

## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** ("Agreement") is made as of this 17 day of November, 2020 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Tampa Machinery Auction, Inc. ("Contractor") (individually, "Party," collectively, "Parties").

### WITNESSETH:

**WHEREAS**, the County requested proposals pursuant to 190-0537-R ("RFP") for Auctioneer Services, Vehicles and Related Equipment; and

**WHEREAS**, based upon the County's assessment of Contractor's proposal, the County selected the Contractor to provide the Services as defined herein; and

**WHEREAS**, Contractor represents that it has the experience and expertise to perform the Services as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

#### 1. Definitions.

**A. "Agreement"** means this Agreement, including all Exhibits, which are expressly incorporated herein by reference and any amendments thereto.

**B. "Amounts Owed to County"** means any amounts other than Net Sales Proceeds for which Contractor may become liable to County according to the terms of this Agreement, including all exhibits, and including, but not limited to, amounts owed due to lost, stolen, damaged, or destroyed County property.

**C. "Contractor's Commission"** means the amount resulting from applying the applicable commission percentage set out in Exhibit B, attached hereto and incorporated herein by reference, to an item's actual sale price, regardless of any established MAP.

**D. "County Confidential Information"** means any County information deemed confidential and/or exempt from Section 119.07, Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution, or other applicable law, and any other information designated in writing by the County as County Confidential Information.

**E. "Contractor Confidential Information"** means any Contractor information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (i) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (ii) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (iii) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (iv) is developed by the County independently of any disclosures made by Contractor.

**F. "Contractor Personnel"** means all employees of Contractor, and all employees of subcontractors of Contractor, who are providing the Services at any time during the project term.

**G. "MAP" or "Minimum Acceptable Price"** means an amount designated by the County in its discretion as the minimum amount the Contractor shall use as the gross sale price for the sale of a particular item, for the purposes of calculating payment due to the County.

**H. "Net Sale Proceeds"** means the amount due to the County for the sale of an item, which shall be calculated by subtracting the Contractor's Commission and any applicable Transportation costs from the Sale Price.

**I. “Services”** means the work, duties and obligations to be carried out and performed by Contractor under this Agreement, as described throughout this Agreement and as specifically described in Exhibit A (“Statement of Work”) attached hereto and incorporated herein by reference. As used in this Agreement, Services shall include any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but not specifically described in this Agreement, and shall include the provision of all standard day-to-day administrative, overhead, and internal expenses, including labor, materials, equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, and per diem and all other costs required to perform Services except as otherwise specifically provided in this Agreement.

**J. “Sale Price”** means either the actual sale price resulting from the auction of an item, or, in the event Contractor sells an item for less than the County-designated MAP without prior consent, the MAP.

**K. “Transportation Costs”** means Contractor’s actual costs, evidenced by such documentation as the County requires, incurred by Contractor for transporting and delivering sale items to Contractor’s auction site.

**2. Conditions Precedent.** This Agreement, and the Parties’ rights and obligations herein, are contingent upon and subject to the Contractor securing and/or providing the performance security, if required in Section 3, and the insurance coverage(s) required in Section 13, within ten (10) days of the Effective Date. No Services shall be performed by the Contractor and the County shall not incur any obligations of any type until Contractor satisfies these conditions. Unless waived in writing by the County, in the event the Contractor fails to satisfy the conditions precedent within the time required herein, the Agreement shall be deemed not to have been entered into and shall be null and void.

### **3. Services.**

**A. Services.** The County retains Contractor, and Contractor agrees to provide the Services. All Services shall be performed to the satisfaction of the County and shall be subject to the provisions and terms contained herein and the Exhibits attached hereto.

**B. Services Requiring Prior Approval.** Contractor shall not commence work on any Services requiring prior written authorization in the Statement of Work without approval from Contract Administrator or designee.

**C. Additional Services.** From the Effective Date and for the duration of the project, the County may elect to have Contractor perform Services that are not specifically described in the Statement of Work attached hereto but are related to the Services (“Additional Services”), in which event Contractor shall perform such Additional Services for the compensation specified in the Statement of Work attached hereto. Contractor shall commence performing the applicable Additional Services promptly upon receipt of written approval as provided herein.

