**AGREEMENT FOR AUCTION SERVICES**

THIS AGREEMENT, made and entered into by and between **K-BID County**, Minnesota, a municipal corporation, hereinafter referred to as the "**County**", and **,** a Minnesota corporation hereinafter referred to as the "**Provider**".

RECITALS:

1. Provider is a Minnesota corporation formed for the purpose of providing auction services.
2. The County seeks to enter into an agreement for the needed provision of auctioneer services for used County vehicles, equipment and miscellaneous parts.
3. Under this agreement, the County wishes to allow its K-BID County partners to utilize these auction services.

NOW, THEREFORE, in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the County and the Provider as follows:

1. THE PROVIDER SHALL:

Perform auction services for vehicles and equipment designated by County or its partners under the terms set forth in attached Exhibit “A” dated , 2015. Provider shall also be responsible for the following:

1. Selling said property, using its professional skill, knowledge and experience to the best advantage of both parties in preparing and conducting the auction.
2. Advertisement of items for sale, including picture taking.
3. Keeping accurate records of the sale and permitting the County to examine same.
4. Cleaning, setup, and handling checkout during and after the auction for up to five (5) days after the auction.
5. Arranging for electricians, refrigeration specialists, plumbers, etc. necessary for the removal of equipment.
6. Transferring of titles of vehicles/equipment.
7. Payment will be made to County ten (10) business days after final pickup and payment date.

2. THE COUNTY SHALL:

1. Maintain and provide premises (Auction location) in which said property can be located and furnish light, water, and other utilities necessary for the auction services to be performed. In addition, County shall be responsible for maintaining appropriate insurance for the premises and property while the services are being performed.
2. Not sell, dispose of or otherwise withdraw from said auction any part of the said property or refuse to submit said property or any part thereof once the property has been designated for sale by Provider.
3. Not interfere, prevent or prohibit Provider, in any manner, prior to or during the auction, from carrying out his duties, and obligations of this agreement.
4. In the event of breach of covenants contained herein, pay the Provider as liquidated damages all advertising and other expenses actually incurred by Provider, and a commission of ten percent (10%) of the minimum bid value of said property.
5. Pay for electricians, refrigeration specialist, plumbers, etc. necessary for the removal of equipment.
6. Fees

Provider acknowledges and agrees that no specific amount of work is guaranteed under this agreement. Fees shall be determined as set out herein and no minimum amount of compensation to Provider is required.

Provider will track and report all transactions by each seller entity and payment for all sales will be made to the County ten (10) business days after final pickup and payment date. County will make payment to the partners ten (10) business days after payment is received by Provider.

1. Condition of Payment

All services provided by the Provider pursuant to this Agreement shall be performed to the satisfaction of the County, and in accordance with applicable federal, state and local laws, ordinances, rules and regulations in place at the time of this agreement.

1. Effective Date of Contract

This Agreement shall be effective upon execution and shall remain in effect until December 31, 2015, or until all obligations set forth in this Agreement have been satisfactorily fulfilled or unless earlier terminated as provided, whichever occurs first.

This Agreement may be renewed on an annual basis, and any changes will be in writing and incorporated into the existing Agreement.

1. Data Practices

All data collected, created, received, maintained or disseminated for any purpose by the activities of the Provider because of this Agreement shall be governed by Minnesota Government Data Practices Act. Provider, its agents, employees and any subcontractors of Provider in providing all services hereunder, agree to abide by the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, as amended, and Minn. Rules promulgated pursuant to Chap. 13. The Provider agrees to hold the County, its officers, department heads and employees harmless from any claims resulting from Provider’s unlawful disclosure, failure to disclose, or use of data protected under state and federal laws.

1. County and State Audit

Pursuant to Minn. Stat. Section 16C.05, Subd. 5, the Provider shall maintain all books, documents, papers and accounting records and other evidence pertaining to costs incurred and shall make such material relevant to this Agreement available at the Provider's office at all reasonable times for inspection by K-BID County or the Minnesota state auditor or representatives of the Minnesota Department of Transportation or the federal government. Records which are not delivered to the County shall be retained by the Provider for a period of six years after agreement completion. The retention period shall be automatically extended until any ongoing administrative or judicial action is finally completed or until the authorized agent of the County notifies the Provider in writing that the records need no longer be kept.

1. Termination of the Agreement

Either party may cancel this Agreement (or any part thereof), at any time by giving written notice to the other party at least fifteen (15) calendar days prior to the effective date of the termination. The Provider shall be paid for the work performed prior to the effective date of termination based upon the payment terms of this Agreement. Such payment shall not exceed the maximum amount provided for by the terms in this agreement. Notice to the County shall be mailed or delivered to the K-BID County. Notice to the Provider shall be mailed or delivered to      ,      ,      ,      , MN      .

1. Independent Contractor

It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of a partnership, joint venture, or an association with the County and Provider. The Provider is an independent contractor and neither it, its employees, agents, subcontractors nor representatives shall be considered employees, agents or representatives of the County. Except as otherwise provided herein, the Provider shall maintain, in all respects, its present control over the means and personnel by which this Agreement is performed. From any amounts due the Provider, there shall be no deduction for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of the Provider.

1. Notices

Any notices to be given under this agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same with the United States Postal Service, addressed to the authorized agent of Provider, at its address stated herein, or to the authorized agent of the County at the address stated herein

1. Choice of Law

The laws of the State of Minnesota shall govern all questions as to the execution, nature, obligation, instruction, validity and performance of this Agreement and all proceedings will be within the jurisdiction of K-BID County, State of Minnesota.

1. Subletting, Assignment or Transfer

Neither party to this Agreement shall transfer, sublet, or assign any rights under or interests in this Agreement without the prior written consent of the other party. This written consent shall in no way relieve the Provider from its primary responsibility for the performance of the work. No approval shall be necessary for non-professional services, such as reproductions, printing, scale models and other services normally performed or provided by others, provided that payment for such services is included under compensation for other items of this Agreement. Any subcontractor of the Provider used to perform any portion of this Agreement shall report to and bill the Provider directly, except as otherwise noted in this Agreement. The Provider shall be solely responsible for the breach, performance, and non‑performance of or by any subcontractor. The Provider shall require and ensure that any subcontractor agrees to and complies with all of the terms of this Agreement.

1. Indemnity

The Provider agrees to defend, indemnify, and hold the County, its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney’s fees and expenses resulting directly or indirectly from any negligent act or omission on the part of Provider, or its subcontractors, partners or independent contractors or any of their agents or employees, in the performance of or with relation to any of the work or services to be performed or furnished by the vendor or the subcontractors, partners or independent contractors or any of their agents or employees under this Agreement.

The Provider shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the Provider under this Agreement. The Provider shall, without additional compensation, correct or revise any errors or deficiencies in the Provider’s final reports and services.

1. Insurance

The Provider shall not commence work under this Agreement until it has obtained at its own cost and expense all insurance required herein. All insurance coverage is subject to approval of the County and shall be maintained by the Provider until final completion of the work.

**A. Workers' Compensation**

a. State: Minnesota ‑ Statutory

b. Employer's Liability with minimum limits of:

#### Bodily Injury by Accident: $100,000 each Accident

#### Bodily Injury by Disease: $100,000 each Employee

#### Bodily Injury by Disease: $500,000 policy limit

c. Benefits required by union labor contracts: As applicable

In the event the Provider is a sole proprietor and has not elected to provide workers' compensation insurance, the Provider will be required to execute and submit an affidavit of sole proprietorship in a form satisfactory to the County before entering into this Agreement.

1. **Commercial** **General Liability**

Including Premises, Operations, Products, Completed Operations, Advertising and Personal Injury Liability, with the following minimum limits of liability:

$2,000,000 Aggregate

$2,000,000 Products & Completed Operations Aggregate

$1,000,000 Personal Injury & Advertising Injury

$1,000,000 Occurrence

$ 100,000 Fire Damage Limit

$ 5,000 Medical Expense

Policy should be written on an occurrence basis and include explosion, collapse and underground.

The County shall be named as an additional insured.

**C. Commercial Auto Liability**

Minimum limits of liability shall be:

If split limits: $1,000,000 each person/$1,000,000 each occurrence for Bodily Injury.

$1,000,000 each occurrence for Property Damage

## If combined single limit: $1,000,000 per occurrence

Automobile liability should include any auto, hired and non-owned. The County shall be named as an additional insured.

**D. Proof of Insurance**

Insurance certificates evidencing that the above insurance is in force with companies acceptable to County and in the amounts required shall be submitted to County for examination and approval prior to the execution of the agreement, after which they shall be filed with County**. The insurance certificate shall name the County as an additional insured and specifically provide that a certificate shall not be materially changed, canceled or non‑renewed except upon sixty (60) days prior written notice to County.** Neither County's failure to require or insist upon certificates or other evidence of insurance showing a variance from the specified coverage changes the Provider's responsibility to comply with the insurance specifications.

1. Settlement of Claims

In any case where the Provider deems that extra compensation is due for services, materials or damages not expressly required by this Agreement or not ordered in writing by the County as extra work, the Provider shall notify the County in writing before it begins any such work on which it bases the claim. If such notification is not previously given or the claim is not separately and strictly accounted for, and approved by the County in writing before the Provider commences said work, the Provider hereby waives and releases forever any claim or costs for such extra compensation. However, such notice or accounting shall not in any way be construed as proving the validity of any claim by the Provider.

The County shall decide all claims, questions and disputes of whatever nature which are referred to it relative to the prosecution and fulfillment of this Agreement; and its decision upon all claims, questions and disputes shall be final and conclusive upon the parties thereto administratively.

1. Successors and Assigns

The County and the Provider, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the County nor Provider shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other.

1. Equal Employment and Americans with Disabilities

In connection with the work under this Agreement, the Provider agrees to comply with the applicable provisions of state and federal equal employment opportunity and nondiscrimination statutes and regulations. In addition, upon entering into this Agreement, the Provider certifies that it has been made fully aware of K-BID County's Equal Employment Opportunity and Americans with Disabilities Act Policy, attached hereto and incorporated herein as Exhibit “B” through both oral and written communications, that it supports this policy and that it will conduct its own employment practices in accordance therewith. Failure on the part of Provider to conduct its own employment practices in accordance with County Policy may result in the withholding of all or part of regular payments by the County due under this Agreement unless or until Provider complies with the County Policy, and/or suspension or termination of this Agreement.

1. Severability

In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the Agreement to fail its purpose. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

1. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof, as well as any previous agreements presently in effect between the County and the Provider relating to the subject matter hereof.

1. Covenant Against Contingent Fees

The Provider warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Provider to solicit or secure this agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Provider any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

1. Laws

The Provider shall keep himself informed of all existing and current regulations of the county, state and federal laws which in any way limit or control the actions or operations of those engaged upon the work or affecting the materials supplied to or by them. The Provider shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify the County as provided in Article 13 of this Agreement.

1. Authorized Agent of K-BID County

K-BID County shall appoint an authorized agent for the purpose of administration of this Agreement. Provider is notified of the authorized agent of K-BID County as follows:

The Provider shall appoint an authorized agent for the purpose of administration of this Agreement. County is notified that the authorized agent of the Provider is as follows:

1. Modification of Agreement

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only

be valid when they have been reduced to writing, signed by authorized representatives of the County and the Provider and attached as an Amendment to the original Agreement.

IN WITNESS WHEREOF, the County and the Provider, by their authorized partner or officer, have hereunto subscribed their names in duplicate.

**K-BID COUNTY, MINNESOTA**

ATTEST:

By:

DATED:

APPROVED AS TO FORM:

By:

DATED:

By:

Its:

And:

Its:

DATED:

**EXHIBIT “A”**

**SCOPE OF WORK**

K-BID County Fleet Department is seeking professional services for the assistance in selling used vehicles/equipment as well as miscellaneous parts. The auction/sale can take place at either the K-BID County Public Works facility or another location.

K-BID County will require that the following are done by the auction company that will be responsible for the sale of the items:

* Advertisement of items for sale, including picture/video taking.
* Sale of items
* Transaction/Payment with all buyers
* Transferring of titles for vehicles/equipment

Auction companies are asked to submit a proposal by filling out the Quote for Proposal Form. County staff will review the submitted proposals and make a selection.