

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **W.J. DICKENSHEET & ASSOCIATES, INC.**, a Colorado Corporation registered to do business in Colorado, whose address is 1501 W Wesley Ave, Denver, CO 80223 (“Contractor”), individually a “Party” and jointly “the Parties.”

RECITALS

WHEREAS, the City is desirous of engaging an on-premises and a hosted third-party solution provider to aid the City in auctioneering services and the Contractor has agreed to provide the hosted solution, services and other deliverables under the terms and conditions as set out below; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor incorporate the recitals set forth above agree as follows:

- 1. DEFINITIONS.** Whenever used herein, any schedules, exhibits, order forms, or addenda to this Agreement, the following terms shall have the meanings assigned below unless otherwise defined therein. Other capitalized terms used in this Agreement are defined in the context in which they are used.
 - 1.1. **"Acceptance"** means the Deliverable demonstrates to the City's reasonable satisfaction that the Deliverable conforms to and operates in all material respects according to the Acceptance Criteria, and if required, has successfully completed Acceptance Testing in all material respects, and for Deliverables not requiring Acceptance Testing that the Deliverable reasonably conforms in all material respects to the Acceptance Criteria or the City's requirements.
 - 1.2. **"Acceptance Certificate"** means a written instrument by which the City promptly notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.
 - 1.3. **"Acceptance Criteria"** means functionality and performance requirements determined by the City and set forth on the Order Form for the applicable Product or Service, based upon

the Specifications, which must be satisfied prior to the City's Acceptance of a Deliverable, or the System. The City and Contractor shall agree upon written Acceptance Criteria in the Order Form for the applicable Product or Service.

- 1.4. **"Acceptance Date"** means the date on which the City issues an Acceptance Certificate for the System or a Deliverable.
- 1.5. **"Acceptance Test"** means the evaluation and testing method, procedures, or both, that are set forth in the Order Form for the applicable Product or Service and are used to determine whether or not the System or a Deliverable requiring Acceptance Testing performs in accordance with the Acceptance Criteria.
- 1.6. **"City Data"** means all information, whether in oral or written (including electronic) form, created by or in any way originating with the City and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with the City, in the course of using and configuring the Services provided under this Agreement, and includes all records relating to the City's use of Contractor Services. City Data also includes Confidential Information disclosed to Contractor.
- 1.7. **"Confidential Information"** means all records or data that is disclosed in written, graphic or machine recognizable form and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent, or, if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) Calendar Days of the disclosure and is not subject to disclosure under CORA. Confidential Information shall include, but is not limited to, PII, PHI, PCI, federal or state tax information ("Tax Information"), Criminal Justice Information (CJI), personnel records, financial, statistical, personnel, human resources data or Personally Identifiable Information and/or Personal Information as described in the C.R.S 24-73-101, *et seq*; attorney/client privileged communications; information which is exempt per federal laws (including but not limited to copyright or HIPPA), all of which is not subject to disclosure under CORA. Confidential Information does not include information which: (a) is public or becomes public through no breach of the confidentiality obligations herein; (b) is disclosed by the party that has received Confidential Information (the "Receiving Party") with the prior written approval of the other party; (c) was known by the Receiving Party at

the time of disclosure; (d) was developed independently by the Receiving Party without use of the Confidential Information; (e) becomes known to the Receiving Party from a source other than the disclosing party through lawful means; (f) is disclosed by the disclosing party to others without confidentiality obligations; or (g) is required by law to be disclosed.

- 1.8. **“CORA”** means the Colorado Open Records Act, §§ 24-72-200.1, *et seq.*, C.R.S.
- 1.9. **“Data Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the City. Data Incidents include, without limitation (i) successful attempts to gain unauthorized access to a City system or the City information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a City system for the processing or storage of data; or (iv) changes to the City system hardware, firmware, or software characteristics without the City’s knowledge, instruction, or consent. It shall also include any actual or reasonably suspected unauthorized access to or acquisition of computerized City Data that compromises the security, confidentiality, or integrity of City Data, or the ability of the City to access City Data.
- 1.10. **“Deliverable”** means the Products or Services or documents or tangible work products described in an Order Form to be provided to the City by Contractor or the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s work that is intended to be delivered to the City by Contractor under this Agreement.
- 1.11. **“Documentation”** means, collectively: (a) all materials published or otherwise made available to the City by Contractor that relate to the functional, operational and/or performance capabilities of the Services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Contractor, including marketing materials that describe the functional, operational and/or performance capabilities of the Services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by the City, and the responses thereto from Contractor, and any document which purports to update or revise any of the foregoing; and (d) the results of any Contractor “Use Cases Presentation,” “Proof of Concept” or similar type presentations or tests provided by Contractor to the City or as

required to be produced by Contractor subject to the terms of this Agreement.

- 1.12. **“Downtime”** means any period of time of any duration that the Services are not made available by Contractor to the City for any reason, including scheduled maintenance or Enhancements.
- 1.13. **“Effective Date”** means the date on which this Agreement is fully approved and signed by the City as shown on the Signature Page for this Agreement. The Effective Date for Services may be set out in an Order Form or similar exhibit.
- 1.14. **“Enhancements”** means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Contractor may develop or acquire and incorporate into its standard version of the Services or which Contractor has elected to make generally available to its customers.
- 1.15. **“Equipment”** means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus, to be provided to the City by Contractor under this Agreement.
- 1.16. **“Error”** means any defect, problem, condition, bug, or other partial or complete inability of a Product to operate in accordance with the applicable Specifications.
- 1.17. **“Intellectual Property Rights”** includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation in part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.
- 1.18. **“Order Form”** means a quote in the form attached hereto as an exhibit, setting forth certain Products and/or Services to be provided pursuant to this Agreement. Any reference to an "Order Form" in this Agreement includes Products and/or Services purchased by the City pursuant to Contractor's online ordering process. An Order Form can also be a statement of work or scope of work if attached to this Agreement.
- 1.19. **“PCI”** means payment card information including any data related to credit card holders’

names, credit card numbers, or other credit card information as may be protected by state or federal law.

- 1.20. **“PII”** means personally identifiable information including, without limitation, any information maintained by the City about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§ 24-72-501 and 24-73-101, C.R.S.
- 1.21. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act. If this Agreement involves the transmission of PHI a separate Business Associates Agreement will become a part of this Agreement.
- 1.22. **“Product(s)”** means software, Equipment, and supplies delivered, or to be delivered, pursuant to an Order Form.
- 1.23. **“Protected Information”** includes, but is not limited to, personally-identifiable information, student records, protected health information, criminal justice information or individual financial information and other data defined under § 24-72-101 *et seq.*, and personal information that is subject to local, state or federal statute, regulatory oversight or industry standard restricting the use and disclosure of such information. The loss of such Protected Information would constitute a direct damage to the City.
- 1.24. **“RFP Response”** means any proposal submitted by Contractor to City in response to City's Request for Proposal ("RFP") titled AUCTIONEERING SERVICES, 0449A_2021, March 16, 2021.
- 1.25. **“Services”** means Contractor’s computing solutions, provided to the City pursuant to this Agreement, that provide the functionality and/or produce the results described in the

Documentation, including without limitation all Enhancements thereto and all interfaces.

- 1.26. **"Scope of Work"** mean the provisions set forth on **Exhibit A** attached hereto, which are incorporated into this Agreement by this reference.
- 1.27. **"Specifications"** means the most current cumulative statement of capabilities, functionality, and performance requirements for the Products or Services as set out in the Acceptance Criteria, Order Forms, Documentation, Contractor's representations, Contractor's proposal, and the City's Request for Proposals.
- 1.28. **"Subcontractor"** means any third party engaged by Contractor to aid in performance of the work or the Service. Contractor shall provide to the City upon request a list of Subcontractors providing material services to the Service.
- 1.29. **"System"** means the operational combination of all Products and Services to be provided by Contractor to the City under this Agreement.
- 1.30. **"Third Party"** means persons, corporations and entities other than Contractor, the City or any of their employees, contractors or agents.
- 1.31. **"Third-Party Host"** means the entity where the physical location of the server(s) of the Contractor's software resides.

2. RIGHTS AND LICENSE IN AND TO DATA

- 2.1. The Parties agree that as between them, all rights in and to City Data shall remain the exclusive property of the City, and Contractor has a limited, nonexclusive license to access and use City Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
- 2.2. All City Data created and/or processed by the Service is and shall remain the property of the City and shall in no way become attached to the Service, nor shall Contractor have any rights in or to the City Data without the express written permission of the City and may not include Protected Information.
- 2.3. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.
- 2.4. The City retains the right to use the Service to access and retrieve data stored on Contractor's Service infrastructure at any time during the term of this Agreement at its sole discretion.

3. DATA PRIVACY

- 3.1. Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for the City's sole benefit and will not share City Data with or disclose it to any Third Party without the prior written consent of the City or as otherwise required by law. By way of illustration and not of limitation, Contractor will not use City Data for Contractor's own benefit and, in particular, will not engage in "data mining" of City Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by the City.
- 3.2. Contractor will provide access to City Data only to those Contractor employees, contractors and Subcontractors ("Contractor Staff") who need to access City Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to City Data, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of City Data they will be handling.
- 3.3. If Contractor receives Protected Information of a Colorado resident under this Agreement, Contractor shall implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the personal identifying information and the nature and size of Contractor's business and its operations. Unless Contractor agrees to provide its own security protections for the information it discloses to a third-party service provider, Contractor shall require all its third-party service providers to implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the personal identifying information disclosed and reasonably designed to help protect the personal identifying information subject to this Agreement from unauthorized access, use, modification, disclosure, or destruction. Contractor and its third-party service providers that maintain electronic or paper documents that contain Protected Information under this Agreement shall develop a written policy for the destruction of such records by shredding, erasing, or otherwise modifying the Protected Information to make it unreadable or indecipherable when the records are no longer needed.
- 3.4. Contractor may provide City Data to its agents, employees, assigns, and Subcontractors as necessary to perform the work under this Agreement, but shall restrict access to Confidential

Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Agreement. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign, or have signed, agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the City upon execution of the nondisclosure provisions if requested by the City.

