




## MEMORANDUM

July 24, 2014

**TO:** Board of Mayor and Aldermen

**FROM:** Eric S. Stuckey, City Administrator   
Russell Truell, Assistant City Administrator / CFO  
Deborah Faulkner, Interim Chief of Police  
John Lawrence, Sergeant, Franklin Police Department  
Gayle Saylor, Evidence Technician, Franklin Police Department  
Brian Wilcox, Purchasing Manager

**SUBJECT:** Consideration of contract award to PropertyRoom.com, Inc. of Frederick, MD for the nonexclusive disposition of personal property seized or otherwise held by the Franklin Police Department as a result of law enforcement proceedings and not returnable to its owner (Contract No. 2014-0142)

### Purpose

The purpose of this procurement is to purchase property disposition services for the Franklin Police Department. These services would be for the nonexclusive disposition of personal property seized or otherwise held by the Franklin Police Department as a result of law enforcement proceedings and not returnable to its owner.

### Background

The City utilizes the services of GovDeals.com for the sale by means of electronic auction of the City's personal property that has been declared surplus for such items as vehicles and furniture that are no longer of use to the City. As the needs of the Franklin Police Department for the sale by electronic auction of property seized or otherwise held by the department in the course of law enforcement proceedings are somewhat different than those of the City for the sale by electronic auction of the City's surplus personal property, a service provider that specializes in the disposal of seized or held property is being recommended for disposition of this category of personal property. Just as for disposition of the City's surplus personal property, property seized or otherwise held by the Franklin Police Department as a result of law enforcement proceedings will be sold by means of electronic auction regardless of estimated value. However, needs of the Police Department that are unique for this category of property include having the service provider (1) take possession of the property prior to making the property available for sale, (2) make the property ready for sale, and (3) handle the transfer of ownership to the buyer. It is worth noting that property seized or otherwise held by the Franklin Police Department as a result of law enforcement proceedings is returned to the rightful owner whenever possible.

PropertyRoom.com is a service that specializes in the disposal of seized property and property otherwise held as a result of law enforcement proceedings. Further, once the property is no longer needed for law enforcement purposes and has been found to be not returnable to its owner, then PropertyRoom.com offers services to meet the needs of the Police Department that are unique for this category of property. Pricing for the services offered by PropertyRoom.com is based on pricing established by National Joint Powers Alliance, one of the purchasing cooperatives utilized by the City from time to time, so the City is able to rely on competitive pricing established by this cooperative for this service rather than having to establish competitive pricing on its own.

### Financial Impact

The fee for services rendered by the service provider being recommended, PropertyRoom.com, depends on the exact level of service requested for the individual item or category of items being auctioned for sale. The fee to be paid by the City to PropertyRoom.com, which is a commission and is expressed in terms of a percentage of the



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winning bid, ranges from 5% to 50%. In addition, other fees and a fuel surcharge may apply. All of the City's expenses would be deducted from the proceeds of sale of the items being auctioned for sale (which proceeds are treated as a revenue stream for either the General Fund or the Drug Fund, depending upon the item).

### **Options**

Disposition of personal property seized or otherwise held by the Franklin Police Department as a result of law enforcement proceedings and not returnable to its owner could be handled the same as disposition of the City's personal property that has been declared surplus. However, the Police Department has unique needs for the sale by electronic auction of personal property seized or otherwise held as a result of law enforcement proceedings, which needs are not met by the City's service provider for the sale by electronic auction of the City's personal property that has been declared surplus.

### **Recommendation**

Staff recommends that the City award, contingent upon Law Department and City Administrator approval of City Contract No. 2014-0142, to PropertyRoom.com, Inc. of Frederick, MD for the nonexclusive disposition of personal property seized or otherwise held by the Franklin Police Department as a result of law enforcement proceedings and not returnable to its owner. Purchasing Manager Brian Wilcox is of the opinion that the recommended award appears to be in compliance with City purchasing policy.



## Property Disposition Service Agreement

Version date: 2014-May

Owner Name: City of Franklin, Tennessee	NJPA Agreement: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Mailing Address: P.O. Box 305	NJPA Member #: 2081
City, State, Zip Franklin, TN 37065-0305	Signature Date:
Telephone: 615.550.6692	Automatic Renewal: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Fax: 615.550.0079	Expiration Date: (if not automatic renewal) <small>Same as NJPA Contract ID No 042911-PRC maturity date, which may be extended.</small>
Primary Contact Name: Ms. Gayle Saylor Evidence Technician, Franklin Police Dept. Primary Contact Phone: 615.550.6808	Primary Contact Email: gayle.saylor@franklintn.gov

This agreement ("Agreement") documents the terms and conditions under which PropertyRoom.com, Inc., a Delaware corporation ("Contractor"), will provide storage, auction and disposition services ("Services") on behalf of owner named above ("Owner").

