

**AGREEMENT FOR
AUCTION SERVICES COUNTYWIDE**

THIS AGREEMENT ("Agreement") is made and entered into as of the date of execution by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Manheim Remarketing, Inc. dba Manheim of Fort Myers, a Delaware corporation, authorized to do business in the state of Florida, whose address is 6205-A Peachtree Dunwoody Rd, Atlanta, GA 30328, and whose federal tax identification number is 58-1620001 hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase live auction services from the Vendor in connection with "Online Auction/Live Auction Services-Countywide" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. RFP170427TJM on July 21, 2017; and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary services for live auction services; and,

WHEREAS, the County posted a Notice of Intended Decision on November 3, 2017; and,

WHEREAS, the Contractor is one of a pool of firms approved to provide services for the Purchase, the County shall award projects as needed, and the Contractor understands and agrees that no work is guaranteed under this Agreement; and,

WHEREAS, the Vendor has reviewed the services to be supplied pursuant to this Agreement and is qualified, willing and able to provide the services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. SERVICES

The Vendor agrees to diligently provide the services for the Purchase in accordance with the project Scope of Services made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. RFP170427TJM, as modified by its addendum, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.

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II. TERM AND DELIVERY

- A. This Agreement shall commence immediately upon execution by both the County and the Vendor, and shall continue for a period of one (1) year. The County reserves the right to renew this Agreement for up to three (3) additional one (1)-year periods, upon mutual written agreement of both parties.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing the services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide the services as outlined in this Agreement, and as supported by the Vendor's submittal in response to Solicitation No. RFP170427TJM, the Vendor's original response dated August 16, 2017 and its Cost Proposal dated January 23, 2018 ("Vendor's Submittals"), copies of which are on file with the County's Department of Procurement Management and are deemed incorporated into this Agreement.
- B. Vendor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no work to Vendor. If a purchase order is issued, the County reserves the right to amend, reduce, or cancel the purchase order in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the services have been provided in conformity with this Agreement.

- B. The Vendor shall submit an invoice for payment, or a payment to the County less any fees described in Exhibit B, to the address indicated in this Agreement for those specific services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work. The additional compensation shall be agreed upon before commencement of any additional services and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service or work performed before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage

required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VII or better. No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality of all services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its services, or if directed by County, supply a comparable replacement service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
 - 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
 - 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and

- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.

IX. TIMELY PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. Any change or substitution to the Vendor's key personnel as provided by the Vendor's Submittals must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all services shall be provided within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the

performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

X. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XI. TERMINATION

- A. The County shall have the right at any time upon fifteen (15) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and

waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIII. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XI.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XI. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XIV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.

- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

Name: Joseph Saterfield
General Manager
Title: _____
Address: 2100 Rockfill Rd
Ft. Myers, FL.
33905
Telephone: 239-476-9814
Facsimile: N/A
E-mail: Joey.satfield@coxau
toinc.com

County's Representatives:

Names: Roger Desjarlais Mary Tucker
Titles: County Manager Director of
Procurement
Management
Address: P.O. Box 398
Fort Myers, FL 33902
Telephone: 239-533-2221 239-533-8881
Facsimile: 239-485-2262 239-485-8383
E-Mail: rdesjarlais@leegov.com mtucker@leegov.com

- I. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- J. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- K. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 - 1. Agreement
 - 2. County's Purchase Order
 - 3. Solicitation No. RFP170427TJM
 - 4. Vendor's Submittals:
 - a. Cost Proposal dated January 23, 2018
 - b. Vendor's Original Response dated August 16, 2017

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

**Manheim Remarketing, Inc. dba
Manheim Fort Myers**

Signed By: *Jeffrey Dillon*

Signed By: *Joseph Sattfield*

Print Name: Jeffrey Dillon

Print Name: Joseph Sattfield

Title: General Manager

Date: 4-5-18

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Cecil L. Pendergras*

CHAIR

DATE: 5-29-18

ATTEST:

CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: *Missy Flint*

DEPUTY CLERK

Commissioner Cecil L. Pendergras
Lee County Board of County Commissioners
District 2

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *Chuck Lira*

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A SCOPE OF SERVICES

Vendor shall provide live auction services on an as-needed basis as described in RFP170427TJM and its addenda, and as further described in this Agreement and the Vendor's Submittals. Vendor shall also provide the additional services as described below. For purposes of this Agreement, Buyer is defined as the third-party purchaser of the auctioned item.

Transportation:

- Vendor shall transport vehicles, upon notification from the County and pick up vehicles and equipment within ten (10) business days.
- Vendor shall require the transporter to create a manual condition report ensuring an accurate documentation trail for vehicles and equipment.
- All vehicles and equipment shall be transported to Manheim Ft. Myers for storage. The vehicles shall be checked into the auction using Vendor's automated inventory management system.
- An electronic condition report shall be generated and the Vendor shall take digital pictures of all vehicles.
- The condition report shall note any damage that resulted from vehicle transport. Vendor is solely responsible for all transport damage.
- Transportation of Cars and Light Trucks at no charge to the County.
- Transportation of Heavy Equipment or Large Trucks that need to be towed are to be negotiated on a case by case basis.

Buyer Failure to Pay/Pick-Up:

In the event an item is not sold due to non-payment or not picked up by the Buyer, the Vendor shall pay the County the funds due from the Vendor at the price bid.

Inspection:

The Vendor shall stage County vehicles for public inspection not less than five (5) business days prior to the commencement of the auction sale.

Security & Storage:

- Vendor shall provide a completely fenced and lighted facility, manned by auction-employed fulltime security staff 24/7/365 located at Manheim Ft. Myers.
- Vehicles shall be stored directly on the Manheim Ft. Myers location property until they sell to an approved Buyer.

EXHIBIT A SCOPE OF SERVICES

- Vendor shall continue to store the vehicle for up to five (5) business days after it is sold, unless a different mutually agreed upon timeframe has been determined between the Buyer and Vendor's General Manager.

Reconditioning & Maximum Returns:

- Vendor shall review all vehicles and equipment being prepared for auction and shall make notations in the MyLocalAuction system pertaining to recommended reconditioning and mechanical repairs and provide estimates to the County.
- Any recommended reconditioning and/or mechanical repairs are for the County to consider for approval at the County's sole discretion.

Mileage (Odometer) Statements:

- Vendor shall check and verify all odometer readings on County vehicles.
- The Vendor shall also conduct the following inspections:
 - Vehicle Identification Inspections
 - Police Inspections
 - Stolen Recovery
 - Odometer Inspections

Titles:

- Vendor shall process all title paperwork at the auction site for Buyers at no cost to the County.
- Vendor shall ensure that County taxes are paid upon completion of a selling transaction within the requirements of Florida law.

Report and Inventory Tracking:

- The Vendor shall report dollar value, as required by the Agreement, on all sales that occur at Manheim Ft. Myers. The Vendor shall provide access to MyLocalAuction (online tool located at www.manheim.com) so that the County may extract its own reports, or the County may request, and the Vendor shall provide, reports directly from the Vendor.

Training:

Vendor shall provide training material to County staff for Manheim.com, for the use of MyLocalAuction, and all other Vendor tools provided to the County.

Marketing:

Vendor shall provide marketing and advertising services for each auction as specified in their Submittals.

EXHIBIT B FEE SCHEDULE

For performance of the live auction services described in this Agreement, the County shall pay the Vendor (as a deduction from the auction proceeds collected on behalf of the County) for actual work performed on an as needed basis as described below.

Flat Fee	Note
\$100.00 per unit sold. Includes Condition Report.	Fee waived if unit sold for under \$100.00.

The following services will only be performed upon express approval by the County:

Description of Service	Rate
Vehicle Detail	\$85.00/Flat Rate
Vehicle Wash/Vacuum	\$35.00/Flat Rate
De-Logo Fee for Pickups and Vans	\$150.00 (upon arrival)/Flat Rate
De-Logo Fee for Box Truck	\$350.00 (upon arrival)/Flat Rate
De-Logo on "total wrapped units"	Negotiated on a case by case basis
Transportation of Cars and Light Trucks Driven through the Lee County area.	No Charge
Transportation of Heavy Equipment or Large Trucks that Need to Be Towed.	Negotiated on a case by case basis.

The Vendor shall perform the following services at no charge to the County:

Vendor provides:

- Collection of all auction payments from Buyers.
- Processes all title work at the auction site.
- Ensures all taxes from the auction are paid upon completion of a selling transaction within the requirements of Florida Law.
- Check and verify all odometer readings on County vehicles according to the Manheim Ft. Myers Bill of Sale Odometer Disclosure.
- Reporting and Inventory Tracking Real-Time Reporting
- Vehicle information and digital pictures uploaded into MyLocalAuction.
- Vehicles and equipment stored at the Vendor's auction site manned with employed full-time security staff 24/7/365.

EXHIBIT C INSURANCE REQUIREMENTS



Major Insurance Requirements with Garage Keepers

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the Vendor's interest or liabilities. The following are the required minimums the Vendor must maintain throughout the duration of this Contract. The County reserves the right to request additional documentation regarding insurance provided.*

- a. **Commercial General Liability/Garage/Garage Keepers/On-Hook Legal Liability** - Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, and contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL) or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by Chapter 440, Florida Statutes, encompassing all operations contemplated by this Contract or Agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers' Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

EXHIBIT C INSURANCE REQUIREMENTS

*The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies," in which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the Contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"* will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the Contract.
2. If applicable, it is the responsibility of the general contractor to ensure that all subcontractors comply with all insurance requirements.