

AGREEMENT FOR AUCTIONEER SERVICES

Northwest Municipal Conference
America's Auto Auction

THIS AGREEMENT dated (date of approval), effective February 15, 2020, is entered into by and between America's Auto Auction ("Contractor"), an Illinois Corporation, with its principal place of business located at 14001 S. Karlov Avenue, Crestwood, IL 60554, and the Northwest Municipal Conference ("NWMC"), 1600 E. Golf Road, Suite 0700, Des Plaines, Illinois 60016, an Illinois Non-Profit Corporation.

The Councils of Government (COGs) identified below may also participate by piggybacking onto the Agreement for Auctioneer Services between the Northwest Municipal Conference (NWMC) and America's Auto Auction (America's AA) and conditions that apply to the NWMC are also extended to them, except as provided for in #3.4.1 below. All references to the NWMC in the Agreement for Auctioneer Services between the Northwest Municipal Conference (NWMC) and America's Auto Auction (America's AA) shall now be deemed to include the parties named below. Additional COGs may be added by Amendment upon mutual agreement between the NWMC, America's AA and any additional COG.

DuPage Mayors & Managers Conference (DMMC)
1220 Oak Brook Road
Oak Brook, IL 60523

Metro West Council of Government (MWCOG)
5 E. Downer Place, Suite #E
Aurora, IL 60505

South Suburban Mayors & Managers Association (SSMMA)
1904 W. 174th Street
East Hazel Crest, IL 60429

WHEREAS, NWMC is seeking a qualified contractor to perform live and Internet auction services for the sale of vehicles; and

WHEREAS, the Contractor has the capabilities and expertise to perform said services;

NOW, THEREFORE, NWMC and Contractor agree as follows:

LIVE, SIMULCAST AND ON-LINE AUCTIONS

1.0 Contractor Responsibilities

The Contractor shall provide professional auctioneer services on an as-needed basis during the term of the Agreement. Contractor shall conduct public auction sales for the sale of vehicles and certain equipment consigned by NWMC and other participating COG members and participating agencies at the America's Auto Auction Crestwood, Illinois location during the Spring, Summer and Fall for a total of three live and simulcast auctions per year. These auctions are subject to volume (minimum 40 units) during the term of this agreement. Online auctions shall have no minimum volume.

1.1 Cataloging of Items

The Contractor shall provide all personnel, tools, supplies, material and equipment reasonably necessary to prepare an effective sale of the vehicles in accordance with America's Auto Auction's standard operating procedures. All vehicles and equipment are to be either individually listed, tagged and assigned a control number, or groups of similar items shall be placed in lots and given a control number for sale by the lot. NWMC, its participating members or other participating COGs will report all vehicles and equipment cosigned to the Contractor in writing. Any discrepancies in quantities of vehicles and equipment received shall be reported to NWMC.

1.2 Inspection

The Contractor shall provide adequate opportunity for its licensed dealers to inspect the vehicles prior to the sale.

1.3 Auction Sale

1.3.1 Personnel

Except as otherwise provided herein, the Contractor shall provide all personnel necessary to conduct the sale, including, but not limited to, auctioneers, registration clerks, recording clerks and cashiers.

1.3.2 Equipment and Supplies

Contractor shall provide all necessary equipment and supplies necessary to conduct the sale, including but not limited to:

- (a) Suitable sound (public address) system(s);
- (b) Bid cards, registration forms, clerking tickets, invoices, and all other forms necessary to conduct the sale; and
- (c) All office supplies and equipment.
- (d) Equipment for online simulcast.

1.4 Registration

Contractor shall register all potential bidders in accordance with its standard policies and procedures. Each bidder shall be provided information that fully explains the payment terms, warranty disclaimers, and other conditions of the sale that are consistent with Contractor's standard policies and procedures.

1.5 Payment; Title Documents

The Contractor may permit buyers to pay via credit card. Collection of vehicle sale proceeds from buyers are the sole responsibility of the Contractor. Each buyer will be issued an itemized invoice or bill of sale. Each NWMC member or other participating COG agency agrees to pay the fees and charges set forth in this Agreement. The applicable NWMC member or other participating COG agency will forward to Contractor the certificate of title and/or registration for each vehicle, together with any other documents necessary to effect transfer upon sale. If the NWMC member or other participating COG or agency's representative will not be attending the sale, all documents necessary to effect transfer upon sale shall be

