

AGREEMENT No. 11-1072DW

FOR

**PROFESSIONAL AUCTIONEERING SERVICES OF SURPLUS
PROPERTY**

THIS AGREEMENT is made and entered into by and between **MANATEE COUNTY**, a political subdivision of the State of Florida (the "COUNTY"), located at 1112 Manatee Avenue West, Bradenton, Florida 34205-7804, and **TAMPA MACHINERY AUCTION, INC.**, (the "CONTRACTOR"), licensed and authorized to conduct business in the State of Florida, located at 11720 Highway 301 North, Thonotosassa, Florida, 33592.

WHEREAS, the COUNTY has determined that it is necessary, expedient and in its best interests to retain, obtain or employ the CONTRACTOR to render and perform Professional Auctioneering Services of Surplus Property in the manner set forth in this Agreement; and,

WHEREAS, the CONTRACTOR submitted a proposal in response to Request For Proposal No. 11-1072DW and the COUNTY thereafter conducted a competitive selection process in accordance with Manatee County Code, resulting in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, it is agreed by and between the Parties hereto as follows:

ARTICLE 1. SCOPE OF SERVICES

The CONTRACTOR covenants and represents to the COUNTY that it shall provide professional real property appraisal services in such manner as more thoroughly set forth in Exhibit "A," "Scope of Services."

ARTICLE 2. EXHIBITS INCORPORATED; CONFLICT RESOLUTION

This Agreement consists of a primary contract, and four (4) exhibits, which are as follows:

- Exhibit "A" Scope of Services
- Exhibit "B" Fee Rate Schedule
- Exhibit "C" Not Applicable
- Exhibit "D" Affidavit of No Conflict
- Exhibit "E" Resolution R-93-22, Drug Free Workplace

ACCEPTED IN OPEN SESSION

JUL 27 2011

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

These Exhibits are attached hereto and are incorporated into the Agreement. In the event of a conflict between the terms and conditions provided in the body of this Agreement and any Exhibit, the provisions contained within the Agreement shall prevail unless the term or provision in the Exhibit specifically states that it shall prevail.

ARTICLE 3. COMPENSATION

- A. Compensation will be made to the COUNTY upon acceptable performance of services rendered and/or to reimburse for authorized and documented expenses incurred in providing the services identified in Exhibit "A," "Scope of Services."
- B. Compensation payable to the COUNTY for services rendered and expenditures incurred in providing the services identified in Exhibit "B," Fee Rate Schedule, attached hereto and incorporated herein.
- C. The fee rates as shown on Exhibit "B," "Fee Rate Schedule," shall be the total compensation for the services and shall contain all costs to include salaries, office operation, transportation, equipment, overhead, general and administrative, incidental expenses, fringe benefits and operating margin.
- D. CONTRACTOR represents that it has carefully assessed the work to be performed under this Agreement, has determined that the compensation agreed to will be sufficient for it to fully perform its obligations as set forth in the Agreement, and understands that no further funding shall be provided by the COUNTY for the completion of this Agreement unless the COUNTY, by way of written amendment to this Agreement, shall add additional tasks not now set forth in the Agreement.
- E. "Task," as used in this Agreement, refers to particular categories/groupings of services described in Exhibit "A," "Scope of Services."

ARTICLE 4. INVOICES AND TIME OF PAYMENT

- A. The CONTRACTOR agrees to pay the COUNTY for the herein described services at a rate of compensation according to the unit rates stated in Exhibit "B," "Fee Rate Schedule," attached hereto and incorporated herein.
- B. Records regarding payroll, costs and other expenditures incurred under terms of this Agreement shall be maintained and made available upon request to the COUNTY at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the COUNTY upon request. Records of costs incurred include the CONTRACTOR's general accounting records together with supporting documents and records of the CONTRACTOR and all subcontractors performing work on the project and all other records of the CONTRACTOR and subcontractors considered necessary by the COUNTY for a proper audit of costs.

- C. Any dispute between COUNTY and CONTRACTOR with regard to the percent of a task that has been completed or CONTRACTOR's invoice shall be resolved in accordance with the provision of Article 9 of this Agreement.
- D. All costs of providing the Scope of Services described in Exhibit "A," "Scope of Services," shall be the responsibility of the CONTRACTOR, with the exception of reimbursement by COUNTY for costs deemed reimbursable in Exhibit "B," Fee Rate Schedule."

ARTICLE 5. TERM OF AGREEMENT

- A. Unless renewed or extended as provided herein, this Agreement shall remain in full force and effect for one (1) year from the date of its execution. However, the terms and conditions of this Agreement shall remain valid beyond one year until all Work Assignments authorized during the effective period of this Agreement have been completed.
- B. This Agreement may be amended for four (4) additional periods, each of one (1) year duration.

ARTICLE 6. NON-PERFORMANCE AND TERMINATION

This Agreement may be terminated as follows:

- A. If the COUNTY determines that the performance of the CONTRACTOR is not satisfactory, the COUNTY shall have the option of (1) immediately terminating the Agreement, or (2) notifying the CONTRACTOR of the deficiency with a demand that the deficiency be corrected within a specified reasonable time, otherwise the Agreement shall be deemed terminated at the end of such time.
- B. If the COUNTY requires termination of this Agreement for reasons other than unsatisfactory performance of the CONTRACTOR, the COUNTY shall notify the CONTRACTOR in writing of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated. The CONTRACTOR shall be entitled to compensation for all accepted services rendered or performed through the date of termination, together with all approved expenses incurred in connection therewith, provided the COUNTY has given the CONTRACTOR written notice ten (10) days in advance of the date of such termination and provided that services rendered and expenses incurred do not exceed the maximum amount of compensation authorized for any phase of work based upon the percentage of the phase completed, or where applicable, any price established for a specific element of work.

- C. In the event of early termination, all completed work, and drafts-in-progress, along with all related data, studies, charts, computations, correspondence, and any other files or records related to this Agreement possessed or controlled by CONTRACTOR become the property of Manatee County, and shall be surrendered to Manatee County upon payment of any outstanding invoices approved for payment.

ARTICLE 7. COVENANTS OF THE COUNTY

The COUNTY hereby covenants and agrees:

- A. The COUNTY will inform CONTRACTOR of its designated Contract Manager. The Contract Manager shall have the authority to transmit instructions, receive information, interpret and define the policy of the COUNTY and make decisions pertinent to services covered by this Agreement subject to oversight by the County Administrator and County Attorney legal advice. The COUNTY reserves the right to designate a different Contract Manager, provided that the CONTRACTOR is given written notice thereof. The Contract Manager is not authorized to approve any amendment, revision or change order to this Agreement absent a pre-approved amendment to the Agreement.
- B. The COUNTY shall make available at no cost to the CONTRACTOR, information relative to the project that is useful in the performance of the Scope of Services.
- C. The COUNTY shall give prompt notice to the CONTRACTOR whenever the COUNTY determines there is a defect in CONTRACTOR's performance under this Agreement.
- D. The COUNTY shall give careful and reasonable consideration to the findings and recommendations of the CONTRACTOR, and shall respond and issue notices to proceed in a timely manner so as not to unduly delay the CONTRACTOR's performance under this Agreement.

ARTICLE 8. COVENANTS OF THE CONTRACTOR

CONTRACTOR hereby covenants and agrees:

- A. CONTRACTOR shall notify the COUNTY if its lead Agent with respect to the services to be performed by the CONTRACTOR pursuant to this Agreement. The CONTRACTOR's Agent shall have the authority to make representations on behalf of CONTRACTOR, receive information, give instruction to other agents of CONTRACTOR, interpret and define the needs of CONTRACTOR, and make decisions pertinent to services covered by the Agreement. Subject to the limitations of this Agreement, CONTRACTOR may designate a different lead agent, provided that the COUNTY is given written notice thereof.

- B. That the Work shall be performed in accordance with the terms and conditions of this Agreement.
- C. That all employees assigned to render services under this Agreement shall be duly qualified, registered, licensed or certified to provide the services required. All services shall comply with such reasonable supplemental written memoranda and directives provided by the Contract Manager, which are not in conflict with this Agreement.
- D. That CONTRACTOR shall be responsible for collecting all existing data required for the successful completion of the work.
- E. That CONTRACTOR shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the service provided pursuant to this Agreement. CONTRACTOR acknowledges this obligation and has executed the Affidavit of No Conflict attached as Exhibit "D."
- F. CONTRACTOR shall be entitled to rely upon that information which may be provided to them from the COUNTY or others on behalf of the COUNTY. CONTRACTOR shall, however, call to the COUNTY's attention any errors or deficiencies noted in such information provided and assist, to the extent practicable, the COUNTY in the identification and resolution of same. Information referred to above includes, but is not limited to, additional services, consultations, investigations, reports and the like, including all other information to be provided to the CONTRACTOR by others and necessary for the execution of CONTRACTOR's work under the Agreement. The COUNTY shall, however, hold CONTRACTOR fully responsible for verifying, to the extent practicable, documents and information provided by the COUNTY and identifying its' obvious deficiencies concerning documents and information provided.

ARTICLE 9. DISPUTE RESOLUTION

Disputes shall be resolved in accordance with § 2-26-63 and § 2-26-64 of the Manatee County Code. Any dispute resolution constituting a material change in this Agreement will not be final until approved by the County Administrator or designee. If such dispute involves the percentage of the work completed by CONTRACTOR, COUNTY shall, as promptly and reasonably as possible after resolution of such dispute, forward payment to CONTRACTOR of any amount determined to be due and owing. The parties shall bear any attorney fees related to dispute resolution regardless of the resolution of the dispute.

ARTICLE 10. RECORDS; AUDITS; LICENSES

- A. CONTRACTOR shall maintain records, accounts, property records, and personnel records in accordance with generally accepted accounting principles, as deemed necessary by the COUNTY to assure proper accounting of funds and compliance with the provisions of this Agreement.

- B.** CONTRACTOR shall provide the COUNTY all information, reports, records and documents required by this Agreement or by COUNTY ordinances, rules or procedures, or as needed by the COUNTY to monitor and evaluate CONTRACTOR's performance. Such materials shall also be made available to the COUNTY for auditing. Inspection or copying will occur during normal business hours, and as often as the COUNTY may deem necessary. The COUNTY shall have the right to obtain and inspect any audit pertaining to the performance of this Agreement or the CONTRACTOR made by any local, state or federal agency. To the extent such materials are in the possession of a third party, CONTRACTOR must obtain them from that third party, or certify to the COUNTY why it was unable to do so. The CONTRACTOR shall retain all of its records and supporting documents related to this Agreement in accordance with all applicable laws, rules and regulations, and, at a minimum, retain all records and supporting documents related to this Agreement, except duplicate copies or drafts, for at least three (3) years after the termination date.
- C.** The CONTRACTOR shall obtain any licenses required to provide the Scope of Services and maintain full compliance with any licensure requirements. Copies of reports provided to or by any licensing or regulatory agency shall be forwarded to the COUNTY within ten (10) days after receipt by the CONTRACTOR. CONTRACTOR shall immediately inform the COUNTY if it, or any of its principles or agents working on this Agreement lose, or have suspended, any required license.
- D.** Reports and other documents prepared by the CONTRACTOR for the work are instruments of the CONTRACTOR's service for use solely with respect to the work and the CONTRACTOR shall be deemed the author of these documents and shall retain all common law, statutory and reserved rights, including the copyright. The COUNTY shall be permitted to retain copies, including reproducible copies, of the CONTRACTOR's findings, reports, and other documents for information and reference in connection with the COUNTY's use. Submission or distribution of documents to comply with laws or regulations or for similar purposes shall not to be construed as publication in derogation of the CONTRACTOR's reserved rights.

