

STATE OF TEXAS §
COUNTY OF FORT BEND §

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL AUCTIONEERING SERVICES

This First Amendment is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Lemons Auctioneers, LLP (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have executed and accepted that certain Agreement for Professional Auctioneering Services (the "Original Agreement," attached as Exhibit One) on or about October 16, 2015;

WHEREAS, the Original Agreement certified funding in an amount that was insufficient to fully pay the obligation of County for the services rendered; and

WHEREAS, the following changes are incorporated as if a part of the Original Agreement incorporated by reference in the same as if fully set forth verbatim herein:

I. Amendments

Section 3. Compensation and Payment is amended as follows:

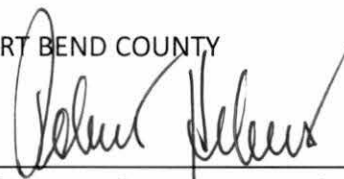
D. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum certified as available by the Fort Bend County Auditor below on this First Amendment specifically allocated to fully discharge any and all liabilities County may incur as payment for Services rendered. This amount shall be the *maximum* sum available and does not change the compensation calculation described in Section 3A of this Agreement.

II. The parties acknowledge and agree that this First Amendment shall be effective as of the date of the Original Agreement.

III. Except as modified herein, any prior executed document remain in full force and effect and has not been modified or amended. In the event of conflict, the contents of this First Amendment shall prevail.

IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below, but effective as of the date of the Original Agreement.

FORT BEND COUNTY



Robert E. Hebert, County Judge
11-24-2015

LEMONS AUCTIONEERS, LLP



Authorized Agent- Signature

Authorized Agent- Signature

Col: Lemons-Campbell
Authorized Agent- Printed Name

Co. Owner/General Manager
Title

Title

11/17/15
Date

Date

ATTEST:



Laura Richard, County Clerk

Laura Richard, County Clerk

Exhibit One: Agreement for Professional Auctioneering Services executed on or about October 16, 2015

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 35,000.⁰⁰ to accomplish and pay the obligation of the Fort Bend County under this Agreement.



Ed Sturdivant, Fort Bend County Auditor

Ed Sturdivant, Fort Bend County Auditor



Exhibit One

Agreement for Professional Auctioneering Services
executed on or about October 16, 2015

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL AUCTIONEERING SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Lemons Auctioneers, LLP (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide professional auctioneering services;

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, Contractor a licensed auctioneer in the State of Texas and represents that Contractor is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor shall render Services in accordance with Exhibit A to this Agreement.

Section 2. Personnel

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project

shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

- A. County agrees to pay Contractor for services rendered a commission of 10% 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. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
- B. Contractor is authorized to collect an additional fee from auction purchasers who tender credit card payment provided that the fee does not exceed 3% of the purchase price of the sale.
- C. County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 5. Termination

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.

B. Termination for Default

1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
2. If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7A above.

C. Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 6. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 7. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 8. Insurance

- A. Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor 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. Contractor 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:
1. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 3. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 4. Auctioneer Professional Liability insurance with limits of \$500,000.
- 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 Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

Section 9. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 10. Confidential and Proprietary Information

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its

own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 11. Independent Contractor

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 12. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:

Fort Bend County
Attn: Purchasing Agent
301 Jackson. Ste. Suite 201
Richmond, Texas 77469

w/copy to:

Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Contractor:

Lemons Auctioneers, LLP
18810 Juergen Road
Tomball, TX 77377

C. Notice is effective only if the party giving or making the Notice has complied with subsections 12(A) and 12(B) and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 13. Compliance with Laws

Contractor 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, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 14. Performance Warranty

- A. Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 15. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.

- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 16. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 17. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 18. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 19. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 20. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 21. Captions

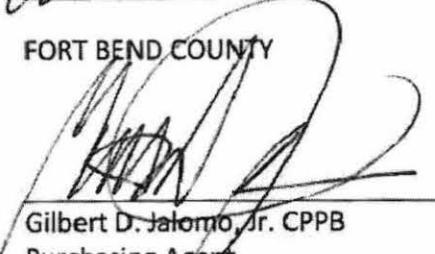
The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 22. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

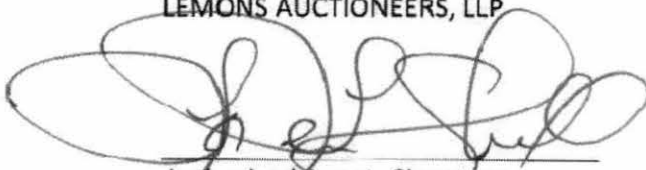
IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 16 day of October, 2015.