At request of Owner, Contractor agrees to establish separate accounts under the terms of this Agreement for any other departments or agencies related to Owner for purposes of complying with Owner's financial accounting requirements. Contractor also recognizes the common practice in many jurisdictions to permit related agencies the opportunity to use the services in this Agreement (to "Piggyback") according to the terms and pricing contained herein.

Contractor further stipulates that any municipal, county, or state governmental agency located in the same state as Owner may also Piggyback this Agreement. Owner acknowledges Contractor has advised Owner about Contractor's nationally awarded contract vendor status from the National Joint Powers Alliance ("NJPA") for Services described in this Agreement, and Owner can obtain complete details of the related RFP process at [www.NJPACoop.org](http://www.NJPACoop.org).

This Agreement comprises the entire agreement between Contractor and Owner relating to the storage, auction and disposition of property and supersedes any prior understandings, agreements, or representations by or between the parties, be they written or oral.

1. **Items Requiring Services.** Owner will designate items of property ("Property") it desires to provide to Contractor for Services. For the sake of clarity, in this Agreement, Property means smaller items, such as jewelry, electronics, bicycles and surplus spare parts, as well as larger items, such as cars, trucks, planes or industrial compressors. Contractor retains the right to accept or reject certain Property in its sole discretion.
2. **Title to Property.** Owner shall retain legal title to Property until it is purchased by auction or otherwise disposed of in accordance with the Agreement, at which time Owner will be deemed to have transferred title to the purchaser or other acquirer of the Property (the "Buyer"). Owner appoints Contractor as its representative and instrumentality to hold and offer for sale on Owner's behalf the Property, in accordance with this Agreement. Owner appoints Contractor as its attorney-in-fact to sign any and all documents necessary to assign to Buyers all of Owner's right, title and interest in and to Property sold or disposed. Owner's Property shall, at all times before sale or disposition, be subject to the direction and control of Owner. Cash receipts, accounts receivable, contract rights, notes, general intangibles, and other rights to payment of every kind, arising out of the sales and dispositions of Property (collectively the "Proceeds") belong to Owner, subject to payment of amounts owed by Owner to Contractor and to third parties pursuant to this Agreement, which amounts shall be disbursed by Contractor on behalf of Owner as provided herein.
3. **Services Offered.** Contractor offers four Services for storage, auction and disposition of Property. Owner may use all or any combination of Services depending on Owner's needs as well as the type and nature of Property. Descriptions below summarize the four Services. Attached data sheets, incorporated by reference, provide more details for each Service.

As and when applicable, for all four Services, Contractor agrees to use commercially reasonable efforts to store and auction Property as well as to dispose of Property not purchased at auction, subject to the ultimate control of Owner. Contractor shall sell and dispose of Property "as is" without any liability to Owner. Contractor is solely responsible for identifying and resolving sales and use tax issues arising from Property sales, including charging, collecting and remitting such taxes.

- a. **Portable Service.** The Portable Service applies to Property items small enough to be picked-up and loaded onto box trucks. Contractor will, on Owner's behalf as its representative, pick-up, test (if applicable and practicable), erase or destroy (in the case of electronic goods) hard disks and SIM cards, photograph, research, store, and list Property for sale by internet auction to the public on one or more domains selected by Contractor. Typical Property processed under the Portable Service include law enforcement property and evidence items approved for disposition, seized items, municipal surplus, and abandoned property as well as lost and found items.
- b. **Gold Service.** The Gold Service applies to Property items too large for pick-up in a box truck and for which Owner agrees to auction-in-place. At Owner's request, Contractor will list such Property for sale by internet auction to the public on one or more domains selected by Contractor. Contractor will use descriptions and digital photographs supplied by Owner. For the sake of clarity, with Gold Service, Contractor will not pick-up and store Property but rather Owner will maintain physical control until transfer of title to Buyers. Contractor will complete auctions and collect funds from Buyers and then provide Owner and Buyers mutual contact information to facilitate Property pick-up by Buyers. Typical Property processed under the Gold Service includes cars and trucks located too far from storage yards to make it economically feasible to tow; additional items include large compressors, generators, etc.
- c. **Titanium Service.** The Titanium Service applies to Property vehicles seized and or impounded by law enforcement agencies. At Owner's request, Contractor will receive tows of seized and impounded vehicles at local yard facilities ("Yards"), storing vehicles while awaiting Owner decision on whether to release a vehicle to a citizen or send to auction. For release-to-citizen vehicles ("Released Vehicles"), Contractor will process paperwork and collect storage fees from citizens. Alternatively, Contractor will, on Owner's behalf as its representative, clean, photograph, store and list the Property for sale by internet auction to the public. Contractor offers Titanium Services in conjunction with subcontractor, Copart, Inc., a publicly traded company ("Subcontractor") with approximately 150 Yards around the U.S.