**D. De-scoping of Services.** The County reserves the right, in its sole discretion, to de-scope Services upon written notification to the Contractor by the County. Upon issuance and receipt of the notification, the Contractor and the County shall enter into a written amendment reducing the appropriate Services Fee for the impacted Services by a sum equal to the amount associated with the de-scoped Services as defined in the payment schedule in this Agreement, if applicable, or as determined by mutual written consent of both Parties based upon the scope of work performed prior to issuance of notification.

**E. Independent Contractor Status and Compliance with the Immigration Reform and Control Act.** Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

**F. Non-Exclusive Services.** This is a non-exclusive Agreement. During the term of this Agreement, and any extensions thereof, the County reserves the right to contract for another provider for similar services as it determines necessary in its sole discretion.

**G. Project Monitoring.** During the term of the Agreement, Contractor shall cooperate with the County, either directly or through its representatives, in monitoring Contractor’s progress and performance of this Agreement.

**H. Provision for Other Agencies.** Contractor agrees to provide the Services described in this Agreement, at the same prices, and equivalent terms and conditions, to other Florida state or local government agencies upon the request of any such agency, and pursuant to an independent agreement executed between Contractor and the requesting agency.

#### **4. Term of Agreement.**

**A. Initial Term.** The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect for **eighty-four (84) months**, or until termination of the Agreement, whichever occurs first.

**B. Term Extension.**

The term of this Agreement may not be extended. All Services shall be completed by the expiration of the initial term as defined in 4.A.

#### **5. Compensation and Method of Payment.**

**A. Basis of Compensation.** As Contractor's compensation for Services completed in accordance with this Agreement, Contractor may retain from the Sale Price for each sale conducted the applicable Contractor's Commission, as set out in **Exhibit B** attached hereto and incorporated herein by reference, together with any applicable Transportation Costs ("Services Fee"). No other amounts may be retained, and the entire remaining balance of each Sale Price shall be paid to the County. It is acknowledged and agreed by Contractor that this compensation constitutes a limitation upon County's obligation to compensate Contractor for such Services required by this Agreement, but does not constitute a limitation upon Contractor's obligation to perform all of the Services required by this Agreement.

**B. Method of Payment.** Within 12 days of any auction, Contractor shall submit an electronic accounting report, as more fully described in Exhibit A, as well as all documentation required by the County for proof of Transportation Costs, which submittals shall be subject to County's review and approval in accordance with the Dispute Resolution process set out in Exhibit E. No later than 45 days from approval by the County of the electronic accounting report and Transportation Cost amounts, Contractor shall pay the total of all Net Sale Proceeds, by sending payment to County's Finance Department, at the address indicated in Exhibit D, attached hereto and incorporated herein by reference. All payments shall be in accordance with the applicable requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act," as well as the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes.

**C. Amounts Owed By Contractor.** The County shall invoice Contractor for any Amounts Owed to County, and Contractor shall remit auction proceeds, net of fees and expenses, within 45 days of auction close.

**D. Travel Expenses.**

The Services Fee includes all travel, lodging and per diem expenses incurred by Contractor in performing the Services.

**E. Taxes.** Contractor acknowledges that the County is not subject to any state or federal sales, use, transportation and certain excise taxes.

#### **6. Personnel.**

**A. Qualified Personnel.** Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement.

**B. Approval and Replacement of Personnel.** The County shall have the right to approve all Contractor Personnel assigned to provide the Services, which approval shall not be unreasonably withheld. Prior to commencing the Services, the Contractor shall provide at least ten (10) days written notice of the names and qualifications of the Contractor Personnel assigned to perform Services pursuant to the Agreement. Thereafter, during the term of this Agreement, the Contractor shall promptly and as required by the County provide written notice of the names and qualifications of any additional Contractor Personnel assigned to perform Services. The County, on a reasonable basis, shall have the right to require the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement. The County will notify Contractor in writing in the event the County requires such action. Contractor shall accomplish any such removal within forty-eight (48) hours after receipt of notice from the County and shall promptly replace such person with another person, acceptable to the County, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement. In situations where individual Contractor Personnel are prohibited by applicable law from providing Services, removal and replacement of such Contractor Personnel shall be immediate and not subject to such forty-eight (48) hour replacement timeframe and the provisions of Section 7. A.1. shall apply if minimum required staffing is not maintained.

