

AGREEMENT FOR AUCTIONEER SERVICES

Northwest Municipal Conference
Obenauf Auction Services, Inc.

THIS AGREEMENT is entered into by and between Obenauf Auction Service, Inc. ("Contractor"), Post Office Box 265, Ingleside, Illinois 60041, an Illinois Corporation, and the Northwest Municipal Conference ("NWMC"), 1616 E. Golf Road, Des Plaines, Illinois 60016, an Illinois Non-Profit Corporation.

WHEREAS, NWMC is seeking a qualified contractor to perform live and Internet auction services; and

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

NOW, THEREFORE, NWMC and Contractor agree as follows:

LIVE AUCTIONS

1.0 Contractor Responsibilities: The Contractor shall provide professional auctioneer services on an as-needed basis during the period of the Agreement.

1.1 Cataloging of Items. The Contractor shall provide all personnel, tools, supplies, material and equipment necessary to prepare an effective sale. All items are to be either individually listed, tagged and assigned a control number, or groups of similar items shall be placed in lots and given a control number for sale by the lot. NWMC or its participating members will report all items consigned to the Contractor in writing. Any discrepancies in quantities or condition of items received shall be reported to NWMC.

1.2 Inspection. The Contractor shall provide adequate opportunity for the public to inspect the merchandise prior to the sale.

1.3 Auction Sale:

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

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

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

1.4 Registration. Contractor shall register all potential bidders. Each bidder shall be provided information that fully explains the payment terms, warranty disclaimers, and other conditions of the sale.

- 1.5 **Payment.** The Contractor may permit buyers to pay via credit card and shall bear all costs associated with providing said service. Payment methods and collection are the sole responsibility of the Contractor. Each buyer will be issued an itemized invoice or bill of sale. Vehicle titles and keys will be issued upon receipt of payment.
- 1.6 **Check-out.** The Contractor shall provide adequate personnel to supervise removal of property.
- 1.7 **End of Sale Reconciliation Reports and Payment to Clients.** Within ten (10) business days after each sale, the Auctioneer shall furnish each participating NWMC member the following:
 - 1.7.1 A listing of all items consigned to the sale by that Client, by lot or catalog number, showing the individual sales price of each item or lot; and
 - 1.7.2 Payment of the net proceeds of the sale for that Client, defined as gross revenues from the sale less the Auctioneer's fee.
 - 1.7.3 A summary report showing the average selling price for each type of vehicle sold in the auction listed by model year.
- 1.8 **End of Sale Reconciliation Reports and Payment to NWMC.** Within ten (10) business days after each sale, the Auctioneer shall furnish NWMC the following:
 - 1.8.1 An accounting of all receipts and revenues from the sale;
 - 1.8.2 Payment of the NWMC marketing fee; and
 - 1.8.3 A list of the names and addresses of each NWMC auction registrant for all NWMC Surplus Vehicle and Equipment Auctions.
- 1.9 **Advertising and Marketing:**
 - 1.9.1 Auction Plan: For each auction, the Contractor shall submit an advertising plan to NWMC for approval.
 - 1.9.2 Auction Flyers: The Contractor shall prepare, print and mail brochures or notices of sale to both its regular clientele and NWMC clientele.
 - 1.9.3 Advertising: The Contractor shall prepare and place advertisements in local newspapers.
 - 1.9.4 Web Site: The Contractor shall list each auction on its Web Site.
 - 1.9.5 Broadcast Media: The Contractor shall coordinate public service announcements with NWMC.
 - 1.9.6 Press Releases: The Contractor shall assist NWMC in preparing and issuing appropriate press releases. No press releases shall be issued, nor any public statements made, without the express approval of NWMC.
 - 1.9.7 Catalog: The Contractor shall publish a descriptive catalog of items to be sold and distribute the catalog to prospective bidders during inspections and on Auction Day.

2.0 **NWMC Responsibilities:**

- 2.1 **Facilities.** NWMC shall furnish suitable facilities for conducting the auction. It is understood that the seller's fee for the NWMC member hosting the auction may be reduced to 2.5% and such reduction shall be borne by the NWMC.

- 2.2 **Transportation of Vehicles to Auction Site.** Each NWMC member shall be responsible for transporting its vehicles to the auction site, including the use of tow trucks, transport trucks, etc. Vehicles shall have sufficient fuel for test running and for driving for short distances after delivery to the auction site.
- 2.3 **Preparation of Vehicles for Sale.** Each NWMC member shall be responsible for preparing its vehicles for sale, including the removal of decals and other markings.
- 2.4 **Personnel.** NWMC shall have a representative on-site during inspection and sale to resolve any issues. NWMC shall provide vehicle drivers and a driver coordinator on Auction Day.
- 2.5 **Security.** During inspections, sale and check-out NWMC shall provide all necessary security officers to provide adequate security, crowd control, traffic direction, etc.
- 2.6 **Auction Notification.** NWMC shall notify its members and other prospective sellers of upcoming auctions.
- 2.7 **Consignment of Property.** All items shall be reported by the participating sellers to the NWMC, who shall report said property to the Contractor. The seller shall be responsible for identifying any substantive defects to motor vehicles and obtaining, prior to the sale, salvage or junk titles if applicable. The Contractor may view said property at the seller's sites during normal business hours and take photographs for the purpose of advertising the sale.

3.0 **Fees and Payments:**

- 3.1 **Buyer's Premium.** A Buyer's Premium of ten percent (10%) of the gross amount of each sale shall be imposed.
- 3.2 **Seller's Fee.** Except as otherwise provided in Subparagraph 2.1 herein, a Seller's Fee shall be imposed as follows:
 - 3.2.1 NWMC Members – Five percent (5%) of the gross amount of each sale.
 - 3.2.2 Non-NWMC Members – Ten percent (10%) of the gross amount of each sale.
- 3.3 **Contractor's Fee.** The Contractor shall deduct from the gross revenues of each sale eight percent (8%) of the gross amount of the sale up to a gross sale amount of \$425,000 and four percent (4%) of the amount in excess of \$425,000.
- 3.4 **NWMC Sponsorship Fee.** The Contractor shall remit the following sponsorship fees to NWMC:
 - 3.4.1 NWMC Members – Seven percent (7%) of the gross amount of each sale.
 - 3.4.2 Non-NWMC Members – Twelve percent (12%) of the gross amount of each sale.
 - 3.4.3 Sale Amount in excess of \$425,000 – If the total amount of an auction sale exceeds \$425,000, the NWMC fees in Subsections 3.4.1 and 3.4.2 shall increase by three percent (3%) for gross auction sales in excess of \$425,000.

3.5 Credit Card Fees. The Contractor shall be responsible for any credit card fees. However, should the credit card fees exceed one percent (1%) of the gross sale amount for any auction, the amount in excess of one percent (1%) shall be borne equally between the Contractor and NWMC and the fees payable under Sections 3.3 and 3.4 adjusted accordingly.

3.6 Payment to Sellers. The Contractor shall collect all monies due and guarantee all checks. Payment of the net amount of revenue collected at the auction (gross sales amount less Seller's fee) shall be remitted to each seller within ten (10) business days after the auction.

INTERNET AUCTIONS

4.0 General Terms:

Obenauf Auction Service, Inc. provides a means for the NWMC's members and non-NWMC members as listed and attached to list items for sale and for potential buyers to bid upon these items via an Internet-based auction system. Contractor and the NWMC are not parties to the actual sale and have no control over the listed information or the ability of the buyer and seller to complete the transaction.

In order to promote NWMC member and non-member participation and increase the benefits for local governments using the Obenauf Auction Services, Inc. Internet Auction, the Conference agrees to actively promote the Obenauf Internet auction system and encourage all members and other local governments to enroll in and actively participate in the program. The Conference further agrees to promote the system via the Conference's website, internal newsletters/publications, meetings, conferences and other methods as deemed appropriate.

5.0 Fees and Payments for Internet Auctions:

5.1 Buyer's Premium – A buyer's premium of eight percent (8%) of the gross amount of each online sale shall be imposed.

5.2 Seller's Fee

5.2.1 NWMC Members - Six percent (6%) if all information and pictures provided via email by the consignor to Obenauf Auction or 7% if Obenauf Auction comes to the consignor's facility to compile the item information, take pictures and post the item online.

5.2.2 Non-NWMC members -10% if all information and pictures provided via email by the consignor to Obenauf Auction or 11% if Obenauf Auction comes to the consignor's facility to compile the item information, take pictures and post the item online.

5.3 NWMC Sponsorship Fee. The Contractor shall remit the following sponsorship fees to NWMC:

5.3.1 NWMC Members – Four percent (4%) of gross sales from NWMC members.

5.3.2 Non-NWMC Members – Six percent (6%) of gross sales from non-NWMC members as described above within thirty (30) business days after the auction.

5.4 Payment to Sellers. Obenauf Auction Service, Inc. agrees to collect all monies due and guarantee all checks. Payment of the net amount of revenue collected at the auction (gross sales amount less Seller's fee) shall be remitted to each seller within thirty (30) business days after the auction.

6.0 Disputes:

6.1 During the Sale. The Contractor shall make every reasonable effort to resolve disputes with buyers prior to the completion of the sale, including, but not limited to, nonpayment, repudiation or undisclosed defects. In addition to any other remedies that may exist, the Contractor may void the sale and re-auction the item.

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

6.2.1 Sell the item at another public auction conducted by the Contractor, in which case:

- (a) The fee paid to NWMC shall be 3% of gross sale of the said resale; and
- (b) The seller shall transport the vehicle to the auction site (if the seller chooses to take part in a non-NWMC Surplus Vehicle and Equipment Auction).

6.2.2 Sell the item on via the Internet pursuant to the terms listed in this agreement, under paragraph 5.0, Fees and Payments shall apply to said resale.

7.0 Direct contact with Contractor:

7.1 If any member or non-member chooses to sell an item at another public auction conducted by the Contractor, Contractor will impose the following:

7.2 Seller's Fee.

7.2.1 NWMC Members – Five percent (5%) of the gross amount of each sale.

7.2.2 Non-NWMC Members – Ten percent (10%) of the gross amount of each sale.

7.3 Payment to Sellers. Payment of the net amount of revenue collected at the auction (gross sales amount less Seller's fee) shall be remitted to each seller within ten (10) business days after the auction.

7.4 Payment to NWMC. NWMC will receive 3% of gross sales within ten (10) business days after said sale, with an itemized summary of all sales for that seller.

8.0 Indemnity. Each party shall defend, indemnify and hold harmless the other from and against any and all lawsuits, claims, demands, liabilities, losses or expenses of any kind, including court costs and attorneys' fees, arising out of or in any way connected with the services provided hereunder. The term "party" shall include a party's officers, directors, trustees, employees, members (participating municipalities), agents, representatives, affiliates and permitted assigns. The foregoing indemnity shall apply except for bodily injury, including death, and damage to property caused directly and solely by the negligence or other fault for which one of the parties is held legally liable. This indemnification obligation is not limited by, but is addition to the insurance and bonding obligations contained in this Agreement.

9.0 Contractor's Insurance. At Contractor's sole expense, Contractor shall procure and maintain, during the term of this Agreement and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Illinois and satisfactory to NWMC in the following types and amounts:

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

9.2 Comprehensive General Liability Insurance on an occurrence basis or equivalent with limits of liability not less than \$1,000,000 per occurrence for bodily injury, property damage, and personal injury. Coverage shall include, where applicable, Premises and Operations, Broad Form Property Damage, Independent Contractors, and Contractual Liability. NWMC is to be named as an additional insured on a primary, non-contributory basis.

9.3 Fidelity Coverage Requirement. Contractor shall procure and maintain fidelity coverage in the amount of \$25,000 with a company licensed in and authorized to do business in the State of Illinois and acceptable to NWMC.

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

10.0 Term of Agreement. This Agreement shall commence January 1, 2008 and will continue for a period of twelve months. This Agreement may be extended for four (4) additional one-year periods upon mutual agreement of both parties. Either party may request a re-negotiation of the terms hereof during a period forty-five days prior to the anniversary date of this Agreement.

11.0 Termination. Either party may terminate this Agreement, in whole or in part, upon sixty (60) days written notice.

12.0 Independent Contractor. Contractor is an independent contractor and will not represent itself as a legal representative, partner, agent or employee of NWMC or any participating local government and may not create any express or implied obligations on

behalf of NWMC. Matters governing the terms and conditions of employment of Contractor's employees, subcontractors or agents are entirely the responsibility of the Contractor. Contractor will be solely responsible for complying with all tax and employee protection laws.

13.0 Legal Compliance:

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

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

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

13.4 Equal Employment Opportunity. Contractor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), which is incorporated herein by reference.

14.0 Non-Compete Covenant. During the term of this Agreement including any extensions thereof, and for a period of twelve months following expiration of this Agreement, neither party will directly or indirectly solicit business from, or attempt to sell or provide similar services to a customer, client or member of the other party. This restriction shall not apply to any customer or client relationship that exists prior to the commencement date of this Agreement.

15.0 Mailing Lists. The list of potential buyers maintained by NWMC shall remain the exclusive property of NWMC. Said list may be furnished to Contractor for the exclusive purpose of sending notices of NWMC auctions. Contractor shall treat said lists as confidential information and not disclose names, addresses or other data to any third party, nor shall said mailing lists be used for any other purpose. Contractor may maintain a mailing list of persons who attend NWMC auctions conducted by the Contractor and utilize said mailing lists to advertise other sales conducted by Contractor. However, said mailing list may not be disclosed to any third party nor used for any other purpose without the express written consent of NWMC.

16.0 Amendments. No modification or amendments of this Agreement or waiver of any provision of this Agreement shall be valid unless in writing and signed by both parties. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of that or any other right or option.

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

- 18.0 **Assignment.** Neither this Agreement, nor any duties or obligations under this Agreement, may be assigned by either party without the prior written consent of the other party.

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


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

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


- 22.0 **Entire Agreement.** This Agreement represents the entire understanding between the parties with respect to its subject matter.

THE ABOVE AGREEMENT IS ACCEPTED AND AGREED TO:

Northwest Municipal Conference

By: 
 Name: MARK C. FOWLER
 Title: EXECUTIVE DIRECTOR
 Date: 2-5-08

Obenauf Auction Service, Inc.

By: 
 Name: William M. Obenauf
 Title: President
 Date: 2-6-08