

## **AGREEMENT FOR ONLINE AUCTIONEERING SERVICES**

This Agreement for Online Auctioneering Services ("Agreement") is between Rene' Bates Auctioneers, Inc., a Texas corporation having its principal place of business at 4660 CR 1006, McKinney, Texas 75701 ("RBAI"); and Williamson County, Texas, a political subdivision of the State of Texas, having an address of 710 Main Street, Suite 101, Georgetown, Texas 78626 ("County").

### **WITNESSETH:**

**WHEREAS**, County currently has fleet vehicles, heavy equipment and other miscellaneous items that it desires to auction to bidders wishing to purchase such property;

**WHEREAS**, RBAI is in the business of auctioning the types of property that County intends to sell;

**WHEREAS**, RBAI, as a part of its business, provides sellers, such as County, with an ability to list items for sale on an online internet auction system and potential purchasers may bid upon such items via said system;

**WHEREAS**, County wishes to retain RBAI, on an as needed basis, for the purposes of auctioning specific items of property, and RBAI wishes to provide online auctioning services to County; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

### **ARTICLE I** **OBLIGATIONS AND RESPONSIBILITIES** **OF THE PARTIES**

#### **A. Obligations and Responsibilities of RBAI:** RBAI hereby agrees to:

1. Conduct online auctions, on an as needed basis, for County upon its request;
2. Work with County to set starting prices for each online auction item (Both parties should agree on the starting prices);
3. Complete and send to County Federal AS – IS/WHERE IS forms for all vehicles and heavy equipment that are auctioned by RBAI;
4. Post all necessary online auction information on [www.renebates.com](http://www.renebates.com) ("Website") and display auction items for one month to two weeks prior to the closing date of each online auction conducted;

5. When a new County auction is added to the Website, RBAI shall notify, by e-mail, each of its online auction customers of the County's new upcoming auction;
6. In addition to the above described email notification, RBAI may, at its discretion, purchase and provide advertising for each auction that is conducted pursuant to the terms of this Agreement. Such advertising for each auction may include local newspaper ads, ads in trade journals, and delivery of regular hard copy brochures to RBAI's past auction customers; provided, however, the County shall be responsible for placing and purchasing the minimum required legal notices and advertisements (Public Notice) for each auction;
7. Collect all auction proceeds and applicable sales tax and generate e-Invoices for both County and the buyers for each auction item sold;
8. Remit all monies, less commission and sales tax, to County;
9. Remit all sales tax collected to the State of Texas; and
10. To notify all bidders of the following:

**ALL PROPERTY THAT IS OFFERED FOR SALE SHALL BE ON AN "AS IS, WHERE IS" BASIS. WILLIAMSON COUNTY, TEXAS, THE SELLER, MAKES NO WARRANTY, GUARANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OF THE PROPERTY OFFERED FOR SALE. THE BUYER SHALL NOT BE ENTITLED TO ANY PAYMENT FOR LOSS OF PROFIT OR ANY OTHER MONEY DAMAGES, INCLUDING BUT NOT LIMITED TO ACTUAL, SPECIAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES.**

The above referenced notice shall be posted on the Website and in any publication or advertisement relating to any County's items that are to be auctioned and sold by RBAI.

**B. Obligations and Responsibilities of County:** County hereby agrees to:

1. Provide RBAI with a list and description of all items to be sold at auction;
2. Gather and provide RBAI with all necessary information on all auction items;
3. Provide digital photographs of each auction item to RBAI;
4. To complete a Vehicle Information Sheet on all vehicles that are to be auctioned and provide a copy of same to RBAI;
5. Attach Federal AS – IS / WHERE IS forms for all vehicles and heavy equipment that are auctioned by RBAI;

6. In order to allow potential bidders to physically inspect all auction items, County shall allow onsite viewing of all auction items before the closing of each online auction;
7. Contact local news media for PSA informing bidders of upcoming online auction and place and purchase the minimum required legal notices and advertisements (Public Notice) for each auction;
8. Provide a link on the County's website, directing visitors to RBAI's website for online auctions that RBAI performs for the County.
9. Transfer all titles to successful bidders after County has received a "PAID" e-Invoice from RBAI; and
10. Oversee removal and checkout of all paid auction items.

**ARTICLE II**  
**FEEES FOR ONLINE AUCTIONEERING SERVICES;**  
**PAYMENT OF SALES PROCEEDS**

- A. **Fees for Online Auctioneering Services:** RBAI agrees to conduct the online auctions for County in exchange for a 6% commission rate. More specifically, RBAI's commission shall be six percent (6%) of each item's selling price and such commission shall be deducted from each item's actual final selling price, provided, however, it is acknowledged and understood by the parties hereto that RBAI shall only receive commissions on those items that have actually been sold by RBAI and paid for, in full with sufficient funds, by the winning bidder.
- B. **Payment of Sales Proceeds:** RBAI shall tender all sales proceeds, less commission and sales tax, to County within ten (10) business days of the auction close date.

**ARTICLE III**  
**TERM AND TERMINATION OF AGREEMENT**

- A. **Term:** The term of this Agreement shall commence upon the last party's execution hereof and shall continue thereafter in full force and effect until terminated by either party in accordance with the terms herein below.
- B. **Termination for Convenience:** Either party may terminate this Agreement for convenience and without cause or further liability upon thirty (30) business day's written notice to the other party.
- C. **Termination for Cause:** If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach

is cured within three (3) business days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within three (3) business days, then and in that instance, the three (3) business day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within three (3) business days or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies available hereunder and under the law, terminate this Agreement.

- D. Procedures Upon Termination:** Within seven (7) business days after the date of either party's termination of this agreement, whether such termination be for convenience or for cause, County shall pay all outstanding fees that are due and owing to RBAI as of the termination date; and RBAI shall (1) collect all auction proceeds and applicable sales tax that are owing as of the date of termination and generate e-Invoices for both County and the buyers for each auction item sold prior to the date of termination; and (2) remit all monies owing to County as of the date of termination, less commission and sales tax.

#### **ARTICLE IV** **MISCELLANEOUS PROVISIONS**

- A. Compliance with Laws:** Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation licensing laws and regulations.
- B. County's Right to Audit:** RBAI agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of RBAI which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. RBAI agrees that County shall have access during normal working hours to all necessary RBAI facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give RBAI reasonable advance notice of intended audits.
- C. Notice.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery, in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

RBAI:	Rene' Bates Auctioneers, Inc. 4660 CR 1006 McKinney, Texas 75701
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COUNTY: Williamson County Judge  
Dan A. Gattis (or successor)  
710 Main Street, Ste. 101  
Georgetown, Texas 78626

With copy to: Williamson County Attorney  
Jana Duty (or successor)  
405 M.L.K. Street, Box #7  
Georgetown, Texas 78626

- D. No Third Party Beneficiaries:** This Agreement is for the sole and exclusive benefit of the parties hereto and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- E. Relationship of the Parties:** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- F. Venue and Governing Law:** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
- G. Exclusivity:** RBAI hereby acknowledges that County is not hereby granting an exclusive right to RBAI for the provision of auctioneering services for County and that County may retain other auctioneering entities to provide County with auctioneering services. Furthermore, County may dispose of its property pursuant to any legal disposition method that may be available to County during the term of this Agreement. County, however, acknowledges and agrees that it shall not attempt to dispose of a specific item of property, in any manner, if such item is currently being offered for auction on the Website.
- H. Indemnification:** RBAI SHALL INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING

FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF RBAI OR ANY OF ITS EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.

- I. **No Waiver of Immunities:** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- J. **Force Majeure:** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.
- K. **Severability:** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.
- L. **Assignment; Successors and Assigns:** No party to this Agreement may assign or transfer its interest in or obligations under this Agreement without the prior written consent of all parties to this Agreement. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.
- M. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which after execution and delivery shall be deemed an original, but all of which shall constitute one and the same instrument.
- N. **Entire Agreement:** This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

Executed and effective as of the later date set forth below:

**Rene' Bates Auctioneers, Inc.:**

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

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

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

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

**Williamson County:**

By: 

Name: Dan A. Gattis Lisa L. Birlman

Title: Williamson County Judge

Date: 4-1-08

Approved as to Form:

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

Hal C. Hawes  
Assistant Williamson  
County Attorney

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

James Gilger, CPA  
Williamson County Contract  
Management Auditor