4. DATA SECURITY AND INTEGRITY

- 4.1. All facilities, whether Contractor hosted or Third-Party Hosted, used to store and process City Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to provide the requested Service availability and to secure City Data from unauthorized access, destruction, use, modification, or disclosure appropriate for City Data. Such measures, when applicable due to the presence of Protected Information, include, but are not limited to, all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, (iv) the Colorado Consumer Protection Act, (v) the Children's Online Privacy Protection Act (COPPA), (vi) the Family Education Rights and Privacy Act (FERPA), (vii) §24-72-101 et seq., (viii) the Telecommunications Industry Association (TIA) Telecommunications Infrastructure Standard for Data Centers (TIA-942); (ix) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Addendum attached to this Agreement, if applicable. Contractor shall submit to the Manager, within fifteen (15) days of the Manager's written request, copies of Contractor's policies and procedures to maintain the confidentiality of protected health information to which Contractor has access, and if applicable, Contractor shall comply with all HIPAA requirements contained herein or attached as an exhibit.

- 4.2. Contractor warrants that all City Data will be encrypted in transmission (including via web interface) and in storage by a mutually agreed upon National Institute of Standards and Technology (NIST) approved strong encryption method and standard.
- 4.3. Contractor shall use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting in providing Services under this Agreement. Contractor shall ensure that any underlying or integrated software employed by the Service is updated on a regular basis and does not pose a threat to the security of the Service.
- 4.4. Contractor shall, and shall cause its Subcontractors, to do all of the following:
 - 4.4.1. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Agreement.
 - 4.4.2. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - 4.4.3. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - 4.4.4. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - 4.4.5. Promptly report all Data Incidents, including Data Incidents that do not result in unauthorized disclosure or loss of data integrity.
 - 4.4.6. Comply with all rules, policies, procedures, and standards issued by the City's Technology Services Security Section.
 - 4.4.7. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the City with scheduled access for the purpose of inspecting and monitoring access and use of City Data, maintaining City systems, and evaluating physical and logical security control effectiveness.
 - 4.4.8. Contractor shall perform current background checks in a form reasonably acceptable to the City on all of its respective employees and agents performing services or having access to City Data provided under this Agreement, including any

Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to City Data shall be deemed to be current.

4.4.9. Contractor will provide notice to the security and compliance representative for the City indicating that background checks have been performed. Such notice will inform the City of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.

4.4.10. If Contractor will have access to Tax Information under the Agreement, Contractor shall comply with the background check requirements defined in IRS Publication 1075 and § 24-50-1002, C.R.S.

4.5. If applicable, Contractor shall use, hold, and maintain Confidential and Protected Information in compliance with all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Confidential and Protected Information.

4.6. Prior to the Effective Date of this Agreement, Contractor, will at its expense conduct or have conducted the following, and thereafter, Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Incident:

4.6.1. A SSAE 16/SOC 2 or other mutually agreed upon audit of Contractor's security policies, procedures and controls;

4.6.2. A quarterly external and internal vulnerability scan of Contractor's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability, age and remediation plan for all issues identified as critical or high;

4.6.3. A formal penetration test, performed by a process and qualified personnel of Contractor's systems and facilities that are used in any way to deliver Services under this Agreement.

4.7. Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of Contractor's receipt of such results.

- 4.8. Based on the results and recommendations of the above audits, certifications, scans and tests, Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures to meet its obligations under this Agreement and provide the City with written evidence of remediation.
- 4.9. The City may require, at its expense, that Contractor perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of Contractor's receipt of such results.
- 4.10. Contractor shall protect data against deterioration or degradation of data quality and authenticity, including, but not limited to annual Third Party data integrity audits. Contractor will provide the City the results of the above audits.

5. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

- 5.1. Except as otherwise expressly prohibited by law, Contractor will:
 - 5.1.1. If required by a court of competent jurisdiction or an administrative body to disclose City Data, Contractor will notify the City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;
 - 5.1.2. Consult with the City regarding its response;
 - 5.1.3. Cooperate with the City's reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request; and
 - 5.1.4. Upon request, provide the City with a copy of its response.
- 5.2. If the City receives a subpoena, warrant, or other legal order, demand or request seeking data maintained by Contractor, the City will promptly provide a copy to Contractor. Contractor will supply the City with copies of data required for the City to respond within forty-eight (48) hours after receipt of copy from the City and will cooperate with the City's reasonable requests in connection with its response.

6. DATA INCIDENT RESPONSE

- 6.1. Contractor shall maintain documented policies and procedures for Data Incident and breach reporting, notification, and mitigation. If Contractor becomes aware of any Data Incident, it shall notify the City immediately and cooperate with the City regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the City. If there is a Data Incident impacting residents of Colorado or any other jurisdiction, Contractor shall cooperate with the City to satisfy notification requirements as currently defined in either federal, state,

or local law. Unless Contractor can establish that neither Contractor nor any of its agents, employees, assigns or Subcontractors are the cause or source of the Data Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Data Incident as required by law. After a Data Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Data Incident in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City.

- 6.2. Contractor shall report, either orally or in writing, to the City any Data Incident involving City Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of City Data, not authorized by this Agreement or in writing by the City, including any reasonable belief that an unauthorized individual has accessed City Data. Contractor shall make the report to the City immediately upon discovery of the unauthorized disclosure, but in no event more than forty-eight (48) hours after Contractor reasonably believes there has been such unauthorized use or disclosure. Oral reports by Contractor regarding Data Incidents will be reduced to writing and supplied to the City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.
- 6.3. Immediately upon becoming aware of any such Data Incident, Contractor shall fully investigate the circumstances, extent and causes of the Data Incident, and report the results to the City and continue to keep the City informed daily of the progress of its investigation until the issue has been effectively resolved.
- 6.4. Contractor's report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- 6.5. Within five (5) calendar days of the date Contractor becomes aware of any such Data Incident, Contractor shall have completed implementation of corrective actions to remedy the Data Incident, restore the City's access to the Services as directed by the City, and prevent further similar unauthorized use or disclosure.
- 6.6. Contractor, at its expense, shall cooperate fully with the City's investigation of and response to any such Data Incident.

- 6.7. Except as otherwise required by law, Contractor will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from the City.
- 6.8. Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, Contractor will promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any such Data Incident, including but not limited to providing notification to Third Parties whose data were compromised and to regulatory bodies, law-enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Incident in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Incident.

7. DATA RETENTION AND DISPOSAL

- 7.1. Using appropriate and reliable storage media, Contractor will regularly backup data and retain such backup copies consistent with the City's data retention policies.
- 7.2. At the City's election, Contractor will either securely destroy or transmit to the City repository any backup copies of City Data. Contractor will supply the City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.
- 7.3. Contractor will immediately preserve the state of the data at the time of the request and place a "hold" on data destruction or disposal under its usual records retention policies of records that include data, in response to an oral or written request from the City indicating that those records may be relevant to litigation that the City reasonably anticipates. Oral requests by the City for a hold on record destruction will be reduced to writing and supplied to Contractor for its records as soon as reasonably practicable under the circumstances. The City will promptly coordinate with Contractor regarding the preservation and disposition of these records. Contractor shall continue to preserve the records until further notice by the City.

8. DATA TRANSFER UPON TERMINATION OR EXPIRATION

- 8.1. Upon expiration or earlier termination of this Agreement or any Services provided in this Agreement, Contractor shall accomplish a complete transition of the Services from Contractor to the City or any replacement provider designated solely by the City without any interruption

of or adverse impact on the Services or any other services provided by third parties in this Agreement. Contractor shall cooperate fully with the City or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Services designated by the City. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Agreement. Contractor shall extend the Agreement monthly if additional time is required beyond the termination of the Agreement, if necessary, to effectuate the transition and the City shall pay a proration of the subscription fee.

- 8.2. Upon the expiration or termination of this Agreement, Contractor shall return City Data provided to Contractor in a common and readily usable format if requested by the City or destroy City Data and certify to the City that it has done so, as directed by the City. If Contractor is prevented by law or regulation from returning or destroying Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such Confidential Information. To the extent that Contractor is requested to perform any services beyond the return of the City's Data in connection with termination assistance, the same shall be performed pursuant to a written statement of work under this Agreement and paid for by the City, applying Contractor's then-current rates for daily/hourly work, as the case may be.

9. SCOPE OF WORK; INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE. See Exhibit A.

10. COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES.

10.1 Contractor will comply with all applicable laws in performing the Services under this Agreement. Any Contractor personnel visiting the City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. The City will provide copies of such policies to Contractor upon request.

10.2 ADA Website Compliance:

a. Compliance and Testing. All Contractor managed or operated public-facing digital experiences (e.g., websites and webpages) must be compliant with Section 508 of the Rehabilitation Act of 1973 and the WCAG 2.0 Level AA guidelines (collectively, "Guidelines"). Prior to launching to the public, Contractor shall test all public-facing digital experiences, both manually and in an automated fashion, as applicable, to confirm and

maintain compliance with the Guidelines, and then subsequently, no more than once per each term year thereafter. Such manual and automated testing may only be performed by a third party vendor approved by the Department of Justice. The City has a list of approved third party vendors. The City does not warrant the work of any third party vendor. All testing under this section shall be performed by third party vendors at the Contractor's expense.

b. Validation, Review and Remediation. Contractor will notify City when its digital experience is ready for City review and validation. City will then validate, prior to launch and each term year thereafter, to confirm that the digital experience is compliant with the Guidelines. Manual testing of the Contractor's digital experience will be verified by City with approved vendors and individuals of varying disabilities which shall include individuals who are blind, deaf or hard of hearing, and who have mobility or dexterity limitations. Upon completion of all testing, a review will be performed by the City's web accessibility coordinator to confirm completion of all accessibility requirements. In the event that any deficiencies are discovered in the Contractor's digital experience, City will promptly notify Contractor, and Contractor will remediate prior to launch. A digital experience will not launch until all deficiencies are remediated. All digital experiences must include a statement on the site that the experience is accessible, will maintain accessibility, and will provide a mechanism for users to submit feedback about accessibility issues.

c. In the event that the digital experience fails compliance at any time, Contractor shall bring the digital experience into compliance within ninety (90) days, which may be extended by mutual written agreement of the Parties. Failure to bring the digital experience into compliance for any reason within such time, except as may be mutually extended by the written agreement of the parties, shall be a breach of this Agreement.

11. WARRANTIES, REPRESENTATIONS AND COVENANTS. Contractor represents and warrants that:

11.1. The Service will conform to applicable specifications, and operate and produce results substantially in accordance with the Documentation and the Exhibits attached hereto, and will be free from deficiencies and defects in materials, workmanship, design and/or performance during the Term of this Agreement;

- 11.2. All technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;
- 11.3. Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and Services free and clear from all liens, adverse claims, encumbrances and interests of any Third Party;
- 11.4. There are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any Third-Party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;
- 11.5. The Service will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any Third Party;
- 11.6. The software and Services will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data. Contractor's obligations for breach of the Services warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if Contractor is unable to correct any breach in the Services Warranty by the date which is sixty (60) calendar days after the City provides notice of such breach, the City may, in its sole discretion, either extend the time for Contractor to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to Contractor under this Agreement.
- 11.7. Disabling Code Warranty. Contractor represents, warrants and agrees that the Services do not contain and the City will not receive from Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code"). In the event a Disabling Code is identified, Contractor shall take all steps necessary, at no additional cost to the City, to: (a) restore and/or reconstruct all City Data lost by the City as a result of Disabling Code; (b) furnish to City a corrected version of the Services without the presence of Disabling Codes;

and, (c) as needed, re-implement the Services at no additional cost to the City. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

- 11.8. Third-Party Warranties and Indemnities. Contractor will assign to the City all Third-Party warranties and indemnities that Contractor receives in connection with any products provided to the City. To the extent that Contractor is not permitted to assign any warranties or indemnities through to the City, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent Contractor is permitted to do so under the terms of the applicable Third Party agreements.
- 11.9. Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Agreement.
- 11.10. Delivery of Products shall not be construed to represent Acceptance nor shall Delivery of Products relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.

12. CONFIDENTIALITY

- 12.1. Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all City Data, unless the City Data is publicly available. Contractor shall not, without prior written approval of the City, use, publish, copy, disclose to any third party, or permit the use by any third party of any City Data, except as otherwise stated in this Agreement, permitted by law, or approved in writing by the City. Contractor shall provide for the security of all Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines.
- 12.2. The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However, (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information

if so required by law (including court order or subpoena). Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to the City are subject to applicable state and federal law, including the Colorado Open Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

- 12.3. The Receiving Party will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement. The Receiving Party shall not disclose City Data or Confidential Information to Subcontractors unless such Subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

13. COLORADO OPEN RECORDS ACT. The Parties understand that all the material provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

14. SOFTWARE AS A SERVICE, SUPPORT AND SERVICES TO BE PERFORMED

- 14.1. Contractor, under the general direction of, and in coordination with, the City's Chief Information Officer or other designated supervisory personnel (the "Manager") agrees to

provide and perform the technology related services described on attached Exhibit A (the “Statement of Work” or “SOW”). The Services, when fully accepted, shall conform to the functionality matrix set out from the RFP Response. The Parties acknowledge that Contractor and the City may work to further define the SOW, in which case that work product (“Follow-Up SOW”) will become a part of this Agreement by incorporation. If the Follow-Up SOW materially alters the attached SOW the Parties agree to amend this Agreement in writing.

- 14.2. As the Manager directs, Contractor shall diligently undertake, perform, and complete all of the technology related services and produce all the deliverables set forth on Exhibit A to the City’s satisfaction.
- 14.3. Contractor is ready, willing, and able to provide the technology related services and the Services required by this Agreement.
- 14.4. Contractor shall faithfully perform the technology related services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.
- 14.5. User ID Credentials. Internal corporate or customer (tenant) user account credentials shall be restricted as per the following, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures:
 - 14.5.1. Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation);
 - 14.5.2. Account credential lifecycle management from instantiation through revocation;
 - 14.5.3. Account credential and/or identity store minimization or re-use when feasible; and
 - 14.5.4. Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expire able, non-shared authentication secrets).
- 14.6. Vendor Supported Releases. Contractor shall maintain the currency all third-party software used in the development and execution or use of the Service including, but not limited to: all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source; with third-party vendor approved and supported releases.

14.7. Identity Management. The City's Identity and Access Management (IdM) system is an integrated infrastructure solution that enables many of the City's services and online resources to operate more efficiently, effectively, economically and securely. All new and proposed applications must utilize the authentication and authorization functions and components of the IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions, regardless to where the application is hosted.

15. GRANT OF LICENSE; RESTRICTIONS

- 15.1. Contractor hereby grants to the City a right and license to display, perform, and use the Services and use all intellectual property rights necessary to use the Services as authorized.
- 15.2. Title to and ownership of the Service will remain with Contractor. The City will not reverse engineer or reverse compile any part of the Service. The City will not remove, obscure or deface any proprietary notice or legend contained in the Service or Documentation without Contractor's prior written consent.

16. DELIVERY AND ACCEPTANCE

- 16.1. Right to Perform Acceptance Testing. Prior to accepting Deliverables, the City shall have the right to perform Acceptance Testing to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria, if any, set forth on the applicable Order Form or Statement of Work. Contractor shall cooperate with the City in the development of Acceptance Criteria that shall be codified in the applicable Order Form or Statement of Work that will set forth the location, date, and other specifications of the Acceptance Testing, if any. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.
- 16.2. After an Acceptance Test and if at any time the Service does not conform, the City will notify Contractor in writing within sixty (60) days and will specify in reasonable detail the identified failures and possible reasons for failure. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency.
- 16.3. If the City issues an Acceptance Certificate for an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction of the Error(s). If Error(s) are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the

Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue an Acceptance Certificate.

- 16.4. If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.
- 16.5. The foregoing procedure will be repeated until the City accepts or finally rejects the Deliverable, in whole or part, in its sole discretion. In the event that the Service does not perform to the City's satisfaction, the City reserves the right to repudiate acceptance. If the City finally rejects the Service, or repudiates acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the Service.
- 16.6. If the City is not satisfied with Contractor's performance of the technology related services described in the Statement of Work, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the technology related service in its sole discretion. If City finally rejects any technology related service, Contractor will refund to City all fees paid by City with respect to such technology related service.
- 16.7. Contractor warrants that during the term of this Agreement that the Service and any associated components will not materially diminish during the subscription Term.

17. TERM. The term of the Agreement is from August 1, 2021 through July 31, 2026 (the "Term").

18. COMPENSATION AND PAYMENT

- 18.1. **Fee:** The fee for the Services and technology related services is described in the attached Exhibit **B** (the "Fee"). The Fee shall be paid pursuant to the City's Prompt Payment Ordinance and in accordance with any payment milestones in Exhibit **B**.
- 18.2. **Reimbursement Expenses:** The fees specified above include all expenses, and no other expenses shall be separately reimbursed or incurred hereunder for the provision of the Service(s).
- 18.3. **Invoicing:** Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information

reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

18.4. Maximum Agreement Liability:

18.4.1. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **TWENTY FIVE THOUSAND AND NO DOLLARS (\$25,000)** (the "Maximum Agreement Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in the attached Exhibits. Any services performed beyond those in the attached Exhibits are performed at Contractor's risk and without authorization under the Agreement.

18.4.2. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

19. STATUS OF CONTRACTOR. Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

20. TERMINATION

20.1. The City has the right to terminate the Agreement, or a product under the Agreement, with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to Contractor. However, nothing gives Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

20.2. Notwithstanding the preceding paragraph, the City may terminate the Agreement if Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in

connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

20.3. Upon termination of the Agreement, with or without cause, Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement and shall refund to the City any prepaid cost or expenses.

21. EXAMINATION OF RECORDS AND AUDITS. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

22. WHEN RIGHTS AND REMEDIES NOT WAIVED. In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

23. INSURANCE

23.1. General Conditions: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

23.2. Proof of Insurance: Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

- 23.3. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 23.4. Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
- 23.5. Subcontractors and Subconsultants: Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.
- 23.6. Workers' Compensation and Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- 23.7. Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- 23.8. Automobile Liability: Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 23.9. Commercial Crime: Contractor shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

24. DEFENSE AND INDEMNIFICATION

- 24.1. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities,

claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

24.2. Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

24.3. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

24.4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

24.5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

24.6. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Service, software, or work product provided by Contractor under this Agreement (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

- 25. COLORADO GOVERNMENTAL IMMUNITY ACT.** The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. (2003).
- 26. TAXES, CHARGES AND PENALTIES.** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.
- 27. ASSIGNMENT; SUBCONTRACTING.** Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, Subcontractor or assign.
- 28. NO THIRD-PARTY BENEFICIARY.** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
- 29. NO AUTHORITY TO BIND CITY TO CONTRACTS.** Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.
- 30. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** Except for the functional requirements provided in response to a request for proposal and/or any subsequent enhancement of the SOW or other implementation documentation that may be developed after execution of this Agreement, the Agreement is the complete integration of all understandings

between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

31. SEVERABILITY. Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

32. CONFLICT OF INTEREST

32.1. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

32.2. Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given Contractor written notice describing the conflict.

33. NOTICES. All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of General Services or Designee
201 West Colfax Avenue, Dept. 1110
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

34. DISPUTES. All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

35. GOVERNING LAW; VENUE. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

36. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this contract, Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Contractor shall insert the foregoing provision in all subcontracts.

- 37. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.** Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.
- 38. LEGAL AUTHORITY.** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.
- 39. NO CONSTRUCTION AGAINST DRAFTING PARTY.** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
- 40. ORDER OF PRECEDENCE.** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
- 41. SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- 42. INUREMENT.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

- 43. TIME IS OF THE ESSENCE.** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- 44. FORCE MAJEURE.** Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a Subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Contractors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.
- 45. PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.
- 46. CITY EXECUTION OF AGREEMENT.** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.
- 47. COUNTERPARTS OF THIS AGREEMENT.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.
- 48. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- 49. ADVERTISING AND PUBLIC DISCLOSURE.** Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of Contractor's advertising or public relations materials without first obtaining the written approval of the

Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

50. COMPLIANCE FOR IN-SCOPE SERVICES. Contractor covenants and agrees to comply with all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Agreement. Such obligations may arise from:

Health Information Portability and Accountability Act (HIPAA)

IRS Publication 1075

Payment Card Industry Data Security Standard (PCI-DSS)

FBI Criminal Justice Information Service Security Addendum

CMS Minimum Acceptable Risk Standards for Exchanges and further covenants and agrees to maintain compliance with the same when appropriate for the data and Services provided under the Agreement. Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers, agents, business partners, contractors, Subcontractors and any person or entity that may have access to City Data under this Agreement maintain compliance with and comply in full with the terms and conditions set out in this Section. Notwithstanding Force Majeure, the respective processing, handling, and security standards and guidelines referenced by this section may be revised or changed from time to time or City Data may be utilized within the Services that change the compliance requirements. If compliance requirements change, Contractor and the City shall collaborate in good faith and use all reasonable efforts to become or remain compliant as necessary under this section. If compliance is required or statutory and no reasonable efforts are available, the City at its discretion may terminate the agreement for cause.

51. ON-LINE AGREEMENT DISCLAIMER. Notwithstanding anything to the contrary herein, the City shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

52. PROHIBITED TERMS. Any term included in this Agreement that requires the City to indemnify or hold Contractor harmless; requires the City to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of § 24-106-109 C.R.S.

53. ON-CALL SERVICES. This Agreement or the SOW may contain hourly or daily rates and Contractor and the Manager may enter into work orders for ongoing services. The City may authorize specific assignments for Contractor by placing a written work order signed by the Manager and Contractor (the "Order") describing in sufficient details the services and/or deliverables at the rates provided or as a flat rate. Contractor agrees that during the term of this Agreement it shall fully coordinate its provision of the services with any person or firm under contract with the City doing work or providing services which affect Contractor's services. Contractor shall faithfully perform the work in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. Contractor represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all services will conform to applicable specifications and as attached to the Order, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party.

54. PCI DSS COMPLIANCE ONLY FOR CREDIT CARD INTERFACE

54.1. If Contractor is directly involved in the processing, storage, or transmission of cardholder data on behalf of the City as part of this Agreement, this Section applies. Any Contractor who provides or has access to software, systems, hardware, or devices which process and/or interact with payment card information or payment cardholder data must be compliant with the current version of the Payment Card Industry Data Security Standard (PCI DSS).

54.2. Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection Rules (SDP), and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations ("Association"), and further covenants and agrees to maintain compliance with the PCI DSS, SDP, and (where applicable) the Payment Application Data Security Standard (PA-DSS) (collectively, the "Security Guidelines"). Contractor represents and warrants that all of the hardware and software components utilized for the City or used under this Agreement is now, and will be PCI DSS compliant during the term of this Agreement. All service providers that Contractor uses under the Agreement must be recognized by Visa as PCI DSS compliant. Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers (as defined by the PCI Security Council), agents, business partners, contractors, Subcontractors and any person or entity that may have access to credit card information under this Agreement maintain compliance with the Security Guidelines and comply in full with the terms and conditions set out in this Section. Contractor further certifies that the equipment, as described herein, will be deployed in a manner that meets or exceeds the PA DSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards. Contractor shall demonstrate its compliance with PCI DSS by annually providing the City an executed Attestation of Compliance (AOC). Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of Contractor's system(s) that interface with or utilize credit card information in any manner or form of collection are PCI DSS compliant. If the Contractor is a service provider involved in the processing, storage or transmission of cardholder data or sensitive authentication data (collectively "Data Handling") on behalf of the City that would result in Data Handling being included in the City's PCI scope through connected software or components, then the Contractor must provide a PCI Responsibility Matrix ("Matrix") to be attached to this Agreement as an exhibit. The Matrix must identify where responsibility resides for each PCI control requirement, whether it be with the Contractor, the City or shared by both. Any PCI control requirements that do not apply should be indicated along with any pertinent notes.

- 54.3. Contractor shall not retain or store CAV2/CVC2/CVV2/CID or such data prohibited by PCI DSS subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind, Contractor shall notify the City in writing consistent with the Data Incident response notification requirements of this Agreement, and shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.
- 54.4. If any Association requires an audit of Contractor or any of Contractor's Service Providers, agents, business partners, contractors or Subcontractors due to a data security compromise event related to this Agreement, Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to Contractor, Contractor shall pay the City's reasonable costs relating to such audit, including attorney's fees. No review, approval, or audit by the City shall relieve Contractor from liability under this section or under other provisions of this Agreement.
- 54.5. In addition to all other defense and indemnity obligations undertaken by Contractor under this Agreement, Contractor, to the extent that its performance of this Agreement includes the allowance or utilization by members of the public of credit cards to pay monetary obligations to the City or Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by Contractor, shall defend, release, indemnify and save and hold harmless the City against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any losses associated with fraudulent transaction(s) occurring after a security breach or loss of information with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone

whomsoever, in any way affected by such credit card data or utilizing a credit card in the performance by Contractor of this Agreement. In furtherance of this, Contractor covenants to defend and indemnify the City and Contractor shall maintain compliance with PCI DSS and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

55. PAYMENT OF CITY MINIMUM WAGE: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

56. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

57. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT

57.1. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

57.2. The Contractor certifies that:

57.2.1. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

57.2.2. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

57.3. The Contractor also agrees and represents that:

57.3.1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

57.3.2. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

57.3.3. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

57.3.4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

57.3.5. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

57.3.6. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

57.4. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification

Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.

ATTACHED EXHIBITS

EXHIBIT A – SCOPE OF WORK AND TECHNICAL REQUIREMENTS

EXHIBIT B - STATEMENT OF WORK

EXHIBIT C - CERTIFICATE OF INSURANCE

Contract Control Number:
Contractor Name:

GENRL-202158990-00
WJ DICKENSHEET & ASSOCIATES INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

Attorney for the City and County of Denver


By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number: GENRL-202158990-00
Contractor Name: WJ DICKENSHEET & ASSOCIATES INC

By:  _____
A579FCB683B543C...

Name: Christine Dickensheet
(please print)
Title: Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

SCOPE OF WORK and TECHNICAL REQUIREMENTS

Auctioneering Services

A.1 SCOPE OF SERVICES:

Contractor shall provide auctioneering services, which include, but are not limited to: auctioneering (calling), auction site set-up, establishing item descriptions (text, photos, videos, etc.), bidder registration, paperwork/bill of sale completion, collection and remittance of proceeds, collection and remittance of taxes, clerk/cashiering services, appraisals, transport, customer service and further responsibilities and duties, as required, relating to the described scope of services and as defined herein.

Contractor shall have a presence in the Denver metro area, which includes a warehouse facility that has capacity to conduct a live auction and/or that can handle the sale of City surplus property if/when required. Contractor shall be able to transition between a live or online auction format, as required by the City. Contractor shall have at least five (5) full-time employees who shall assist the City in the prep work, auctioneering, payment collection, paperwork completion and customer service it takes to successfully manage auctions, especially impounded vehicle auctions, whether live or online.

A.1.a Alternative Responses NOT Accepted

The City has identified specific requirements herein, the City is not interested in the proposal of alternative approaches at this time. Submittals of documents, marketing materials, and structures outside of the requirements herein shall be deemed **Non-Responsive**.

A.2 NON-EXCLUSIVE AGREEMENT:

This is a non-exclusive AGREEMENT. The City reserves the right to obtain similar services through other procurements or manners of sale if, in the opinion of the City, it is in the best interest of the City and County of Denver to do so. Other manners of disposition may include, but are not limited to, the following methods: sealed bids, phone bids, intergovernmental sales, posted prices, other online auction platforms, other auctioneers, and etcetera. Further, the Contractor hereunder shall have no right to any compensation pursuant to any alternate method of sale determined to be in the best interests of the City and County of Denver.

A.3 AUCTION REVENUE HISTORY:

The City's approximate gross sales at auction for the period of January 2019 through December 2020 are noted below. The City neither states nor implies that auctions conducted pursuant to this solicitation shall equal or exceed revenues noted below. The data below is for informational purposes only.

A.3.a Auction Revenue History Table

Category	Description	AUCTION TOTALS FOR 2019 – 2020	Number of Auctions
1)	ABANDONED/CONFISCATED VEHICLES AND VEHICULAR EQUIPMENT	\$6,586,517.00 (6,993 vehicles sold)	52
2)	PERSONAL PROPERTY SEIZED FOR UNPAID TAXES	\$77,741.00	4
3)	JEWELRY/WATCHES/COIN (LOST/STOLEN/CONFISCATED)	\$209,148	3
4)	BISON	\$96,650.00	2
	TOTAL:	\$6,970,056	61

A.4 SCOPE OF WORK - DETAIL: AUCTION CATEGORIES (1 - 5)

Auction requirements, methods and processes may be subject to revision in the best interests of the City per directives of the Surplus Administrator and/or per mutual agreement between the Contractor and the Surplus Administrator.

Scheduling of Auctions

The only regularly scheduled auction is Auction Category 1 - Abandoned/Confiscated/Impounded Vehicles and Vehicular Equipment.

All other auctions are scheduled on an "as needed" basis.

Contractor shall prioritize City and County of Denver auctions in the course of their work schedule.

Auction Format

An online only auction format is currently being utilized for Auction Category 1 - Abandoned/Confiscated/Impounded Vehicles/Vehicular Equipment and Auction Category 3 – Jewelry/Watches/Coin.

- The City anticipates Auction Category 1 and Auction Category 3 formats will remain online for the foreseeable future.

A live only auction format is currently being utilized for Auction Category 2 – Personal Property Seized for Unpaid Taxes and Auction Category 4 – Bison.

- The City anticipates Auction Category 2 and Auction Category 4 formats will remain live for the foreseeable future.

A simultaneous live and online auction format will never be utilized by the City.

Auction formats are subject to change. The City will continuously evaluate the effectiveness of the auction format (live or online) being utilized. The City will notify Contractor at least thirty (30) days in advance of a change to auction format that is determined to be in the best interests of the City.

CATEGORY 1: ABANDONED/CONFISCATED/IMPOUNDED VEHICLES & VEHICULAR EQUIPMENT (BOTH LIVE AND ONLINE REQUIREMENTS LISTED BELOW - AUCTION FORMAT AT THE DISCRETION OF THE CITY)

A. Client Agency: The Department of General Services, Purchasing Division

B. Where:

Denver Sheriff Vehicle Impound Facility, 5226 Brighton Boulevard

C. When:

Live: Every other Wednesday, throughout the year. (26 auctions per year)

- Single day event.
- All duties completed over the course of one day.

Online: Every Week (typically Wednesday's), throughout the year. (26 auctions per year)

- Pictures/descriptions compiled on a Wednesday with online auctions posted no later than 7 P.M. that same evening.
- Auctions close on the following Sunday at times agreed upon between City and Contractor.
- Buyer payments collected and vehicle paperwork completed the following Monday and Tuesday.
- Buyer removal the following Wednesday from 8:00 A.M to 3:00 P.M.

Auctions will not be canceled. Contractor shall be prepared to work during rain, shine or blizzard.

D. Arrival Time:

Live: 7:45 A.M.

- Sale gates open at 9:00 A.M.
- Auction begins at 9:30 A.M.

Online: 7:30 A.M. each Wednesday.

E. Departure Time:

Live: Conclusion of auction after all payments have been collected and all vehicles have been removed (no later than 5:00 P.M.).

Online: Conclusion of pictures/descriptions (typically 1:00 P.M.).
Conclusion of vehicle removal (typically 3:00 P.M.).

F. Personnel Required (minimum):

Live:

- 1 EA – Auctioneer (Shall have ability to call in Spanish)
- 1 EA - Ring Person
- 1 EA – Runner/Driver/Gate Supervisor/Cleanup Person
- 1 EA – Recording Clerk (outside)
- 3 EA - Cashier/Clerks (inside)
- 1 EA – City Contract Manager (manager may perform other duties listed above)

Online:

- 3 EA – General Employees to prepare/manage online auction and manage vehicle removals.
- 1 EA – City Contract Manager (manager may perform other duties listed above)

G. Equipment Required:

Live:

- 1 EA – Portable Public Address System capable of carrying voice communications to a crowd of several hundred bidders over a 1 ½ acre sale yard.
- 1 EA – Vehicle or trailer which the auctioneer and PA system can be transported throughout the auction yard while conducting the auction. This vehicle shall contain a generator or be able to power the PA system. This vehicle should have an enclosure and will need to function in all weather conditions.
- 1 EA - Cash box or register with, at least, \$200.00 change bank
- 1 EA – Computer and printer to generate invoices and/or paperwork as needed.
- 1 EA – Mobile Internet Device

300+ EA - Bid Cards - Pre numbered with registration section detachable.

Online:

3 EA – Cameras/phones/tablets to capture photos and descriptions.

1 EA – Computer and printer to generate invoices and/or paperwork as needed.

1 EA – Mobile Internet Hotspot Device

H. Auction Specific Duties Required (in addition to standard auctioneering services as defined in the SCOPE OF SERVICES section):

Snow/Ice: Contractor personnel shall assist in clearing vehicles of snow and ice prior to the photographing or auctioning or removal of vehicles scheduled to be sold.

Sale Order: Contractor shall inspect the sale yard to ensure vehicles are in proper order and there are no unexpected additions or deletions.

Keys: Contractor shall search each vehicle for ignition keys. Contractor shall place ignition keys found into an envelope and mark the envelope with the appropriate lot number. If an ignition key is found, Contractor shall attempt to start vehicle. Contractor shall make note of which vehicles have keys and of which vehicles have started and shall clearly indicate such prior to the selling of the vehicle. If a key is lost or mislabeled in anyway by Contractor personnel, it shall be the responsibility of the Contractor to resolve the situation with the buyer, which shall include paying for a replacement key if necessary.

Online Auction Prep: Contractor shall produce detailed, accurate, honest descriptions and pictures for any vehicles sold using an online auction format (auction format to be approved by the City).

Terms & Conditions: Contractor shall ensure that all City terms & conditions of sale are clearly announced, posted and accepted by any bidder wishing to participate in the auction process.

Special Vehicle Designations: Contractor shall clearly announce and/or post information regarding vehicles that have special designations as assigned by the City or State prior to the selling of such vehicles. Such designations include, but are not limited to salvage, rebuilt from salvage, parts only, seizure, assigned id, odometer discrepancy and others as required.

Bidder Registration: Contractor shall require that bidders register and agree to City terms and conditions prior to placing a bid. With the exception of bid deposits, which may be required, Contractor shall not charge a fee or in any other way prohibit potential bidders from participating in the auction.

Deposits: Cash bid deposits may be required by the City. If required, Contractor shall be responsible for the collection and reimbursement of said deposits.

Security: Contractor shall assist City personnel and/or City provided security vendor in maintaining the security of the auction yard and deterring theft while performing auction duties.

Auction Completion: Contractor shall make every effort to ensure that all vehicles scheduled for

auction are in fact sold, unless it is obvious that “fair market value” has not been achieved and this “no sale” has been approved by City representatives. Re-sales are typical, and City representative oversight of re-sales shall be required.

Paperwork/Bills of Sale: Contractor shall be responsible to manually complete the prepopulated bills of sale and other sale documents with buyer information once buyer payment has been received. Other sale documents include salvage forms, seizure compliance statements, emissions forms or any additional paperwork as required.

- Contractor shall pick-up prepopulated bills of sale and other sale documents from designated City facility no later than the Friday following the Wednesday picture/description day if an online auction format has been approved by the City.
- All “goldenrod” copies of Bills of Sale shall be retained and provided to the City representative immediately following auction or vehicle removal day.

Buyer Removal: Contractor shall schedule vehicle removals using designated time slots in order to ensure a safe and controlled environment if utilizing an online auction format (auction format to be approved by the City). Contractor shall make every effort to ensure that all sold vehicles are removed within the allowed timeframe. Contractor shall verify that vehicles are removed by confirmed buyer or authorized individual.

Waste Management: Contractor shall make every effort to ensure that buyer removes all contents of the vehicle. Garbage/debris/waste shall not be left behind by buyer. Contractor shall assist City personnel in picking up garbage/debris/waste to ensure a clean sale yard while performing auction duties.

I. Receipt of Proceeds:

Contractor shall be responsible for the receipt, safekeeping and deposit of all proceeds generated at the sale.

J. Remittance of Proceeds:

Contractor shall remit payment to the City by ACH within two (2) business days following the conclusion of live auction or vehicle removal day.

Contractor shall notify the City administrator that payment has been made and provide a consignor report detailing each payment.

Consigner report shall include a detailed listing of all items sold (including proceeds received and fees charged) and a detailed listing of all registered bidders.

Separate checks are sometimes required. Contractor will be notified by City representative if a separate check is required and payee of said check.

CATEGORY 2: PERSONAL PROPERTY SEIZED FOR UNPAID TAXES

- A. Client Agency:** The Department of Finance, Treasury Division
- B. Where:**
To Be Determined. Different locations across the City and County of Denver.
- C. When:**
As Needed. Periodically throughout the year as required by the Treasury Division.
- D. Arrival Time:**
To Be Determined.
- E. Departure Time:**
Conclusion of auction after all payments have been collected and all property has been removed.
- F. Personnel Required:**
As specified by the Treasury Division (required personnel shall be determined by the type and size of business to be sold.). However, on auction day minimum required personnel shall usually be:
1 EA – Auctioneer
1 EA - Ring Person
1 EA – Clerk/Cashier
- G. Equipment Required:**
As specified by the Treasury Division. However, required equipment shall usually be:
1 EA - Loudspeaker/PA System
1 EA – Folding Table (if not available at auction site)
2 EA – Folding Chairs (if not available at auction site.)
1 EA - Cash Box or register with, at least, \$200.00 change bank
1 EA – Computer and printer to generate sale list and/or paperwork as needed.
1 EA – Mobile Internet Hotspot Device
100+ - Pre-numbered lot stickers
100+ - Bid Cards - Pre numbered with registration section detachable
100+ - Clerking Tickets
- H. Auction Specific Duties Required** (in addition to standard auctioneering services as defined in the SCOPE OF SERVICES section):

Pursuant to the Revised Municipal Code of the City and County of Denver and Colorado Revised Statutes 39-10-13, the Treasury Division of the City and County of Denver is authorized to sell personal property seized for non-payment of taxes.

The Treasury Division is solely responsible for the conduct of these auctions; any questions related to services to be rendered should be directed to the Treasury Division. However, Contractor's responsibilities shall usually include, but not be limited to:

1. Auction Preparation/Organization/Lotting
2. Auction Set-up
3. Payment Collection
4. Conduct auction in manner specified by Treasury Division.
5. Any additional requirements as specified by the Treasury Division.

I. Receipt of Proceeds:

Contractor shall be responsible for the receipt, safekeeping and deposit of all proceeds generated at the sale.

J. Remittance of Proceeds:

Contractor shall remit payment to the City by ACH within two (2) business days following the conclusion of auction.

Contractor shall notify the Treasury Division that payment has been made and provide a consignor report detailing each payment.

Consignor report shall include a detailed listing of all items sold (including proceeds received and fees charged) and a detailed listing of all registered bidders.

CATEGORY 3: JEWELRY/WATCHES/COIN (LOST/STOLEN/CONFISCATED)
(BOTH LIVE AND ONLINE REQUIREMENTS LISTED BELOW - AUCTION
FORMAT AT THE DISCRETION OF THE CITY)

A. Client Agency: The Department of General Services, Purchasing Division

B. Where:

Contractor's Facility

C. When:

As Needed. Typically, once per year.

D. Arrival Time:

To Be Determined

E. Departure Time:

Conclusion of auction after all payments have been collected and all property has been removed.

F. Personnel Required (minimum):

Appraisal/Lotting:

- 1 EA – Appraiser/Jeweler/Gemologist/Collectible Coin Appraiser.
- 1 EA – General Employee to assist with lot creation and auction preparation.
- 1 EA – City Contract Manager (manager may perform other duties listed above)

Inspection:

- 1 EA – Registration Clerk
- 4 EA – General Employees to assist/oversee inspection.

1 EA – City Contract Manager (manager may perform other duties listed above)

Live Auction:

1 EA – Auctioneer

1 EA - Ring Person

2 EA – Clerks/Cashiers

1 EA – General Employee to assist with buyer removal.

1 EA – City Contract Manager (manager may perform other duties listed above)

Online Auction:

2 EA – Clerks/Cashiers

1 EA – General Employee to assist with buyer removal.

1 EA – City Contract Manager (manager may perform other duties listed above)

G. Equipment Required:

Live:

1 EA - Loudspeaker/PA System

6 EA - Locking Jewelry Cases/Cabinets

1 EA - Cash box or register with, at least, \$200.00 change bank.

1 EA – Computer and printer to generate sale list and/or paperwork as needed.

1 EA – Mobile Internet Hotspot Device

400+ - Pre-numbered lot stickers

400+ - Clerking Tickets

200+ - Bid Cards - Pre numbered with registration section detachable.

Bags/Boxes for storage/packing of auction lots.

Online:

2 EA – Cameras/phones/tablets to capture photos and descriptions.

6 EA - Locking Jewelry Cases/Cabinets

1 EA - Cash box or register with, at least, \$200.00 change bank.

1 EA – Computer and printer to generate sale list and/or paperwork as needed.

1 EA – Mobile Internet Hotspot Device

400+ - Pre-numbered lot stickers

Bags/Boxes for storage/packing of auction lots.

H. Auction Specific Duties Required (in addition to standard auctioneering services as defined in the SCOPE OF SERVICES section):

City Code: Contractor shall conduct sale in complete compliance with Denver Revised Municipal Code, Chapter 9, §9-10 regarding jewelry.

Appraisal: Contractor shall be responsible for engaging and paying for the services of an appraiser/jeweler/gemologist/collectible coin appraiser.

Auction Prep: Contractor shall manage the appraisal, organization and lot selection process held at a secure City facility.

- Contractor shall produce detailed, accurate, honest descriptions.
- Appraisal/lot selection process typically takes 2 – 3 business days to complete.
- Auction typically consists of 300 – 400 lots.

Online Auction Prep: Contractor shall produce detailed, accurate, honest descriptions and pictures for all property sold using an online auction format (auction format to be approved by the City).

Terms & Conditions: Contractor shall ensure that all City terms & conditions of sale are clearly announced, posted and accepted by any bidder wishing to participate in the auction process.

Inspection: Contractor shall provide sufficient staffing and time periods which shall allow interested bidders to satisfactorily inspect property.

- Inspections typically occur over 1 – 3 business days depending on volume.

Bidder Registration: Contractor shall require that bidders register and agree to City terms and conditions prior to placing a bid. With the exception of bid deposits, which may be required, Contractor shall not charge a fee or in any other way prohibit potential bidders from participating in the auction.

Security: Contractor shall maintain the security of auction property and deter theft while performing auction duties.

Auction Completion: Contractor shall make every effort to ensure that all property scheduled for auction is in fact sold, unless it is obvious that “fair market value” has not been achieved and this “no sale” has been approved by City representatives.

- Any unsold property shall be returned to the City within two (2) business days following the conclusion of the auction.

Buyer Removal: Contractor shall oversee property removal in order to ensure a safe and controlled environment. Contractor shall verify that property is removed by confirmed buyer or authorized individual.

I. Receipt of Proceeds:

Contractor shall be responsible for the receipt, safekeeping and deposit of all proceeds generated at the sale.

J. Remittance of Proceeds:

Contractor shall remit payment to the City by ACH within two (2) business days following the conclusion of auction after all buyer payments have been received.

Contractor shall notify the City administrator that payment has been made and provide a consignor report detailing each payment.

Consignor report shall include a detailed listing of all items sold (including proceeds received and fees charged) and a detailed listing of all registered bidders.

Consignor report shall be broken out by property source as required by the City.

Separate checks are sometimes required. Contractor will be notified by City representative if a separate check is required and payee of said check.

CATEGORY 4: BISON AUCTION (LIVE ONLY)

A. Client Agency: The Department of General Services, Purchasing Division

B. Where:

Genesee Park, 26771 Genesee Lane (Bison Ranch)

Ranch location is in the foothills. Contractor shall be prepared to work in muddy, rainy, snowy conditions.

C. When:

Once a year. Typically held the first Friday of March.

D. Arrival Time: 9:30 A.M.

E. Departure Time:

Conclusion of auction after all payments have been collected (typically 2:00 P.M.).

F. Personnel Required (minimum):

1 EA – Auctioneer

1 EA - Ring Person

1 EA – Clerk/Cashier

1 EA – City Contract Manager (manager may perform other duties listed above)

G. Equipment Required:

1 EA – Portable Loudspeaker/PA System (Contractor shall supply power)

1 EA – Vehicle/Trailer which would allow for the passage of documents and monies through a window or appropriate opening and the ability to converse with auction attendees. This vehicle/trailer will need to handle all weather/terrain conditions.

1 EA - Cash box or register with, at least, \$200.00 change bank

1 EA – Computer and printer to generate invoices and/or paperwork as needed.

1 EA – Mobile Internet Hotspot Device

100+ EA - Bid Cards - Pre numbered with registration section detachable.

H. Auction Specific Duties Required (in addition to standard auctioneering services as defined in the SCOPE OF SERVICES section):

Bidder Registration: Contractor shall require that bidders register and agree to City terms and conditions prior to placing a bid. With the exception of bid deposits, which may be required, Contractor shall not charge a fee or in any other way prohibit potential bidders from participating in the auction.

Terms & Conditions: Contractor shall ensure that all City terms & conditions of sale are clearly announced, posted and accepted by any bidder wishing to participate in the auction process.

Auction Completion: Contractor shall make every effort to ensure that all animals scheduled for auction are in fact sold, unless it is obvious that “fair market value” has not been achieved and this “no sale” has been approved by City representatives.

I. Receipt of Proceeds:

Contractor shall be responsible for the receipt, safekeeping and deposit of all proceeds generated at the sale.

J. Remittance of Proceeds:

Contractor shall remit payment to the City by ACH within two (2) business days following the conclusion of auction.

Contractor shall notify the City administrator that payment has been made and provide a consignor report detailing each payment.

Consigner report shall include a detailed listing of all items sold (including proceeds received and fees charged) and a detailed listing of all registered bidders.

CATEGORY 5: ADDITIONAL CATEGORIES OF AUCTIONS

Additional categories of auctions may be identified by the Department of General Services. Remuneration for such auction(s) shall be agreed upon between City and Contractor depending on duties required and sale logistics. Remuneration shall not exceed the rate proposed on Category 3A.

A.5 MINIMUM REQUIREMENTS/QUALIFICATIONS:

Instructions

On your letterhead attach, reference, and submit with your bid-include IFB title and company name in file description.

e.g. 2021_0049A_AUCT_SRVCS_TECHRSPNSE_XXMYCOMPANYNAMEXX.pdf

A.5.a Professional Full-Time Auctioneering Experience

Contractor’s organization shall have been continuously and actively engaged in the actual performance of ‘full-time’ auctioneering services for a minimum of at least three (3) years beginning in January of 2018. Full time is defined as any organization devoting at least 80% of its output capacity to and deriving 80% of its gross income from the conducting of auctions equivalent to the City’s auctions.

Contractor shall have conducted a minimum of 125 auctions since January 2018.

Contractor shall demonstrate that their organization has facilitated a total of at least thirty (30) auctions conducted from 2018 through 2020 for federal and/or state and/or county and/or city governmental

organizations with an aggregate of \$2,000,000.00 minimum in gross auction revenue sales generated.

Contractor shall indicate past (within the last three years) and current contracts that would illustrate Contractor's ability to perform and deliver the services required herein.

Submittal Requirement

Provide documentation that your organization complies with this requirement. Submittal shall include but is not limited to:

- 1) Business licenses with dates indicating compliance with the time experience threshold.
- 2) Agreements and historical commission financial statements with other governmental agencies.
- 3) Description of experience related to auctioneering services in a “public sector” setting (i.e., auctions specifically involving federal, state, county or city governmental entities, to include public schools, state colleges and universities and similar institutions that qualify under this category).
- 4) Include at least three (3) reference organizations: name, location, contact, phone, email, auction gross proceeds.
- 5) Copies of current contracts with governmental agencies inside the State of Colorado.
- 6) Contractor may describe contractual services with the “private sector” that might illustrate Contractor’s ability to perform and deliver the services required herein.

A.5.b Staff and Experience

Contractor shall provide staff with the appropriate experience and qualifications related to the scope of work.

Contractor’s staff shall include a minimum of two (2) licensed auctioneers with at least three (3) years’ experience (each) as full time auctioneers.

Contractor’s staff shall include at least five (5) persons, who are employed on a full-time basis.

Submittal Requirement

Provide documentation that your organization complies with this requirement. Submittal shall include but is not limited to:

- A. Identify current full-time staff members (five minimum) who **will be consistently** active in the execution of this contract if awarded:
 - i. Indicate the specified auction support services they will provide,
 - ii. Include resumes for each staff member, which shall include but is not limited to:
 - City and County of Denver Auctioneer’s License (Only for Auctioneers)
 - Overall years or months of related experience
- B. Identify current staff member who will fulfill the role of “City Contract Manager” who will be the main point of contact between the City and Contractor.

- i. Include their resume which shall include but is not limited to:
 - City and County of Denver Auctioneer's License (Only for Auctioneers)
 - Overall years or months of related experience

C. Identify current staff members who will fulfill the following positions taken from Auction Category 1 - ABANDONED/CONFISCATED/IMPOUNDED VEHICLES & VEHICULAR EQUIPMENT (LIVE):

- i. 1 EA – Auctioneer (Shall have ability to call in Spanish)
- ii. 1 EA - Ring Person
- iii. 1 EA – Runner/Driver/Gate Supervisor/Cleanup Person
- iv. 1 EA – Recording Clerk (outside)
- v. 3 EA - Cashier/Clerks (inside)
- vi. 1 EA – City Contract Manager (manager may perform other duties listed above)

Include the length of their employment with Contractor's organization (full-time, part-time or on-call) and overall years or months of experience.

A.5.c Licenses

Contractor shall have the following current licenses:

- A. City and County of Denver Auctioneer's License(s)
- B. City and County of Denver Retail Sales/Use/Lodger's Tax License
- C. State of Colorado Sales Tax License

Submittal Requirement

Provide copies of the Licenses.

A.5.d Infrastructure

The following Infrastructure shall be in place at the time of proposal:

- 1. Facility located within the Denver metro area with a minimum of 5,000 sq. ft. of warehouse space.
 - Denver metro area is defined as the conurbation that includes one continuous region consisting of the six central counties of Adams, Arapahoe, Broomfield, Denver, Douglas, and Jefferson.
 - Facility shall be located no more than 25 driving miles from the Wellington E. Webb Municipal Office Building located at 201 West Colfax Ave, Denver, CO 80202.
 - Facility shall be able to accommodate parking for a minimum of fifty (50) vehicles through either a private parking lot or on-street.

Submittal Requirement

Provide a narrative describing the infrastructure which shall accommodate this requirement, which shall include the physical address of the facility/warehouse.

A.5.e Technology

The following Technology shall be in place at the time of proposal:

1. Online Auction Platform
 - Auto Extension/Soft Close Policy
 - Bidder Registration Policy
 - Bidder Probation Policy
 - Bidder Default/Blocking Policy
 - System Accessibility/Reliability
 - Marketing Efforts

Submittal Requirement

Provide a narrative describing the online auction platform currently being utilized which shall accommodate this requirement. Please ensure to address all the bullet points listed above. Live demonstration of online auction platform may be required.

Provide link of your current online auction site.

A.5.f Equipment/Technology

The following Equipment/Technology shall be in place at the time of proposal:

1. Computerized clerking/cashiering/accounting system (hardware, software, printer and standard accessories).
2. Portable public address system.
3. Truck/vehicle/trailer with enclosure from which Contractor can conduct outdoor sales in all weather conditions.
4. In the event that an outdoor sale would lack a sheltered or otherwise suitable clerk/cashiering structure/facility, Contractor would then be required to provide an appropriate vehicle (e.g., trailer, van, motorhome, etc.) which would allow for the passage of documents and monies through a window or appropriate opening and the ability to converse with auction attendees. If Contractor does not own such a vehicle, then the unit would have to be rented-at no charge to the City.

Submittal Requirement

Provide a narrative describing the equipment/technology currently being utilized which shall accommodate this requirement. Live demonstration, photographs and/or site visit may be required.

A.5.g Statement of Familiarity DRMC

Statement of familiarity with all Colorado and City and County of Denver Revised Municipal Code Chapter Nine (9) requirements governing the operation of Auctioneers and Auctioneering.

Submittal Requirement

Provide a narrative detailing Contractor's knowledge and compliance associated with this requirement.

A.6 CONDITIONS FOR CONTRACT COMPLIANCE:

A.6.1 Scope of Work Compliance

Contractor acknowledges and shall accommodate the City's requirements in their entirety.

A.6.2 Deficiency

Contractor shall respond in full with a corrective action plan to Contractor Deficiency/Deviation Report sent by the City within three (3) working days.

A.6.3 Conflict of Interest

Contractor and/or their employees are prohibited from registering as bidders and/or bidding on items offered for sale at City auction events serviced by the Contractor.

Substantiated evidence of the Contractor and/or their employees being registered as bidders and/or offering bids shall be a conflict of interest and shall be cause for cancellation of this contract.

Further, it shall be a conflict of interest and cause for cancellation of this contract for the Contractor and/or their employees to have a collusive relationship with any registered auction bidder.

A.6.4 Inappropriate Personnel

Employees of the Contractor shall be able to perform assigned tasks in a competent manner and be willing to perform related tasks as needed.

Misconduct or incompetence on the part of any employee(s) of Contractor may be considered a deficiency and may result in the issuance of a Contractor Deficiency/Deviation Report to Contractor.

Further, the City reserves the right to request replacement of personnel deemed unable or unwilling to adequately perform assigned tasks.

Continual staffing of deficient personnel may be grounds for cancellation of contract.

A.6.5 Auction Requirements

The City shall have the ability to block bidders from City auctions at the City's sole discretion.

The City reserves the right to set reserve prices on any auction item.

The City reserves the right to accept or reject any or all bids and to add to or remove from items currently scheduled to be auctioned.

All items shall be sold "AS IS, WHERE IS" with no warranty or guarantee express or implied.

Online auctions shall use a soft close format where timeframe shall extend for a minimum of one additional minute if a bid is received within the last one minute of auction close. These extensions shall continue until no additional bids are received within the last one minute remaining of auction close.

Contractor shall make every effort to minimize buyer defaults. Continual or excessive buyer defaults may be grounds for cancellation of contract.

Pictures, descriptions, terms and conditions used shall be of a professional level up to City standards. Continual use of poor or inaccurate pictures, descriptions, terms and conditions may be grounds for

cancellation of contract.

Contractor shall keep and maintain detailed City auction records for a minimum of seven (7) years.

A.6.6 Responsibility for Proceeds:

Contractor shall be responsible for the manner and terms in which payments are accepted for items sold.

Regardless of the manner in which the Contractor accepts payment for items sold at auction and regardless of default or non-payment by buyer(s) pursuant to same, the City shall require payment in full from Contractor once an item is marked "PAID" by Contractor and property has been released to buyer(s).

Contractor shall remit payment to the City by ACH within two (2) business days following the conclusion of scheduled auction after all buyer payments have been received. Contractor shall notify the City administrator that payment has been made and provide a consignor report detailing each payment.

A.6.7 Credit Card Requirements

The Contractor must provide verification to the City and Trust, prior to start up and ongoing annually during the term of this Agreement, that all modules of the Contractor's or any subcontractor's or supplier's system(s) that interface with or utilize credit card information in any manner or form of collection are Payment Card Industry Data Security Standards (PCI DSS) compliant. The Contractor and its subcontractors and suppliers shall not retain or store CVV2/CVC2 data subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a disclosure of credit card information of any kind, shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure. The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program/CISP, MasterCard's Security Data Program and SDP Rules, and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations, and further covenants and agrees to maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS).

Additional Credit Card Indemnification Language

In addition to all other defense and indemnity obligations undertaken by the Contractor under this Agreement, the Contractor, to the extent that its performance of this Agreement either directly or through a subcontractor or supplier includes the allowance of utilization by members of the public of credit cards to pay monetary obligations to the City, the Trust or the Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by the Contractor or a subcontractor or supplier, shall defend, release, indemnify and save and hold harmless the City and the Trust against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City, the Trust and/or the Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines and fees, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any losses associated with fraudulent transaction(s) occurring after a security breach with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City and the Trust from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such credit card data or utilizing a credit card in the performance by

Contractor or any subcontractor or supplier of this Agreement. In furtherance of this Contractor covenant to defend and indemnify, the Contractor shall maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) and with all other requirements and obligations related to credit card data or utilization set out in of this Agreement.