- d. **Platinum Service.** The Platinum Service applies to the auctioning of municipal fleet vehicles and surplus equipment, i.e., Property. At Owner's request, Contractor will tow the Property to, or take delivery at Yards. Contractor will, on Owner's behalf as its representative, tow, verify drivability, clean, photograph, store and list Property for sale by internet auction to the public. Contractor offers Platinum Services in conjunction with Subcontractor. Typical Property sold under this service include municipal fleet vehicles such as automobiles and light trucks as well as specialty equipment such as fire trucks, ambulances, trash collection trucks, and other large public works equipment.

#### 4. Term and Termination.

- a. The Agreement will become effective upon signature by the parties (the "Signature Date") and, as indicated in the top section of this Agreement, will continue for either:
  - (1) An initial term of 1-year from the Signature Date and thereafter will automatically renew for consecutive 1-year terms unless written notice of non-renewal is provided by either party to the other at least 60 days prior to the expiration of the then current term; or
  - (2) An initial term specified by the Owner of at least 1-year, after which a renewal agreement will be required by the Owner. If Owner selects this option, Contractor will send Owner a Notice of Renewal 60 days prior to Agreement expiration.
- b. The Agreement may be terminated by either party upon 30 days prior written notice to the other party.
- c. The rights of the parties to terminate the Agreement are not exclusive of any other rights and remedies available at law or in equity, and such rights will be cumulative. The exercise of any such right or remedy will not preclude the exercise of any other rights and remedies.
- d. Notwithstanding any termination by either party of the Agreement, Contractor will continue to remit Proceeds arising under the Agreement (net of amounts owed by Owner to Contractor and to third parties pursuant to the Agreement) in connection with any sales made before the effective date of the termination. At the time of termination, any unsold inventory shall continue to be auctioned by Contractor or disposed on behalf of Owner or returned to Owner, at Owner's election and cost.

#### 5. Allocation of Sales Proceeds.

For all Services, "Winning Bid" means the highest amount committed and paid by any auction participant ("Buyer") for a Property item sold. For the sake of clarity, Winning Bid does not include shipping, buyer or other fees, nor does Winning Bid mean or include an amount that a Buyer commits to pay but later fails to pay.

##### a. Portable Service

- (1) **Sales Price.** Total Proceeds paid by Buyer shall be called "Sales Price." Sales Price shall include the Winning Bid plus fees (the "Fees"), such as shipping and handling, taxes, and insurance costs associated with the transaction and paid by Buyer.
- (2) **Transaction Costs.** Contractor shall utilize Fees, and not the Winning Bid, to pay or remit costs for shipping and handling, taxes, and insurance.
- (3) **Contractor Commission.** For each item of Property, Owner will pay to Contractor a fee (the "Contractor Commission") equal to 50% of the first \$1,000 of the Winning Bid and 25% of the Winning Bid portion, if any, that exceeds \$1,000. The amount of the Winning Bid remaining after deduction and payment of the Contractor Commission will be called "Owner's Gross Proceeds".
- (4) **Processing Costs.** Credit card processing costs ("Credit Card Cost") and affiliate processing fees (the "Affiliate Fees," which include commissions and processing costs paid to third parties if such a third party sent the winning bidder to the website), will be borne by Owner and Contractor in proportion to the ratio of Owner's Gross Proceeds to Contractor Commission. Owner's portion of Credit Card Cost and Affiliate Fees (collectively, the "Processing Costs") will be paid by Contractor to applicable third parties on Owner's behalf.
- (5) **Net Proceeds.** "Owner's Net Proceeds" shall mean the amount of the Winning Bid paid to Owner after deduction and payment of Contractor Commission and Processing Costs.

- (6) **Fuel Surcharge.** For Portable Services, Contractor does not charge pick-up fees, hourly labor rates or mileage charges. However, if and when fuel prices rise above a level as shown in the schedule below, a fuel surcharge ("Fuel Surcharge") will be paid to Contractor out of Owner's Net Proceeds for each manifest of Portable items. Contractor tracks benchmark average retail diesel prices as published online by the Energy Information Administration of the U.S. Department of Energy and resets the Fuel Surcharge quarterly based on average weekly pricing from the prior quarter. Fuel Surcharges, if any, are deducted from monthly Owner's Net Proceeds.

**Fuel Surcharge Schedule**

Retail Diesel (per gal)	Fuel Surcharge*
< \$ 2.50	\$ 0.00
\$ 2.50 to \$ 2.99	\$ 12.40
\$ 3.00 to \$ 3.49	\$ 24.80
\$ 3.50 to \$ 3.99	\$ 37.20
\$ 4.00 to \$ 4.49	\$ 49.60**

- \* Divides across locations and/or sub-accounts picked-up same day
- \*\* Table continues at same rate of \$12.40 increments per \$0.50 per gal change in Retail Diesel.

