

Agenda Summary Report (ASR)

Franklin County Board of Commissioners

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| DATE SUBMITTED: 07/13/2021 | PREPARED BY: Whitney Hottell |
| Meeting Date Requested: 07/20/2021 | PRESENTED BY: Click here to enter text. |
| ITEM: (Select One) <input checked="" type="checkbox"/> Consent Agenda | Brought Before the Board Time needed: |
| SUBJECT / ISSUE: Approve request for Profession Service Agreement with GovEase | |
| FISCAL IMPACT: N/A | |
| BACKGROUND: Franklin County Treasurer's Office would like to continue to receive public interest advertising and auction services for tax-foreclosure properties. | |
| RECOMMENDATION: Approve request for Profession Service Agreement with GovEase | |
| COORDINATION: Josie Koelzer – Treasurer Ruslan Stetskiy – Chief Deputy Whitney Hottell – Foreclosure Deputy | |
| ATTACHMENTS: (Documents you are submitting to the Board) Resolution | |
| HANDLING / ROUTING: (Once document is fully executed it will be imported into Document Manager. Please list <u>name(s)</u> of parties that will need a pdf) Originals: FC Treasurer (1) Franklin County (1) | |

I certify the above information is accurate and complete.

Whitney Hottell, Foreclosure Deputy

FRANKLIN COUNTY RESOLUTION _____

**BEFORE THE BOARD OF COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**

**IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT
BETWEEN FRANKLIN COUNTY AND GOVEASE**

WHEREAS, GovEase is an Internet advertising and auction services for tax-foreclosure properties; and

WHEREAS, the Treasurer desires to utilize these services to provide the public internet advertising and auction services for tax-foreclosure properties; and

WHEREAS, the signed contract is between GovEase and Franklin County as a whole; and

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and ensure the care of county property and management of county funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into the attached agreement as being in the best interest of Franklin County.

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Professional Service Agreement between GovEase effective immediately.

APPROVED this ___ day of _____, 2021.

**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**

Chairman

Chairman Pro Tem

Member

ATTEST:

Clerk to the Board

Originals: Commissioners Office

**PROFESSIONAL SERVICES CONTRACT FOR ONLINE
AUCTION PORTAL**

between

Franklin County, Washington

And

GovEase Auction LLC

THIS AGREEMENT FOR ONLINE AUCTION PORTAL (“Agreement”) is executed and entered into by and between Franklin County Treasurer (“the Customer”) and GovEase, LLC (“GovEase”) this the 20th day of July, 2021 (the “Effective Date”). In consideration of the promises, rights and obligations set forth below, and intending to be legally bound thereby, the parties hereby agree as follows:

I. Initial Term and Renewal

The term of this Agreement shall commence on the Effective Date and shall continue remain in force until 1 year, unless terminated earlier pursuant to the terms of this Agreement. Provided that neither party is in default hereunder beyond applicable periods of grace and/or notice and cure, upon the conclusion of this initial term, or any renewal term hereunder, this Agreement shall be automatically renewed for additional terms of one (1) year upon all terms, conditions and obligations set forth herein unless either party notifies the other ninety (90) days in advance that they do not intend to renew. To the extent the Agreement’s term extends past the current term of the elected official(s) designated by the Customer to administrate and sign this Agreement on behalf of the Customer, the Agreement shall be subject to cancellation by any subsequently elected official that first assumes office after the Effective Date. Should such a subsequently elected official desire to exercise this option to cancel, they must provide written notice to GovEase of said intention to cancel within thirty (30) days of assuming office or said option shall be deemed to be waived.

II. Scope of Services

1. In exchange for payment by the Customer as set forth in Section III of this Agreement, GovEase will provide the services outlined in **Exhibit “A”** of this Agreement.
2. The services to be performed pursuant to this Agreement shall be performed in accordance with the applicable laws and regulations of the State of Washington.

