

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

AGREEMENT FOR PROFESSIONAL AUCTIONEERING SERVICES

THIS AGREEMENT (hereinafter referred to as "Agreement"), is made and entered into by and between Fort Bend County, Texas (hereinafter referred to as "County"), a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, and Ernie Croucher Auctioneers, (hereinafter referred to as "Auctioneer"), under the following terms and conditions.

Whereas, Auctioneer is qualified and capable of performing the professional auctioneering service proposed herein and is willing to enter into this Agreement with County to perform said service.

Now, therefore, in consideration of the covenants and agreement hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

1. **Term.** The term of this Agreement shall be for a period of one (1) year. This agreement is subject to renewal for an additional one (1) year term upon express written agreement of the parties. This agreement shall be effective on the date approved by County and shall terminate on _____. Either party to this Agreement may terminate the Agreement by giving the other party written notice of its intent to terminate at least thirty (30) days prior to the end of the Agreement anniversary date. Alternatively, this Agreement may be terminated in accordance with any other provision of the Agreement.
2. **Payment.** County agrees to pay Auctioneer for services rendered by Auctioneer a commission of: (1) 10% of the gross receipts from all sales from a full service online auction without minimum and with or without reserve and no buyer's premium; (2) 15% of the gross receipts from all sales from a full service live on site public auction without minimum or reserve and no buyer's premium; or (3) 20% of the gross receipts from all sales from a full service simulcast auction with both live on site bidding and telecast bidding plus a \$750.00 set up fee. Commission and fees shall be paid within thirty days of completion of the sale.
3. **Pre-Auction Requirements.**
 - a. Auction Method
 - i. Auctioneer must recommend the auction method that is best suited for the type of property being sold.
 - ii. Auctioneer may recommend any method deemed necessary to accomplish the goal of obtaining a fair return of value, to include but not limited to, live/public auction, online/internet auction, and/or simulcast bidding.
 - iii. County reserves the right to reject the recommended method and require a specific method whenever deemed necessary.
 - iv. County reserves the right to select the location of all auctions.

b. Advertising

- i. Prior to each sale, Auctioneer must advertise the auction event.
- ii. All advertising must be approved by County.
- iii. Auctioneer must advertise in at least the following ways:
 1. Auctioneer must print a minimum of 1,000 two-colored sales brochures at least fourteen (14) days prior to the auction. Each brochure must identify the auction location, date, time, and terms and conditions, and must provide pictures of the items being sold. One hundred brochures must be provided to the Fort Bend County Purchasing Department and remainder must be mailed.
 2. Auctioneer must advertise at a minimum in the Houston Chronicle, Fort Bend Herald, Southwest Star, and India Herald newspapers once a week for two (2) weeks prior to the auction.
 3. Auctioneer must post an auction notice on the Auctioneer's website and the Houston Chronicle's website.
 4. Auctioneer must recommend and conduct an appropriate advertising process for sales that will be conducted entirely online.

4. Auction Requirements.

a. Setup/Display

- i. County shall organize all items to be sold.
- ii. Auctioneer must lot all items to be sold.
- iii. Auctioneer must be available during scheduled viewing times to assist with any questions or requests for information raised by auction attendees.

b. Event

- i. Auctioneer must provide all labor, equipment, and supplies necessary to prepare for and conduct each auction.
- ii. Auctioneer must ensure that all attendees are registered and receive a copy of the terms and conditions of sale.
- iii. County hereby agrees to sell the property to the highest bidder and to deliver titles of said property free of all liens and encumbrances.
- iv. Auctioneer will serve County so as to return the highest price possible for all County property.
- v. Auctioneer must settle any disputes that may arise among the buyers or between a buyer and County that pertains to a lot or lots purchased.
- vi. County will provide all security during auctions held on County property.
- vii. Auctioneer must provide a final auction sales report immediately following the auction. The report must include a registration list in bidder's number sequence including the name, address, and telephone number of the bidder. The report must contain an itemized listing of all items sold and must indicate the price received and the bidder number of the buyer.
- viii. Auctioneer must remit gross proceeds for the auction to County upon completion of auction, except credit card receipts which must be remitted within 72 hours of the completion of the auction.
- ix. After the sale of any titled vehicles, County will furnish the title application form and take the necessary steps to release the title.

5. **Performance.** Auctioneer will perform all services here in under the direction of the County Purchasing Agent.
6. **Insurance.**
 - a. Prior to commencement of the Services, Auctioneer shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Auctioneer shall provide certified copies of insurance endorsements and/or policies if requested by County. Auctioneer shall maintain such insurance coverage from the time services commence until services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of services. Auctioneer shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - i. Commercial General Liability insurance on an occurrence form in the minimum amount of \$500,000 per occurrence with a \$1,000,000 general policy aggregate. The policy shall protect the County and the Auctioneer from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Auctioneer's operations under this Agreement, whether performed by the Auctioneer itself or anyone directly or indirectly employed by Auctioneer. Such insurance shall provide coverage for premises operations, acts Auctioneer, and completed operations.
 - ii. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$500,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - b. County and the members of Commissioners Court shall be named as additional insured to all required coverage. All Liability policies written on behalf of Auctioneer shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
7. **Energy Conservation Requirements.** Auctioneer agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
8. **Access to Records and Reports.** Auctioneer agrees to provide Fort Bend County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Auctioneer which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Auctioneer also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Auctioneer's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Auctioneer

agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Auctioneer agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Auctioneer agrees to maintain same until Fort Bend County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

9. **Federal Changes.** Auctioneer shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Auctioneer's failure to so comply shall constitute a material breach of this contract.
10. **No Government Obligation to Third Parties.** County and the Auctioneer acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to County, Auctioneer, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Auctioneer agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
11. **Program Fraud and False or Fraudulent Statement and Related Acts.** Auctioneer acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Auctioneer certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Auctioneer further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Auctioneer to the extent the Federal Government deems appropriate.

Auctioneer also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Auctioneer, to the extent the Federal Government deems appropriate.

Auctioneer agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. Civil Rights Requirements. The following requirements apply to the underlying contract:

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Auctioneer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Auctioneer agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Auctioneer agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Auctioneer agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Auctioneer agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, Auctioneer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Auctioneer agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Auctioneer agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the

Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Auctioneer agrees to comply with any implementing requirements FTA may issue.

Auctioneer also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13. **Disadvantaged Business Enterprise (DBE).** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

Auctioneer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Auctioneer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Auctioneer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Fort Bend County deems appropriate. Each subcontract Auctioneer signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Auctioneer is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Auctioneer's receipt of payment for that work from County. In addition, Auctioneer is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.

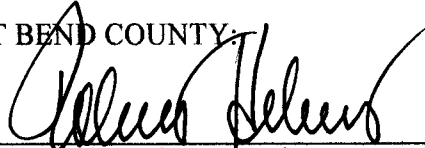
Auctioneer must promptly notify County whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Auctioneer may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of County.

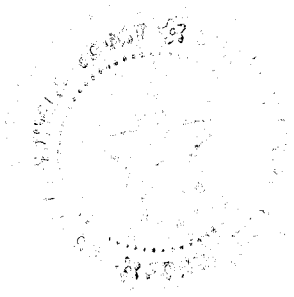
14. **Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Auctioneer shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

EXECUTION


This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:


Robert E. Hebert, County Judge


5-11-2010
Date

ATTEST:


Dianne Wilson, County Clerk

5-11-10
Date

AUCTIONEER: ERNIE CROUCHER AUCTIONEERS # 7561

By:



Ernie Croucher
License No. 7561
2122 Country Mile Lane
Richmond, Texas 77469
281-341-9169

PS: Ernie Croucher.Auction Agreement (Transportation): 3686