A.6.8 Credit Card Service Fee

Contractor may impose a credit card service fee at auction events where the terms of sale include the use of credit cards. Credit card service fee shall be disclosed in the Pricing Section below and shall not increase throughout the life of the Agreement.

A.6.9 Responsibility for Collection of Sales Tax

Contractor shall be required to collect and remit appropriate sales tax on all taxable items as required by law.

A.7 Estimated Quantities:

The number of auctions and dollar amounts listed herein are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this contract, as determined by actual needs and availability of appropriated funds. It is expressly understood and agreed that the resulting contract is to provide the City with its complete actual requirement of the services specified in this invitation for the contract period.

A.8 Emergency Purchases:

The City and County of Denver reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the vendor.

A.9 Minimum Wage Ordinance:

The services being requested in this solicitation may involve services that are covered pursuant to Division 3.75 of Article IV of Chapter 20 of the Denver Revised Municipal Code ("D.R.M.C."), which is designed to address the issue of wage equity and cost of living affordability in the City & County of Denver. Vendor agrees that any contract with the City shall include a requirement that Vendor will comply with the provisions of D.R.M.C. §§20-82 through 20-84, including, but not limited to, paying all covered workers no less than the City Minimum Wage for all covered services rendered in connection with the Contract. Additionally, Vendor agrees that the contract shall require compliance with all current and future federal and state laws and City ordinances.

Wages can be found here: <https://www.denverauditor.org/denverlabor/> https://denverauditor.org/wp-content/uploads/2019/06/MinWage_overview_flier_2019.pdf

A.10 Receipting Requirements:

Purpose:

The purpose of these requirements is to provide direction to City departments and potential vendors

concerning payment receipting and cash management practices in order to maintain compliance with the City's Charter, Revised Municipal Code and Department of Finance requirements. These requirements are used for, but not limited to, development of Request for Proposals, implementation or modification of systems involving receipt or deposit of payments, and development or modification of City cash handling practices.

A.10.a Authority

- City Charter Article II – Mayor and Executive Departments, Part 5 – Finance, §2.53 and §2.54
- Revised Municipal Code – Chapter 20 – Finance, Article III – Disposition of Funds, Division 2 – Handling of Receipts and Procedures for Making Refunds, Section 36 and 38

Any implementation or process involving payment, receipt, cash handling or banking of City funds (as defined by Denver Revised Municipal Code 20-36) shall be approved by and coordinated directly with the City's Cash Management Section within the Department of Finance's Cash and Capital Funding Division. The Department of Finance has the authority to establish what forms of payment the City accepts and what mechanisms and accounts are used to process and deposit payments.

A.10.b Requirements:

1. Funds (as defined by Denver Revised Municipal Code 20-36) gross of any fees are the property of the City.
2. Systems, payment architecture and procedures implemented shall be currently certified Payment Card Industry Data Security Standard (PCI DSS) compliant, be reviewed and approved by the Cash Management Section and City's Data Security Team and/or identified as out of scope by the City's Data Security Team prior to selection or implementation.
3. Systems, payment architecture and procedures shall comply with the National Automated Clearing House Association (NACHA) and applicable rules and regulations surrounding Fedwires when processing electronic funds transfers. ACH and/or Wire payment mechanisms shall be reviewed and approved by the Cash Management Section prior to implementation.
4. If a third-party is involved in the payment, receipting, cash handling or banking process, the initiating City department or designee shall coordinate the structure, process and implementation with the Cash Management Section and the third-party. All payment, receipting, cash handling or banking structures and processes shall be reviewed and approved by the Cash Management Section prior to selection and implementation. The City's Department of Finance has final approval of all payment, receipting, cash handling or banking structures and processes.

A.10.c Policies and Procedures:

- Fiscal Accountability Rule 3.3 – Change Funds and associated procedures and forms
- Fiscal Accountability Rule 3.4 – Receipts and Deposits and associated procedures and forms

A.10.d Vendor Performance Management:

The City may administer a performance management program as part this proposal and resulting contract.

The purpose of this program is to create a method for documenting and advising the City of exceptional performance or any problems related to the provided services.

Propose as part of your response specific performance measures that may be used to develop a vendor performance management report card. Also provide any other data, criterion or methods that would be effective in measuring vendor performance over the life of this contract.

Awarded vendors are required to furnish a performance report to the analyst on an annual basis, no later than the anniversary date of the applicable City Contract.

EXHIBIT B

Pricing:

All prices, premiums, and hourly rates quoted shall be firm and fixed for the specified contract period.

Contractor shall receive their fee from a premium charged to buyers based upon the final selling price of auction items.

- Buyer's premium shall be charged only on the actual sale price. Sales tax shall not be used as a component of the buyer's premium.

Contractor shall only be paid its auction premium on items that have sold and been paid for.

As authorized by City personnel, Contractor may, at times, be allowed to charge the Treasury Division and hourly rate per person for transportation, setup, descriptions, etc. for Auction Category 2 - PERSONAL PROPERTY SEIZED FOR UNPAID TAXES, if auction is deemed unusually complex by the City.

No additional fees or charges are allowed pursuant to this scope of service (e.g. listing fee, minimum auction fee, etc.) unless itemized below. The Contractor shall not request, and the City or buyers shall not provide additional remuneration other than that set out in the below Pricing Items.

Contractor shall ensure that all auction fees (i.e. buyer's premium, credit card service fee, tax rate, etc.) are clearly announced, posted and accepted by any bidder wishing to participate in the auction process.

NOTE: Contractor shall agree to perform a walk-through and participate in a pre-auction conference AT NO CHARGE at the request of the City. Further, City meetings to address problems, issues or the disposition of merchandise associated with the auction process may require the attendance of the Contractor AT NO CHARGE.

EXHIBIT B

Item	Description
1A	<p>Buyer's Premium for all sold Category 1 auctions:</p> <p>ABANDONED/CONFISCATED/IMPOUNDED VEHICLES AND VEHICULAR EQUIPMENT - Applies to Online or Live Auction</p> <p>Buyer's Premium %: <u>3.25</u> %</p>
2A	<p>Buyer's Premium for all sold Category 2 auctions:</p> <p>PERSONAL PROPERTY SEIZED FOR UNPAID TAXES - Applies to Online or Live Auction</p> <p>Buyer's Premium %: <u>10</u> %</p>
2B	<p>Hourly Rate Per Person for transportation, setup, descriptions, etc. that would NOT fall into the Buyer's Premium % for Category 2 auctions:</p> <p>PERSONAL PROPERTY SEIZED FOR UNPAID TAXES</p> <p>Hourly Rate \$ <u>20⁰⁰</u> Per Person</p>
3A	<p>Buyer's Premium for all sold Category 3 auctions:</p> <p>JEWELRY/WATCHES/COIN (LOST/STOLEN/CONFISCATED) - Applies to Online or Live Auction</p> <p>Buyer's Premium %: <u>10</u> %</p>
4A	<p>Buyer's Premium for all sold Category 4 auctions:</p> <p>BISON - Applies to Live Auction only</p> <p>Buyer's Premium %: <u>10</u> %</p>
5A	<p>Credit Card Service Fee Charged to Buyer <u>4</u> %</p>
Bidder Information	<p>Company Name: <u>WJ Dickensheer & Associates, Inc. d/b/a Dickensheer & Associates, Inc.</u></p> <p>Signatory: <u>Christine Dickensheer</u></p>



CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
07/13/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Stailey Insurance Corporation 2084 S. Milwaukee Street Denver CO 80210-	CONTACT NAME: Jenny Westphal	FAX (A/C, No): (303)759-2960	
	PHONE (A/C, No, Ext): (303)759-2796	E-MAIL ADDRESS: jenny@staileycorp.com	
INSURED W.J. Dickensheet & Associates, Inc. Dickensheet Motor Car Company 1501 W. Wesley Avenue Denver CO 80223-	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: CNA Casualty of California		20435
	INSURER B: EMPLOYERS MUTUAL CASUALTY		21415
	INSURER C: Pinnacol Assurance		41190
	INSURER D:		
INSURER E:			
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			4D52487-21	08/25/2020	08/25/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> OTHER:			4E52487-21	08/25/2020	08/25/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			4J52487-21	08/25/2020	08/25/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	1709752	04/01/2021	04/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
B	Auctioneer Bond			4J52487	08/25/2020	08/25/2021	\$2,000
A	Auctioneer Bond			71755134	01/01/2021	01/01/2022	\$2,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
CNA BOND 10/31/20-10/31/21 \$100,000 Limit 71340408

Blanket Additional Applies to General Liability

Crime/Fidelity Limit: \$100,000; Deductible \$1,000. Travelers Casualty & Surety Co, Pol #106534289

Cyber, Network Security, Privacy Liability Aggregate Limit: \$1,000,000; Retention \$10,000. Travelers Casualty & Surety Co, Pol #107472233 eff 7/12/2021-7/12/2022. Crime coverage includes all eight insuring agreements as well as Employee Theft of Customers Property. City and County of Denver is Loss Payee. Auctioneer Service 0449A. (Auctioneering Services) As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as additional Insured with regards to the General Liability and Business Automobile.

CERTIFICATE HOLDER

CANCELLATION

AI 057520

City and County Of Denver Department of Purchasing 201 W. Colfax Avenue, Dept. 304 Denver CO 80202-	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE