

RESOLUTION 20-144

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH FLORIDA AUCTION NETWORK, LLC TO PROVIDE ONLINE AUCTIONEER SERVICES ON COMMISSION BASIS FOR A FEE OF 5% PERCENT OF THE TOTAL PROCEEDS RECEIVED.

BE IT RESOLVED by the City Council of the City of Panama City Beach that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Florida Auction Network, LLC, to provide online auctioneer services to the City as more fully set forth in the Agreement attached hereto as Exhibit A on a commission basis for Five Percent (5%) of the total proceeds received, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 13th day of August, 2020.

CITY OF PANAMA CITY BEACH

By: _____

Mark Sheldon
MARK SHELDON, MAYOR

ATTEST:

Jo Smith
JO SMITH, INTERIM CITY CLERK

**AUCTIONEER SERVICES AGREEMENT
BETWEEN CITY OF PANAMA CITY BEACH
AND FLORIDA AUCTION NETWORK, LLC**

1. **CITY AUCTIONEER:** City grants Florida Auction Network LLC (FANLLC) the exclusive right to auction his/her/its property at online auction which shall be conducted in accordance with the Scope of Services attached hereto as Exhibit A. FANLLC may divide or combine the property into one or more separate lots.
2. **TERM:** The term of this Agreement shall be for a period of two (2) years, commencing on the date of the execution of both parties to this Agreement and ending on the date two (2) years from the date of execution, unless the contract is sooner terminated. The City shall have the option to renew this Contract for up to two successive terms of two (2) years by delivering written notice of its intent to exercise this option at least thirty (30) days prior to the end of the original acceptance date.
3. **COMMISSIONS:** FANLLC will receive 5% of the hammer price for all lots sold. Hammer price shall mean the total proceeds received from the winning bid for each lot sold excluding the buyer's premium.
4. **RESERVES:** Reasonable reserves are accepted on most items. It is understood that if FANLLC sells the property below a reserve amount, the City will receive an amount equivalent to that which they are entitled to had the item sold at the reserve amount. Reserves are to be agreed upon before items are transferred to possession of FANLLC and cannot be raised after FANLLC has taken possession. Unsold items may incur a service charge. (See paragraph 13 about alerting FANLLC to retrieve unsold items and/or relisting items through another auction)
5. **ADDITIONAL CHARGES:** City will pay all packing, handling, and transportation costs to FANLLC premises, as well as restoration, repair, and cleaning costs and costs of third party services, appraisals or expert advice to properly describe property or verify authenticity. Cleaning, restoration, and appraisal costs in excess of \$30 will be approved in advance by City. All third party costs are increased 10% as a service charge for FANLLC account.
6. **INSURANCE:** City will maintain any insurance deemed necessary and holds FANLLC harmless for any damage or liability claims resulting from involvement of property at the premises/site until the City is paid by FANLLC. City will maintain insurance until City is paid by FANLLC and City is liable for any theft, damage, fire damage, natural disaster, or vandalism that may occur while on premises/site or while being handled by FANLLC.
7. **ADVERTISING, PHOTOGRAPHY, & VIDEO:** FANLLC will market as it deems necessary in accordance with Exhibit A to obtain the maximum results. FANLLC will display, video, and photograph the items, and events/transactions as it deems appropriate. FANLLC reserves the right to photograph, audio and video record any property and event/transaction and to use pictures and recordings in any and all advertisements, information packets, legal proceedings, or for any legal use.
8. **PAYMENTS:** FANLLC will provide (by mail or in person) sales proceeds to the City, less all commissions and costs, within 30 days after the auction close, together with a full accounting thereof.
9. **CLAIMS BY BUYERS:** If, within 30 days from the auction close, the buyer of any property demonstrates to FANLLC's satisfaction that the property purchased is not authentic or is materially different from its catalogue description or other FANLLC representations, FANLLC may, in its sole discretion, delay payment to the City (if not yet paid under Paragraph Number 7), rescind the sale, and refund the full purchase price to the buyer. If the City is paid under Paragraph Number 7, City will remit to FANLLC the proceeds previously received for the rescinded sale.
10. **RESERVED BIDS & WITHDRAWAL:** City appoints the Auctioneer and/or FANLLC and its representatives to bid on the City's behalf up to the amount of the reserve at the express direction of the City. City agrees that it will not bid on items under this agreement. Any items the City does bid on will be treated as a purchase and charged the full buyer's premium and commission. City agrees not to withdraw any property subject to this agreement unless

agreed to by FANLLC, and the payment of all charges, costs, and the commission (both buyer's premium and City's fees) due as if the item had been sold.

11. **WARRANTIES & INDEMNIFICATION BY CITY:** (a) City represents and warrants that it has the legal right to auction the property for sale; that there is not, nor will there be, any claim, lien or encumbrance against the property for any reason.
12. **NONPAYMENT BY PURCHASER:** FANLLC is not obligated to legally enforce payment by any buyer of the property. If FANLLC is not paid by the purchaser within 15 days of sale, FANLLC may, in its sole discretion, cancel the sale and resell the property. In the event that FANLLC resells the property under this agreement, FANLLC shall only be entitled to a commission on the proceeds actually paid.
13. **NO GUARANTEE:** FANLLC does not guarantee the selling price of property. All estimates of selling value are opinion only and shall not be construed as any promise of selling price. FANLLC is not liable for errors or omissions in catalogues or other descriptive material.
14. **UNSOLD PROPERTY:** (a) Property not sold shall be reclaimed by the City no more than 20 days after the last day of the sale period or auction upon written notice to the City by FANLLC. (b) Upon receipt of written notice of unsold property, the City is responsible for contacting FANLLC to indicate when unsold consigned items are to be retrieved from the premises, or if the unsold consigned item(s) are to be relisted in a second auction, it is incumbent upon the City to alert FANLLC to that decision before 20 days elapse after an auction or consignment period ends. All items not relisted in a future auction or a new consignment agreement is not completed are given a 20 day grace period for the City to retrieve from the premises, as per point (a) above. Property remaining after the 20 days will be subject to storage charges of \$10 per day, per lot. All charges must be paid before the property is released. **ANY ITEMS LEFT OVER 30 DAYS WILL BE CONSIDERED ABANDONED AND BECOME PROPERTY OF FANLLC. FANLLC MAY DISPOSE OF THE ITEMS AT ITS DISCRETION.**
15. **MISCELLANEOUS:** This agreement is binding upon the City's heirs, beneficiaries, executors, et. al.; is assignable only with FANLLC's consent; may be modified only in writing signed by FANLLC and the City; and shall be governed by the laws of the state of Florida.
16. **CONTRACT TERM:** The contract will continue in force until notice to cancel is given by either party or 365 days has passed. A new Consignment Agreement is required each 365 days.
17. **ITEM REMOVAL:** It is understood by the parties that in the event any consigned item is removed by the City, FANLLC will receive their due commission as if the item had sold. The value will be determined by the reserve, or where there is no reserve, the appraised value by a mutually agreed to appraiser.
18. **CITY RESPONSIBILITIES:** City is responsible to furnish FANLLC with a complete descriptive list of the property to be sold; including but not limited to brand name, model number, manufacturers serial number, size, shape, color, condition. (see Paragraph Number 18 for information related to titled items) City will deliver all listed property to the premises/site in the cleanest, most functional condition practical and free of any excess liquids or contaminants before being transported to FANLLC premises/site. Any misrepresentation by the City as to the description or condition will allow FANLLC to make a downward adjustment on the selling price at FANLLC's sole discretion or refuse to sell the property and collect the payment of all charges, costs, and the commission (both buyer's premium and City's fees) due as if the item had been sold.
19. **STORAGE:** As an additional service to the City, FANLLC offers short-term storage of items that are involved in the surplus/disposal process. FANLLC provides a licensed, bonded, and insured premises at 3847 E. Business Hwy 98, Panama City, FL 32401. This premises is fenced and covered by 24-hour surveillance. Items may be stored for up to 90 days prior to auction without charge.
20. **TITLED:** Titled items require a separate Used Vehicle Consignment Agreement form for each vehicle consigned by an individual or business, Power of Attorney HSMV 82995, and title delivered to FANLLC prior to FANLLC taking possession of titled item. Automobile Dealers are required to re-assign title to FANLLC for a vehicle to be

sold or auctioned and complete a FANLLC Vehicle Information Data Form. Titles and lien releases must accompany vehicle upon pick up or delivery to FANLLC possession.

- 21. **TERMINATION:** Either party may terminate this Agreement with or without cause provided, however, that the terminating party has given the other party thirty (30) days written notice of termination.

- 22. **PUBLIC RECORDS:** City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that FANLLC is acting on behalf of City as provided under Section 119.011(2) (2017) and implemented through the judicially established "totality of factors" analysis, FANLLC agrees to also comply with that law, specifically including to:
 - a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
 - b. Upon request of the City, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if FANLLC does not transfer the records to the City.
 - d. Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of the contract 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 City in a format that is compatible with the information technology systems of the City.
 - e. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, JSMITH@PCBGOV.COM, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FL 32413.**

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents as of the year and date first above written.

**THE CITY OF PANAMA CITY BEACH,
FLORIDA,**
a municipal corporation

By: _____
Tony O'Rourke, City Manager

ATTEST:

Jo Smith, Interim City Clerk

FLORIDA AUCTION NETWORK, LLC

WITNESS
PRINT NAME: _____

By: _____
Jonathon Sewell, Manager

WITNESS
PRINT NAME: _____

EXHIBIT A
SCOPE OF SERVICES

Scope of Work: The City requests competitive bids for the following services:

1. Auctioneer shall provide a hosted website (the "Auctioneer's site") to organize, advertise, post, host, and service the sale by auction of surplus or unclaimed City property as determined by the City.
2. The Auctioneer's site shall be developed and maintained by the successful proposer to accommodate all necessary aspects of auction advertising acceptable to the City, including posting pictures or property for sale and advertising of sale results. The Auctioneer's site must be well-organized, user-friendly, easy to navigate and compatible with mobile and desktop browsers. The Auctioneer's site shall be structured so that bidders can bid automatically.
3. Advertisement of the auction shall be conducted not less than one (1) nor more than two (2) weeks prior to the auction and should accommodate all necessary aspects of auction advertising acceptable to the City, including advertisement of the sale results. Advertisement of the auction shall include advertisement in the newspaper having general circulation in Bay County. In addition, the successful proposer shall provide a marketing plan to assist in promoting the sale of eligible properties and disseminate due diligence information online to potential bidders in support of the sale of eligible properties.
4. The Auctioneer shall implement the City's directed parameters for auction advertising, including minimum price, reserve price, settlement terms and time frames. The online auction and Auctioneer's site must structure the online auction process to include a pre-qualification process for potential bidders and bidder instructions. Advertisement of the auction should be conducted so as to inform potential buyers of relevant bidder instructions. Bidder's instructions shall be posted online and set forth the following information:
 - a. All sales as "where is, as is, and final."
 - b. The minimum bid amount.
 - c. Auction start date and time.
 - d. Auction end date and time.
 - e. The City's right to reject bids for any reason whatsoever.
 - f. The City's right to withdraw property for auction for any reason whatsoever.
5. The Auctioneer shall notify registered users of the Auctioneer's site upon the occurrence of the following events: 1) auction advertising information posted online; 2) auction commencement; 3) bid receipt; and 4) bidder has been outbid. The Auctioneer will notify the successful bidder, at the direction of the City, immediately after the auction.

6. The Auctioneer must structure the auction to allow bidders to tender payment within forty-eight (48) hours of notification of a successful bid. The means of payment will be established by the City and may include check, e-check, credit card, debit card, wire transfer, and any other means designated by the City. The proposal must identify payment capabilities in the proposal.
7. The Auctioneer shall collect, process, and account for payments from successful bidders, including sales tax when appropriate and seller's premium, and shall transmit the funds, along with a full report, electronic or hard copy, to the City within seven (7) days after the close of the auction.
8. Auctioneer shall ensure that all auctions conducted and all services provided shall comply with Chapter 468, Florida Statutes.