

RECITALS

H **WHEREAS**, Humboldt County (“Client”) desires for GovEase to facilitate payments for one or more auctions through GovEase’ solution, and GovEase utilizes Municipal Services Bureau (MSB) to serve as its vendor to provide an online payment acceptance solution, including credit/debit card E-check and wire transfer of certified funds; and,

WHEREAS, MSB is in the business of providing payment processing services and desires to provide an online payment acceptance solution, including credit/debit card and E-Check for the Client.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the Parties hereby mutually agree as follows:

AGREEMENT

- I. **SCOPE OF SERVICES:** MSB will, as an MSP of Fifth Third bank, process payments received via credit card, debit card, E-check, and/or wire transfer of certified funds in relation to auctions facilitated by GovEase and will remit such payments to the Client and not GovEase.
- II. **GENERAL PROVISIONS:**
 - A. **Independent Contractor:** MSB is an independent contractor of GovEase and is free to perform services for other clients. Personnel performing services under this Agreement shall always be under MSB’s exclusive direction and control and shall be employees of the Contractor. Contractor shall pay all wages and salaries and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, benefits, unemployment compensation, worker's compensation, and similar matters.
 - B. **Cooperation and Compliance:** MSB requires cooperation and support from GovEase to provide the Services and to ensure proper functionality; this includes ensuring appropriate data interfaces are established since the Parties acknowledge that MSB cannot perform the Services without the necessary payment related data. The Parties and their vendors will work together in a cooperative, responsive, and supportive manner to help ensure the success of the program.

It is also acknowledged that the Client and any Client vendors in connection with the Services provided may be required to comply with certain laws, rules, or standards, including those applicable to or imposed by the payment card industry or card networks (e.g. card network rules, PCI-DSS, NACHA and EFTA, and bank card merchant rules and regulations) The Rules Summary, as changed or updated by MSB from time to time, is a summary of key operating regulations, including but not limited to card association rules that govern this Agreement. The Client agrees to fully cooperate with MSB and take reasonable and appropriate steps to help ensure applicable compliance with above referenced rules and requirements. Additionally, the Client agrees to fully assist and cooperate with MSB as needed to ensure that MSB may comply with its obligations under any contracts with its processor or merchant bank or under any other industry laws, rules, or standards.

In the event of any changes to laws, regulations, rules, standards, or other material changes impacting compliance, pricing, or operations (including changes imposed upon MSB by its

contracted processor, merchant bank or gateways, as well as those required or imposed by the credit card industry, card networks, etc.) that impact this Agreement, the Services, or the cost thereof, the Parties will work together in good faith to address, resolve and/or comply with those changes. If the parties cannot agree on any such resolution and continuation of the Services by MSB becomes impossible or impracticable, then MSB may promptly suspend services or terminate this Agreement.

MSB does not review or validate the accuracy or integrity of any of the account information (including the personal information or the amounts due or related account or payment data) that is interfaced or otherwise made available or provided to MSB from either the Client or its software providers. MSB shall not be liable for any incomplete, incorrect, or inaccurate account information (or for delays or interruptions in the transmissions or access to said account information).

- C. **Agent of the Payee:** Client acknowledges that MSB is acting as its agent, processing payments for and on behalf of the Client in the Client's name. MSB shall disburse funds to the Client upon processing and settlement, and Client acknowledges further that upon transmittal, MSB is no longer responsible for the funds transmitted.
- D. **Indemnification:** Each Party shall defend, indemnify and hold the other Party harmless and its officers, directors, employees, and agents from any and all claims, liability, losses, or damages (including reasonable attorneys' fees) arising from or in connection with the indemnifying Party's violation of any applicable federal, state, or local law, statute, ordinance, rule, or regulation.

MSB performs payment processing services as explained herein and assumes no responsibility or liability for the Client's business activities, conduct, operations, or for the accuracy or validity of the account and payment information and data MSB receives from the Client or its software providers. Accordingly, to the extent any claims, liability, losses, or damages are made or incurred by or against MSB that are not related to MSB's role as a payment processor, and instead relate directly or indirectly to the business activities, conduct, account and payment data accuracy or validity, or operations of the Client or its software providers, then Client shall fully indemnify, defend, and hold MSB harmless.

- E. **Limitation of Liability and Disclaimer:** Unless otherwise expressly stated in this Agreement, and whether the Parties have been advised of the possibility of such loss, neither Party shall be liable to the other Party in Contract, tort (including but not limited to warranty, negligence or strict liability) or otherwise for indirect, special, incidental, or consequential loss or damages, loss of revenue, lost profits, business or goodwill.

MSB's liability related to or arising out of this Agreement shall not exceed an amount equal to the lesser of (i) actual monetary damages incurred by Client or (ii) amounts paid to MSB for services under this Agreement during the 12-month period immediately preceding the date of incident giving rise to the claim or cause of action.

- F. **Attorney Fees:** The prevailing Party shall have the right to collect from the other Party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.

- G. **Notice:** All notices, requests, demands, and determinations (individually a "Notice") required under this Contract (other than routine operational communications or as otherwise expressly set forth herein), must be in writing and provided by one or more of the following methods of delivery: personal delivery, Registered or Certified Mail (with return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid and proof of delivery provided by courier), facsimile or email. Notices shall be provided to the appropriate person at the receiving Party at the address listed below or to such address as a Party may designate by a Notice given in compliance with this section.
- H. **Payments Deposited with Municipal Services Bureau:** The County agrees that MSB is authorized to deposit Payments into the account designated by the County for receipt of funds processed by MSB. The County further agrees that MSB shall be deemed to have fully satisfied its obligations to County under this Agreement upon depositing the Payments into the County's account.

To Client:

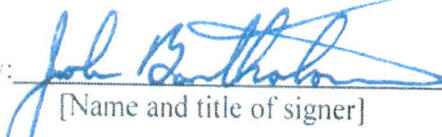
Humboldt County Treasurer-Tax Collector
825 5th Street
Eureka, CA 95501

To MSB:

Gila LLC d/b/a Municipal Services Bureau
325 Daniel Zenker Drive, Suite 3
Horseheads, NY 14845
Attention: Elye Sackmary
Phone: 512-619-5262
Fax: 888-909-4727


IN WITNESS HEREOF, the Parties hereto have executed this Contract.

[COUNTY NAME] Humboldt County

By: 

[Name and title of signer]
John Bartholomew
Treasurer-Tax Collector

GILA LLC d/b/a MUNICIPAL SERVICES BUREAU

By: 

Elye Sackmary, CPM
President & CEO