



City of Green River
City Council Meeting
Agenda Documentation

Preparation Date: 1/12/2023	Department: Finance
Meeting Date: 1/17/2023	Department Head: Chris Meats
	Presenter: Chris Meats

Subject:

Approval of an agreement with The Public Group, LLC for an online bid board service.

Background/Alternatives:

The City currently only allows bidding in a paper. Staff would like to explore using an online bidding option. Public Purchase is the platform the State of Wyoming uses for its online bidding service. The service has a free option and paid option depending on the services utilized.

Attachments:

Contract

Fiscal Impact:

There is a free option that we are going to start with and there are some paid services that might be utilized at a later date. Paid options are less than \$1,000 per year which is budgeted in the Finance Department's budget.

Staff Impact:

Staff believes this will give some additional bidding options for our bids

Legal Review:

The Agreement has been sent to Legal Counsel for review.

Suggested Motion:

I move to approve an agreement The Public Group, LLC for an online bid board service, pending approval by legal counsel.

Agency Agreement

Public Purchase

Public Buyer Agreement

The Public Group, LLC, a Utah limited liability company that sometimes does business as **Public Purchase** ("Public Purchase", **We Us**), provides online bid boards, online auctions, and other online methods of procuring goods and services on www.publicpurchase.com and other websites (collectively, the **Site**) for governmental bodies and others (**You**) to buy goods and services from vendors of all types (**Vendors**). As a condition to accessing and using the Site and receiving the benefit of Public Purchase's services provided through the Site and otherwise (the **Services**), Public Purchase requires that You review and accept this Public Buyer 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 PURCHASE. 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. Your Affirmations in Connection with Purchases. In using our Site and Services, You agree as follows: You will be financially responsible for concluding a transaction and making payment with respect to any proposal accepted using Your username and password. You are a real person or entity, with a verifiable address, telephone number and email address as provided to Us. You are dealing in good faith and are not attempting to defraud, cheat, or wrong Public Purchase or any Vendor. You are fully capable of paying for goods and services for which You request proposals.

1.3. Accuracy and Nature of Your Information. You are solely responsible for all information You provide to Us, Vendors, 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 Purchase charges no fees for You to register to request proposals through the Site. However, Public Purchase may charge 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 Purchase 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 6.8 of this Agreement. You acknowledge that You will be responsible and liable for, and hold Public Purchase harmless against, any damages, claims, liabilities, and expenses of any kind suffered by Public Purchase 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 Purchase. You hereby agree that We may send future correspondence to You via electronic mail (e-mail) that notifies You of bids or proposals 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 Purchase; and (ii) will clearly and conspicuously display a functioning return e-mail address to enable You to reply to Public Purchase.

1.9. 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 Site, in the terms and conditions section of the Site, or any other section where they may appear.

2. UNDERSTANDINGS AND OBLIGATIONS

In requesting proposals on our Site or otherwise accessing our Site and Services in any way, You represent, warrant and agree to the following:

2.1. Deposits. We reserve the right to require an earnest money deposit prior to or during any requests for proposal for certain items at our sole discretion or at the discretion of the Vendor. Any such deposits from You will be retained and applied to the pending invoice or to any past due balances owed by You.

2.2. Payment. At the close of a transaction in which You accept a proposal for delivery of goods or services from a Vendor, You agree to make payment for the goods and services in accordance with the terms specified in Your request for proposals.

2.3. Failure to Complete Transaction. If You accept a proposal and fail to complete the transaction, You agree that Vendor or Public Purchase may in their sole discretion enforce any and all of the following remedies:

(a) You may be required through specific performance to complete the transaction and/or You may be sued for damages;

(b) Your access to our Site and Services may be suspended or terminated; and/or

(c) the Vendor may sell or otherwise dispose of the goods or services offered and charge all losses and expenses incidental thereto to You.

2.4. Legal Compliance. You will comply with all applicable laws, statutes, ordinances and regulations regarding Your use of our Site and Services and the request for proposals. Soliciting proposals or accepting a proposal on a good or service with the intent not to complete the transaction or causing disruption to the process in any way 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 Purchase responsible for actions or inactions of Vendors or other users, including the quality or condition of the information posted or goods or services provided. You acknowledge that We are not the Vendor of goods and services sold through our Site. Instead, the Site provides a marketplace for users to request, 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 Vendors. We have no control over and do not guarantee such things as the accuracy or completeness of the proposals to provide goods and services, the ability of Vendors to provide goods or services, or the actual completion of a transaction with You, even upon Your acceptance of an offer or proposal by a Vendor. 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 Site, our Services, or this Agreement.