## **7. Termination.**

### **A. Contractor Default Provisions and Remedies of County.**

1. **Events of Default.** Any of the following shall constitute a “Contractor Event of Default” hereunder: (i) Contractor fails to maintain the staffing necessary to perform the Services as required in the Agreement, fails to perform the Services as specified in the Agreement, or fails to complete the Services within the completion dates as specified in the Agreement; (ii) Contractor breaches Section 9 (Confidential Information); (iii) Contractor fails to gain acceptance of a deliverable per Section 15, if applicable, for two (2) consecutive iterations; or (iv) Contractor fails to perform or observe any of the other material provisions of this Agreement.
2. **Cure Provisions.** Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor (“Notice to Cure”), and Contractor shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.
3. **Termination for Cause by the County.** In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, or upon the occurrence of a Contractor Event of Default as specified in Section 7.A.1.(iii), the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the County.

### **B. County Default Provisions and Remedies of Contractor.**

1. **Events of Default.** Any of the following shall constitute a “County Event of Default” hereunder: (i) the County fails to make timely undisputed payments as described in this Agreement; (ii) the County breaches Section 9 (Confidential Information); or (iii) the County fails to perform any of the other material provisions of this Agreement.
2. **Cure Provisions.** Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County (“Notice to Cure”), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.
3. **Termination for Cause by Contractor.** In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the Contractor.

**C. Termination for Convenience.** Notwithstanding any other provision herein, the County may terminate this Agreement, without cause, by giving thirty (30) days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision.

**8. Time is of the Essence.** Time is of the essence with respect to all provisions of this Agreement that specify a time for performance, including the Services as described in Exhibits attached hereto; provided, however, that the foregoing shall not be construed to limit a Party’s cure period allowed in the Agreement.

## **9. Confidential Information and Public Records.**

**A. County Confidential Information.** Contractor shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

**B. Contractor Confidential Information.** All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County’s staff and the County’s subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County’s obligations under this Section may be superseded by its obligations under any requirements of said laws.

**C. Public Records.** Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

**If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Pinellas County Board of County Commissioners, Purchasing and Risk Management Department, Operations Manager custodian of public records at 727-464-3311, [purchase@pinellascounty.org](mailto:purchase@pinellascounty.org), Pinellas County Government, Purchasing and Risk Management Department, Operations Manager, 400 S. Ft. Harrison Ave, 6<sup>th</sup> Floor, Clearwater, FL 33756.**

**10. Audit.** Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to examine and/or audit such records.

**11. Compliance with Laws.** Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of licenses, permits and certificates where required, and including, but not limited to, laws related to Workers' Compensation, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA, health and the environment, and privacy of medical records or information as applicable to this contract.

**12. Public Entities Crimes**

Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, as well as Florida Statute 287.135 regarding Scrutinized Companies, and represents to County that Contractor is qualified to transact business with public entities in Florida, and to enter into and fully perform this Agreement subject to the provisions state therein. Failure to comply with any of the above provisions shall be considered a material breach of the Agreement.

**13. Liability and Insurance.**

**A. Insurance.** Contractor shall comply with the insurance requirements set out in Exhibit C, attached hereto and incorporated herein by reference.

**B. Indemnification.** Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as shall have been occasioned by the sole negligence of the County.

**C. Liability.** Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor's negligence or willful action or failure to act.