- (7) **Disposal.** To the extent that Property is not sold by auction, Contractor will dispose of Property in a commercially reasonable manner, including, but not limited to, sending to recycling, landfill, or scrap processor. Owner understands and agrees:
  - (a) For Property not sold by Auction, disposition activities create additional Contractor processing costs (the "Disposal Costs") and potentially a disposition Sales Price (the "Disposition Proceeds").
  - (b) Disposal Costs include, but are not limited to, labor cost of reloading Property onto a truck, labor and vehicle costs associated with transporting Property for disposition, and third-party fees, such as landfill, recycling, and hazardous material disposal fees.
  - (c) Disposition Proceeds include, but are not limited to, a Sales Price obtained for scrap metal.
  - (d) Contractor will bear the burden of Disposal Costs.
  - (e) Contractor will retain Disposition Proceeds, if any, as an offset to Disposal Costs, except if Disposition Proceeds for an item of Owner Property exceed \$250, in which case Owner shall be entitled to retain a portion of Disposition Proceeds calculated in accordance with Section 5a above, provided that Disposition Proceeds will be deemed be equivalent to "Winning Bid" and the Disposal Costs will be deducted as a processing cost under Section 5a(4) above.
  
- b. **Gold Service**
  - (1) **Sales Price, Transaction Costs, Processing Costs & Net Proceeds.** Same as in 5a(1), 5a(2), 5a(4) and 5a(5).
  - (2) **Contractor Commission.** For each item of Property sold at auction, Owner will pay to Contractor a fee equal to 5% of the Winning Bid. In addition, Contractor will separately charge Buyer a 15% buyer's premium paid directly to Contractor by Buyer (the "Buyer's Premium").
  
- c. **Titanium Service.** Owner will pay Contractor a "Contractor Commission", "Tow Fees", and "Storage Fees" as described below
  - (1) **Contractor Commission.** For each item of Property sold at auction, Owner will pay to Contractor a fee equal to 12.5% of the Winning Bid.
  - (2) **Tow Fees.** For vehicles that can be hauled on a standard vehicle transporter, such as automobiles and light trucks, tow services are provided for free within thirty nautical miles of any Yard. A \$10 tow fee applies for every additional 10 nautical miles, or portion thereof, over

- the first 30 free nautical miles. For over-sized vehicle tows (e.g., cranes, buses, backhoes, etc.) Contractor will seek competitive bids from several haulers and Owner may choose which company to use. In addition, fees for acquiring titles on behalf of Owner, if any, will be borne entirely by Owner.
- (3) **Buyer Fees.** Subcontractor will charge fees to Buyers for additional services, such as lot access, vehicle loading assistance, shipping and transportation, and other services.
  - (4) **Storage Fees.** For Owner vehicles sold at auction, daily storage fees ("Owner Storage Fees") equal \$5.00 per vehicle per day. For Release Vehicles, daily storage fees ("Citizen Storage Fees") equal \$10.00 per vehicle per day. Owner has the right to charge citizens higher storage fees for Release Vehicles and Contractor will collect such fees along with other citizen fees set by Owner, such as tow charges, administrative charges, court processing fees, etc. ("Citizen Payments").
  - (5) **Net Proceeds.** "Owner's Net Proceeds" shall mean the amount of the Winning Bid plus Citizen Payments (if any) paid to Owner after deduction and payment of Contractor Commission, Tow Fees (if any), Owner Storage Fees, Citizen Storage Fees, and any other fees for ancillary services requested by Owner, such as title fees, decal removal, etc.
- d. **Platinum Service.** Owner will pay Contractor a "Contractor Commission" and "Tow Fees" as described below. Note: There are no storage fees for Platinum accounts.
- (1) **Contractor Commission.** Same as 5c(1).
  - (2) **Tow Fees.** Same as 5c(2).
  - (3) **Buyer Fees.** Same as 5c(3).
  - (4) **Net Proceeds.** Same as 5c(5)
6. **Payment Terms.** Once a month, Contractor will remit to Owner the Owner's Net Proceeds arising from completed sales and Services rendered during the prior month. Sales are deemed completed when all items comprising a line item on the original manifest or other list of Property are sold. With each payment of Owner's Net Proceeds, Contractor will make available to Owner, online, a report setting forth the following information for the immediately preceding month:
- a. Completed sales during the prior month, including the total amount of related Proceeds collected, Citizen Remittances (if any), Contractor Commissions, the Owner and Contractor share of Processing Costs, Tow Fees (if any), Owner and Citizen Storage fees (if any), any applicable Title Fees and/or Fuel Surcharges, and Owner's Net Proceeds;
  - b. Other dispositions of Property during the month; and
  - c. The Property, if any, inventoried by Contractor at end of month.
7. **Contractor Obligations.** With respect to Contractor's delivery of Services:
- a. Contractor will exercise due care in the handling and storage of Property;
  - b. Contractor shall keep Property free of liens, security interests, and encumbrances, and shall pay when due all fees and charges with respect to the Property;
  - c. Contractor shall sign and deliver to Owner any UCC-1 financing statements or other documents reasonably requested by Owner;
  - d. Contractor shall obtain and maintain insurance in an amount (determined by Contractor) not less than the replacement value of Property in its possession. The insurance will cover the Property against fire, theft, and extended coverage risks ordinarily included in similar policies. Contractor shall give Owner a certificate or a copy of each of the above upon Owner's request.
  - e. Contractor agrees, in order to help Owner comply with local public notification statutes, if any, as well as to help Owner achieve higher Winning Bids, to allow Owner to place one or more clickable links (the "Links") from one or more Owner websites to [www.PropertyRoom.com](http://www.PropertyRoom.com) or other websites Contractor uses for sale of Owner items. Contractor agrees to supply technical requirements for Links to Owner.
8. **Owner Obligations.** While this Agreement is not exclusive and has no minimum requirements, Owner will use reasonable efforts to provide Contractor such Property as becomes available for sale. Owner will complete paperwork reasonably necessary to convey custodial possession of Property