III. Fees and Billing

1. The fee schedule for all tax sales held during the term of this Agreement shall be set forth as provided in this section, to begin with the 2021 Franklin County Tax Sale. As used in this Agreement, the term “tax sale(s)” shall mean the public offering of sale by Customer of Tax Deeds or Tax Liens on real properties located in the Customer’s jurisdiction with delinquent property taxes pursuant to applicable statutes governing the State of Washington.
2. In consideration of the services to be rendered by GovEase as set forth in this Agreement, the Customer shall pay or cause to be paid to GovEase fees in accordance with **Exhibit “B”** of this Agreement.
3. GovEase shall not be obligated to provide any services hereunder in the event the Customer is more than ninety (90) days delinquent in paying any invoices, provided, however, that GovEase has provided written notice to the Customer that it will cease performing services unless delinquent invoices are paid in full.

IV. Warranties

A. Limited Warranties

GovEase warrants that the web site and internet application, when provided with accurate and properly formatted data by the Customer and third party users, and when accessed by properly functioning software and equipment of third party users with the appropriate system requirements, will perform substantially as required in order to facilitate the Customer's online tax sales. For the purposes of this Agreement, the term "third party users" shall be defined as bidders or participants in tax sales conducted by GovEase on behalf of the Customer pursuant to this agreement. In the event that failures or defects arise with the web site or internet application prior to, during or after a tax sale, GovEase will, at no charge to the Customer, make any necessary corrections to the web site and/or internet application so that the web site performs substantially as required under the terms of this Agreement, and will use its best efforts to make such necessary corrections applicable within 24 hours of being notified by the Customer of any failures or defects in the web site, provided that the Customer provides GovEase with information necessary and sufficient to correct such failure or defect upon GovEase's request. In the event GovEase is not able to make such corrections applicable within 24 hours, GovEase's chief executive officer and/or chief operating officer will confer with a representative of the Customer to advise the Customer on the status of problem resolution and anticipated time of correction.

V. Modification

1. This Agreement may only be modified, altered or amended by a written instrument duly executed by authorized representatives of the Customer and GovEase.
2. The language of this Agreement may be amended and/or modified by one or more Addendums attached hereto and identified below in order to comport with the laws of the state where the tax sales conducted under this agreement will be held or to otherwise reflect the agreement of the parties. Any Addendums attached to this Agreement that amend or modify this Agreement that conflict with or are specifically designated to replace language within this Agreement shall control and any such Addendums shall, by reference herein, become a part of the Agreement as if reprinted full herein. The following Addendums are attached to this Agreement:

VI. Breach and Termination

1. In the event of the occurrence of a material breach or violation of this Agreement by a party, the non-breaching party shall provide written notice to breaching party regarding the occurrence of said material breach or violation of this Agreement, along with a description of the steps necessary to remedy, resolve or remove the material breach or violation. If said material breach or violation is not remedied, resolved or removed within sixty (60) days after such written notice, the non-breach party may immediately terminate this Agreement.
2. Either party may terminate this Agreement at any time for any reason by providing the other party with written notice no less than ninety (90) days prior to its intent to terminate the Agreement.

3. Termination of this Agreement shall not deprive a party of other remedies available under this Agreement or the applicable law for failure of a party to perform its obligations under this Agreement. Failure of either party to enforce a material breach or any violation of the terms of this Agreement or exercise of remedies hereunder shall not be considered as a waiver of that party's rights, respectively, with respect to any subsequent breach or violation.
4. In the event of a party's breach or failure to perform its obligation under this Agreement and it becomes necessary for either party to employ an attorney to enforce compliance with any of the provisions herein contained or to give advice, enforce or demand either party's rights or remedies hereunder, then the defaulting or breaching party shall be liable for the non-breaching or non-defaulting party's attorney fees, court costs and other expenses occasioned by such default(s) or breach(es).
5. Upon termination of this Agreement, each party shall promptly return to the other any and all personal property of the other held by such party, including, but not limited to, any of GovEase's confidential information as that term is used in Section IX of this Agreement, and shall provide a certificate to the other party to the effect that it has delivered to the other party all property belonging to the other party, including confidential information, and has retained no duplicates or copies of, nor conveyed to any third party, any such property.