ARTICLE 11. INDEMNIFICATION

CONTRACTOR hereby agrees to indemnify, defend and hold harmless the COUNTY, its agents, officers and employees, from any and all claims, liability, loss or cause of action of any kind or nature arising out of its intentional or negligent actions or omissions in the performance of this Agreement. COUNTY hereby agrees to indemnify, defend and hold harmless the CONTRACTOR, its agents, officers and employees, from any and all claims, liability, loss or cause of action of any kind or nature arising out of its intentional or negligent actions or omissions related to this Agreement. Such indemnification shall include the payment of all valid claims, losses, and judgments of any nature whatsoever in connection therewith, and the defense of all suits, in the name of the COUNTY when applicable, including payment of all related fees and costs. The COUNTY reserves the right to defend itself with its own counsel or retained counsel at CONTRACTOR's expense.

ARTICLE 12. INSURANCE

A. **COMMERCIAL GENERAL LIABILITY.** The CONTRACTOR shall have and maintain during the period of this Agreement, a commercial general liability insurance policy or policies affording minimum coverage as follows:

General aggregate	
Products /Completed	
Operations aggregate	\$300,000
Personal and advertising injury	\$300,000
Each occurrence	\$300,000

B. **BUSINESS AUTO POLICY.** The CONTRACTOR shall have and maintain, during the period of this Agreement, a business auto insurance policy or policies affording minimum coverage as follows;

Each occurrence per bodily injury and	
Property damage liability	\$300,000
Annual aggregate (if applicable)	3 x each occurrence limit

C. **WORKERS' COMPENSATION.** The CONTRACTOR shall also carry and keep in force Workers' Compensation insurance as required under the applicable Workers' Compensation laws and statutes.

D. **CERTIFICATION OF INSURANCE AND COPIES OF POLICIES.** Certificates of Insurance evidencing the insurance coverage specified in paragraphs A., B., and C. above shall be filed with the Purchasing Official before work begins. The required certificates shall name the type of policy, policy number, date of expiration, amount of coverage, companies affording coverage, shall refer specifically to the name of this Agreement, and shall name Manatee County as an additional insured.

Insurance shall remain in force through the completion of this Agreement in the amounts and types as stated herein, including coverage for all products and services completed under this contract.

If the initial insurance expires prior to the completion of this Agreement by the CONTRACTOR, renewal certificates of insurance and required copies of policies shall be furnished by the CONTRACTOR and delivered to the Purchasing Manager thirty (30) days prior to the date of their expiration.

NO WAIVER OF IMMUNITY – Nothing herein shall be interpreted as a waiver of the COUNTY of its rights, including the limitations of the waiver of immunity, as set forth in Florida Statutes § 768.28, or any other statute, and the COUNTY expressly reserves these rights to the full extent allowed by law.

ADDITIONAL INSURED: - The County of Manatee shall be specifically named as an additional insured for Commercial General Liability.

If the initial insurance expires prior to the completion of operations and or services by the CONTRACTOR, renewal certificates of insurance and required copies of policies shall be furnished by the proposer and delivered to the Purchasing Manager thirty (30) days prior to the date of their expiration.

ARTICLE 13. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the COUNTY shall be that of an independent CONTRACTOR. Nothing herein contained shall be construed as vesting or delegating to the CONTRACTOR or any of the officers, employees, personnel, agents, or sub-contractors of the CONTRACTOR any rights, interest or status as an employee of the COUNTY. The COUNTY shall not be liable to any person, firm or corporation that is employed by contracts with or provides goods or services to the CONTRACTOR in connection with the Scope of Services or for debts or claims accruing to such parties. The CONTRACTOR shall promptly pay, discharge or take such action as may be necessary and reasonable to settle such debts or claims.

ARTICLE 14. ASSIGNMENT AND SUBCONTRACTS

The COUNTY has selected CONTRACTOR for its stated skills and abilities, as outlined in the Request For Proposal process. CONTRACTOR has represented to the County that it has the in-house capabilities, resources and expertise to perform the services required by this Agreement. Therefore, the CONTRACTOR shall not assign or transfer any right or duty under this Agreement to any other party without the prior written consent of the COUNTY. In the unlikely event the CONTRACTOR asserts it is necessary to utilize the services of third parties to perform any service under this Agreement, CONTRACTOR shall first obtain prior written approval of the COUNTY. Approval to utilize any third party shall not relieve the CONTRACTOR from any direct liability or responsibility to the COUNTY pursuant to the provisions of this Agreement, or obligate the COUNTY to make any payments other than payments due to the CONTRACTOR as outlined in this Agreement.

ARTICLE 15. OWNERSHIP AND SALE OF RIGHTS; SUCCESSORS BOUND

The identity of the person or the entity, if not an individual, who or which shall be the owner or holder of the rights granted under this Agreement is very important to the COUNTY. Therefore, in addition to the limitations of Article 16 above, CONTRACTOR shall not, without prior written consent of the COUNTY, sell, pledge, transfer or otherwise encumber this Agreement, or the rights granted therein, to any third party. Assignment, pledging, sale, transferring, or encumbering of any interest in or under this Agreement or the rights there under, to anyone other than the CONTRACTOR, without the prior written consent of the COUNTY, shall be grounds for immediate termination of this Agreement. All terms and conditions of this Agreement shall extend to and be binding on any approved purchaser, assignee, or other successor in interest.

ARTICLE 16. CERTIFICATION OF NON-PAYMENT OF COMMISSION OR GIFT

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

ARTICLE 17. NOTICES

All notices, requests and authorizations provided for herein shall be in writing and shall be delivered by hand or mailed through the U.S. Mail, addressed as follows:

To the County:

Manatee County
Fuel/Inventory Operations Division Manager
Public Works Department
2908 12th Street Court East
Bradenton, Florida 34208
(941) 708-7524
(941) 708-7512 (Fax)

To the CONTRACTOR:

Tampa Machinery Auction, Inc. |
Mr. David W. Nelson, President
11720 Highway 301 North
Thonotosassa, Florida 33592
(813) 986-2485
dave@tmauction.com

Mailing Address:
P.O. Box 291069
Tampa, Florida 33687

ARTICLE 18. NON-DISCRIMINATION

During the performance of this Agreement the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, disability or age, and will take affirmative action to insure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining, (including apprenticeship

and on-the-job training). CONTRACTOR further agrees that no person in the United States shall, on the grounds of race, creed, sex, color, national origin, disability or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Agreement.

ARTICLE 19. KEY PERSONNEL

Due to their unique skills, knowledge and backgrounds, upon which the COUNTY expressly relied in selecting CONTRACTOR, CONTRACTOR shall not remove from active participation on the project the following agents until alternate personnel acceptable to the COUNTY are approved, in writing, by the COUNTY:

David W. Nelson	President	dave@tmauction.com
Jackie A. Nelson	Secretary/Treasurer	Jackie@tmauction.com
Carolyn Thurman	Office Manager	Carolyn@tmauction.com
Kevin O'Brien	Yard Manager	Kevin@tmauction.com
Darin Weaver	Sales/ Logistics	darinweaver@tmauction.com

ARTICLE 20. MISCELLANEOUS TERMS

Ethical Conduct; Media Relations. The CONTRACTOR recognizes that in rendering the services required in this Agreement, it is working for the interests of the citizens of Manatee County, Florida, subject to public observation, scrutiny and inquiry, and based upon said recognition, the CONTRACTOR shall, in all of its interactions with the COUNTY and its citizens and business interests, conduct itself in accordance with the utmost professionalism and ethical standards, including any professional ethical codes related to the various professionals who will be working on this project. To ensure the COUNTY is properly represented in any media stories related to this project, CONTRACTOR's agents shall refer any media requests for interviews, information or comments to the Contract Manager for response.

Compliance With Laws. The CONTRACTOR acknowledges that the COUNTY is subject to restraints, limitations, regulations and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The CONTRACTOR agrees that all services rendered or performed by the CONTRACTOR pursuant to the provisions of this Agreement shall be in compliance therewith with all applicable local, state and federal agencies or authorities, laws and ordinances.

Entire Agreement, Amendments, Calculation of Days. This Agreement, and the exhibits attached hereto and incorporated herein, constitute the entire, fully integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous verbal or written agreements between the Parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may be amended only by written document, properly authorized, executed, and delivered by both Parties hereto. Any act or

delivery that must be completed on a Saturday, Sunday or COUNTY holiday shall be adequate if performed or delivered on the following business day.

No Waiver. The indulgence of either Party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision of any portion of this Agreement, either at the time the breach or failure occurs, or at any time throughout the term of this Agreement.

Force Majeure. Neither Party shall be in default of its obligations hereunder to the extent that performance of such obligations or any of them is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, hurricane, or other disruptive event of nature, act of terrorism, explosion, lack of or failure of transportation facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Agreement, is beyond the control and without the fault of the Party seeking to invoke this paragraph.

Governing Law, Jurisdiction and Venue. CONTRACTOR consents and agrees that all legal proceedings related to the subject matter of this Agreement shall be governed by the laws of and maintained in courts sitting within the State of Florida. CONTRACTOR further consents and agrees that jurisdiction for such proceedings shall lie exclusively with such court and venue shall be in Manatee County, Florida or if in Federal Court the Middle District of Florida, Tampa Division.

Attorneys Fees and Costs. Each Party hereto shall be solely responsible for paying its attorneys fees and costs in any protest, litigation, dispute resolution proceeding, settlement negotiation or any other matter related to this Agreement.

No Conflict. By accepting award of this Agreement, CONTRACTOR, for itself and its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of duties or services required hereunder.

Public Records. By accepting award of this Agreement, CONTRACTOR acknowledges that the portion of its books and records related to its contracting activities with COUNTY may become subject to inspection and copying under the Florida Public Records Act, and that it will in all respects comply with any requirements of that Act.

Public Entity Crimes. CONTRACTOR has been made aware of the Florida Public Entity Crimes Act, § 287.133, Florida Statutes, specifically section 2(a), and the COUNTY's requirement that the CONTRACTOR comply with it in all respects prior to and during the term of this Agreement.

No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the

benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

Legal References. All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

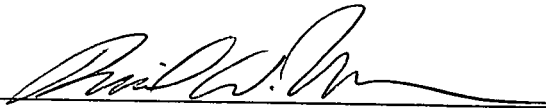
Severability. The provisions of this Agreement are declared by the Parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent here thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

Headings. This Agreement is to be read as a whole. All titles, articles, and descriptive headings of paragraphs herein are inserted for convenience only and shall not affect the construction or interpretation of the Agreement's actual terms.