items to Contractor, including a written manifest or list that describes the items of Property in sufficient detail for identification.

Owner agrees it will not knowingly provide Property that is illegal or hazardous or infringes the intellectual property rights of any third party ("Prohibited Property"), including but not limited to explosives, firearms, counterfeit or unauthorized copyrighted material ("knock-offs"), poisons or pharmaceuticals. In the event Contractor determines in good faith that any Property consists of Prohibited Property, Contractor shall have the right to immediately suspend or cancel (even if completed) any auction or disposal of such Property and may refuse to sell, offer to sell or otherwise dispose of such Property. To the extent requested by Contractor, Owner will provide reasonable assistance in determining whether such Property in fact consists of Prohibited Property.

In the event any Buyer asserts a claim that any Property consists of Prohibited Property and Contractor determines in good faith that such claim is reasonably likely to be determined to be correct, Contractor may, in its discretion, accept the return of such Property and refund the Sales Price for such Property to Buyer, in which event Contractor may then destroy such Property or return such Property to Owner and such refunded Sales Price shall be deducted from future remittances of Owner's Net Proceeds made by Contractor.

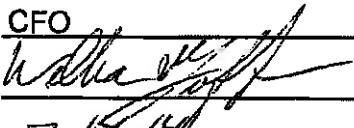
9. **Restrictions on Bidding.** Contractor and its employees and agents may not directly or indirectly bid for or purchase auctioned Property on Contractor websites.
10. **Representations and Warranties of Owner.** Owner hereby represents warrants and covenants as follows (the "Conditions Precedent"):
  - a. Property delivered to Contractor is available for sale to the general public without any restrictions or conditions whatever and does not consist of Prohibited Property; and
  - b. Owner has taken necessary actions for Owner to auction the Property or to transfer title to the Property to Buyers.
11. **Books and Records.** Contractor will keep complete and accurate books of account, records, and other documents with respect to the Agreement ("Books and Records") for at least 3 years following Agreement expiration or termination. Upon reasonable notice, Books and Records will be available for inspection by Owner, at Owner's expense, at the location where Books and Records are regularly maintained, during normal business hours.
12. **Assignment.** The Agreement may not be assigned, in whole or in part, by either of the parties without the prior written consent of the other party (which consent may not be unreasonably withheld or delayed). Notwithstanding the foregoing, an assignment of the Agreement by either party to any subsidiary or affiliate or a third party acquisition of all or substantially all of the assets of such party will not require the consent of the other party, so long as such subsidiary, affiliate or acquiring entity assumes all of such party's obligations under the Agreement. No delegation by Contractor of any of its duties hereunder will be deemed an assignment of the Agreement, nor will any changes in control or any assignment by operation of law by either party. Subject to the restrictions contained in this section, the terms and conditions of the Agreement will bind and inure to the benefit of each of the respective successors and assigns of the parties hereto.
13. **Notices.** Any notice or other communication given under the Agreement will be in writing and delivered by hand, sent by facsimile (provided acknowledgment of receipt thereof is delivered to the sender), sent by certified, registered mail or sent by any nationally recognized overnight courier service to the addresses provided on the signature page of the Agreement. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.
14. **Interpretation.** Whenever possible, each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent



of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement. The Agreement headings are inserted for convenience of reference only and shall not constitute a part hereof.

