

AGREEMENT FOR AUCTIONEERING SERVICES

This Agreement is entered into between **LEVY COUNTY**, a political subdivision of the State of Florida, P.O. Box 310, Bronson, FL 32621 (the "County") and **((insert name of contractor))** (the "Contractor") on ((insert month and day)), 2022 (the "Effective Date").

RECITALS:

WHEREAS, on ((insert month and day)), 2022, County issued Request for Proposals No. 2022-004 for the services described in Article II below (the "RFP") in accordance with applicable procurement policies and procedures;

WHEREAS, Contractor submitted a proposal in response to the RFP and was selected by County to provide the services; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

ARTICLE 1 – INCORPORATION OF DOCUMENTS

The RFP consisting 1-27 pages, addenda dated ((insert dates for all addenda)), 2022 (the "Addenda") and the proposal submitted by Contractor dated ((insert month and day)) 2022 (the "Proposal"), all of which are on file in the County Procurement Department, are made a part of this Agreement. In the event of any conflict, the documents will be given precedence in the following order: (1) this Agreement; (2) the Addenda; (3) the RFP; and (4) the Proposal.

ARTICLE 2 –SCOPE OF SERVICES

- 2.1 The Project consists of conducting public auctions to offer for sale to the highest bidder certain personal property (such as, but not limited to, motor vehicles, machinery, heavy equipment, parts, furniture and office equipment) and real property that is no longer used or needed by the County (collectively "Surplus Property".) Such auctions will be held on an "as needed" basis throughout the term of the Agreement, as directed by the County. It is anticipated that the County will request auctions in any given fiscal year (October 1 through September 30) but no minimum number of auctions is guaranteed.
- 2.2 The Project consists of the following **Scope of Services**:
 - 2.2.1 Contractor is responsible for design and placement of all advertising and promotional materials for the auctions, except for any notice required by law (which will be the responsibility of the County.)
 - 2.2.2 Contractor will provide notice to bidders that all Surplus Property is sold FOB Place of Sale and "AS-IS, WHERE-IS" with no guarantees or warranties, expressed or implied, and will hold harmless the County from any action arising out of the buyer's removal or subsequent use of Surplus Property sold at auction.
 - 2.2.3 Contractor will conduct auctions at the direction of the COUNTY coordinator who will specify whether the action is to be conducted live (at a County facility/property) or on-line. The County Coordinator may require a reserve/minimum bid for any item. All auctions shall be open to the public and not restricted in any manner.

- 2.2.4 Contractor will make reasonable and prudent effort to maximize the value of the Surplus Property. Contractor will stage the Surplus Property in an orderly fashion so as to enhance its marketability and will consider only the best interest of the County in conducting the auction.
- 2.2.5 Contractor shall provide sufficient personnel (including a Notary Public) to supervise, direct, assist clients, provide for signature registration of all bidders, and to collect all monies and taxes on the day of an auction.
- 2.2.6 Contractor is responsible for collecting payment for all Surplus Property that is auctioned and must certify payment of State of Florida Sales Tax. Bad or dishonored checks or errors in computation of funds are at the Contractor's risk. No Show may be deducted from the total sales; however, the deposit made by the No Shows shall be recorded as a sale and the unsold Surplus Property processed pursuant to the following paragraph.
- 2.2.7 Contractor shall provide a computer-generated report of the results of each auction, which report must include: a brief description of each piece of Surplus Property, its asset/property control number or parcel identification number, selling price, commission amount and net amount. The net amount shall be reduced further by transportation costs, if applicable. The report shall have a signature attesting to the accuracy of the report and a date of attest. This report shall be due and forwarded to the County with the final payment from each auction.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

- 3.1 Contractor shall perform the Scope of Services in strict accordance with the provisions of this Agreement.
- 3.2 Contractor agrees that, to the best of its ability, the key personnel identified in the Proposal will be retained by Contractor throughout the term of this Agreement. If Contractor is unable to retain any of the key personnel identified in its Proposal, it shall provide prompt notice including the names and qualifications of the replacement personnel to County.
- 3.3 Contractor shall obtain and maintain throughout the term of this Agreement, all licenses and permits required by law, such as, but not limited to: (a) Auctioneer License; and (b) any licenses required to sell motor vehicles and real property owned by the County.
- 3.4 A Performance Bond in the amount of \$20,000 by a surety company considered satisfactory by Levy County and otherwise authorized to transact business in the State of Florida, shall be required from the Contractor for purposes of insuring the faithful performance of the obligations imposed by this Agreement. The Performance Bond must be properly executed by the surety company and Contractor and be submitted to Levy County within ten (10) days after the Effective Date.
- 3.5 Contractor shall comply with all federal, state, and local statutes, rules, codes, ordinances, and regulations that apply to performance of this Agreement.
- 3.6 As required by 119.0701, Florida Statutes, the following notice is given regarding the Contractor's duty to comply with Florida's public records laws (Chapter 119, Florida Statutes), as the same may be amended. Failure to comply shall constitute a breach of this Agreement. Specifically, but not by way limitation, Contractor shall:
 - (i) Keep and maintain public records required by County to perform the services;

(ii) Upon request from County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the services to be provided by Contractor under this Agreement if Contractor does not transfer the records to County; and

(iv) Upon completion of this Agreement, transfer, at no cost, to County all public records in possession of Contractor or keep and maintain public records required by County to perform the services. If Contractor transfers all public records to County upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon requests from County's custodian of public records, in a format that is compatible with the information technology systems of County.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

TELEPHONE: (352) 486-5218
EMAIL: LEVYBOCC@LEVYCOUNTY.ORG
MAILING ADDRESS: P.O. BOX 310, BRONSON, FL 32621

ARTICLE 4 – COUNTY'S RESPONSIBILITIES

- 4.1 The County will be responsible for transporting all items to the auction site.
- 4.2 The County will provide a clean, safe environment for the auction.
- 4.3 County staff, or staff of the Ex-Officio Clerk to the Board of County Commissioners, at the option of the County will be available to direct/assist Contractor during hours of auction.
- 4.4 The County will be responsible for all repairs to County-owned facilities and equipment therein, which are not the result of actions caused by the negligence or misuse of or by the Contractor and/or his employees.
- 4.5 County shall provide reasonable access and entry to all County property required by Contractor to perform the services described in this Agreement. All such access and entry shall be provided at County expense. County shall also use reasonable efforts to obtain permission for reasonable

access and entry to any private property required by Contractor to perform the services described in this Agreement, if applicable.

- 4.6 For each auction, the County will provide a written list describing the Surplus Property to be auctioned, along with the necessary titles, powers of attorney and other documentation (if any.) Items other than vehicles and heavy machinery/equipment and real property, may be palletized (and required to be auctioned in that way) by the County.

ARTICLE 5 – TERM/TERMINATION

- 5.1 The term of this Agreement shall begin on the Effective Date and continue for a three (3) year period. Upon written notice from the County to the Contractor, this Agreement may be extended at the end of the initial 3-year term for up to three additional 1 year terms.
- 5.2 This Agreement may be terminated by County without cause upon no less than thirty (30) calendar days' advance written notice to Contractor. This Agreement may be terminated by the County for cause upon no less than ten (10) calendar days' advance written notice to Contractor, which notice specifies the cause of termination and allows the Contractor a reasonable period in which to cure the cause of termination. This Agreement may be immediately terminated by the County in the following circumstances: funds necessary to pay for the Contractor's services are no longer available, the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors, or the Contractor fails to comply with Florida's public records laws.
- 5.3 In the event of termination, Contractor shall be entitled to compensation for services rendered and costs incurred through the effective date of termination. All finished or unfinished documents, data, studies, surveys, analyses, sketches, tracings, specifications, plan, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other work product prepared by Contractor shall become the property of County and shall be delivered by Contractor to County immediately upon the effective date of termination.
- 5.4 Notwithstanding the foregoing, the Contractor shall not be relieved of liability for damages sustained by the County from breach of the Agreement by Contractor and the County may reasonably withhold payment to Contractor for the purposes of set-off until such time as the exact amount of damages due the County from the Contractor is determined.

ARTICLE 6 – PAYMENT

- 6.1 The Contractor will retain a percentage commission of _____ percent (____%) from any total auction sales, or individual piece of equipment, as full compensation for this Agreement.
- 6.2 Contractor will send the sales report required by paragraph 2.2.7 and a check in an amount equal to total gross sales, less commission, not later than ten (10) working days after each auction is concluded. Report and payment shall be sent to the attention of the County Coordinator, P.O. Box 310, Bronson, FL 32621.

6.3 Price shall be net and all invoices will be subject to and payable according to the Local Government Prompt Payment Act (sections 218.70 through 218.80, Florida Statutes, if applicable).

ARTICLE 7 – STANDARDS AND CORRECTIONS

7.1 Contractor shall perform or furnish to County all services to a level of technical skill, ability, and diligence as required for professionals having the level of skill, expertise and specialized knowledge, as represented to the County, both orally and in writing, to be possessed by Contractor, all in accordance with this Agreement and with generally accepted standards of professional practice and with the laws, statutes, ordinances, codes, rules and regulations governing Contractor’s profession. The same standards of care shall be required of any subconsultant or subcontractor engaged by Contractor.

7.2 Contractor shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Contractor or any subconsultant or subcontractor engaged by Contractor under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County’s rights under any applicable statutes of limitations. County review of, approval of, acceptance of, or payment for any of Contractor’s work product, services, or materials shall not be construed to operate as a waiver of any County’s rights under this Agreement, or cause of action County may have arising out of the performance of this Agreement, or cause of action County may have arising out of the performance of this Agreement. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 8 – COUNTY PROPERTY

All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Contractor’s services under this Agreement shall become property of and shall be delivered to County without restriction or limitation as to use. Any other use by Contractor or other parties shall be approved in writing by the County. If requested, Contractor shall deliver the documents to the County within fifteen (15) calendar days.

ARTICLE 9 – NOTICES

Any notice required or permitted to be sent hereunder shall be sent by United States first class mail, postage prepaid, or hand-delivered to the parties at the addresses listed below:

If to County:

County Coordinator
P.O. Box 310
Bronson, FL 32621

If to Contractor:

ARTICLE 10 – NO CONTINGENT FEES

Contractor certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of breach or violation of this provision, County may terminate this Agreement without liability and deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 11 – NO ASSIGNMENT

11.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Contractor without prior written consent of County.

11.2 Consultant shall not subcontract any services or work to be provided to County without the prior written approval of the County. The County reserves the approve or reject any subcontractor or subconsultant and to evaluate/inspect any subcontractors in order to determine the ability of the subcontractor or subconsultant. The County’s approval of a subcontractor or subconsultant shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE 12 - INDEMNIFICATION

12.1 The Contractor agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless County and all of County’s elected officials, officers, agents, and employees from and against all claims, liability, loss, and expense, including reasonable costs, collection expenses, attorneys’ fees, and court costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of Contractor or its officers, agents or employees in performance or non-performance of its obligations under an agreement. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to County when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of valuable consideration provided by County in support of these indemnification, legal defense and hold harmless contractual obligation in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify County as set forth in this provision. Nothing herein shall be construed to extend County’s liability beyond that provided in Section 768.28, Florida Statutes.

12.2 The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

ARTICLE 13 - INSURANCE

Before performing any work, the Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, insurance policies in coverages and limits required below, or to the extent and in such amounts as required and authorized by Florida law.

In addition, for those policies that are allowed by law to carry an additional named insured, Contractor will provide declarations pages from policies or insurance policies (other similar evidence) of insurance executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, listing coverages and limits, expirations dates, terms of policies and all endorsements, and shall include the RFP/Project Name, and naming "Levy County, a political subdivision of the State of Florida, its elected officials, officers, employees, agents, and volunteers," as a named, additional insured, as well as furnishing County with a certified copy, or copies, of said insurance policies.

In addition, each policy required below shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverages or limits, written notice thereof shall be given to County. Any and all deductibles to any insurance policy shall be the responsibility of the Contractor. Said insurance coverages procured by Contractor as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to County, and that any other insurance, or self-insurance available to County shall be considered secondary to, or in excess of, the insurance coverage(s) procured by County as required herein. Nothing herein shall be construed to extend County's liability beyond that provided in Section 768.28, Florida Statutes.

Coverages and limits for required insurance is as follows:

- A. Workers' Compensation: Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$300,000 each accident, \$300,000 each employee, \$300,000 policy limit for disease.
- B. Public Liability Insurance: Policy must include bodily injury and property damage, Combined Single Limits (CSL) of \$300,000 minimum.
- C. Commercial General Liability – Occurrence Form Required: Contractor/Vendor shall maintain commercial general liability (CGL) insurance with a limit of not less than \$500,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project in the amount of \$1,000,000. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operation, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury and advertising injury. Damage to rented premises shall be included at \$100,000.
- D. Commercial Automobile Liability Insurance: Contractor/Vendor shall maintain automobile liability insurance with a limit of not less than \$300,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos.) The policy shall be endorsed to provide contractual liability coverage.

ARTICLE 14 - CONTACT PERSON(S)

Upon written request of Contractor, the County Coordinator shall designate one or more County employee(s) to serve as a point of contact for the day-to-day performance of this Agreement.

ARTICLE 15 - SEVERABILITY

In the event that a court having appropriate jurisdiction deems any provision of this Agreement invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that

one party may have drafted or prepared any or all terms and provisions hereof. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

ARTICLE 16 - GOVERNING LAW/VENUE/WAIVER OF JURY TRIAL/SOVEREIGN IMMUNITY

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the Eighth Judicial Circuit in and for Levy County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the County file a lawsuit to enforce any term or provision under this Agreement, then the County shall be entitled to its costs and attorney's fees at the pretrial, trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the County pursuant to Section 768.28, Florida Statutes.

ARTICLE 17 - INDEPENDENT CONTRACTOR

Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by Contractor and its employees, subcontractors and subconsultants. Under no circumstances shall Contractor, its employees, subcontractors or subconsultants look to the County as his/her employer, or as a partner, agent of principal. Neither Contractor, nor any of its employees, subcontractors and subconsultants, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

ARTICLE 18 - THIRD PARTY BENEFICIARIES

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

ARTICLE 19 – MISCELLANEOUS PROVISIONS

19.1 Pursuant to Section 215.4725, Florida Statutes, contracting with any entity listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Any contract for goods or services of One Million Dollars (\$1,000,000) or more may be terminated at the County's option if it is discovered that the Contractor submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

19.2 As required by Section 287.133(3)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid,

proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

19.3 If it is discovered that Contractor provided false statements in the Non-Collusion Affidavit submitted with its proposal, or it is discovered that collusion existed between Contractor and any other proposers or parties, the responses of all participants in such collusion will be rejected and/or this Agreement terminated and no participants in the collusion will be considered in future procurement processes.

19.4 The Contractor must comply, as applicable, with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Florida Civil Rights Act, and Levy County Resolution 2011-59, and other laws that prohibit harassment and discrimination, all as the same may be amended. Specifically, but not by way of limitation, the Contractor agrees that:

- No person shall, on the grounds of race, color, sex, religion, age, disability, national origin, genetics, pregnancy or marital status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, activity or service funded through this Contract.
- Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, genetics, pregnancy or marital status. Contractor agrees to post notice in a conspicuous place, available to employees and applicants for employment, setting forth the provision of this non-discrimination clause.
- Contractor will, in all solicitations or advertisements regarding program activities, services provided or applications for employment, state that all qualified applicants will receive consideration for services or employment without regard to race, color, religion, sex, age, disability, national origin, genetics, pregnancy or marital status.
- County may require Contractor to submit reports, and permit the County access to Contractor’s books, records, accounts and other sources of information and its facilities, as may be reasonably necessary to determine Contractor’s compliance with laws that prohibit harassment and discrimination.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the Effective Date.

BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA

_____, Chair

Date: _____

ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

Danny Shipp, Clerk

Approved as to form and legal
sufficiency

Nicolle M. Shalley, County Attorney

By: _____

Title: _____

Date: _____

ATTEST/WITNESS

Secretary of Corporation