Authority to Execute. Each of the Parties hereto represents to the other that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by their respective representatives who have executed this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their authorized representatives:



TAMPA MACHINERY AUCTION, INC.

By: 

DAVID W. NELSON, PRESIDENT
Print Name & Title of Above Signer

Date: 6/22/2011

MANATEE COUNTY

By: 
 R.C. "Rob" Cuthbert, C.P.M., CPPO
Purchasing Official

Authority to execute this contract per Manatee County Code, Chapter 2-26, and, delegation by the County Administrator effective 1/26/2009, as revised 8/10/09.

Date: 6/28/2011

EXHIBIT "A"

SCOPE OF SERVICES

PROFESSIONAL AUCTIONEERING SERVICES FOR SURPLUS PROPERTY

I. BACKGROUND

Pursuant to Florida Statute 274.05, surplus County property shall be offered for sale and will include, but not be limited to, motor vehicles, machinery, heavy equipment, electronics, furniture, and other tangible personal property owned by the County.

The Contractor shall provide an auction site to accept, store, organize, and sell by public auction the surplus County property.

The County reserves the right to offer certain surplus items for sale through other methods outside of this contract as it deems necessary.

II. SCOPE OF SERVICES

- a. **Site Supervision and Security:** Contractor shall provide on-site supervision and security during all auctions at Contractor's facility.
- b. **Property Receipt:** The Contractor shall receive and provide receipt for all County property delivered to the Contractor for the purpose of sale at public auction.
- c. **County Property:** The Contractor shall receive and protect all County property delivered to the Contractor for the purpose of sale at public auction for a period of sixty (60) days prior to the designated public auction date. The Contractor shall replace or compensate the County at present value for any County property lost, stolen, or destroyed while in the custody of the Contractor, or reimburse the County for any incremental loss of value due to damage or other occurrence.
- d. **Collection of Sale Proceeds:** The Contractor shall be responsible for the collection of all money received from the sale of the County's surplus property at auction including the certification of payment of Florida sales tax. Returned checks or errors in the computation of funds shall be at the Contractor's risk.
- e. **Advertising:** The Contractor shall advertise and promote all auctions and bear all expenses related to the advertisement and promotions of auctions.

- f. **Equipment Pick-up and Transportation:** The Contractor shall furnish safe and responsible manpower and transportation to handle the pick-up, transport, handling and delivery of County surplus motor vehicles, heavy equipment, furniture, electronics, and other property to the Contractor's auction site. The Contractor shall be responsible for the payment of such services and shall deduct such costs from the sales proceeds received at auction.
- g. **Warranty:** The Contractor shall auction all County property "as-is" "where-is." The Contractor shall not express or imply any warranties including warranty for fitness for a particular purpose or merchantability.
- h. **Reports and Records:** The Contractor shall maintain and keep all reports and records necessary to comply with any federal, state, or local law. Maintain an electronic back-up system for reports and records. A copy of all reports or records shall be made available to the County upon receipt of written request. All books and records shall be open for the County Auditor to inspect at any time.
- i. **Payments to the County:** The Contractor shall submit payments to the County within ten (10) business days after completion of an auction. All payments shall be accompanied by a complete accounting of all receipts to include buyer number, item number, lot number, description of the property and a statement of total sales including any amounts deducted for transportation, pick-up, handling, and delivery cost.
- j. **Contractor Performance:** The Contractor shall make every reasonable and prudent effort to maximize the value of the County's property being sold at auction. The Contractor shall also maintain integrity and professionalism throughout the entire auction process while representing the County.

EXHIBIT "B"

PROFESSIONAL AUCTIONEERING SERVICES FOR SURPLUS PROPERTY

FEE RATE SCHEDULE

SELLER'S COMMISSION	PERCENTAGE
Items Selling for <i>\$10,000.00 or Less</i>	Nine Percent (9%) of the Gross Sales Price Received
Items Selling for <i>over \$10,000.00</i>	<u>Nine Percent</u> (9%) of the first \$10,000.00 of the Gross Sales Price Received <i>and</i> <u>Five Percent</u> (5%) of the Balance over \$10,000.00 for Items selling more than \$10,000.00.
REPLACEMENT TITLE COST=	\$110.25 each
TRANSPORTATION	COST
Light Duty Roll-Back / Wrecker	\$240.00 / Load
Medium Duty Roll-Back	\$300.00 / Load
Equipment Transport (Legal Loads)	\$400.00 / Load
Car Hauler (Seven (7) unit minimum)	\$510.00 / Load

EXHIBIT "D"

AFFIDAVIT OF NO CONFLICT

PROFESSIONAL AUCTIONEERING SERVICES FOR SURPLUS PROPERTY

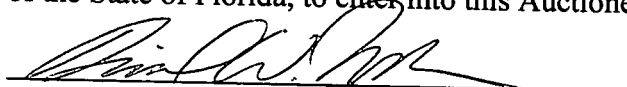
STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, this day personally appeared _____, a principal with full authority to bind TAMPA MACHINERY AUCTION, INC. (hereinafter the "CONTRACTOR"), who being first duly sworn, deposes and says:

The CONTRACTOR -

- (a) is not and will not become engaged in any obligations, undertakings or contracts which would constitute a conflict of interest relative to Manatee County; and,
- (b) has provided full disclosure of all potentially conflicting contractual relationships and full disclosure of contractual relationships deemed to raise a question of conflict(s); and,
- (c) has provided full disclosure of prior work history and qualifications that may be deemed to raise possible question of conflict(s); and,
- (d) will not undertake auction assignments for both Manatee County and one or more private parties within the same public project.

