auction Site References**

**Response:** We work with over 20 State agencies and 5,000 government agencies altogether. We have provided 3 references in our reference document attached.

- **Method of contacting bidders (bidders database)**

**Response:** We have over 400,000 buyers in our system registered to bid on auctions. When these buyers register they create an "interest list" informing us what type of items they are interested in purchasing and which region they would like to buy from. Once an item is posted that meets their criteria we will e-mail them about the item. We also reach out to buyer via telephone for specialty items.

- **Method of collection of data and/or photos of sale items.**

**Response:** The selling agency is responsible for taking and uploading photos on the website. The agency can also upload spreadsheets and word documents or maintenance records of the items when they create the auction posting.

- **Method of auctioning (setting minimums, deadlines, times, etc...)**

**Response:** Each selling agency is in total control of the auction creation process. They select the time of the auction, the category of the item, the title of an auction and input any additional information of the item. The agency also uploads photos, creates a price they are comfortable with and can use our of our templates to make the auction creation very easy. If TIPS would like to see the full auction creation process we would be happy to show an online demonstration as part of this response.

- **Site structure (web pages etc...)**

**Response:** Our website is very easy to navigate in order to search for or build auctions. We encourage TIPS to go out to [www.publicsurplus.com](http://www.publicsurplus.com) to see how easy the system is to navigate. Our auction creation process is a one page form to fill out and takes less then 3 minutes to create an auction.

PRICING TABLE (please complete in a table format)

Price Per Auction	This is the price per auction that the auctioneer will be paid once an auction item is listed on the auction website, regardless if there is a completed sale or not. <b>We do not charge per listing. We only get paid on items that sell and are PAID for. Our fee is paid by the buyer in the form of a 7% buyer's premium. The selling agency does not pay Public Surplus any fee.</b>
Commission Fee Schedule	The vendor shall include or attach it's commission fee schedule that details the percentage commission fee that will be charged after each completed sale on the sale price. <b>Please see our cost proposal for full details but our commission is a 7% fee on top of the sale price that the buyer pays.</b>
NOTE	No price or fee will be accepted other than a price per auction (Listing Fee) and a percentage commission fee schedule.
NOTE	If vendor does not charge a listing fee, the vendor must insert a zero (\$0.00) bid on the price per auction line. If the price per auction line is left blank, the vendor may be determined to be "non-responsive".

Auctioneer should explain how they meet the following requirements within this submission to TIPS:

- ☒ Reducing on-hand surplus inventory and related inventory carrying costs;

**Response:** Because our system allows government agencies to post items on our website as soon as they are declared surplus you can sell items sooner and get it off your property sooner which greatly reduces storage costs and drastically reduces item depreciation.

- ☒ Increased market presence and bidder base;

**Response:** Please see our marketing items outlined in our confidential section.

- ☒ Increased bid prices for auctioned items;

**Response:** With over 500,000 bidders on our system we bring more traffic to our auctions than other auction companies. This increase in competition brings up the bidding on items and in turn increases the amount offered to the selling agency from buyers.

- ☒ Increased ROI;

**Response:** We have numerous features in our system to increase your ROI that has been outlined in this response. We also do an auction extension which ensures that the bidder willing to pay the most will win the item and not just the last person to bid.

- ☒ Reduction in direct and indirect auction costs;

**Response:** Our system is the fastest available to post an item and with our app feature government agencies can post items directly from their phone for an even faster upload.

- ☒ Ease of program administration, including but not limited to posting of auctions, marketing of auctions, receiving payment from bidders, blocking bidders who renege on obligations, invoicing, etc...

**Response:** Our system allows each agency to have full administrative abilities to post auctions, block bidders, charge bid deposits, run reports, etc. Each user is also assigned a customer support rep that can help with any additional questions or items.

- ☒ Ease of use by the bidding community, including auction notification, award notification, automatic bidding etc...

**Response:** Our system automatically notifies buyers of auctions they are interested in, bids places, items won and payments made. The selling agency doesn't need to worry about providing any sort of notification to the buyer.

Qualification of Vendor:

- ☒ The auctioneer must be organized for the purpose of conducting auctions (regular or online) and must have 10 years of experience.

**Response:** We meet this criteria.

- ☒ Must have all required licenses by the state for auctioneering services.

**Response:** We meet this criteria and are able to perform online auction services in all 50 states in the

USA.

- ☒ Value added services should be explained in detail. If bidder can offer greater quantities at lower pricing, these “value added” prices should be submitted in this section.

**Response:** Below is a list of some additional services and options we provide that bring exceptional value to what we offer.

#### Additional Products

Our company offers TIPSmembers many different avenues of government procurement that none of our competitors do offer. If a TIPSmember utilizes our Public Surplus service they can also utilize our e-procurement software, Public Purchase for free. They can also get a discounted rate using our contract management software, Public Contract. Finally, we offer our Public Surplus service for free to our TIPSmembers. Anything sold on the system will have the buyer pay our fee so the using member will never owe Public Surplus anything.

*Default Bidders* Response: We have many steps in place to deter default bidders. Many of these steps happen system-wide but the agency is also in control of monitoring and blocking buyers directly from their auctions.

- A. We have a buyer department that monitors buyers that are bidding on our system. If a buyer goes over our “Default Limit” our buyer department will immediately suspend that buyer from bidding on our system and prevent any future registrations on our system from that buyer.
- B. We give the agency full authority and ability to “block” buyers directly from bidding on their auctions if they do not wish to deal with a buyer because of defaults or any other set of circumstances. Once the agency blocks the buyer they do also have the ability to unblock the buyer if they desire.
- C. We have a “Bid Deposit” system in place that automatically puts a \$50 bid deposit on any auction over \$500 on our website. This ensures that buyers bidding on those auctions have money down upfront and if they win that auction but default they will lose out on that money. We also have a feature that we can enable for the agency, if desired, that will allow the agency to set the bid deposit amount above or below \$50 based on the estimated value of the item.

#### Internal Reallocation

Many government agencies are required by state or local mandate to offer their surplus items for internal transfer before they auction them to the public. The Public Surplus auction system has a built-in internal reallocation feature for you to offer your surplus items to departments within your agency, or to other affiliated agencies or non-profit entities. You can do this before (or instead of) offering the items to the general public. Items offered for internal reallocation are not auctioned; they are offered on a first-come, first-served basis for a specific price or for free.

Internal reallocation is an automated tool to manage your surplus property and will save you the hassle of creating an email for an item and sending to multiple contacts before listing it for public auction. Using this feature allows you to make the item available internally for a set time before it is

available to be bid on by the public. You also have the option to make items available internally only, and not be offered to the public at all.

In order to invite departments/agencies to view your internal auctions Public Surplus will provide you an Internal Registration hyperlink and Registration Code. The department/affiliate then registers and will be notified of all internal reallocation listings as they are listed. This is just a one-time registration.

You can select how long you would like an item listed as Internal Reallocation by selecting the number of days (between 4 and 42) from the drop down menu under Time Frame when you are creating an auction. You can set a price for the item under Internal Price. If you would like to give the item away for free you can enter zero (0.00) in the Internal Price box. If an item has not sold before the end date it will automatically be released as a current auction if the agency desires.

There is no fee associated with internal reallocation and we only make money on this feature if the item isn't claimed internally and it goes out for public bid. We will then receive our fee on top of the sale price from the buyer. We have been a master and innovator of this system for many years and will work hand-in-hand with the agency to set it up exactly for what is needed.

Public Surplus will not receive any commission on internal items that are reallocated and if the items are not claimed internally they will then go out to Public Auction and the agency will be able to select a minimum price and reserve price on these items that are deemed appropriate by agency staff.

#### Departments

Our system is built with an extensive department feature that several of our agencies use. The biggest client is the City of New York that has over 200 departments setup in our system. The departments are assigned users and these users can post items on behalf of each department. TIPS will be able to monitor and edit these departments.

#### Permission Based System

Our system is a permission based system that allows the agency administrators to manually select the permissions and controls that each user in the system is able to access and navigate. The agency will be able to specify who is administrators on the website and who has the ability to create/release auctions. Once the agency begins using our system we will help them create their users with the needed access and then they can begin creating auctions

Our online system is designed for ease of use when it comes to auction creation. Users are able to use an excel upload file to create a lot of auctions or can manually create them 1 by 1 with our standard form. Once the auctions are live we have easy to use features that give the agency the ability to revise existing listings, copy existing listings for creation of new listings, and the ability to retract or end listings. All of these features are readily accessible from the seller user menu.

#### Auction Listing Information

The Public Group understands that the agency will exclusively determine the items and equipment available for surplus. The agency will have the utmost flexibility in how the listings may be conducted. The following functionality is included in our solution:

- I. Ability to have multiple line items per lot (ie. Computers);
- ii. Ability to have one asset per listing (i.e. vehicles);
- iii. Ability to have dutch auctions (i.e. same item and condition but multiple quantities and multiple bidders can purchase one or many)

Our system is built specifically for government agencies and we have the ability for agencies to add their own inventory categories they want on each item. These fields are customizable and can be tracked and reported. We are able to customize whatever information for tracking purposes that the agency would need.

After the agency inputs the information they want in the auction creation page it will go to a “Held” section that will allow any agency users with the correct permissions to view and release the items for sale. While the auctions are out for sale the agency will be able to view who is bidding on the item, the number of bids and the current price the bidding is out. The auction page will also show all contact information for the agency employees responsible for the auction. The agency will also be able to place any additional information about the item that they would like in this section such as payment and pickup procedures.

Once an item is released for sale our system allows any user to search for auctions on our website using our search feature. Users that are on the website will be able to search for current auctions as well as closed auctions. Buyers are able to search for items by a specific region and/or specific agency. Below is an example of using this search feature for past auction data.

The screenshot shows the Public Surplus website search interface. The search filters are: Keyword: Car; In Category: Motor Pool; Status: Ended (selected); Ended Between: May 1, 2015 and May 31, 2015; Price Range: From \$ 1000 To \$ 1500; Located: All miles from zip code; In Region: All. Below the filters is a table of search results.

Auction	Title	Image	Agency	Status	Time Left	Bids	Current Price
1350506	2002 Chrysler Sebring		CA	Ended		2	\$1,050.00
1358824	2006 White Ford Crown Vic		AZ	Ended		14	\$1,275.00

During the duration of the auction buyers are able to access the auction page and ask questions they may have pertaining to the auction. The user that created the auction will then be notified of the question and be able to answer it via e-mail and/or on the website. The user will be able to review the question and



approve or deny it before responding and providing an answer.

When a buyer goes to bid on an auction they will have to agree to the terms and conditions that the agency is able to create and edit. When a buyer goes to bid on these items they must agree to the terms, which works as an electronic signature agreeing to whatever specifications the agency has set forth. Below is an example of an agreement page.

**Public Surplus™**

Chat | Help | Logout Home | Browse | Search | My Stuff | Auctions | Warehouse | Tools

**City of Midway**

**Bid on Item**  
**1993 CASE 580 SK BACKHOE**  
**Auction #179103**  
 Region: IL  
 Current Price: \$1,502.00  
 Increment: \$25.00  
 Minimum bid: \$1,527.00  
 Time Left: 2 days 1 hour  
 How to place a bid

**Terms And Conditions - City of Midway**

CITY OF MIDWAY - ONLINE AUCTION TERMS AND CONDITIONS

PLEASE READ THIS DOCUMENT CAREFULLY. SHOULD YOU HAVE ANY QUESTIONS, SEND THEM TO AUCTIONS@CITYOFMIDWAY.ORG.

**PART 1 - GENERAL AUCTION AND PAYMENT TERMS**

The online auctions are opened to the general public. However, City of Midway employees and their relatives will not be permitted to bid. Buyer must be of legal age to enter into a contract with the City of Midway.

**ALL SALES ARE FINAL.** There are no refunds or exchanges.

The City of Midway reserves the right, to reject any and/or all bids considered, if the public interest may be served thereby. The City of Midway also reserves the right to withdraw an item at any time - including during the bidding process.

**THIS ITEM IS BEING SOLD "AS IS", WITH NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

At the conclusion of bidding, the successful bidder must submit full payment within five (5) business days of the auction close. Cash, cashier's checks, certified checks, money orders, and

I have read the document and I accept the conditions therein. **ACCEPT**

I have read the document and I decline the purchase of the item. **DECLINE**

Once an auction ends our system automatically sends a winning notification and payment notification to the buyers after payment has been made. The agency will be able to customize the information e-mailed to the buyers. The agency also has the ability to manually send notifications through our e-mail system within our website.

These winning bidder notifications go out automatically after each auction is ended. The winning bidder and agency will both receive the e-mail notification. The agency is able to customize the information they want within this winning notification. The agency is also able to manually send this information to the winning bidder or second bidder if they want to offer the item to them through our system.

You can view any auctions that ended on our closed auction tab which will show all auctions that closed, the price they ended for bid and who the winning bidder was. The main closing page on an auction looks like the following:

Chat | Help | Login Home | Browse | Search

**MIAMI-DADE COUNTY**

Current Auctions  
**Closed Auctions**

**Closed Auctions for: Miami-Dade County**

Keyword

Ended between Jul 29, 2015 and Aug 16, 2015  
 ( Please enter dates as April 23, 2009 or 04/23/2009 )

Category

Include Island

**Search**

Auction	Title	Price	Status	Notes	Date Ended
1411107	Trinco Split level direct pressure cabinet for sand blasting	\$786.00	●		Jul 29, 2015 6:00:00 PM MDT
1411125	Universal envelope feeder manufactured by Suspension Feeder Corporation	\$100.00	●		Jul 29, 2015 6:00:00 PM MDT
1411146	Lot of 4 Good Year Wrangler P255/70R16 tires	\$381.00	●		Jul 29, 2015 6:00:00 PM MDT
1411153	Ammco Brake Lathe Model: 4000	\$655.00	●		Jul 29, 2015 6:00:00 PM MDT
1411094	589102/One lot of hydraulic saw tools and accessories	\$500.00	●		Jul 29, 2015 6:00:18 PM MDT
1406851	8-0580/2004 Blue Bird City Transit Bus, MIA Shuttle #4	\$2,550.00	●		Jul 29, 2015 6:00:54 PM MDT
1411120	Horizon Emergency Traffic Signal	\$357.69	●		Jul 29, 2015 6:01:29 PM MDT
1406846	8-0581/2004 Blue Bird City Transit Bus, MIA Shuttle #2	\$5,300.00	●		Jul 29, 2015 6:01:49 PM MDT

ADOT17-00006634  
 15



Once the auction closes the buyer has 5 business days to pay for their item and then 5 days from payment to pickup the item. The agency can negotiate these terms with the buyer if they so desire. If the agency has any issues with buyers then the agency will have the ability to block or otherwise decline bidders / buyers whom have defaulted on previous agency or any other government agencies auctions. Additionally, **Public Surplus** can block or otherwise restrict buyers on a per case basis

## **2. We would like to provide TIPS with our vision of the role we play in online auctions for our clients and what their role consists of.**

We have outlined our standard training plan—which includes what is needed from the agency and from our staff. These roles vary and are subject to change as needed and will encompass training agency IT staff if necessary on security, problem identification and problem resolution.

### The Public Group's Role

- Provide onsite or online auction training as needed to ensure the agency is as comfortable as possible with the system.
- Provide the buyers an easy-to-use system to bid on the items and provide all customer support for buyers as they attempt to bid on agency's items.
- Provide an auction extension feature and marketing of items that will ensure we make more money for the agency than any other auction avenue available.
- Provide a system that will make sure our buyers are qualified bidders and perform functions like a bid deposit that will keep buyer's accountable on the transactions they purchase.
- Provide a payment collection service that will handle all payments from buyers on an agency's auction and remit the payment back to the agency on a Net30 cycle.
- Provide constant improvements to the website that make the auction process easier for agency's and implement ideas that agency's may bring forth on their unique account.
- Assist the agency with advertising items in their local newspaper as well as providing a logo link to bring more traffic to the agency's auctions.
- Provide all website security measures and protocols to meet the rules and regulations that are needed during the government auction process.
- Provide all report and audit functions that government agencies need including customizable reports they can access whenever needed.
- Provide all customer support items an agency may need such as online chat, help tabs and a dedicated customer support representative.

### Agency's Role

- Setup users in the The Public Group's system that will have the permissions to create auctions and manage the auction system.
- Provide pictures and descriptions of items that need to be sold. These description items include condition of item and VIN, hours or mileage if applicable.
- Provide a location for buyers to be able to pick the items up. There can be multiple locations within an agencies account if needed.
- Provide an auction contact person that will be available to view and answer any questions a buyer may ask about the item.
- Provide the buyers with a pickup time for them to come and remove the property from the agency's location in a timely manner.
- Provide the transfer of titles if needed on vehicle items.

### Buyer's Role

- Register on our website and meet all of our qualification processes in order to be a user in our system.
- Place bid or proxy bid on an item that will exceed the agency's reserve price and complete the bid deposit process.
- Provide adequate and approved payment of items within 5 business days after the auction closes.

The Public Group will provide all training, manuals and on-site/online sessions the agency requires in order to be comfortable using our system. There will not be any additional charges for training and setting up of the system. The Public Group will also provide dedicated customer support representatives to assist with any follow up training and assistance as needed.

End user training will be provided in a group type forum via an online presentation via GoToMeeting or Mikogo. Users will be able to interact and voice questions during the presentation and on certain occasions video conferencing tools may be implemented. Agencies also have access to our online Help section where there are detailed instructions for how to create and manage auctions.

Installation pricing if applicable should be submitted.

**Response:** There is no installation cost.

Additional Services:

Bidder should list in the excel spreadsheet all related supplies, equipment, services, installation, repair, maintenance, and hourly fee according to category offered on this contract. Offering must be related to this category. No inappropriate offerings will be considered.

The Contractor shall furnish all necessary labor, materials, tools, supplies, equipment, transportation,

supervision, management and shall perform all operations necessary and required for services. All work shall be performed in accordance with the requirements set forth in the resulting contract and each mutually agreed upon work request or purchase order issued by TIPS participating members.

Pricing document must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” PRICING section.

**Response:** Our cost proposal is below and we did respond to the pricing section attachment but do not have anything additional to add there as we do not provide or require additional equipment to use our system.

# COST PROPOSAL

**Public Surplus** can be paid in the form of Buyer's Premium for the use of our application or the agency can pay the fee directly. A Buyer's Premium is a set percentage that is in addition to the winning bid; this amount is in addition to any applicable taxes and charges. The Buyer's Premium is listed as a separate line item from the winning bid amount. Any applicable fees such as taxes are charged to the Buyer.

All auctions clearly state and explain the Buyer's Premium for all Bidders (if the agency elects to have one), along with the methods acceptable for payment. Winning bidders also receive this information via email once the buyer has won the auction. If an item listed by the agency is not successfully won, The Public Group does not collect a fee. We feel strongly about our application, we do not charge additional fees found by other online auction sites.

We also do not charge any setup or startup costs. Some of these fees, which we **do not** charge for, includes:

- Re-Listing fees
- Uploading fees for:
  - Photos
  - Manuals
  - Item supporting documentation
  - Warranty information
  - Internal re-allocation fee
  - Targeted marketing
  - Email blasts
  - Contacting specialty buyers
  - Record Storage fees
  - Integration into the agency's website

Our fee breakdown service is as follows:

**7% Auction Selling Fee** – Our service can be completely free for the agency as you can pass the fee onto the buyer if you so desire. Our standard fee is 7% and the buyer would pay this fee in the form of a buyer's premium. State agency's are offered a 4% rate.

Example: If the item sells for \$100.00 and the agency charges a buyer's premium the agency will receive \$100.00. The buyer will pay \$107.00 and Public Surplus will receive

\$7.00 from the buyer.

If the *agency elects to pay the fee* then in the scenario above the buyer would pay \$100.00, the agency would receive \$93.00 and Public Surplus would receive \$4.00. This 7% rate offered is what we offer.

**3% Payment Collection Fee (Optional through Public Processing)** – This additional fee is applied if the agency decides to have Public Surplus collect payment from the buyer directly. Public Surplus uses Public Processing to collect payments from the buyer and will allow the buyer to pay via credit card or wire transfer. This 3% fee is paid by the buyer on top of the sale price. For example, if an item sells for \$100.00 the agency will receive \$100.00 and the buyer will pay \$110.00. \$7 for the selling fee and \$3 for the collection fee.

**4% Auction Technician Fee (Optional)** – This optional service is a service we offer to have a representative from our company come out and post the auctions for the State. We will take pictures, obtain description and create that auction on the website. The auctions will go to the held section and TIPS will have the opportunity to review all the data and then release it out for sale. The agency can elect to have the buyer pay this fee or pay for this service themselves.

**ADMIN FEE PAID TO TIPS** – We offer TIPS a 10% rebate on all revenue we make on agencies using this contract. For example, if an agency using this contract sells \$100,000 on our website we will make \$7,000. We will then pay TIPS \$700 as this rebate and this is our offer to pay the admin fee.

**Price Match Guarantee** - With this response we do offer a “price match guarantee” that means we will not be beat on price for similar services to what we are offering. If TIPS finds similar services at a lower cost than our quote, we will be that price by .125%

# EXCEPTIONS

Added language is in bold italics and underlined.

Deleted language is lined through.

## Indemnity

Indemnity for Performance Contracts. The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, **in proportion to and to the extent** arising out of, or resulting from, Vendor's work under this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Vendor further agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees, from and against all claims and suits for injuries (including death) to an officer, employee, agent, subcontractor, supplier or equipment lessee of the Vendor, **in proportion to and to the extent** arising out of, or resulting from, Vendor's work under this contract whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.

## Cancellation for non-performance or contract deficiency.

TPG cannot accept the following language from this section: "Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by awarded vendor under this contract shall become the property of the TIPS Member on demand."

## Marketing

~~Awarded vendor agrees to allow TIPS to~~ **may** use **Vendor's** ~~their~~ name and logo within website, marketing materials and advertisement **upon prior approval from Vendor**. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this contract by awarded vendor must have prior approval from TIPS.

## Audit rights

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Contract. TIPS and Region 8 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective

date of termination. TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in *electronic* the format and at the location designated by Region 8 ESC or TIPS.

## Special Terms and Conditions

Promotion of Contract: It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor and not through TIPS contract is not acceptable to the terms and conditions of this contract and will result in removal of Vendor from Program. ~~Vendor is expected to use marketing funds for the marketing and promotion of this contract~~

# Addendums

We have not received any addendums pertaining to this RFP at this time.



## Confidential Information – Page 1

*Our expert team is ready to increase revenue and visibility of the City's auctions using a wide variety of marketing tools. The Public Group's buyer contact team has researched and developed the largest qualified buyer database for government agencies. The City will benefit directly from this team calling and sending emails regarding its valuable auctions in order to increase revenue where it is needed most. Our transition team will review the City's current methods, offer suggestions for improvement, and offer the use of additional advertising tools such as:*

- 1. Trade magazine advertisements*
- 2. Targeted email blasts*
- 3. Flyer distribution*
- 4. Links on all City websites – such as banner ads*
- 5. Specialty Advertising*
- 6. Promotion to previous buyers*
- 7. Utilization of mailing lists and contact lists*
- 8. Notification to Special Interest Buyers of various assets*
- 9. Listing advertisements in periodicals and newspapers*
- 10. Strategic emails to Buyers*
- 11. Power Point presentations for viewing on Public Television*
- 12. Advertising in Trade Publications*
- 13. Telephone call campaigns*
- 14. Highlighted website listings*

*In addition to our advertising strategies, our team will review the City's current efforts to determine if we can provide any additional support in these areas. The Public Group will provide links for the City to embed in their current website so all visitors to the City's site can review the City's surplus from the site. The City will be able to incorporate their logo onto their own specific web page within our Public Surplus application.*

***We request that our marketing information remain confidential, as these are the type of things that set us apart from our competition and allow us to make our agency's the most money possible.***

# Confidential Information – Page 2

## Marketing Plan #1 – City of New York Barges – Marketing Team

New York City contacted us in March of 2014 as they needed to sell some hopper barges on our website. They did not have a market for these types of items and were not sure which type of buyers or companies would be interested in purchasing these types of items.

We had our marketing team begin to do research on these items and in turn reach out to the type of companies that would purchase these items. We made many phone calls and e-mails on the behalf of the City to different companies we found that may be interested in these types of items. After a month of diligent marketing we were able to sell all four hopper barges for over \$1,000,000 total. The City of New York was extremely pleased with this marketing technique and this is something we offer all of our agencies as they post vehicles and heavy equipment on our website. We will do all research and buyer contacting for you.



### Closed Auctions for: New York City Department of Citywide Administrative Services

Keyword

Ended between  and   
( Please enter dates as April 23, 2009 or 04/23/2009 )

Category

Sold Status  Bidder  [\[Find User\]](#)

Pay Status  Rcpt/Conf #

Pickup Location

▶ Auction	▶ Title	▶ Price	▶ Status	Paid	Pick-up	Notes	▼ Date Ended	Copy
820908	Hopper Barge - DOS/0824151-2013	\$256,889.00		PAID			May 5, 2014 10:03:13 AM MDT	<input type="checkbox"/>
820909	Hopper Barge - DOS/0824151-2013	\$275,100.00		PAID			May 5, 2014 11:10:56 AM MDT	<input type="checkbox"/>
820910	Hopper Barge - DOS/0824151-2013	\$293,255.00		PAID			May 5, 2014 12:27:18 PM MDT	<input type="checkbox"/>
820911	Hopper Barge - DOS/0824151-2013	\$276,100.00		PAID			May 5, 2014 1:06:38 PM MDT	<input type="checkbox"/>

## Confidential Information – Page 3

### *Marketing Plan #2 – Interest List – Madison City, MT*

*This agency had concerns about going to online auctions from a local auction company. They were concerned that we wouldn't be able to bring buyers to their auctions as they are in remote Montana. We informed them that as part of our marketing buyers create an interest list when they sign up on our website. This interest allows buyers to select the region and type of items they would like to purchase on the website.*

*Once an agency creates an auction that meets the criteria the buyer has set they will receive an automatic e-mail notification once a day showing them the items posted in their region. This City decided to post an excavator with us, and our interest list was able to pull many buyers in their region to the auction that they were not aware of. Ultimately the excavator sold for over \$45,000, which was \$20,000 more than they were hoping to receive.*

- User Information
- Change Password
- Interest List**

## Interest List

Sign up to receive email notifications each time a new item is placed up for auction in a category and/or region of interest. You will receive a list of all auctions that match the selected categories and regions.

### Categories of Interest

To select a category, click on the category of interest in the left, and click the "Add" button. To remove, click on the category on the right and click "Remove".

Available Categories

- Airport -> Confiscated
- Airport -> General
- Airport -> Luggage
- Animals and Livestock -> Animals
- Animals and Livestock -> Equipment
- Animals and Livestock -> Livestock
- Animals and Livestock -> Supplies
- Aviation -> Airplane - Jet
- Aviation -> Airplane - Prop
- Aviation -> General

Add >>

<< Remove

Selected Categories

### Regions of Interest

To select a region, click on the region of interest in the left, and click the "Add" button. To remove, click on the region on the right and click "Remove".

Available Regions

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida

Add >>

<< Remove

Selected Regions

## Confidential Information – Page 4

### Marketing Plan #3 – Rock and Dirt Ad

*Below is an example of a recent rock and dirt advertisement we had in the national trade magazine. We do these advertisements periodically and include a list of agencies that are selling heavy equipment for buyers to go and look at. This specific rock and dirt advertisement came out during the same time that the State of Alaska needed to sell some graders and loaders. Due to the traffic obtained on these auctions during that time the State was able to receive a considerable amount more revenue than they expected.*

**Public | Surplus®** Online Government Surplus Auctions  
 www.publicsurplus.com  
 buyersupport@publicsurplus.com  
 801.932.7000



Heavy Equipment and Vehicles listed daily from THOUSANDS of GOVERNMENT AGENCIES across the nation such as, City of New York (NY), City of Asheville (NC), Fulton County Georgia (GA), City of Atlanta (GA), City of Houston (TX), Indiana State Surplus (IN), Fairfax County (VA), Sacramento County (CA), State of Washington (WA), City of Bellevue (WA), Wyoming Department of Transportation (WY), Oregon State University (OR), City of Independence (MO), State of Alaska (AK), City of Chicago (IL), Colorado Springs Utilities (CO), State of Montana (MT), State of Arizona (AZ), City of Tucson (AZ), City of Beloit (WI), City of Norfolk (VA), City of Santa Clarita (CA), City and County of Denver, just to name a few.

## Confidential Information – Page 5

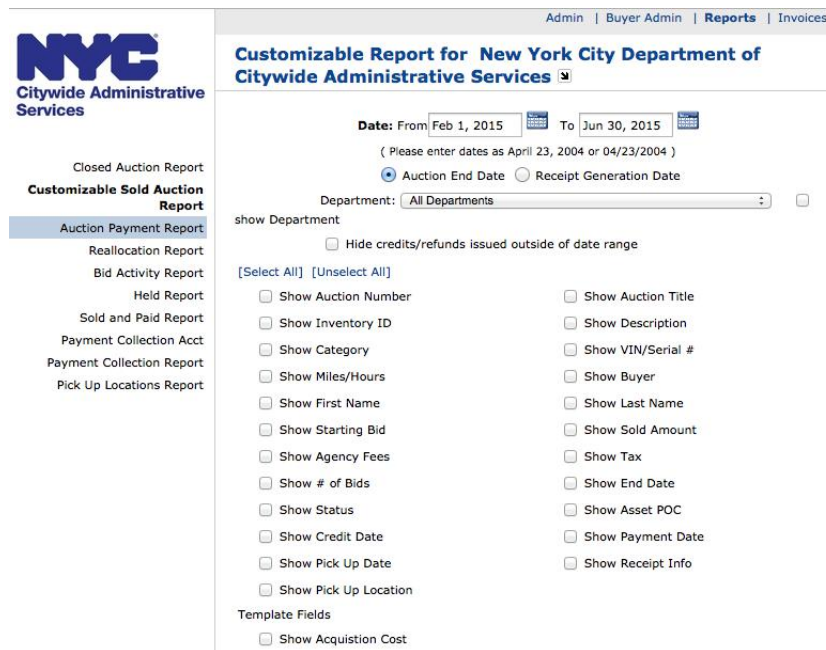
### Billing and Financial Reporting

*The Public Group provides standard reports that meet the City's criteria as well as customizable reports that allow the City to select specific criteria for each report. Our reports are specifically designed to assist with audit and transparency standards that Government agencies require. We can develop specialized reports with set criteria if needed. Our system currently has the 9 standard reports that the City will have access to. These reports can be downloaded into a PDF or Excel file and any user with the correct permission will be able to see the reports.*

**9 Standard reports the City will be able to access:**

- Closed Auction Report
- Customizable Sold Auction Report
- Auction Payment Report
- Reallocation Report
- Bid Activity Report
- Coop Revenue Report
- Sold and Paid Report
- Payment Collection Account
- Payment Collection Report

Below are screenshot examples of what our reporting feature looks like.



## Public Surplus Agreements

### Public Surplus – Seller Agreement

The Public Group, a California corporation 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](http://www.publicsurplus.com) and other websites (collectively, the "Site") for governmental bodies and others ("Sellers" 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 You 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."

**4.6. Indemnity.** You agree to indemnify, defend and hold harmless Public Surplus from and against any and all debts, liabilities, obligations, claims, suits, judgments, damages, expenses, including attorney's fees, and demands, made or incurred by any third party arising out of Your breach or alleged breach of this Agreement or Your violation or alleged violation of any applicable law or any rights of a third party.

## 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 You 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 You 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. Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Utah. 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. You further agree to the exercise of personal jurisdiction in the State of Utah in connection with any dispute or claim involving Public Surplus.

**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. You will indemnify and hold Us harmless, as provided for previously in this Agreement, from any claim or demand made by a third party due to or arising out of your violation of any law or rights of a third party.

**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. Entire Agreement.** This Agreement constitutes the entire agreement between You and Public Surplus, and supersedes any previous agreements, whether oral or in writing, between You and Public Surplus relating to the subject matter hereof. Public Surplus may, at its sole discretion, remove or change any aspect of this Agreement at any time by providing notice to You.

**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**" or "**You**") through online bid boards, auctions and stores, and other online transactions on [www.publicsurplus.com](http://www.publicsurplus.com) and other websites (collectively, the "**Site**") operated by our affiliates, The Public Group, LLC, a Utah limited liability company and The Public Group, Inc., that sometimes do 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. Except as provided in paragraph 3.7, 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 exceeds \$100. We will not make payments to You of \$100 or less. Where any amount or amounts received on Your behalf do not exceed \$100, payment will be made to You upon receipt of additional funds that bring Your balance in excess of \$100. Public Processing will own the interest on any balance held because it does not exceed \$100. However, 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."

**4.6. Indemnity.** You agree to indemnify, defend and hold harmless Public Processing from and against any and all debts, liabilities, obligations, claims, suits, judgments, damages, expenses, including attorney's fees, and demands, made or incurred by any third party arising out of Your breach or alleged breach of this Agreement or Your violation or alleged violation of any applicable law or any rights of a third party.

## 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

**7.1. Changes to Site and Services.** Public Processing may modify, suspend, or terminate any aspect of the Site and Services, including, but not limited to, content, auction features, news and information, and product categories without notice.

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

**7.3. Notice and Communication.** Unless stated otherwise, all notice and communication with You 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. Governing Law and Jurisdiction.** This agreement is governed by the laws of the State of Nevada without regard to any conflict of law provisions. 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. You further agree to the exercise of personal jurisdiction in the State of Nevada in connection with any dispute or claim involving Public Processing.

**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 You 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, 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. You will indemnify and hold Us harmless, as provided for previously in this Agreement, from any claim or demand made by a third party due to or arising out of your violation of any law or rights of a third party.

**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. Entire Agreement.** This Agreement constitutes the entire agreement between You and Public Processing, and supersedes any previous agreements, whether oral or in writing, between You and Public Processing relating to the subject matter hereof. Public Processing may, at its sole discretion, remove or change any aspect of this Agreement at any time by providing notice to You.

**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.



# Public Surplus – Buyer's Agreement

This Seller agreement is a contract between you ("you" or "your") and The Public Group, LLC, a Utah limited liability company acting through its Public Surplus division ("Public Surplus", "We" or "Us"), and governs your use of [www.publicsurplus.com](http://www.publicsurplus.com) and related websites (collectively, the "Site") and the services provided through the Site and otherwise (the "Services"). As a condition to accessing and using the Site and Services, Public Surplus requires that you review and accept 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.

## 1. BIDDING AND PURCHASING

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.

1.2. Buyer Affirmations in Connection with Bids or Purchases. In using our Site and Services, you agree as follows:

- (a) No contingency to your bid exists other than those stated in the listing at the time of sale.
- (b) You may not retract, amend or modify a bid without prior approval by the Seller.
- (c) You will be financially responsible for any bids placed using your username and password.
- (d) You are capable of removing the property from its location within the required time frame.
- (e) You have or can readily obtain the Trade Security Control (TSC) clearance to buy any property that

requires a clearance.

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

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

(h) You have inspected every item prior to placing a bid or you waive the need for inspection.

(i) Except as otherwise stated in writing by the Seller on the Site, you understand that all items are sold "as is, where is" without warranty.

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.

1.4. Fees. Public Surplus charges no fees for you to register to make bids or purchases on the Site. However, if you bid on an item, are the successful bidder, and do not purchase the item, you may, at our option, be assessed a service fee equal to \$200 or 40% of your successful bid price, whichever is greater. Other fees 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 applicable taxes associated with the Site in a timely manner 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 might 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 might damage, interfere with, copy, 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 or copy 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. Upon the approval of your registration, 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 all activities and charges related to the use of your 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. 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 auction items that we believe might interest you. Any e-mail correspondence to you (i) shall be clearly and conspicuously identified as sent by Public Surplus; and (ii) shall clearly and conspicuously display a functioning return e-mail address to enable you to reply to Public Surplus.

1.8. Electronic Signature. Prospective bidders 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 web site, in the terms and conditions section of the site, or any other section where they might appear.

## **2. BUYER UNDERSTANDINGS AND OBLIGATIONS**

In bidding or purchasing items on our Site or otherwise accessing our Site and Services in any way, you represent, warrant and agree to the following:

2.1. Payment and Shipment. At the close of an auction in which you have a winning bid, you agree to make immediate payment for the total amount due, including the stated Buyer's Premium, shipping costs and all duties and taxes if applicable, using payment methods provided by Public Surplus. As a winning bidder, you also will make immediate arrangements to take delivery of the goods.

2.2. Deposits. We reserve the right to require an earnest money deposit prior to or during bidding on certain items at our sole discretion or at the discretion of the Seller. Any such deposits from you will be retained and applied to the pending invoice or to any past due balances owed by you. Any deposits taken from non-winning bidders will be returned.

2.3. Failure to Complete Purchase. If you fail to complete a purchase of property for which you submitted a winning bid, you agree to any and all of the following remedies:

(a) you will be required to pay a fee to Public Surplus equal to the greater of \$200 or 40% of the final bid price;

(b) you may be required through specific performance to complete the purchase and/or you may be sued for damages;

(c) your access to our Site and Services may be suspended or terminated;

(d) the Seller may sell or otherwise dispose of the property and charge all losses and expenses incidental thereto to you;

(e) any bid deposit will be immediately forfeited and applied against any such losses, expenses, penalties, and fees; and

(f) if you refuse shipment or delivery upon arrival to the location specified, you will be responsible for the associated shipping charges.

2.4. Legal Compliance. You will comply with all applicable laws, statutes, ordinances and regulations regarding your use of our Services. Bidding on an asset with the intent not to complete the transaction or bidding on multiple assets causing disruption to the process and not completing the transactions will be considered in most jurisdictions as fraud and may be prosecuted to the fullest extent of the law.

### **3. LIABILITY LIMITATIONS AND RELEASES**

3.1. Absence of Liability. You will not hold Public Surplus responsible for actions or inactions of Sellers or other users, including the quality or condition of property or the information posted. You acknowledge that we are not a traditional auctioneer and we are not the Seller 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, such as stores, fixed price formats and auction-style formats. We are not involved in the actual transaction between you and Sellers. We have no control over and do not guarantee the quality, safety or legality of items advertised, the truth or accuracy of listings, the ability of Sellers to sell items, or the actual completion of a sale to you, even upon a successful bid by you.

3.2. 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 THE LISTED ASSETS, 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 SURPLUS MAKES NO WARRANTY OF ANY KIND REGARDING ANY LISTED ASSETS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES 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 SELLER OR OTHER USER.

3.3. 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 bids, auctions, or sales. You understand and acknowledge that the Site and our Services might be unavailable unexpectedly.

3.4. Third Party Links. The Site might 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.

3.5. Release. If you have a dispute with a Seller or any other Buyer 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. If you are a California resident, you waive California Civil Code Â§1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3.6. Resolution of Disputes by Arbitration. You shall resolve any dispute or claim involving Public Surplus through binding arbitration and not in court. Arbitration will be conducted by the American Arbitration Association according to its rules, and must take place in Salt Lake or Utah County, Utah. Arbitration will be conducted only on an individual basis and not as a class, consolidated or representative action.

3.7. Indemnity. You agree to indemnify, defend and hold harmless Public Surplus from and against any and all debts, liabilities, obligations, claims, suits, judgments, damages, expenses, including attorney's fees, and demands, made or incurred by any third party arising out of your breach or alleged breach of this agreement or your violation or alleged violation of any applicable law or any rights of a third party.

#### **4. 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 the Public Surplus Privacy Policy. We view protection of Buyers' 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 the Public Surplus Privacy Policy. If you object to Your Information being transferred or used in this way please do not use our services.

#### **5. 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 might cause legal liability for you, our users or us.

#### **6. MISCELLANEOUS**

6.1. Changes to Site and Services. Public Surplus may 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.

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

6.3. Notice and Communication. Unless stated otherwise, all notice and communication with you shall be provided by e-mail to the e-mail address provided by you in their registration application or via posting on the Site. Notice shall 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. If Public Surplus receives a message that your e-mail is disconnected or is no longer valid, notice shall be deemed to have been provided 72 hours following the mailing of a letter to your address contained in your registration application

6.4. Governing Law. Utah law, without regard to any conflict of law principles, governs this agreement and any dispute or claim you might have with Public Surplus .

6.5. 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. But if disregarding the unenforceable provisions would deprive either party of an essential purpose of this contract, the entire contract is to be held unenforceable.

6.6. 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.

6. 7. Independent Contractor Relationship. The relationship between you and Public Surplus is intended to be that of an independent contractor. No agency, partnership, joint venture or franchise relationship is implied, intended or created by this agreement.

6.8. Intellectual Property. All inventions, know how, improvements, discoveries, methods, processes, concepts, designs, ideas, prototypes, samples, drawings, blueprints, specifications, computer or intellectual property programs, methods of doing business, 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 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 in the content. Public Surplus IP might 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 might acquire in any Public Surplus IP. 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, modified, published, transmitted, distributed, displayed, or sold without the prior written consent of Public Surplus.

6.9. Copyrights. The Site might 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. You will indemnify and hold Us harmless, as provided for previously in this agreement, from any claim or demand made by a third party due to or arising out of your violation of any law or rights of a third party.

6.10. 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.

6.11. 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 by Public Surplus to any party. This agreement and all incorporated agreements may be automatically assigned by Public Surplus, in our sole discretion, to a third party in the event of a merger or acquisition.

6.12. Entire Agreement. This agreement constitutes the entire agreement between you and Public Surplus, and supersedes any previous agreements, whether oral or in writing, between you and Public Surplus. Public Surplus may, at its sole discretion, remove or change any aspect of this agreement at any time by providing notice to you.

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