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 PURCHASE 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 PURCHASE DOES NOT WARRANT THAT THE SERVICES, FUNCTIONS, FEATURES OR CONTENT WILL BE FUNCTIONAL, TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. PUBLIC PURCHASE MAKES NO WARRANTY THAT THE OFFERS OR PROPOSALS IN RESPONSE TO YOUR SOLICITATIONS, THE SITE OR THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. PUBLIC PURCHASE EXPRESSLY DISCLAIMS ANY WARRANTIES OR GUARANTEES THAT ANY PARTICULAR OFFERS OR PROPOSALS WILL BE ADEQUATE FOR YOUR NEEDS OR EVEN CONSUMMATED, EVEN THOUGH YOU ACCEPTED AN OFFER OR PROPOSAL FROM A VENDOR. PUBLIC PURCHASE MAKES NO WARRANTY OF ANY KIND REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SITE OR THE SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES. PUBLIC PURCHASE EXPRESSLY DISCLAIMS ANY ENDORSEMENT OR WARRANTY OF ANY OFFERS OR PROPOSALS MADE ON OR THROUGH THE SITE OR THE SERVICES, AND ANY RESPONSIBILITY FOR ANY MISREPRESENTATIONS OR BREACHES COMMITTED BY ANY VENDOR OR OTHER USER.

3.3. Interruption of Service. Public Purchase 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.

3.4. 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 Purchase 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 Purchase endorses the linked site. You use the links at Your own risk.

3.5. Release. If You have a dispute with a Vendor or any other 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."

3.6. Indemnity. You agree to indemnify, defend and hold harmless Public Purchase 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 Public Purchase's Privacy Policy. We view protection of Your 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 Purchase's 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 Purchase 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 goods or services or interfere with another user's communications or transactions; (d) We are unable to verify or authenticate any information You provide to a Vendor or Us; or (e) We believe that Your actions may cause legal liability for You, our users, or Us.

6. MISCELLANEOUS

6.1. Changes to Site and Services. Public Purchase 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.

6.2. Record Keeping. While Public Purchase generally seeks to retain records of historic transactions for seven years, Public Purchase cannot guarantee the preservation or maintenance of the records 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 will be provided by e-mail to the e-mail address provided by You in the 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 Purchase or the information was posted on the Site.

6.4. 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 Purchase.

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.

6.6. Waiver. The failure of Public Purchase 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 Purchase is 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, **data in Public Purchase's 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 Purchase **(the "Public Purchase IP")**. In addition, all content contained on the Site is Public Purchase IP that is copyrighted material, and Public Purchase retains and reserves all rights and interests in the content. Public Purchase IP may be created by one of more of Public Purchase's 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 Purchase IP will belong to Public Purchase and will be subject to the conditions of this Agreement. You hereby irrevocably assign to Public Purchase all right, title, and interest You may acquire in any Public Purchase IP, whether or not generated from Feedback. Public Purchase may, at its option, file an application for intellectual property protection for Public Purchase IP. If any such Public Purchase IP is created with Your participation or Feedback, You agree to cooperate with Public Purchase 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 Purchase IP is the sole and exclusive property of Public Purchase 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 Purchase. Furthermore, You may not provide access to, or information from, the Site to any other party without Public Purchase's prior written consent.

6.9. 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.

6.10. The copy of the NIGP Code used on this Site is the property of NIGP, and is licensed to Periscope Holdings, Inc., and is protected under the copyright laws of the United States. Unauthorized duplication or copying is prohibited.

6.11. Trademarks. The Site and Public Purchase's trade names, domain names and logos found on the Site are trademarks or service marks of Public Purchase. No display or use of such marks may be made without the express written permission of Public Purchase. All other designated trademarks or

service marks are the property of their respective owners.

6.12. 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 Purchase. However, You agree that this Agreement and all incorporated agreements may be assigned and delegated by Public Purchase in our sole discretion to any party and will be assigned and delegated automatically in the event of a merger of Public Purchase with another party.

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

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

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

6.16. Oral Statements by Representatives. Any oral statement or representation by any representative of Public Purchase changing or supplementing this Agreement or any terms of bidding or purchase 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 Purchase unless agreed to, in writing, by Public Purchase.