- 15. **Governing Law.** The internal law, and not the law of conflicts, of the state in which Owner is located will govern all questions concerning construction, validity and interpretation of the Agreement and the performance of the obligations imposed by the Agreement. The proper venue for any proceeding at law or in equity will be the state and county in which the Owner is located, and the parties waive any right to object to the venue.
- 16. **Further Assurances.** Contractor and Owner will each sign such other documents and take such actions as the other may reasonably request in order to effect the relationships, Services and activities contemplated by the Agreement and to account for and document those activities.
- 17. **Relationship of the Parties.** No representations or assertions will be made or actions taken by either party that could imply or establish any joint venture, partnership, employment or trust relationship between the parties with respect to the subject matter of the Agreement. Except as expressly provided in the Agreement, neither party will have any authority or power whatsoever to enter into any agreement, contract or commitment on behalf of the other, or to create any liability or obligation whatsoever on behalf of the other, to any person or entity. Whenever Contractor is given discretion in the Agreement, Contractor may exercise that discretion solely in any manner Contractor deems appropriate. Contractor shall not be liable to Owner for any Losses incurred by reason of any act or omission performed or omitted by Contractor in good faith on behalf of the Owner and in a manner reasonably believed to be within the scope of authority conferred on Contractor by the Agreement, except that Contractor shall be liable for any such Losses incurred by reason of Contractor's fraud, gross negligence or willful misconduct.
- 18. **Force Majeure.** Neither party will be liable for any failure of or delay in performance of the Agreement for the period that such failure or delay is due to acts of God, public enemy, war, strikes or labor disputes, or any other cause beyond the parties' reasonable control (each a "Force Majeure"), it being understood that lack of financial resources will not to be deemed a cause beyond a party's control. Each party will notify the other party promptly of any Force Majeure occurrence and carry out the Agreement as promptly as practicable after such Force Majeure is terminated. The existence of any Force Majeure will not extend the term of the Agreement.

This Agreement, including all of the terms and conditions set forth above as well as the data sheet attachments for the four Contractor service offerings and any addendum prepared by the Owner (indicate inclusion of Owner Addendum by checking here: ) comprises the entire Agreement between the Parties. This Agreement cannot be modified except in writing by the duly authorized representatives of both parties.

	OWNER	CONTRACTOR
Signor Name:	<u>Dr. Ken Moore</u>	<u>William V. Griffith</u>
Signor Title:	<u>Mayor</u>	<u>CFO</u>
Signature:	<u></u>	
Date:	<u></u>	<u>7-18-14</u>

## Addendum to Property Disposition Services Agreement

This addendum is attached to and made part of **City of Franklin, Tennessee Property Disposition Services Agreement** dated \_\_\_\_\_ (the "Agreement"). In the event of a conflict between the provisions of the Agreement and this Addendum, the terms of this Addendum shall govern.

The Agreement is hereby modified as follows:

**Paragraph four (4) of Page 1, is modified to read:**

This Agreement, including Owner's Procurement Terms and Conditions attached hereto and hereby incorporated by reference, comprises the entire agreement between Contractor and Owner relating to the storage, auction and disposition of property and supersedes any prior understandings, agreements, or representations by or between the parties, be they written or oral.

**Section 8: Owner Obligations: The first sentence is modified to read:**

While this Agreement is not exclusive and has no minimum requirements, Owner will use reasonable efforts to provide Contractor such Property it chooses to dispose of pursuant to this Agreement as such property becomes available for sale.

**Section 10: Representations and Warranties of Owner: The first sentence is modified to read:**

Owner hereby represents warrants and covenants, to the extent permitted by Tennessee law, as follows (the "Conditions Precedent"):

**Owner**

By: \_\_\_\_\_ Date

Name: Dr. Ken Moore, Mayor

**PropertyRoom.com, Inc.**

By:  \_\_\_\_\_ Date 7-17-14

Name: William V. Griffith, CFO

# PROPERTY AND EVIDENCE DISPOSITION

## *Auction Services*

You have enough to do without auctioning property and evidence.  
That's where PropertyRoom.com comes in.

PropertyRoom.com's Property & Evidence Auction Services specialize in selling abandoned, seized, and recovered property as well as evidence items no longer required to be retained by your department. We also accept items of surplus municipal property that can easily be transported by our trucks back to our processing centers.



### Property Pick-Up & Evaluation

- Regularly scheduled pick-ups by our fleet of trucks
- We supply manifest forms and customized, account specific bar code labels
- Photographing, cleaning, sorting, and assessing the condition of assets
- Reasonable repairs of high value assets to maximize return
- Research and evaluation of assets to enhance their salability
- Appraisals or certification when we feel that would increase bidding interest
- Live customer support for your agency during business hours



### Online Auction

- Offer your property to our more than 1.6 million registered bidders
- Conduct online auction using our proprietary technology
- Process payments from successful bidders either by credit card, PayPal, or wire transfer
- Ship assets to purchasers
- 24/7/365 email support to customers
- Consistent marketing support to increase visibility and end value



### Post Auction Accountability

- Remit payments to you each month
- Detailed audit trail for all property provided to us
- Online reports available to you 24/7/365 for your internal reporting and accountability requirements
- Additional Added Service: Return of lost or stolen assets when citizens prove any asset on our site is rightfully theirs