Affiant makes this affidavit for the purpose of inducing Manatee County, a political subdivision of the State of Florida, to enter into this Auctioneering Services Agreement.


Signature

SUBSCRIBED to and sworn before me this 22 day of June, 20 11.

Notary Public 

My commission expires: _____

Personally Known Or Produced Identification Type of Id _____

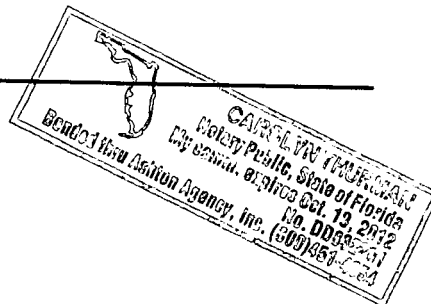


EXHIBIT "E"

RESOLUTION R-93-22 and Drug Free Work Place Certification

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, IMPLEMENTING ¶3-101(7)3(1) OF THE MANATEE COUNTY PROCUREMENT CODE (ORDINANCE 84-02 AS AMENDED) TO ESTABLISH MINIMUM REQUIREMENTS FOR BIDDERS WITH RESPECT TO MAINTAINING A DRUG FREE WORKPLACE; REQUIRING WRITTEN CERTIFICATION TO THE COUNTY OF COMPLIANCE WITH THE REQUIREMENTS ESTABLISHED HEREIN; AND PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Manatee County recognizes that substance abuse is a complex societal problem that continues to threaten the welfare of the residents and community; and

WHEREAS, the Board of County Commissioners considers substance abuse on the job to be an unsafe and counter-productive work practice; and

WHEREAS, consistent with its policy to promote a safe work environment and encourage personal health for all citizens of Manatee County, the Commission finds it necessary to combat substance abuse in the workplace by promoting education and awareness; and

WHEREAS, consistent with the Drug Free Workplace Act (§112.0455, Florida Statutes) and policies applicable to Manatee County employees pursuant to Resolution R-93-10, the Board of County Commissioners of Manatee County has determined that it is necessary and in the best interest of the County to adopt the drug free workplace requirements for persons or entities contracting with Manatee County; and

WHEREAS, ¶3-101(7)B of the Manatee County procurement Code (Ordinance 84-02, as amended) authorizes the adoption of requirements for maintaining a drug free workplace applicable to persons or entities bidding on contracts with Manatee County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida, as follows:

- 1. Certification Required:** No person or entity submitting a bid pursuant to ¶3-101 shall be awarded or receive a county contract for public improvements, procurement of goods or services (including professional services) or a county lease, franchise, concession or management agreement, unless such person or entity has submitted a written certification to the county that it will provide a drug free workplace by:
 - a.** providing a written statement to each employee notifying such employee that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in §893.02(4), Florida statutes, as the same may be amended from time to time, in the person's or entity's workplace is prohibited specifying the actions that will be taken against employees for violation of such prohibition. Such written statement shall inform employees about:
 - (i)** the dangers of drug abuse in the workplace;
 - (ii)** the person's or entity's policy of maintaining a drug free environment at all its workplaces, including but not limited to all locations where employees perform any task relating to any portion of such contract, business transaction or grant;
 - (iii)** any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (iv)** the penalties that may be imposed upon employees for drug abuse violations.
 - b.** Requiring the employee to sign a copy of such written statement to acknowledge his or her receipt of same and advice as to the specifics of such policy. Such person or entity shall retain the statements signed by its employees. Such person or entity shall also post in a prominent place at all of its workplaces a written statement of its policy containing the foregoing elements (i) through (iv).
 - c.** Notifying the employee in the statement required by subsection 1. that as a condition of employment the employee will:
 - (i)** abide by the terms of the statement; and,
 - (ii)** notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such a conviction.
 - d.** At all times pertinent to the performance of any contract with Manatee County, notify the county within ten (10) days after receiving notice under subsection c. from an employee or otherwise receiving actual notice of such conviction.
 - e.** Imposing appropriate personnel action against such employee up to and including termination; or requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.

- f. Making a good faith effort to continue to maintain a drug free workplace through implementation of sections a. through e. of this subsection.
2. **Severability.** If any part, section, subsection, or other portion of this Resolution, or any application thereof to any person or circumstances declared to be void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Resolution, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
3. **Effective Date.** This Resolution shall take effect ninety (90) days after adoption by the Board of County Commissioners.

ADOPTED in open session by a majority of the duly elected Board of County Commissioners of Manatee County, Florida, this 2nd day of February, 1993.

**ORIGINAL DOCUMENT SIGNED BY BOARD OF COUNTY COMMISSIONERS
CHAIRMAN MS. LARI ANN HARRIS ON FEBRUARY 2, 1993 AND IS ON FILE AT
MANATEE COUNTY CLERK'S OFFICE.**

Drug Free Work Place Certification

SWORN STATEMENT PURSUANT TO RESOLUTION R-01-36 SECTION 4, E (1) (a) MANATEE COUNTY PURCHASING POLICIES, ON DRUG FREE WORK PLACES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

This sworn statement is submitted to the Manatee County Board of County Commissioners by:

David W Nelson for Tampa Machinery Auction, Inc.
[print individual's name and title] [print name of entity submitting sworn statement]

whose business address is: 11720 US Hwy 301 N. Thonotosassa, FL
and (if applicable) its Federal Employer Identification Number (FEIN) is 59-1346852 (If the entity has no
FEIN, include the Social Security Number of the individual signing this sworn statement: _____)

I understand that no person or entity shall be awarded or receive a county contract for public improvements, procurement of goods or services (including professional services) or a county lease, franchise, concession or management agreement, or shall receive a grant of county monies unless such person or entity has submitted a written certification to the County that it will provide a drug free work place by:

(1) providing a written statement to each employee notifying such employee that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined by §893.02(4), Florida Statutes, as the same may be amended from time to time, in the person's or entity's work place is prohibited specifying the actions that will be taken against employees for violation of such prohibition. Such written statement shall inform employees about:

- (i) the dangers of drug abuse in the work place;
- (ii) the person's or entity's policy of maintaining a drug free environment at all its work places, including but not limited to all locations where employees perform any task relating to any portion of such contract, business transaction or grant;
- (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed upon employees for drug abuse violations.

(2) Requiring the employee to sign a copy of such written statement to acknowledge his or her receipt of same and advice as to the specifics of such policy. Such person or entity shall retain the statements signed by its employees. Such person or entity shall also post in a prominent place at all of its work places a written statement of its policy containing the foregoing elements (i) through (iv).

(3) Notifying the employee in the statement required by subsection (1) that as a condition of employment the employee will:

- (i) abide by the terms of the statement; and
- (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such a conviction.

(4) Notifying the County within ten (10) days after receiving notice under subsection (3) from an employee or otherwise receiving actual notice of such conviction.

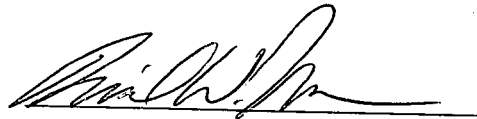
(5) Imposing appropriate personnel action against such employee up to and including termination; or requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

(6) Making a good faith effort to continue to maintain a drug free work place through implementation of sections (1) through (5) stated above.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR MANATEE COUNTY IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT ANY CONTRACT OR BUSINESS TRANSACTION SHALL PROVIDE FOR SUSPENSION OF PAYMENTS, OR TERMINATION, OR BOTH, IF THE CONTRACTING OFFICER OR THE COUNTY ADMINISTRATOR DETERMINES THAT:

- (1) Such person or entity has made false certification.
- (2) Such person or entity violates such certification by failing to carry out the requirements of sections (1), (2), (3), (4), (5), or (6) or Resolution R-01-36 Section 4, E (1) (a) or
- (3) Such a number of employees of such person or entity have been convicted of violations occurring in the work place as to indicate that such person or entity has failed to make a good faith effort to provide a drug free work place as required by Resolution R-01-36 Section 4, E (1) (a).

[Signature]



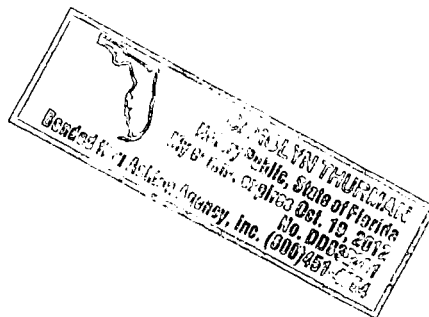
STATE OF FLORIDA
COUNTY OF Hillsborough

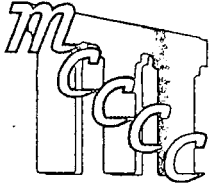
Sworn to and subscribed before me this 22 day of June, 2011 by

Personally known OR Produced identification
(Type of identification)

Carl J. My commission expires _____
Notary Public Signature

[Print, type or stamp Commissioned name of Notary Public]





Manatee County

Clerk of the Circuit Court and Comptroller

R.B. "Chips" Shore

P.O. Box 25400 ◦ Bradenton, Florida 34206 ◦ (941) 749-1800 ◦ FAX (941) 741-4082 ◦ www.manateeclerk.com

July 26, 2011

TO: Tampa Machinery Auction, Inc.
11720 Highway 301 North
Thonotosassa, Florida 33592

FROM Clerk of Circuit Court
Board Records Department
Vicki P. Jarratt
P.O. Box 25400
Bradenton, Florida 34206

RE: **Professional Auctioneering Services of Surplus Property - Agreement (11-1072-DW) with Tampa Machinery Auction, Inc., for one year (6/28/11-6/28/12).**

ACCEPTED: In open session by the Manatee County Board of County Commissioners on **July 26, 2011.**

RBS:vpj
Enclosure

cc: Board Records
Judy Berisford, Public Works

MEMORANDUM



FINANCIAL MANAGEMENT
DEPARTMENT
Purchasing Division
1112 Manatee Avenue West
Bradenton, FL 34205

MANATEE COUNTY
FLORIDA

Phone: 941.749.3014
Fax: 941.749.3034

To: Susan Romine, Supervisor
Board Records

From: Dennis W. Wallace *DWW*
Purchasing Office

Date: June 28, 2011

Subject: Agreement No. 11-1072DW with **Tampa Machinery Auction, Inc.** for Professional Auctioneering Services of Surplus Property

RECEIVED

JUN 30 2011

BOARD RECORDS

Please accept the enclosed executed above-captioned Agreement for Professional Auctioneering Services of Surplus Property with **Tampa Machinery Auction, Inc.** for period of one (1) year commencing on June 28, 2011 and ending on June 28, 2012 with four (4) additional one (1) year periods in accordance with the provisions of the Agreement. This executed Agreement, is as authorized by Manatee County Code, Chapter 2-26, and per the delegation by the County Administrator effective 1/26/2009 and revised 8/10/09.

If you require any additional background or information, please call me at x3039.

Please send a confirmation of acceptance as follows: One (1) Original to Vendor, and One (1) Original to Judy Berisford, Public Works. *7-26-11 v9* *COPY*

Thank you.

Enclosures to Board Records:

1. Two (2) Original Agreements
2. Source Selection Dated: June 9, 2011

MANATEE COUNTY GOVERNMENT SOURCE SELECTION

SUBJECT	Professional Auctioneering Services for the Sale of Surplus Property	DATE POSTED	Date Posted on <i>10/9/11 m</i> Mymanatee.org _____
PURCHASING REPRESENTATIVE	Dennis W. Wallace	DATE CONTRACT SHALL BE AWARDED	To Be Determined After Negotiations
DEPARTMENT	Financial Management Purchasing Division	CONSEQUENCES IF DEFERRED	N/A
SOURCE RECOMMENDATION	Request for Proposal No. 11-1072DW	AUTHORIZED BY DATE	R.C. "Rob" Cuthbert, C.P.M., CPPO June 10, 2011 <i>[Signature]</i>

ACTION DESIRED

Authorization to enter into negotiations with the top ranked firm, **Tampa Machinery Auction, Inc.**, Tampa, Florida, to provide Auctioneering Services for the Sale of Surplus Property on an as-needed basis.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

Manatee County Code of Law, Chapter 2-26 Manatee County Purchasing Ordinance, Section 2-26-40 and the Standards and Procedures approved by the County Administrator.

BACKGROUND/DISCUSSION

The County competitively solicited a Request for Proposal ("RFP") No. 11-1072-DW seeking the best qualified firm to perform Professional Auctioneering Services for Surplus Property on an as-needed basis for a period of four (4) years to provide an auction site to accept, store, organize, and sell, by public auction, surplus County property pursuant to F.S. 274.05.

The RFP was broadcast via Demand Star to fifty-two (52) firms who provide this service; four (4) firms downloaded the RFP and four (4) firms submitted proposals. In addition, the RFP was advertised in the Bradenton Herald, posted on the County's website, and provided to the Manatee County Chamber of Commerce for release to its' members.

- Continued on Page 2 -

SUMMARY

Authorization to enter into negotiations with **Tampa Machinery Auction, Inc.** to provide Auctioneering Services for the Sale of Surplus Property.

ATTACHMENTS: (List in order as attached)

INSTRUCTIONS TO BOARD RECORDS:

NA

COST

Revenue Contract

SOURCE (ACCT# & NAME)

N/A

COMMENTS

N/A

AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)

N/A

BACKGROUND / DISCUSSION – continued –**PROPOSALS:**

Proposals were received from the following firms:

Manatee County Firms:

SRI Incorporated Bradenton, FL

Local Firms:

Atkinson Realty and Auction, Inc. Sarasota, FL

Tampa Machinery Auction, Inc. Tampa, FL

Other Firms:

The Public Group Provo, UT

SELECTION COMMITTEE:

The Selection Committee consisted of the following:

Judy Berisford Public Works, Fuel/Inventory Operations

Michael Brennan Public Works, Fleet Services

Dennis W. Wallace Financial Management Department

The Selection Committee convened on 5/17/2011 and short listed the following firms:

- 1) Tampa Machinery Auction, Inc.
- 2) Atkinson Realty and Auction, Inc.

The Selection Committee ranked the firms as follows for the purpose of negotiating a contract with the top ranked firm:

Ranked No. 1: Tampa Machinery Auction, Inc.

The top ranked firm demonstrated exceptional qualifications and displayed a technical competence with impressive detail and results. Their proposal outlined forty (40) years of experience of on-site and internet auctions. The firm effectively presented a project plan which emphasized their ability to accept, store, and organize property for sale and conduct auctions at the same location on a regular monthly schedule. The firm demonstrated its' understanding of the County's requirements and included a reasonable pricing structure. In addition to an auctioneer's license, the firm possesses a motor vehicle dealers license and a used recreational vehicle dealers license.

Ranked No. 2: Atkinson Realty and Auction, Inc.

The firm has over seventeen (17) years of experience in traditional and internet auctions. While their proposal satisfied the RFP's minimum qualifications it was not perceived by the Committee as representing a workable project plan for traditional on-site auctions in accepting, storing, and organizing surplus property for sale but demonstrated, instead, a strong emphasis on internet auctions while not developing a comprehensive strategy to accommodate the County's requirements. The firm's corporate and administrative office is located in Sarasota, however, their auction sites are located in Lake City and Ruskin, FL. The firm was ranked second by the Selection Committee due to presumed higher cost implications to the County resulting from their North Florida auction site and less overall capabilities to meet the County's requirements for traditional on-site auctions.

Remaining Respondents:

The remaining respondents, listed alphabetically below, were not found to be authorized to transact business in the State of Florida at the time of submittal pursuant to Section A.12, "Applicable Laws," of the RFP, and, as a result, were considered to be non-responsive to the RFP.

SRI Incorporated Bradenton, FL
The Public Group Provo, UT

FUNDING: Since this is a revenue contract no funding was required to be budgeted.

From: **Vicki Jarratt**

Sent: **Thursday, July 28, 2011 8:05 AM**

To: **'judy.berisford@mymanatee.org'**

Subject: **Agreement for Professional Auctioneering Services of Surplus Property - Tampa Machinery Auction, Inc.**

Attachments: **BC20110726DOCC37.PDF**

Attached is the Agreement for Professional Auctioneering Services of Surplus Property - Tampa Machinery Auction, Inc. accepted by the BCC on 7/26/11.

Best regards,

Vicki Jarratt

Board Records

For R.B. "Chips" Shore

Manatee County Clerk of Circuit Court & Comptroller

www.ManateeClerk.com

vicki.jarratt@manateeclerk.com

749-1800 Ext. 4185

"Pride in Service with a Vision to the Future"