VII. Notice

Any notices required to be sent hereunder shall be hand delivered or sent by a nationally recognized overnight delivery service (such as FedEx) or by certified mail (return receipt requested) to the following addresses:

CUSTOMER: Franklin County Treasurer
Attn: Josie Koelzer
1016 N 4th Avenue
Pasco, WA 99301

GOVEASE: Trey Pittman, Chairman & CEO
GovEase, LLC
2080 Main St., Suite 200
Madison, Mississippi 39110

With a copy to: Price W. Donahoo, Esq.
Donahoo Law Firm, PLLC
Post Office Box 1549
Madison, Mississippi 39110

All written notices required under this Agreement shall be effective upon the earlier of the date received, refused or returned as undeliverable.

VIII. Title

It is agreed between the parties that GovEase owns all rights, title and interest in and to the web site, internet application, and all documents, files, reports, data summaries, work papers and working documentation, electronic or otherwise, created by or on behalf of GovEase in connection with the services to be performed by GovEase pursuant to this Agreement, as well as the related source code including copyright, trade secret, patent, trademark and other proprietary rights and all customizations, enhancements, modifications, improvements, derivations or other variations thereof. This Agreement does not transfer to the Customer under any circumstances any of GovEase's ownership rights in the web site, internet application or the related source code.

IX. License

1. GovEase Grants the Customer and its full-time, part-time or contract employees (excluding professional consultants), subject to the terms and conditions of this Agreement, a limited, non-perpetual, non-transferable and non-exclusive license to access and use the web site and internet application solely in conjunction with the Customer's billing, collection and administration of the relevant taxes and tax sales. This license immediately terminates upon any termination of this Agreement. GovEase is acting as an Application Service Provider ("ASP") supplying to the Customer a hosted service via the Internet.
2. The Customer acknowledges and understands that the GovEase web site and internet application licensed under this Agreement is owned by GovEase and constitutes a valuable trade secret belonging to GovEase. The Customer also acknowledges and understands that GovEase is willing to provide the Customer with certain proprietary business and technical information regarding its web site and internet application pursuant to this Agreement. It is expressly understood and agreed that the software used to develop and operate the web site and internet application; any related materials and documentation provided by GovEase, including without limitation information related to security, functionality or other technical aspects of the web site and internet application; the non-public pages of the web site; and all documents, files, reports, data summaries, work papers and working documentation, electronic or otherwise, created by or on behalf of GovEase in connection with the services to be performed by GovEase pursuant to this Agreement (sometimes collectively referred to herein as "confidential information") constitute a valuable proprietary product and trade secret of GovEase embodying substantial creative efforts and confidential information, ideas, and expressions. The Customer agrees to hold all such confidential information in strictest confidence and take such steps as are reasonably necessary to protect the confidentiality of the confidential information and other materials designated by GovEase as confidential. Such steps shall include, without limitation, refraining from taking any action in derogation of GovEase's ownership rights in the web site, internet application and confidential information and taking actions similar to those taken by the Customer with respect to protecting other third-party confidential information in its possession.
3. The Customer shall not disclose or otherwise make available GovEase's confidential information in any form to any person except to those employees of the Customer or GovEase who need access to the information to facilitate the Customer's authorized use of the web site. Nothing herein shall be construed, however, to prohibit the Customer from making any disclosures required of the Customer pursuant to any legal process or request from any governmental authority having

jurisdiction over the Customer, or from making disclosure required by applicable law. However, prior to any such disclosure, the Customer shall provide written notice at least thirty (30) days prior to any such disclosure to GovEase in order to enable GovEase to seek judicial relief. The Customer's obligations under this paragraph shall survive termination of this Agreement.