### PropertyRoom.com's proprietary, online audit and asset tracking system, Agency Web, allows you 24/7/365 visibility of your property

- Track your department's property online 24/7/365
- Full transparency of current and historic asset records from pick-up to purchaser
- Access full reporting and audits by manifest and/or asset
- Search by SKU, case ID or any other reference code you provide



### With PropertyRoom.com you'll benefit from:

- Disciplined purges of your property and evidence rooms
- Freed up time for more mission critical work
- Higher returns on property sales from attracting more and better bidders
- Detailed audit reports to maintain tight accountability on the assets you are responsible for protecting



**PROPERTYROOM.COM**

# SOLD IN-PLACE ASSETS

## Gold Auction Services

**You have enough to do without auctioning vehicles and equipment.  
That's where PropertyRoom.com comes in.**

PropertyRoom.com's Gold Auction Services specialize in selling abandoned, seized, and forfeited vehicles as well as fleet vehicles and other large pieces of property which do not lend themselves to truck transport to our processing centers. Our Gold Auction Services include:

- Uploading up to 30 digital photographs and a description from your staff
- Describing and listing your vehicles or other equipment in our online auction catalog
- Conducting an online auction that reaches our more than 1.6 million registered bidders
- Selling your property to the highest bidder
- Collecting the successful bid payment
- Remitting the proceeds due to your agency
- Providing detailed audit trails for your internal reporting and accountability requirements



PropertyRoom.com's proprietary, online audit and asset tracking system, Agency Web, allows you 24/7/365 visibility of your property

- Track your department's property online 24/7/365
- Full transparency of current and historic asset records from pick-up to purchaser
- Access full reporting and audits by manifest and/or asset
- Search by SKU, case ID or any other reference code you provide



With PropertyRoom.com you'll benefit from:

- Ease of use and reduced time spent on routine processing
- Higher returns on property sales from attracting more and better bidders
- Detailed audit reports to maintain tight accountability on the assets you are responsible for protecting



**PROPERTYROOM.COM**

# HAUL AWAY AUCTIONS

## *Platinum Auction Services*



**You have enough to do without auctioning vehicles and equipment. That's where PropertyRoom.com comes in.**

PropertyRoom.com and Copart, Inc., both leaders in online auctions, have joined forces to create a full-service solution for the public sector marketplace. We specialize in selling abandoned, seized, and forfeited vehicles as well as fleet vehicles. Our Platinum Auction Services include:

- Towing vehicles from either your agency storage location or from your contract local tow companies
- Cleaning and photographing your vehicles
- Describing and listing your vehicles in our online auction catalog
- Conducting public inspection periods
- Responses to bidder's questions handled by our Customer Support team
- Conducting an online auction that reaches a local as well as national and international audience of bidders
- Public inspections held off your premises – reducing liability and risk of lawsuits
- Selling your vehicles to the highest bidder
- Collecting the successful bid payment
- Facilitating title and registration transfer
- Delivering the vehicle to the successful bidder
- Remitting the proceeds due to your agency
- Providing detailed audit trails for your internal reporting and accountability requirements



With PropertyRoom.com, you'll benefit from:

- Ease of use and reduced time spent on routine processing
- Less cost for storage and towing charges
- Higher returns on vehicle sales from attracting more and better bidders
- Automated processing of title and registration documents
- Detailed audit reports to maintain tight accountability on the assets you are responsible for protecting
- 100% solution to your disposition needs because we also process totaled/wrecked and salvage title vehicles



PropertyRoom.com's proprietary, online audit and asset tracking system, Agency Web, allows you 24/7/365 visibility of your property

- Track your department's property online 24/7/365
- Full transparency of current and historic asset records from pick-up to purchaser
- Access full reporting and audits by manifest and/or asset
- Search by SKU, case ID or any other reference code you provide



# ABANDONED, SEIZED, FORFEITED, & IMPOUND VEHICLES

## *Titanium Auction Services*

**You have enough to do without auctioning vehicles.  
That's where PropertyRoom.com comes in.**

PropertyRoom.com and Copart, Inc., both leaders in online auctions, have joined forces to create a full-service solution for the public sector marketplace. We specialize in selling abandoned, seized, and forfeited vehicles as well as fleet vehicles. Our Titanium Auction Service includes:

- Towing vehicles from either your agency storage location, impound lot, or local tow companies
- Storing your vehicles while awaiting resolution of their legal status or while awaiting citizen redemption
- Processing citizen returns upon proof of clearance from your agency
- Scheduling for sale all vehicles approved for disposition by your agency
- Cleaning and photographing your vehicles
- Describing and listing your vehicles in our online auction catalog
- Conducting public inspection periods
- Public inspections held off your premises - reducing liability and risk of lawsuits
- Conducting an online auction that reaches a local as well as national and international audience of bidders
- Responses to bidder's questions handled by our Customer Support team
- Selling your vehicles to the highest bidder
- Collecting the successful bid payment
- Facilitating title and registration transfer
- Delivering the vehicle to the successful bidder, and remitting the proceeds due to your agency
- Providing a detailed audit trail with all bids received, the successful bidder, the payment terms, and the title transfer information



