

THE STATE OF TEXAS    '  
                                  '  
COUNTY OF HIDALGO    '

**AGREEMENT FOR AUCTIONEER SERVICES**  
**C-09-058-00-00**

THIS AGREEMENT FOR AUCTIONEER SERVICES (the "Agreement") is entered into effective as of this the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between **HIDALGO COUNTY, TEXAS**, ("County") and \_\_\_\_\_, ("Company").

WHEREAS, County has solicited proposals from qualified parties to conduct public auction sales of surplus and/or seized property belonging to County: and

WHEREAS, Auctioneer has submitted a proposal to provide the services required by County in accordance with the request for Bids attached hereto as Exhibit "A" and Auctioneer bid proposal attached hereto as Exhibit "B" and

WHEREAS, County has determined that the proposal by Auctioneer is the lowest and best bid submitted, and a contract should be awarded to Auctioneer; and

WHEREAS, the parties wish to further reduce to writing their representations, warranties and agreements regarding the services to be provided by Auctioneer to County.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows;

1. In the event County, in its sole discretion, determines that surplus or seized property in its possession is to be sold and that the services of a state-licensed auctioneer are required, Auctioneer agrees that it will perform the following services for and on behalf of County, in exchange for the consideration herein expressed (the "Services"): advertising of the sale in at least two issues of the proper local newspaper (including proper disclosures pursuant to Chapter 263 of the Texas Local Government Code). Labeling and set-up of items prior to the auction, preparation and clearing of all auction proceeds prior to delivery of goods to buyer, preparation of all paperwork necessary to transfer title to personal property,

issuance of a cashier=s check to County for the net sale proceeds, and collection deposit of all sales taxes.

2. For and in consideration of Auctioneer=s services hereunder, County agrees to pay Auction a fee equal to \_\_\_\_\_ percent (\_\_\_\_%) of the gross sales receipts of any auction conducted by Auctioneer. Such amount may be deducted from the sales receipts by Auctioneer prior to remitting to County the cashier=s check for the net sales.

3. The term of this agreement shall be for a period of one (1) year from the effective date hereof, as first-above written. County, in its sole discretion, may elect to extend the term of this contract for an additional two (2) one year term, under the same rates, terms and conditions. Contract may be extended at the sole discretion of County for an additional sixty (60) days, unless this Contract is terminated pursuant to the provisions herein, whichever occurs first.

4. Auctioneer represents and warrants to County as follows:

- (a) Auctioneer is licensed by all appropriate federal, state and local agencies to conduct the Services herein described.
- (b) A true and correct copy of Auctioneer=s license is attached hereto as Attachment #1 to Exhibit "B"
- (c) Auctioneer has been issued a Texas motor vehicle dealer "P" number, as evidenced by Attachment #1 to Exhibit "B".
- (b) Auctioneer understands that County retains the sole discretion to determine if an auction is to be conducted which requires the services of a licensed auctioneer, and that the awarding of this bid and the execution of this Agreement by County do not constitute any representation or guaranty that any such auction will occur.
- (e) Auctioneer is not required to maintain Workers= Compensation Insurance pursuant to the applicable provisions of Texas Labor Code.

(f) Concurrently with his execution of this Agreement, Auctioneer has presented to County a certificate of insurance indicating A five-hundred thousand general liability insurance policy, naming County as an additional insured, with limits of at least \$300,000 providing additional coverage to all underlying liabilities consistent with potential exposure of County in accordance with the Texas Tort Claims Act. Each policy of insurance required hereunder shall extend for a period equivalent to the term of this Agreement, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the County Judge prior to the cancellation of any such coverage on the termination date or otherwise.

(g) County and Auctioneer agree that either party may terminate this contract upon thirty (30) days written notice at any time for any reason or no reason at all.

5. Auctioneer agrees to promptly notify County of any suspension, termination or revocation of Auctioneer's License or of the liability insurance coverage required, hereunder, in which event County may, in its sole discretion, elect to immediately terminate this Agreement.