X. Confidentiality

Each party agrees to treat any information they receive that is submitted to the web site by third party users, including without limitation, deposit amounts, social security numbers, bank account numbers, federal tax identification numbers, etc., in accordance with applicable law and the "privacy policy" set forth in the related link on the web site. GovEase will not change the "privacy policy" without the Customer's consent, which will not be unreasonably withheld.

XI. Place of Execution; Governing Law; Venue

This Agreement shall be deemed to be executed in Franklin County, State of Washington, regardless of GovEase's domicile, and shall be interpreted and construed in accordance with the laws of the State of Washington. The parties agree that the venue for any and all claims between the parties arising from this Agreement shall be in the federal courts for Eastern Washington or in the state courts in and for Franklin County, Washington

XII. Successors

The provisions of this agreement shall be binding upon and for the benefit of the heirs, personal representatives, successors and assigns of the parties. Neither party shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party.

XIII. Severability

1. If any provision of this Agreement is found to be unlawful or to otherwise conflict with applicable law, the applicable law shall control and the offending provision shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.
2. If any provision of this Agreement is found to be unlawful or to otherwise conflict with applicable law, then the parties hereby agree to modify said provision, in a writing to be signed by authorized representatives of the parties, to comply with the applicable law and to reflect the parties' intention if necessary.

XIV. Force Majeure

1. Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or is delay due to a "force majeure." For purposes of this Agreement, the term "force majeure" means any cause, action or agency delaying or preventing the performance of a party's obligation(s) under this Agreement which is beyond the reasonable control or foreseeability of such party including but not limited to natural disasters, wars, power failures, internet outages and other acts of God.

2. Upon notice of a force majeure event, the party whose performance under this Agreement is affected thereby shall:
 - a. Promptly notify the other party by the quickest means available, explaining the nature and expected duration thereof; and
 - b. Use reasonable efforts to diligently remedy the interruption or delay, provided that the interruption or delay is reasonably capable of being remedied by that party.

XV. Authorization

Both GovEase and the Customer each represent and warrant to the other that each is authorized by all required and necessary corporate or government authority or action to enter into this Agreement and that the individual(s) signing this Agreement on behalf of GovEase and the Customer are authorized to bind GovEase and the Customer to its terms. Furthermore, both GovEase and the Customer represent that they are free to enter into this Agreement and that doing so, or performing the duties required under this Agreement, will not violate the terms of any other agreements or contracts between the parties and any third parties.

XVI. Complete Agreement

This Agreement constitutes the entire understanding and Agreement between the parties hereto with respect to its subject matter and supersedes all prior or contemporaneous Agreements, representations, warranties and understandings of such parties, whether oral or written.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the Effective Date of this Agreement duly authorized to execute this Agreement.

GOVEASE AUCTION, LLC

By:

Trey Pittman, Chairman & CEO

FRANKLIN COUNTY, WASHINGTON

By:



Josie Koelzer, Franklin County Treasurer

Approved as to form:



PROSECUTING ATTORNEY'S OFFICE

EXHIBIT A
SCOPE OF SERVICES

GovEase shall provide a custom web site to administer tax sales on behalf of the Customer. The term “web site” shall mean an Internet web site hosted by or at the expense of GovEase that will utilize GovEase’s internet application to conduct online tax sales on behalf of the Customer. The term “internet application” means the proprietary internet application software developed by GovEase to facilitate tax sales using a process that replicates a live, public outcry auction that can be accessed through the web site. The procedures and technical requirements of the tax sales shall be substantially as described herein.