**D. Contractor's Taxes.** The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor's assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

**14. County's Funding.** The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

**15. Acceptance of Services.** For all Services deliverables that require County acceptance as provided in the Statement of Work, the County, through the Contract Administrator or designee, will have ten (10) calendar days to review the deliverable(s) after receipt or completion of same by Contractor, and either accept or reject the deliverable(s) by written notice to Tampa Machinery Auction, Inc. If a deliverable is rejected, the written notice from the County will specify any required changes, deficiencies, and/or additions necessary. Contractor shall then have seven (7) calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the County, who will then have seven (7) calendar days to review and approve, or reject the deliverable(s); provided however, that Contractor shall not be responsible for any delays in the overall project schedule that result from the County's failure to timely approve or reject deliverable(s) as provided herein. Upon final acceptance of the deliverable(s), the County will accept the deliverable(s) in writing.

**16. Subcontracting/Assignment.**

**A. Subcontracting.** Contractor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Contractor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the County, without the prior written consent of the County, which shall be determined by the County in its sole discretion.

**B. Assignment.**

This Agreement, and all rights or obligations hereunder, shall not be assigned, transferred, or delegated in whole or in part, including by acquisition of assets, merger, consolidation, dissolution, operation of law, change in effective control of the Contractor, or any other assignment, transfer, or delegation of rights or obligations, without the prior written consent of the County. The Contractor shall provide written notice to the County within fifteen (15) calendar days of any action or occurrence assigning the Agreement or any rights or obligations hereunder as described in this section. In the event the County does not consent to the assignment, as determined in its sole discretion, the purported assignment in violation of this section shall be null and void, and the County may elect to terminate this Agreement by providing written notice of its election to terminate pursuant to this provision upon fifteen (15) days' notice to Contractor.

**17. Survival.** The following provisions shall survive the expiration or termination of the Term of this Agreement: 7, 9, 10, 13, 20, 23, and any others which by their nature would survive termination.

**18. Notices.** All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or (iii) sent via email and addressed as set forth below, which designated person(s) may be amended by either Party by giving written notice to the other Party:

For County:

Attn: Contract Administrator  
Fleet Management Operations  
9685 Ulmerton Road  
Largo, FL 33778

For Contractor:

Attn: David Nelson  
Tampa Machinery Auction, Inc.  
P.O. Box 291069  
Tampa, FL 33687-6970

with a copy to:  
Division Director  
Pinellas County Purchasing and Risk Management Division  
400 South Fort Harrison Avenue  
Clearwater, FL 33756

**19. Conflict of Interest.**

A. The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest shall be employed by Contractor during the agreement term and any extensions.

B. The Contractor shall promptly notify the County in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the Contractor is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contractor may identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion within (10) calendar days of receipt of notification by the Contractor, which shall be binding on the Contractor.

**20. Right to Ownership.** All work created, originated and/or prepared by Contractor in performing Services pursuant to the Agreement, to the extent that such work, products, documentation, materials or information are described in or required by the Services (collectively, the "Work Product") shall be County's property when completed and accepted, if acceptance is required in this Agreement, and the County has made payment of the sums due therefore. The ideas, concepts, know-how or techniques developed during the course of this Agreement by the Contractor or jointly by Contractor and the County may be used by the County without obligation of notice or accounting to the Contractor. Any data, information or other materials furnished by the County for use by Contractor under this Agreement shall remain the sole property of the County.

**21. Amendment.** This Agreement may be amended by mutual written agreement of the Parties hereto.

**22. Severability.** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

**23. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a Party elects to file an action in federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each Party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

**24. Waiver.** No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

**25. Due Authority.** Each Party to this Agreement represents and warrants that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the Party is authorized to do so; (iii) this Agreement constitutes a valid and legally binding obligation of the Party, enforceable in accordance with its terms.

**26. No Third Party Beneficiary.** The Parties hereto acknowledge and agree that there are no third party beneficiaries to this Agreement. Persons or entities not a party to this Agreement may not claim any benefit from this Agreement or as third party beneficiaries hereto.

**27. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written.

PINELLAS COUNTY, FLORIDA

By and through its

Board of County Commissioners

Pat Gerard

By

Pat Gerard, Chair, Board of County Commissioners

Tampa Machinery Auction, Inc.

Name of Firm

By:

David W. Nelson

Signature

DAVID W. NELSON

Print Name

PRESIDENT

Title

ATTEST:

Ken Burke,

Clerk of the Circuit Court

By:

Katherine Carpenter

Deputy Clerk



APPROVED AS TO FORM

Jacina Haston

JACINA HASTON

OFFICE OF THE COUNTY ATTORNEY



## EXHIBIT A- SCOPE OF WORK

1. Minimum Acceptable Price (MAP)
  - a. The Seller may, at any time, establish a MAP for any vehicle or related equipment on the inventory listing.
  - b. Contractor shall make no sale below any set MAP limit without prior consent.
  - c. In an event where an item has been sold below the established MAP limit Contractor, without prior consent, the Contractor shall reimburse the Seller for the difference between sale dollars and MAP.
2. Logistics
  - a. The County or Participating Agency (Seller) will provide an inventory listing of vehicles and related equipment to be auctioned at least ten (10) days prior to the auction date.
  - b. The Seller may be required to add, modify or delete items from such list within an agreed upon amount of days prior to the auction day.
  - c. Contractor shall accommodate auctioneering services for all vehicles and related equipment within ten (10) days of notice.
  - d. Contractor shall be responsible for coordinating the transporting and delivery of inventory equipment to Contractor's auction site, including the payment of such.
    - i. Contractor shall then provide the Seller with invoices showing actual transportation costs, which will be deducted from the sales proceeds.
  - e. There shall be no mark up on transportation cost or any pass-through costs.
  - f. Upon receipt of equipment to be auctioned, Contractor shall provide the participating entity with a receipt.
  - g. Contractor shall immediately notify the Seller of any item(s) containing license plates, light bars, logos and seals, or other identification markings. Such items shall not be auctioned. Contractor will hold items until given direction from Pinellas County Fleet Management contract administrator.
  - h. Contractor shall be required to remove any decals and numberings from vehicles/equipment without damaging paint finish.
3. Contractor shall be responsible to provide all personnel, advertising and services necessary to conduct the auction.
4. Contractor shall have a website that includes current data and photos of equipment inventory for each scheduled auction and such website shall have the capability to allow bidders to enter proxy bid on specified items.
5. Contractor shall have the capability to conduct Internet-based auctions whereby all bidding may be conducted remotely to enable auction sales to continue in the event public gatherings are limited in number or prohibited altogether.
6. Disclaimer of Sales
  - a. Contractor shall post or distribute to the audience and on website the terms and conditions, restrictions, and procedures whereby goods will be sold at the auction.
  - b. Contractor shall advise the bidder of known defective conditions of any vehicle and/or vehicle related equipment offered for sale before offering the vehicle and/or vehicle related equipment for auction.
  - c. All sales must be F.O.B place of sale, and are to be sold **AS IS**, and shall disclaim all warranties express or implied, including but not limited to warranty, fitness for a particular purpose, or merchantability. Such disclaimer shall be indicated on each advertisement or announcement. Contractor will be responsible for and will bear or reimburse the Seller for any expenses resulting from Contractor's failure to provide such disclaimer.
  - d. Each auction item shall include a notice of description with description of all relevant details of item, including MAP / Right of Refusal (ROR), year, make, and model, as applicable.

## **EXHIBIT A- SCOPE OF WORK**

7. Contractor shall have electronic access to the department of Motor Vehicles (DMV) database to check registration, Vehicle Identification Number (VIN), etc.
8. Contractor must provide services necessary to register, license, and/or transfer title of vehicle and/or vehicle related equipment to buyer, including the submittal of all required paperwork to DMV within a period of thirty (30) days.
9. Contractor will be responsible for collecting, counting and recording all proceeds and documentation received during the auction, including certification of payment of Florida State Sales tax. Acceptance of bad checks or errors in computation of funds will be at the auctioneer's risk.
10. For verification purposes, all auctions sales must be electronically recorded.
11. Seller will be paid based on recorded sale value. No-shows will be deducted from the total sales; however, deposit paid by the no shows will be recorded as a sale.
12. Facility Requirements
  - a. All auctions shall be conducted at auctioneer's owned or leased facility.
  - b. Contractor's facility shall have the capability to accommodate approximately 100+ vehicles, including large trucks and oversized vehicles and related equipment.
  - c. Contractor's facility shall have the capability to safely store the same amount of additional equipment, at no extra cost to the participating entity, until equipment is sold and picked up by the buyer.
  - d. Contractor may not store vehicles and or related equipment at a location(s) other than the Contractor's owned or leased facility at which the auction takes place.
  - e. Seller shall be provided with access when requested to the secured storage facility as well as, the Contractor's auctions to monitor and record bid prices.
  - f. Contractor shall provide access to all prospective bidders to inspect equipment, at least five (5) business days prior to the auction date, including a two (2) hour inspection period the morning of the auction. The facility shall be open a minimum of eight (8) hours daily during public inspection periods.
13. Damaged or Lost Property
  - a. Contractor will be responsible for replacing or compensating the Seller at fair market value, for any property lost, stolen, damaged or destroyed by a third party or vandalism. The replacement or repair shall be within the time frame specified by the Seller. All replacements or repairs will require prior written approval.
  - b. A third party appraiser valuation shall be the final arbiter in the event of a dispute on replacements or repairs between the Seller and the Contractor. If the Contractor has failed to properly replace or repair damaged vehicles and/or vehicle related equipment, the County will invoice Contractor for all damages incurred.
  - c. The Contractor shall pay the Seller for the appraised value or 3<sup>rd</sup> party appraiser valuation of the loss/damaged related equipment and such payment shall be made within thirty (30) days of the loss.
14. At point of sale, Contractor shall provide successful bidder with a bill of sale and the related vehicle items.
15. Seller shall not pay any premiums associated with the sale of items at auctions.

## **EXHIBIT A- SCOPE OF WORK**

### **16. Reports**

#### **a. Sold items**

- i. After each auction, Contractor shall provide Seller an electronic accounting, in EXCEL format, within twelve (12) business days of the auction for all items sold at auction, including but not limited to:
  1. Date Auction Conducted
  2. Seller Name
  3. Seller established MAP price (as applicable) per item
  4. Description of Product Auctioned, including:
    - a. Year
    - b. Make and Model Number (as applicable);
    - c. Property Control Number, VIN, Serial Number (as applicable);
  5. Selling Price
  6. Transportation Fees
  7. Auctioneers Commission Dollar Amount
  8. Net Price Due to Seller
  9. Signature Attesting to Accuracy of the Gross and Net Pricing and Dated

#### **b. Unsold Items**

- i. Contractor shall furnish the Seller with the equipment listing of all unsold vehicles and equipment items within six (6) business days of close of each auction. This equipment listing shall include all submitted bid pricing, if any.

Unless otherwise stated by the Seller, such items shall be held by contractor in a safe and fully secured location until the next auction, at no expense to the Seller.

**EXHIBIT B- CONTRACTOR'S COMMISSION**

DESCRIPTION	COMMISSION FEE	BUYER'S FEE
Items with sale price less than \$5,000	<u>6 %</u>	<u>2 %</u>
Items with sale price between \$5,001 - \$15,000	<u>5 %</u>	<u>2 %</u>
Items with sale price over \$15,000	<u>4 %</u>	<u>2 %</u>
Cost for removal of decals and lettering: <u>\$20.00</u> /per vehicle		

## EXHIBIT C- INSURANCE REQUIREMENTS

### 1. INSURANCE:

The recommended Proposer must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below, prior to award of contract. Failure to provide the required insurance within the requested timeframe may result in your submittal being deemed non-responsive.

The contracted Proposer shall obtain and maintain, and require any sub-contractors to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Contractor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

- a) Proposal submittals should include, the Proposer's current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If Proposer does not currently meet insurance requirements, Proposer shall also include verification from their broker or agent that any required insurance not provided at that time of submittal will be in place prior to the award of contract.
- b) If certificate received with bid was a compliant certificate no further action may be necessary. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.** The certificate must name Pinellas County, a Political Subdivision of the State of Florida **400 S fort Harrison Avenue Clearwater, FL 33756**, as certificate holder. Certificate marked "Sample", or blank certificate holder information are not compliant.
- c) Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the RFP and/or contract period.
- d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the Proposer and any subcontractors to meet the requirements of the Agreement shall be endorsed to include **Pinellas County a Political subdivision of the State of Florida** as an Additional Insured.
- e) If any insurance provided pursuant to the Agreement expires or cancels prior to the completion of the Work, you will be notified by CTrax, the authorized vendor of Pinellas County. Upon notification, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished to Pinellas County Risk Management at [InsuranceCerts@pinellascounty.org](mailto:InsuranceCerts@pinellascounty.org) and to CTrax c/o JDi Data at [PinellasSupport@ididata.com](mailto:PinellasSupport@ididata.com) by the Proposer or their agent prior to the expiration date.,
  - (1) Proposer shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said Proposer from its insurer. Notice shall be given by email to Pinellas County Risk Management at [InsuranceCerts@pinellascounty.org](mailto:InsuranceCerts@pinellascounty.org). Nothing contained herein shall absolve Proposer of this requirement to provide notice.
  - (2) Should the Proposer, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the Proposer for such purchase or offset the cost against amounts due to proposer for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- f) The County reserves the right, but not the duty, to review and request a copy of the Contractor's most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.

- g) If subcontracting is allowed under this RFP, the Prime Proposer shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; *but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*
- (1) All subcontracts between Proposer and its subcontractors shall be in writing and are subject to the County's prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Proposer to the same extent Proposer is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from Proposer to the County at the election of Owner upon termination of the Contract; (3) provide that County will be an additional indemnified party of the subcontract; (4) provide that the County will be an additional insured on all insurance policies required to be provided by the subcontractor except workers compensation and professional liability; (5) provide waiver of subrogation in favor of the County and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to the County; and (7) identify the County as an intended third-party beneficiary of the subcontract. Proposer shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.
- h) Each insurance policy and/or certificate shall include the following terms and/or conditions:
- (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County. If Proposer is a Joint Venture per Section A. titled Joint Venture of this RFP, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.
- (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.
- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the Proposer is only using employees named on such list to perform work for the County. Should employees not named be utilized by Proposer, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the Proposer to be in default and take such other protective measures as necessary.
- (7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the Proposer and subcontractor(s).
- i) The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Workers' Compensation Insurance

Limit	Florida Statutory
Employers' Liability Limits	
Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

(2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limits	
Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

(3) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired, and non-owned vehicles. If the Proposer does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Proposer can show that this coverage exists under the Commercial General Liability policy. **Motor Carrier Act endorsement (MCS 90) shall be attached.**

Limit	
Combined Single Limit Per Accident	\$ 1,000,000

(4) Excess or Umbrella Liability Insurance excess of the primary coverage required, in paragraphs (1), (2), and (3) above:

Limits	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000

Property Insurance Proposer will be responsible for all damage to its own property, equipment and/or materials.

## **EXHIBIT D - PAYMENT/INVOICES:**

### **PAYMENT/INVOICES:**

SUPPLIER shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 *et. seq.*, Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable  
Pinellas County Board of County Commissioners  
P. O. Box 2438  
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Supplier's name, contact information and the standard purchase order number. In order to expedite payment, it is recommended the Supplier also include the information shown in below. The County may dispute any payments invoiced by SUPPLIER in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

### **INVOICE INFORMATION:**

<b>Supplier Information</b>	Company name, mailing address, phone number, contact name and email address as provided on the PO
<b>Remit To</b>	Billing address to which you are requesting payment be sent
<b>Invoice Date</b>	Creation date of the invoice
<b>Invoice Number</b>	Company tracking number
<b>Shipping Address</b>	Address where goods and/or services were delivered
<b>Ordering Department</b>	Name of ordering department, including name and phone number of contact person
<b>PO Number</b>	Standard purchase order number
<b>Ship Date</b>	Date the goods/services were sent/provided
<b>Quantity</b>	Quantity of goods or services billed
<b>Description</b>	Description of services or goods delivered
<b>Unit Price</b>	Unit price for the quantity of goods/services delivered
<b>Line Total</b>	Amount due by line item
<b>Invoice Total</b>	Sum of all of the line totals for the invoice

Pinellas County offers a credit card payment process (ePayables) through Bank of America. Pinellas County does not charge vendors to participate in the program; however, there may be a charge by the company that processes your credit card transactions. For more information please visit Pinellas County purchasing website at [www.pinellascounty.org/purchase](http://www.pinellascounty.org/purchase).



**EXHIBIT E - DISPUTE RESOLUTION FOR PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS IN  
MATTERS OF INVOICE PAYMENTS:**

Payment of invoices for work performed for Pinellas County Board of County Commissioners (County) is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act.

If a dispute should arise as a result of non-payment of a payment request or invoice the following Dispute Resolution process shall apply:

- A. Pinellas County shall notify a vendor in writing within ten (10) days after receipt of an improper invoice, that the invoice is improper. The notice should indicate what steps the vendor should undertake to correct the invoice and resubmit a proper invoice to the County. The steps taken by the vendor shall be that of initially contacting the requesting department to validate their invoice and receive a sign off from that entity that would indicate that the invoice in question is in keeping with the terms and conditions of the agreement. Once sign off is obtained, the vendor should then resubmit the invoice as a "Corrected Invoice" to the requesting department which will initiate the payment timeline.
  - 1.) Requesting department for this purpose is defined as the County department for whom the work is performed.
  - 2.) Proper invoice for this purpose is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of Pinellas County.
- B. Should a dispute result between the vendor and the County about payment of a payment request or an invoice then the vendor should submit their dissatisfaction in writing to the Requesting Department. Each Requesting Department shall assign a representative who shall act as a "Dispute Manager" to resolve the issue at departmental level.
- C. The Dispute Manager shall first initiate procedures to investigate the dispute and document the steps taken to resolve the issue in accordance with section 218.76 Florida Statutes. Such procedures shall be commenced no later than forty-five (45) days after the date on which the payment request or invoice was received by Pinellas County, and shall not extend beyond sixty (60) days after the date on which the payment request or invoice was received by Pinellas County.
- D. The Dispute Manager should investigate and ascertain that the work, for which the payment request or invoice has been submitted, was performed to Pinellas County's satisfaction and duly accepted by the Proper Authority. Proper Authority for this purpose is defined as the Pinellas County representative who is designated as the approving authority for the work performed in the contractual document. The Dispute Manager shall perform the required investigation and arrive at a solution before or at the sixty (60) days timeframe for resolution of the dispute, per section 218.76, Florida Statutes. The County Administrator or his or her designee shall be the final arbiter in resolving the issue before it becomes a legal matter. The County Administrator or his or her designee will issue their decision in writing.
- E. Pinellas County Dispute Resolution Procedures shall not be subject to Chapter 120 of the Florida Statutes. The procedures shall also, per section 218.76, Florida Statutes, not be intended as an administrative proceeding which would prohibit a court from ruling again on any action resulting from the dispute.
- F. Should the dispute be resolved in the County's favor interest charges begin to accrue fifteen (15) days after the final decision made by the County. Should the dispute be resolved in the vendor's favor the County shall pay interest as of the original date the payment was due.
- G. For any legal action to recover any fees due because of the application of sections 218.70 et. seq., Florida Statutes, an award shall be made to cover court costs and reasonable attorney fees, including those fees incurred as a result of an appeal, to the prevailing party. If it is found that the non-prevailing party held back any payment that was the reason for the dispute without having any reasonable lawful basis or fact to dispute the prevailing party's claim to those amounts.