FORT BEND COUNTY


Gilbert D. Jalomo, Jr. CPPB
Purchasing Agent

10.16.15
Date

LEMONS AUCTIONEERS, LLP


Authorized Agent- Signature

Lori Lemons-Campbell
Authorized Agent- Printed Name

Co-Dund General Manager
Title

10/13/15
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 35,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.

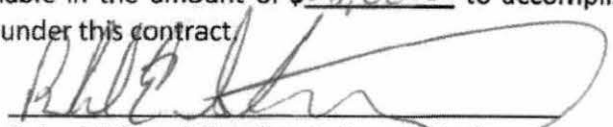

Robert Edward Sturdivant, County Auditor

Exhibit A
Scope of Service

PRE-AUCTION ACTIVITIES:

A. Technical Requirements:

1. Contractor must provide an auctioneer who is licensed in the State of Texas. Name and license number of the auctioneer to be provided to County Purchasing Agent no later than 15 calendar days prior to scheduled sale date.
2. Contractor must be experienced and adept at conducting public auctions utilizing Contractor's furnished equipment.
3. Contractor must be experienced at utilizing a variety of auctioneering methods to conduct auctions including online auctions.
4. Contractor must not buy directly or indirectly from any auction that he/she is conducting for Fort Bend County.
5. Contractor will not be compensated for unconsummated sales.
6. Contractor to conduct public auction without minimum or reserve, buyer's premium, bid-ins or buy backs.
7. Contractor required conducting auctions for equipment that will be sold as "conditional sales."

B. Work Requirements:

1. Contractor must recommend the auction method that is best suited for the type of property being sold.
2. Contractor 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 reserve pricing auction, and/or simulcast bidding.
3. Fort Bend County reserves the right to reject the recommended method and require a specific method whenever deemed necessary.
4. Contractor must provide all labor, equipment and supplies necessary to prepare for and conduct each auction.
5. Fort Bend County reserves the right to select the location of all auctions.

C. Advertising:

1. Prior to the sale, the Contractor shall advertise the auction event.
2. All advertising must be approved by Fort Bend County.
3. Contractor must advertise the sale in at least the following ways:
 - a. Brochure. Contractor must print a minimum of 1,000 two-colored sales brochures fourteen (14) calendar days prior to the auction. Of which 100 are to be given to the Fort Bend County Purchasing Department and remainder mailed. Brochure to contain at a minimum the auction location, date, time, terms and conditions, and pictures of items being sold.
 - b. Newspaper. Contractor must advertise at a minimum in the Houston Chronicle, Fort Bend Herald, Southwest Star and Fort Bend Independent newspapers once a week for two (2) weeks prior to the auction.
 - c. Websites. Contractor must post the auction notice on his/her own company's website as well as the Houston Chronicle. Fort Bend County will post on the county's website.
 - d. Contractor must recommend and conduct an appropriate advertising process for sales that will be conducted entirely online.

EXECUTION OF AUCTION:

1. Fort Bend County shall organize all items to be sold.
2. Contractor must lot all items to be sold.
3. Fort Bend County is responsible for starting the vehicles during the actual auction.
4. Contractor must be available during scheduled viewing times to assist with any questions or request for information raised by auction attendees.
5. Contractor must ensure that all attendees are registered and receive a copy of the terms and conditions of sale.
6. Contractor must make sure all forms are turned in by attendees when registering (example: Texas Sales & Use Tax Resale Certificate and the Bank Letter of Guarantee)
7. Contractor must settle any disputes which may arise among the buyers, or between a buyer, and County, which pertain to a lot or lots purchased.

8. Date of sale shall be **November 14, 2015**, unless otherwise agreed to in advance by the Parties. Start and end time shall be agreed to in advance by the Parties.
9. Contractor 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 include itemized listing of all items sold and is to indicate the price received and the bidder number of the buyer.
10. Contractor to remit gross proceeds for the auction to the County upon completion of auction; except credit card receipts which are to be remitted within 72 hours of conclusion of the auction.
11. Fort Bend County will provide all security during auctions held on County property.
12. After the sale of any titled vehicles, Fort Bend County will furnish the title application form and take the necessary steps to release the title.
13. Upon completion of auction, Contractor will submit a clear, concise invoice and proof of advertisements.
14. The County Auditor's Office will complete an analysis of the auction prior to payment authorization.