6. With respect to any property seized by any law enforcement agency of Hidalgo County, or any cooperative agency of which Hidalgo County is a party, including, but not limited to, the High Intensity Drug Trafficking Area, Auctioneer agrees to store such property for County for the period prior to any sale being conducted. No storage fees will be assessed to County or any cooperative agency as herein described, for the storage of such property, without regard to the fact that such property is not, upon final adjudication, awarded to County, or that County, upon final award or adjudication, elects to retain such property for its own use, rather than to sell it at public or private auction. To the extent permitted by the court in which any forfeiture or seizure proceeding, Auctioneer may elect to charge its usual and customary storage or impoundment fees, consistent with the fee schedule attached hereto as Exhibit "C" and incorporated herein by reference, to the owners of seized property held by Auctioneer which is awarded back to such owners

upon final adjudication of the forfeiture or seizure proceeding. The storage are provided by Auctioneer will consist of three (3) acres, fenced, controlled access compound, with guard dog.

7. For all non-law enforcement departments, no property shall be allowed into Auctioneer=s compound unless the property has been previously declared surplus through Commissioners= Court. Proof of such action must be requested by Auctioneer. Items being sent to Auctioneer for storage prior to auction must be cleared through the Purchasing Department=s Surplus Manager. The Surplus Manager will coordinate with Auctioneer and the respective departments in arranging for the transfer of items that are to be auctioned.

8. The storage area provided by Auctioneer pursuant to Paragraph 6, above, will be open for business at least seven (7) hours, daily, excluding weekends and official County holidays. In addition, Auctioneer will maintain personnel at the storage location 24 hour per day, and will post emergency access telephone numbers for deliveries of property after hours, and on weekends or holidays.

9. Auctioneer will conduct any auction sale required hereunder at any location within Hidalgo County, as requested by County, including Auctioneer auction center. Sales will be scheduled on dates and at times mutually convenient to the parties hereto, and so as to enhance the public=s attendance at such sales. In the event a scheduled sale must be canceled by either party hereto, or because of inclement weather, the sale will be rescheduled for the next appropriate date upon which both parties are available.

10. Unless minimum bids are otherwise specified by County in writing prior to the conducting of an auction sale hereunder, all auctions will result in sales of all items to the highest bidder. County will, unless otherwise specified in writing, with sufficient advance notice to Auctioneer for inclusion in any auction catalogue or published listing, convey merchantable title to all goods sold at auction: the parties acknowledge, however, that County may, from time to time, be required to convey items without warranty of title.

11. Auctioneer will indemnify and hold County harmless from any and all claims, actions, liability and expenses (including costs of judgments, settlements, court costs, and attorneys= fees, regardless of the outcome of such claim or

action) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Agreement, whether such act, omission or failure was Auctioneer or that of any person providing services hereunder by or through Auctioneer. Upon written notice from County, Auctioneer will resist and defend at its own expense, and by counsel reasonably satisfactory to County, any such claim or action.

12. The terms and conditions of the specifications attached hereto as Exhibit "A" and the bid submitted by Auctioneer attached hereto as Exhibit "B" are incorporated herein by reference and are made a part hereof as if such were fully set forth herein. In the event of any conflict between any other term of this Agreement and those terms incorporated herein as a result of this Paragraph II, the provision set forth in the text of this Agreement shall control over the term or condition expressed in the provisions incorporated herein by this Paragraph II.

### 13. **Miscellaneous Provisions**

13.01 **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

13.02 **No Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

13.03 **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and Auctioneer, and not

otherwise.

13.04 **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

13.05 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: Hidalgo County, Texas  
Attention: County Judge  
100 E. Cano, 2<sup>nd</sup> Floor  
Edinburg, Texas 78539

with copy to: Hidalgo County Purchasing  
Department  
Attention: Purchasing Agent  
2812 S Hwy Bus 281  
Edinburg, Texas 78539

If to Auctioneer \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

13.06 **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

13.07 **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

13.08 **Assignment.** This Agreement shall not be assignable by either party hereto without the prior written consent of the other. Consent to any assignment of this Agreement shall not constitute consent to any future or subsequent assignment by either party hereto.

13.09 **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

13.10 **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

13.11 **Authority to Execute.** The execution and performance of this Agreement by County and Auctioneer have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and Auctioneer in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the day and year first above written.

COUNTY OF HIDALGO

\_\_\_\_\_  
Juan D. Salinas, III County Judge

ATTEST :

\_\_\_\_\_  
Arturo Guajardo, Jr. County Clerk

COMPANY: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved on Commissioners= Court \_\_\_\_\_

APPROVED AS TO FORM  
Atlas & Hall, LLP

\_\_\_\_\_  
By: Stephen L. Crane