Specific Actions to be Taken and Services to be Provided by GovEase

1. GovEase will work with the Customer to determine the development timeline of the web site and to gather information required to build the web site.
2. GovEase will build a tax sales web site that will utilize the internet application to make information available to third party users and to conduct online tax sales using a process that replicates a live, public outcry auction.
3. GovEase will populate the web site and internet application with data provided by the Customer, including, but not limited to:
 - a. A list of properties with delinquent taxes (typically referred to as an advertising list);
 - b. Data on bidders who participated in previous auctions; and
 - c. Additional available data (tax records, pending tax liens on the property, appraiser’s web site and links to Geographic Information Systems maps, if available).
4. GovEase will provide training for third party users including an online tax sale demonstration, practice tax sales and an on-site Bidder Orientation Session (at the discretion of the Customer).
5. GovEase shall provide a host server for the web site. The web site will utilize GovEase’s internet application, which is capable of accepting and processing competitive bids from third party users for tax sales offered by Customer. The Customer acknowledges that GovEase’s server may not be dedicated exclusively to the web site. GovEase shall use its best efforts to make the web site available during all regular business hours during each tax sale conducted pursuant to this Agreement and shall not schedule planned maintenance downtime to occur during any such tax sale in normal business hours. During each such tax sale, GovEase shall provide Auction Administrator(s) and the technical support necessary to facilitate the Customer’s conduct of online tax sales.
6. GovEase will include on the web site terms and conditions, with appropriate disclaimers, to which third party users will be required to give assent. Each party will have the right to reasonably approve the terms and conditions or disclaimers that are included within the web site.
7. On the date when properties with delinquent taxes are advertised in local newspapers (the “advertising dates”), GovEase will post the same list on the web site. It will be at the Customer’s discretion to post such list solely on the GovEase

- website. The timing and frequency of tax sales conducted pursuant to this Agreement shall be determined by the Customer in accordance with applicable law.
8. Each tax sale conducted by GovEase on behalf of the Customer under this Agreement shall proceed as follows: On the date that the Customer has determined that a tax sale will begin, at a time as instructed by the Customer, and continuing from day to day until all parcels have been offered for sale, the delinquent tax properties shall be sold on the GovEase web site. Third party users can submit bids by using the web site to perform all tasks normally associated with the tax sale including: researching tax history; submitting registration forms and other information as specified by the Customer; submitting bids; viewing; and downloading auction results and submit all required deposit and final bid payments.
 9. GovEase will manage and maintain all tax sale proceeds, deposits, billing, and fee payments as well as, refunding of deposits.
 10. GovEase will remit payment to Franklin County of final purchases 7-10 business days following the conclusion of the sale.
 11. In the case a buyer defaults on payment of a parcel GovEase will send the required deposit amount received from the defaulted buyer to the Customer.
 12. GovEase will work with the Customer to determine the method of resell of the parcel which was defaulted following the conclusion of the public auction.
 13. GovEase will handle all bidder approvals on behalf of the Customer under this agreement accompanying the Customer's registration requirements.

EXHIBIT B
FEES AND BILLING

The fee for all subsequent sales shall be paid as follows:

1. In accordance with Washington Code 84.64.225 (1) In lieu of the sale procedure specified in RCW 84.56.070 or 84.64.080, the county treasurer may conduct a public auction sale by electronic media as provided in RCW 36.16.145.
2. In accordance with Washington Code 84.64.080 and in consideration of the services to be rendered by GovEase as set forth in this Agreement, for each tax sale administrated by GovEase under the terms of this Agreement on behalf of the Customer, GovEase will charge a fee of \$150 per parcel and a 2.5% buyer's premium for the total sale amount of each parcel.
3. The \$150 per parcel fee will be assessed 30 days prior to the date of the tax sale, at which time the Customer will send GovEase the delinquent parcel list to be posted on the GovEase auction portal.
4. GovEase will receive no fee for parcels which are offered for sale but receive no bid.
5. GovEase will not charge the Customer a setup fee.
6. GovEase will not charge a re-list fee for secondary or tertiary auctions within 45 days of the original auction date.
7. GovEase will not charge alteration fee for any changes made to the parcel listing requested by the Customer.
8. GovEase will remit payment of final purchases less the \$150 per parcel fee 7-10 business days following the conclusion of the sale pursuant to Section III (2) of this Agreement for a tax sale conducted under this Agreement.
9. In the case a buyer defaults on payment of a parcel GovEase will send the required deposit amount received from the defaulted buyer to the Customer. GovEase will work with the Customer to determine the method of resell of the parcel which was defaulted on for no additional fee.