With PropertyRoom.com you'll benefit from:

- Ease of use and reduced time spent on routine processing
- Less cost for storage and towing charges
- Higher returns on vehicle sales from attracting more and better bidders
- Automated processing of title and registration documents
- Detailed audit reports to maintain tight accountability on the assets you are responsible for protecting
- 100% solution to your disposition needs because we also process totaled and wrecked vehicles



PropertyRoom.com's proprietary, online audit and asset tracking system, Agency Web, allows you 24/7/365 visibility of your property

Track your department's property online 24/7/365

Full transparency of current and historic asset records from pick-up to purchaser

Access full reporting and audits by manifest and/or asset

Search by SKU, case ID or any other reference code you provide



**PROPERTYROOM.COM**

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions or any Statement of Work without the prior written consent of the other party. These Standard Procurement Terms and Conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under these Standard Procurement Terms and Conditions.
2. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of this procurement.
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
4. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) City business days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which these Standard Procurement Terms and Conditions may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin

Attn: Purchasing Manager

Re: City of Franklin Purchasing Office Solicitation No. n/a n/a

109 Third Ave. South

P.O. Box 305

Franklin, TN 37065-0305

FAX: 615/550-0079

E-mail: [purchasing@franklintn.gov](mailto:purchasing@franklintn.gov)

In the case of Vendor:

Propertyroom.com, Inc.

Attn: Contract & Proposal Coordinator

5257 Buckeystown Pike

Suite 475

Frederick, MD 21704

FAX: 240/230-0229

E-mail: [kathryncoles@propertyroom.com](mailto:kathryncoles@propertyroom.com)

## Standard Procurement Terms and Conditions City of Franklin, Tennessee

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5. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
6. Derivative Works. To the extent that the Agreement contains Vendor's reservation of rights, such definitions and limitations are superseded by the following: "Derivative Work" means a program that is based on or derived from one or more existing programs or components. If the original software is modified to create a new program, a derived work is created. If the original software was designed to accept plug-ins or drivers using a defined mechanism, such a driver or plug-in does not form a derived work. Linking to a library in the way it was designed to be interfaced with, does *not* constitute deriving a work. "Derivative work" is *not* the data that the Licensee inputs, manipulates, modifies or otherwise improves, nor the images resulting therefrom.
7. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
8. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
9. Warranties/Limitation of Liability/Waiver. City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
10. Severability. If any term or provision of these Standard Procurement Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Procurement Terms and Conditions will not be affected.



## **Standard Procurement Terms and Conditions**

### **City of Franklin, Tennessee**

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11. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, the provisions of these Standard Procurement Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Procurement Terms and Conditions.
  
12. Indemnification. Vendor agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the work done in connection with the contract of which this agreement is a part, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.
  
13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
  
14. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
  
15. Termination. Unless the City has indicated otherwise for a specific procurement solicitation, either party may terminate these Standard Procurement Terms and Conditions, with or without cause, upon thirty (30) calendar days' notice to the other. Upon termination by the vendor, the City shall be entitled to retain ownership of any and all goods and equipment purchased. Upon termination by the City, the vendor shall be entitled to receive any amounts due as a result of goods and equipment already delivered and/or services already rendered; however, the City shall maintain ownership and control of any goods and equipment purchased. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30<sup>th</sup> calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.

## Standard Procurement Terms and Conditions City of Franklin, Tennessee

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16. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, by either party, the non-breaching party shall be entitled to terminate these Standard Procurement Terms and Conditions without notice, with all of the remedies it would have in the event of termination under section 10 ("Severability") above, and may also have such other remedies as it may be entitled to in law or in equity.
  
17. Default. If Vendor fails to perform or comply with any provision of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, then the City (i) may cancel the purchase award and/or the accompanying contract or agreement or purchase order, in whole or in part, without penalty or protest by Vendor; (ii) may consider such failure to perform or comply as a breach of contract; (iii) reserves the right to purchase its requirements from the vendor that submitted the next lowest and best responsive and responsible bid, or the vendor that submitted the next best proposal, if that vendor will still honor that bid or proposal, or to seek new bids or proposals, or to pursue one or more other options available to the City in compliance with its then current purchasing policy; and (iv) may hold the defaulting vendor liable for all damages provided by law, including cost of cover.
  
18. Entire Agreement. These Standard Procurement Terms and Conditions, including any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Standard Procurement Terms and Conditions. The terms and conditions of these Standard Procurement Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Procurement Terms and Conditions by section number and signed by an authorized representative of each party.
  
19. Survival. These Standard Procurement Terms and Conditions shall survive the completion of or any termination of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany.