

GovDeals

Sellers Agreement

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This Agreement is between GovDeals, Inc. ("GovDeals"), a Delaware corporation having its principal place of business at 5907 Carmichael Place, Montgomery, Alabama, 36117 and Collierville, Tennessee ("Client"), having its principal place of business at 500 Poplar View Parkway, Collierville, Tennessee 38017.

- 1.0 Description of Services:** GovDeals provides a means for sellers to list items for sale and for potential buyers to bid upon these items via an Internet-based auction system. Although GovDeals may provide software and applications to the Client to make the listing of items easier, GovDeals is not a party to the actual sale and has no control over the listed information or the ability of the buyer and seller to complete the transaction.
- 2.0 GovDeals Responsibilities:** In addition to the operation of an Internet auction server, GovDeals will provide the Client with the following services during the term of the Agreement:
- 2.1** Access to a web-based application ("GovDeals Auction Server") that will help the Client maintain information about assets and submit them to auction. The GovDeals Auction Server will:
- 2.1.1** Accept descriptive information concerning an asset;
 - 2.1.2** Allow different auction phases based upon dates and times to be specified;
 - 2.1.3** Permit the assignment of certain buyer restrictions during each auction phase; and
 - 2.1.4** Facilitate requests for credits regarding transactions that were not completed.
- 2.2** Training and support services to implement the GovDeals service, which will include:
- 2.2.1** Familiarization with the nature and operation of the GovDeals Auction Server;
 - 2.2.2** Guidance in the initial entry of assets;
 - 2.2.3** Procedures for taking and posting pictures of assets; and
 - 2.2.4** Assistance in the development of an implementation plan and schedule.
- At GovDeals option, training and support services will be provided either on-site or via telephone and the Internet.
- 2.3** A customer support desk available via telephone or e-mail between the hours of 8:00 a.m. and 6:00 p.m., Eastern Time, Monday through Friday, except announced holidays.
- 2.4** Marketing of the on-line auction service to promote use of the site by potential buyers.
- 3.0 Client Responsibilities:** To promote a successful operation and increase the benefits from using GovDeals auction capabilities, the Client agrees to:

- 3.1 Provide on-site support and resources required to access the GovDeals Auction Server via the Internet;
 - 3.2 Make sufficient personnel related to surplus property disposal available for training, implementation, and initial data entry;
 - 3.3 Cooperate with marketing campaigns, including providing a mailing list of prior auction customers, if available; and
 - 3.4 Utilize GovDeals Auction Server and on-line auction capabilities during the term of this Agreement by:
 - 3.4.1 Listing assets for sale on the GovDeals auction service;
 - 3.4.2 Completing sales transactions for assets sold via this service;
 - 3.4.3 Not selling through some other means any item for which it has received a winning bid via GovDeals for the specific purpose of avoiding the GovDeals fee; and
 - 3.4.4 Not engaging, directly or indirectly, in any activities intended to manipulate or interfere with the bidding process.
- 4.0 **Fees:** For any item that is sold as a result of posting it to the GovDeals web site, the following fees apply:
- 4.1 Where a single auction item does not yield greater than \$100,000 in a winning bid, Client agrees to pay GovDeals a fee of seven and one-half percent (7.5%) of the winning bid, but not less than \$5.00.
 - 4.2 Where a single auction item yields greater than \$100,000, but does not yield greater than \$500,000 in a winning bid, Client agrees to pay GovDeals a fee of seven and one-half percent (7.5%) of the winning bid up to \$100,000 plus five and one-half percent (5.5%) of the winning bid that is in excess of \$100,000 up to \$500,000.
 - 4.3 Where a single auction item yields greater than \$500,000 in a winning bid, Client agrees to pay GovDeals a fee of seven and one-half percent (7.5) of \$100,000 of the winning bid, plus a fee of five and one-half percent (5.5%) of \$400,000 of the winning bid, plus a fee of three and one-half percent (3.5%) of the amount in excess of \$500,000 of the winning bid.
 - 4.4 On occasion, and apart from initial training, the Client may request GovDeals to supply on-site assistance to quickly move large amounts of items that have accumulated over a period of time. For this service GovDeals will charge an additional 7.5% fee or a total fee of 15%. For this additional fee GovDeals will go to the Client's site and record asset descriptions, take pictures, load assets to the auction site, and set auction dates. Assets must be arranged in such a manner as to allow GovDeals personnel access to the assets for recording descriptions and taking pictures. If assets are not arranged in the proper manner, the Client will provide personnel to assist the GovDeals representatives in arranging the assets for proper presentation. The additional 7.5% fee does not apply to assets used in the initial training and will not apply when the Client processes its own assets.

- 5.0 Financial Settlement Service (Auction Proceeds Collected by GovDeals):** Client can elect to have GovDeals collect Auction Proceeds from the winning Bidder. If Client elects this optional service, please read and approve the attached Addendum Number One (1) which follows the approval page of this Sellers Agreement. If Client prefers to collect the Auction Proceeds, simply remove Addendum Number One (1) and approve the Sellers Agreement. Based on the option selected, the Terms and Conditions will be modified to conform to the collection method chosen.
- 6.0 Payment:**
- 6.1** GovDeals will invoice Client for fees on a periodic basis. Client agrees to remit payment to GovDeals within thirty (30) calendar days, unless an applicable prompt payment act or similar legislation specifies a different time period.
- 6.2** Client shall promptly, but not more than sixty (60) calendar days after the sale date, notify GovDeals of any transaction that was not consummated. The fees for said transaction shall be credited to the Client during the next invoice period.
- 7.0 Term of Agreement:** This Agreement shall commence on the date it is signed by the second party to do so and will continue for a period of twelve months unless otherwise terminated upon sixty days written notice by either party. This Agreement shall be automatically extended for additional one-year periods, unless either party notifies the other in writing of its intent not to renew at least sixty days prior to the anniversary date. Either party may request a re-negotiation of the terms hereof during a period sixty days prior to the anniversary date of this Agreement. Any charges owed either party prior to terminating the agreement will remain payable.
- 8.0 Right to Sell and Content:** Client will only post items to the GovDeals auction site that the Client has the legal right to sell or dispose of to qualified buyers. Any information posted will be accurate to the best of Client's ability and not contain anything of a pornographic or objectionable nature. Client agrees to only use links to digital pictures of associated assets as provided for in the GovDeals software, and will not create links to any other site, text or other information without the written consent of GovDeals.
- 9.0 Online Sales - Terms and Conditions:** Attached hereto are model Online Sales – Terms and Conditions for use by client. At any time during the term of this Agreement, Client may modify the Terms and Conditions. Said substitution modification must be submitted to GovDeals in writing for posting to the GovDeals auction site. The Terms and Conditions posted to the GovDeals auction site shall not modify, amend or affect the provisions of this Agreement.
- 10.0 Information and Security:**
- 10.1** Client agrees that GovDeals is not responsible for the accuracy of information provided to it by seller(s) and/or buyer(s). GovDeals will use reasonable efforts to protect information that is on its web site from inappropriate use and loss.
- 10.2** Client grants GovDeals a non-exclusive, non-transferable, irrevocable, and royalty-free right to exercise any copyright or publicity rights Client may have in the

information it posts to the GovDeals server(s). GovDeals agrees to use this information only for its intended purpose in support of this Agreement.

- 11.0 Interference:** Client will not use any programs, routines, or applications in connection with GovDeals that will interfere with the operation of the software or site. Specifically, the Client will only communicate with the GovDeals Auction Server by using software and applications that GovDeals provides or specifically approves in writing.
- 12.0 Proprietary Intellectual Property Exclusivity and Confidentiality:** The proprietary Internet-based auction system, environment, and components (collectively, the "System") provided by GovDeals under this Agreement are, and will remain, the exclusive property of GovDeals. GovDeals retains and reserves all rights to the proprietary intellectual property, including, but not limited to, all copyrights and trademarks of and to the System. GovDeals is providing the Client hereunder with a license for said System solely for its own use.
- Client may not subcontract, sell, lease, transfer, assign or otherwise share said System with any third party. Client acknowledges that the System constitutes the proprietary and confidential property of GovDeals and agrees not to directly or indirectly use, employ, divulge, disclose, transfer, or communicate to any person, firm, corporation or other entity, in any manner whatsoever, any of the System or documentation/information provided by GovDeals. In the event of termination of this Agreement, Client shall promptly return to GovDeals or at the option of GovDeals destroy, all documentation/information regarding the System.
- 13.0 Warranty Disclaimer:** GovDeals does not warrant error-free or uninterrupted use of the GovDeals service. The GovDeals web sites, services, software and applications are provided without warranty, express or implied, including, but not limited to, any implied warranties for merchantability or fitness for a particular purpose. GovDeals, its directors, officers, employees, agents and/or affiliates shall not be liable for any loss of profit and/or any direct, indirect, special, incidental or consequential damages resulting from the services offered herein.
- 14.0 Governance:** This Agreement will be governed, interpreted, construed and enforced in accordance with the laws of the State of Tennessee.
- 15.0 Counterparts:** This Agreement may be executed in two or more counterparts, each of which after execution and delivery shall be deemed an original, but all of which shall constitute one and the same instrument.
- 16.0 Non-Exclusive Engagement:** This Agreement is not exclusive. The Client may utilize other disposal approaches, including traditional auctioneer services and sealed bids in addition to GovDeals services. However, it is understood and agreed that the Client will not simultaneously utilize other disposal approaches and GovDeals while an asset is listed on a GovDeals auction.

17.0 Entire Agreement: This Agreement represents the entire understanding between the parties with respect to its subject matter.

THE ABOVE AGREEMENT IS ACCEPTED AND AGREED TO.

GovDeals:

By: Robert L. DeBardelaben

Name: Robert L. DeBardelaben

Title: President

Date: 12/24/08

Client Name : Collierville Tennessee

By: Stan Byner

Name: Stan Byner

Title: Mayor

Date: 1/26/09

Sellers Agreement Mailing

Address and Contact :

Attention: Sales Support

5907 Carmichael Place

Montgomery, AL 36117

Fax Number: (334) 387-0519

Primary Contact Person:

Name: Cathryn Perdue

Title: Buyer

Telephone Number: 901.457.2254

Fax Number: 901.457.2258

e-mail: cperdue@ci.collierville.tn.us

Primary Contact Person:

(Contract development)

Name: Carson McCord

Title: Central Sales Representative

Telephone Number: (615) 846-1150

Fax Number: (615) 846-1154

e-mail: cmccord@govdeals.com

GovDeals
Sellers Agreement
Online Sales – Terms and Conditions

City of Collierville, Tennessee
Collierville, Tennessee

Online Sales – Terms and Conditions

All bidders and other participants of this auction agree that they have read and fully understand these terms and agree to be bound thereby.

Guaranty Waiver. All property is offered for sale “AS IS, WHERE IS.” Collierville Tennessee (Seller) makes no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered for sale. The Buyer is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect, or consequential.

Description Warranty. Seller warrants to the Buyer that the property offered for sale will conform to its description. Any claim for misdescription must be made prior to removal of the property. If Seller confirms that the property does not conform to the description, Seller will keep the property and refund any money paid. The liability of Collierville Tennessee shall not exceed the actual purchase price of the property. Please note that upon removal of the property, **all sales are final.**

Personal and property risk. Persons attending during exhibition, sale or removal of goods assume all risks of damage of or loss to person and property and specifically release the seller and GovDeals from liability therefore.

Inspection. Most items offered for sale are used and may contain defects not immediately detectable. Bidders may inspect the property prior to bidding. Bidders must adhere to the inspection dates and times indicated in the item description. See special instructions on each auction page for inspection details.

Consideration of Bid. Collierville Tennessee reserves the right to reject any and all bids and to withdraw from sale any of the items listed.

Buyer's Certificate. Successful bidders will receive a Buyer's Certificate by email from GovDeals.

Payment. Payment in full is due not later than **5 business days** from the time and date of the Buyer's Certificate. Acceptable forms of payment are:

- U. S. Currency
- Certified Cashiers Check
- Money Order
- Company Check (with Bank Letter guaranteeing funds – **mandatory**)

Checks shall be made payable to: **Collierville Tennessee**. Payments shall be made at the location listed in the Buyer's Certificate.

Escrow Payment. When the purchase price (of a single item or the aggregate purchase price of multiple items) totals \$5,000 or greater, the Seller may require a down payment from the winning Buyer. This non-refundable fee will be 20% of the total purchase price. When the Seller exercises this option, the Buyer will have 48-hours from the time of issuance of the Buyers Certificate, to comply with this requirement. If Buyer fails to comply with this requirement within the stated time frame, the Seller can declare Buyer in default, bar them from further bidding and have them removed from the GovDeals system. If Buyer is in default, Seller may negotiate with next closest bidder, re-list at another auction and/or pursue all legal proceedings. All monies collected in escrow, will be deducted from total monies due at time of final payment.

Removal. All items must be removed within **10 business days** from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Successful bidders are responsible for loading and removal and any and all property awarded to them from the place where the property is located as indicated on the website and in the Buyer's Certificate. The Buyer will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Under no circumstances will **Collierville Tennessee** assume responsibility for packing, loading or shipping. See special instructions on each auction page for removal details. A daily storage fee of \$10.00 may be charged for any item not removed within the 10 business days allowed and stated on the Buyer's Certificate.

Vehicle Titles. Seller will issue a title or certificate upon receipt of payment. Titles may be subject to any restrictions as indicated in the item description on the website. Open titles cannot be issued. **Collierville Tennessee** will not issue replacement titles.

Default. Default shall include (1) failure to observe these terms and conditions; (2) failure to make good and timely payment; or (3) failure to remove all items within the specified time. Default may result in termination of the contract and suspension from participation in all future sales until the default has been cured. If the Buyer fails in the performance of their obligations, **Seller** may exercise such rights and may pursue such remedies as are provided by law. Seller reserves the right to reclaim and resell all items not removed by Buyer thirty (30) days from the expiration of specified removal date and Seller is under no obligation to refund any monies received from the bidder.

Acceptance of Terms and Conditions. By submitting a bid, the bidder agrees that they have read, fully understand and accept these Terms and Conditions of Online Sales, and agree to pay for and remove the property, if the bid is accepted, by the dates and times specified. These Terms and Conditions are displayed at the top of each page of each item listed on GovDeals.

State/Local Sales and/or Use Tax. Buyers may be subject to payment of State and/or local sales and/or use tax. Buyers are responsible for contacting the appropriate tax office, completing any forms, and paying any taxes that may be imposed.

Sales to Employees. Employees of the Town of Collierville Tennessee may not bid on the property listed for auction.