endorsed as required, prior to their being forwarded to Contractor. If the NWMC member or other participating COG or agency's representative does attend the sale, endorsement of documents necessary to effect transfer upon sale may be accomplished by the representative on the day of the sale. Each individual agency agrees to provide a completed Federal Odometer Disclosure Statement along with title document for each vehicle being sold. If for any reason the agency is unable to complete the Federal Odometer Disclosure Statement, at the agency's request, Contractor may execute the Federal Odometer Disclosure Statement for said agency, as long as that agency provides Contractor with a power of attorney, in the form attached hereto as Exhibit A, indicating that Contractor is being authorized to execute the Federal Odometer Disclosure Statement and that Contractor will be held harmless from any and all causes of action associated therewith. Contractor will not deliver, endorse, or otherwise part with the possession of such documents except to the purchaser of the vehicle after sale and receipt of payment in accordance with Contractor's procedures.

1.6 Check-out

The Contractor shall provide adequate personnel to supervise removal of property.

1.7 End of Sale Reconciliation Reports and Payment to NWMC and Other Participating COG Members

Within ten (10) business days after each sale, Contractor shall furnish each NWMC or other participating COG auction participant the following:

1.7.1 A listing of all items consigned to the sale by that NWMC or other participating COG auction participant, by lot or catalog number, showing the individual sales price of each item or lot; and

1.7.2 Payment of the net proceeds of the sale for that NWMC or other participating COG auction participant, defined as gross revenues from the sale less amounts owed to Contractor related to such sale.

1.8 End of Sale Reconciliation Reports and Payment to NWMC and Other Participating COGs

Within ten (10) business days after each sale, Contractor shall furnish NWMC and the other participating COGs the following via email as an Excel spreadsheet, or similar format, as requested by NWMC:

1.8.1 An accounting of all receipts and revenues from the sale of NWMC and other participating COG auction participant vehicles and equipment, including details and specific information on each item sold; and

1.8.2 Payment of the NWMC sponsorship fee as set forth in Section 3.4 below.

1.9 Advertising and Marketing

1.9.1 Auction Plan

For each auction, the Contractor shall submit an advertising plan to NWMC for approval.

1.9.2 Auction Flyers

The Contractor shall prepare, print, mail and email brochures or notices of sale to both its regular clientele and NWMC clientele; provided, that, NWMC shall provide Contractor with all email addresses of past sale attendees which Contractor may use to email brochures in lieu of direct mailing.

1.9.3 Advertising

The Contractor shall prepare and place advertisements in electronic media and local print media.

1.9.4 Web Site

The Contractor shall list each auction on its Web Site. The Contractor shall publish the description and image of each unit to be sold on its internet site and make all items for sale available for viewing on its internet site prior to live auction, via Simulcast proxy bidding and/or online on Contractor's site.

1.9.5 Broadcast and Online Media

The Contractor shall coordinate public service announcements with NWMC.

1.9.6 Press Releases

The Contractor shall assist NWMC in preparing and issuing appropriate press releases. No press releases shall be issued, nor any public statements made, without the express approval of NWMC.

1.10 Security

During inspection, sale and check-out, Contractor shall provide necessary security in accordance with Contractor's reasonable existing operating procedures.

2.0 NWMC Responsibilities

2.1 NWMC represents and warrants that it is authorized to act on behalf of and to bind each participating agency and member to this Agreement.

2.2 Transportation of Vehicles to Auction Site

Each NWMC or other participating COG member or participating agency shall be responsible for transporting its vehicles and/or equipment to the auction site, including the use of tow trucks or transport trucks; provided, that, Contractor shall provide a fee structure for auction participants to transport vehicles to the America's Auto Auction Crestwood, Illinois location and may assist NWMC and other participating COG members in arranging for transportation through third party transportation companies. Contractor shall not be liable for any damages, claims or losses arising from the transportation of the vehicles to the auction site. Vehicles shall have sufficient fuel for test running and for driving for short distances after delivery to the auction site.

2.3 Preparation of Vehicles for Sale

Each NWMC or other participating COG member or participating agency shall be responsible for preparing its vehicles for sale, including the removal of decals and other markings.

2.4 Personnel

NWMC shall have a representative on-site during inspection and sale to resolve any issues. Each NWMC or other participating COG member or participating agency shall have a representative on site or available by telephone during inspection and sale to resolve any issues. Contractor shall contact each designated representative immediately during the auction if bid price does not hit floor price to determine if bid will be accepted or rejected. Each NWMC or other participating COG member or participating agency shall provide vehicle drivers for specialty vehicles such as fire trucks and Contractor will provide a driver coordinator on Auction Day for all other drivable vehicles.

2.5 Auction Notification

NWMC and other participating COGs shall notify its members and other prospective sellers of upcoming auctions.

2.6 Consignment of Property

All items shall be reported by the participating sellers to the Contractor, who shall report said property to the NWMC via email on an Excel spreadsheet or similar, as directed by NWMC. The seller shall be responsible for identifying any substantive defects to motor vehicles and obtaining, prior to the sale, salvage or junk titles if applicable. The Contractor may view said property at the seller's sites during normal business hours and take photographs for the purpose of advertising the sale.

3.0 Fees and Payments

For all auction sales, whether in-lane or on-line, the following fees shall apply:

3.1 Buyer's Fee

A Buyer's Fee of ten percent (10%) of the gross purchase price of each vehicle sale shall be charged to the buyer.

3.2 Seller's Fee

A Seller's Fee shall be imposed as follows:

3.2.1 NWMC or Other Participating COG Members

Five percent (5%) of the gross purchase price of each vehicle sale.

3.2.2 Non-NWMC or Other Participating COG Non-Members

Ten percent (10%) of the gross purchase price of each vehicle sale.

3.3 Contractor's Fees

The Contractor shall deduct from the gross revenues of each sale the following fees: (i) eight percent (8%) of the gross amount of the sale; and (ii) any other fees

owed to Contractor for services related to the vehicle, including without limitation, wash and vacuum fees, detail fees and condition report fees. Subject to approval by the selling agency, Contractor, or its subcontractors, shall provide wash and vacuum services for a fee of \$25 per vehicle, full detail services for a fee of \$90 per vehicle, and prepare condition reports for a fee of \$35 per vehicle, or other services offered by Contractor directly to participants.

3.4 NWMC or Other Participating COG Sponsorship Fee

The Contractor shall remit the following sponsorship fees to NWMC or other participating COGs:

3.4.1 NWMC or Other Participating COG Members

Seven percent (7%) of the gross amount of each sale from the sale of NWMC or other participating COG Member vehicles at an auction sale.

Sponsorship fees will be paid directly by America's AA to each of the other participating COGs for their members at the same rate as NWMC members as provided in Section 3.4.1. Sponsorship fees for any municipality with dual COG memberships will be distributed to the COG that first joined the NWMC Surplus Vehicle and Equipment Auction Program. The NWMC will continue to receive all sponsorship fees for all NWMC members with dual COG memberships. All sponsorship fees from any participating municipality not affiliated with any of the COGs that are parties to this agreement shall continue to be paid to the NWMC.

3.4.2 Non-NWMC or other participating COG Members

12% of the gross amount of each sale from the sale of NWMC or other participating COG non-member vehicles at an auction sale.

3.4.3 Sale Amount in excess of \$425,000

If the total amount of gross amount of each sale from the sale of NWMC or other participating COG Member vehicles at an auction sale exceeds \$425,000, the NWMC or other participating COG sponsorship fees in Subsections 3.4.1 and 3.4.2 shall increase by three percent (3%) for gross auction sales in excess of \$425,000.

3.5 Credit Card Fees

The Contractor shall be responsible for any credit card fees.

3.6 Payment to Sellers

The Contractor shall collect all monies due and guarantee all checks. Payment of the amounts owed under this Section 3 shall be remitted to each seller within ten (10) business days after the auction.

4.0 Disputes

4.1 During the Sale. The Contractor and the NWMC or other participating COG representative shall use reasonable efforts to resolve disputes with buyers prior to

the completion of the sale, including, but not limited to, nonpayment, repudiation or undisclosed defects. In addition to any other remedies that may exist, the Contractor may void the sale and re-auction the item.

4.2 Following the Sale

After completion of the auction, in the event that sale of the item is not completed for any reason, including, but not limited to, nonpayment, repudiation or unresolved defect, the seller shall retain title to the property and remove the item from the site of the NWMC auction. At the seller's option, Contractor will

4.2.1 Sell the item on-line or at another public auction conducted by the Contractor, in which case the terms and conditions set forth in this Agreement shall remain the same.

5.0 Indemnity

Each party shall defend, indemnify and hold harmless the other from and against any and all lawsuits, claims, demands, liabilities, losses or expenses of any kind, including court costs and attorneys' fees, arising out of the negligence or intentional misconduct of such party. The term "party" shall include a party's officers, directors, trustees, employees, members (participating municipalities), agents, representatives, affiliates and permitted assigns. The foregoing indemnity shall apply except for bodily injury, including death, and damage to property to the extent caused by the negligence or other fault for which one of the parties is held legally liable. This indemnification obligation is not limited by, but in addition to the insurance and bonding obligations contained in this Agreement. In addition, NWMC, NWMC members and other parties to this agreement shall defend, indemnify, and hold Contractor harmless from and against any and all lawsuits, claims, demands, liabilities, losses or expenses of any kind, including court costs and attorneys' fees, arising out of (i) any judgments, liens or citations that were placed on the vehicles, (ii) defects in the vehicles' titles, (iii) mechanical or design defects in the vehicles, (iv) inadequate disclosures/announcements related to the vehicles, or (v) inaccuracy of the odometer reading on any vehicles or any odometer statement prepared in connection with the sale at auction of any vehicles, unless such inaccuracy is caused by the willful misconduct or gross negligence of an employee, agent, or officer of Contractor. Contractor assumes no responsibility for the accuracy of the odometer reading on any vehicle.

6.0 Contractor's Insurance

At Contractor's sole expense, Contractor shall procure and maintain, during the term of this Agreement and any extensions thereof, insurance in the following types and amounts:

6.1 Worker's Compensation Insurance in accordance with the laws of the State of Illinois, with statutory limits covering all employees, and Employer's Liability Insurance with limits of not less than \$500,000 for each accident or illness.

6.2 Comprehensive General Liability Insurance on an occurrence basis or equivalent with limits of liability not less than \$1,000,000 per occurrence for bodily injury, property damage, and personal injury. Coverage shall include, where applicable, Premises and Operations, Broad Form Property Damage, Independent Contractors, and Contractual Liability.

6.3 Evidence of Insurance. The Contractor shall provide NWMC with Certificates of Insurance evidencing the above required insurance, prior to the commencement of this Agreement, and thereafter with certificates evidencing renewals or replacements of said policies at least fifteen (15) days prior to the expiration or cancellation of any such policies.

7.0 Term of Agreement

This Agreement shall commence as of the Effective Date and will continue for a period of twelve (12) months. This Agreement may be extended for four (4) additional one-year periods upon mutual agreement of both parties. Either party may request a re-negotiation of the terms hereof during a period forty-five (45) days prior to each one-year anniversary date of this Agreement.

8.0 Termination

Either America's Auto Auction or the NWMC may terminate this Agreement, in whole or in part, upon sixty (60) days written notice.

9.0 Independent Contractor

Contractor is an independent contractor and will not represent itself as a legal representative, partner, agent or employee of the NWMC or any participating COG or local government and may not create any express or implied obligations on behalf of NWMC or other participating COG. Matters governing the terms and conditions of employment of Contractor's employees, subcontractors or agents are entirely the responsibility of the Contractor. Contractor will be solely responsible for complying with all tax and employee protection laws.

10.0 Legal Compliance.

10.1 The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations.

10.2 All auctioneers shall be licensed by the State of Illinois.

10.3 The Contractor may decline to sell any motor vehicle for which a proper title has not been provided by the seller, including any vehicles that, in the Contractor's sole opinion, are damaged to the extent that a salvage or junk certificate is required.

10.4 Equal Employment Opportunity. Contractor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), which is incorporated herein with the link <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?DocName=&ActID=2266&ChapterID=0&SeqStart=&SeqEnd=&Print=True>.

11.0 Amendments

No modification or amendments of this Agreement or waiver of any provision of this Agreement shall be valid unless in writing and signed by both America's Auto Auction and the NWMC. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of that or any other right or option.

12.0 Notices

All notices, requests, demands and other communications required or permitted to be made hereunder shall be in writing and shall be delivered personally or sent by express delivery service or by certified mail. Notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with is paragraph.

13.0 Assignment

Neither this Agreement, nor any duties or obligations under this Agreement, may be assigned by either America's Auto Auction or the NWMC without the prior written consent of the other party.

14.0 Severability

If any provision of this Agreement is deemed or determined to be unenforceable or invalid, such finding or determination shall not affect the validity or enforceability of any other provision of this Agreement.

15.0 Headings

The headings contained in this Agreement are for reference purposes only and shall not in any way affect the interpretation, construction or enforcement of this Agreement.

16.0 Governance

This Agreement will be governed, interpreted, construed and enforced in accordance with the laws of the State of Illinois.

17.0 Entire Agreement

This Agreement represents the entire understanding between the parties with respect to its subject matter.

THE ABOVE AGREEMENT IS ACCEPTED AND AGREED TO:

Northwest Municipal Conference

By: Mark L. Fowler

Name: Mark L. Fowler

Title: Executive Director

Date: January 23, 2020

America's Auto Auction

By: Larry Head

Name: LARRY HEAD

Title: General Manager

Date: 1-27-20