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State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
25 Capitol Street - Room 120
Concord, New Hampshire 03301
Office@das.nh.gov

Charles M. Arlinghaus
Commissioner
(603) 271-3201

Joseph B. Bouchard
Assistant Commissioner
(603) 271-3204

Catherine A. Keane
Deputy Commissioner
(603) 271-2059

September 18, 2018

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services, State Surplus Distribution, to amend the terms and conditions of the contract to incorporate Payment Card Industry Data Security Standards compliance requirements, enhance advertising requirements, and update the language specifying the contractor's liability to any transactional fee, with James R. St. Jean Auctioneers, Epping, NH Vendor No. 231036. This contract was originally approved by Governor and Executive Council on December 6, 2017, item #46. This amendment shall be effective upon Governor and Council through December 31, 2022.

There is no cost to the State associated with the use of this Contract. The proceeds from the sales of surplus property are directly deposited into 01-14-14-149710-81600000-402085 and then shall be transferred in accordance with Adm. 611 State Surplus Management to state agencies.

EXPLANATION

On December 6, 2017, item #46, Governor and Executive Council approved a five year contract with James R. St. Jean Auctioneers for live auction services of State surplus at White Farm. This First Amendment has three components, including Payment Card Industry Data-Security Standard (PCI DSS) compliance requirements which defines the data security specifications that the contractor must meet regarding their payment system and cardholder data. Second, alter the advertising requirements to ensure advertising resources are utilized in a manner that reaches the largest number of potential customers. Third, update the language that specifies the responsibility and liability of the contractor regarding credit card processing fees, transactional fees, and chargebacks.

Based on the foregoing, I am respectfully recommending approval of the amendment to the contract with James R. St. Jean Auctioneers.

Respectfully submitted,

Charles M. Arlinghaus
Commissioner

**FIRST AMENDMENT TO THE CONTRACT
BETWEEN JAMES R ST JEAN AUCTIONEERS
AND
THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF ADMINISTRATIVE SERVICES,
FOR LIVE AUCTION SERVICES
CONTRACT # 8002260**

This First Amendment (hereinafter referred to as the "Amendment"), dated this 9 day of September, 2019, is by and between the State of New Hampshire, Department of Administrative Services (hereinafter referred to as "the State") and James R St Jean Auctioneers (hereinafter referred to as "the Contractor") for Live Auction Services.

WHEREAS, pursuant to an agreement approved by Governor and Executive Council on December 6, 2017, item #46, and set to expire December 31, 2022, (hereinafter referred to as "the Agreement"), the Contractor agreed to perform certain Live Auction services for the State; and

WHEREAS, pursuant to Section 18 of the Agreement, the Agreement may be amended by an instrument in writing executed by both parties;

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Amendment and the underlying Agreement, the parties do mutually agree as follows:

1. Amend Exhibit A Scope of Work; add the following specifications for the period January 1, 2018 through December 31, 2022:



PCI-DSS:

The Contractor will be the merchant of record. The Contractor agrees that it is responsible for the security of cardholder data that it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data.

The Contractor affirms that, as of the effective date of this contract, it has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with the PCI DSS.

The Contractor will undertake an annual PCI-DSS reassessment applicable to their Merchant Level Status as outlined below:

- If the Contractor is a Level 1 Merchant, an annual ROC must be completed by a QSA or Internal Security Assessor (ISA) and the Contractor must submit their Attestation of Compliance (AOC) annually to the State.
- If the Contractor is a Level 2 or 3 Merchant, the Contractor must complete an annual self-assessment questionnaire (SAQ) and must submit their AOC annually to the State.
- If the Contractor is a Level 4 Merchant, the Contractor must complete an annual SAQ and submit the SAQ annually to the State.

The Contractor will immediately notify the State if it learns that it is no longer PCI DSS compliant and will immediately provide the State the steps being taken to remediate the non-compliance status. In no event should the Contractor's notification to the State be later than one (1) business day after Contractor learns it is no longer PCI DSS compliant.



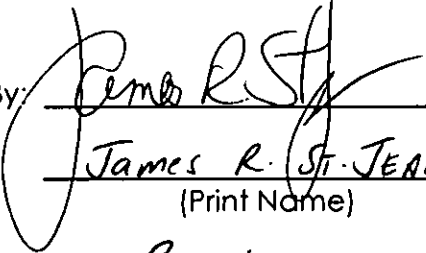
DEFINITIONS

PCI-DSS The Payment Card Industry Data Security Standard (PCI DSS) is a proprietary information security standard for organizations that handle branded credit cards from the major card schemes including Visa, MasterCard, American Express, Discover, and JCB.

Contractor Responsibilities

13. Contractor shall place advertisements in a minimum of three (3) major New Hampshire newspapers once a week for two (2) weeks prior to the Auction. Advertisement shall include a general listing of items that may be found at each upcoming Auction; the minimum dimensions required for the advertisement shall be 2X4. Including a photo, or photos, of some of the items is also strongly encouraged. The Contractor shall also advertise the Auction on their professional website. Contractor shall advertise by other various methods as mutually agreed upon by the State and the Contractor prior to each Auction. The cost of all advertisements shall be solely borne by the Contractor.
17. The Contractor shall be required to collect and hold all monies (i.e. bid price, bidder's premium) from the bidder in the course of the live auction. The Contractor shall be responsible and liable for all credit card processing fees including but not limited to transactional fees and chargebacks.
2. All other provisions of the Agreement, approved by the Governor and Executive Council on December 6, 2017, item #46, shall remain in full force and effect.

JAMES R. ST. JEAN AUCTIONEERS

By: 
James R. St. Jean
(Print Name)

Title: PRESIDENT
Date: 9/9/2019

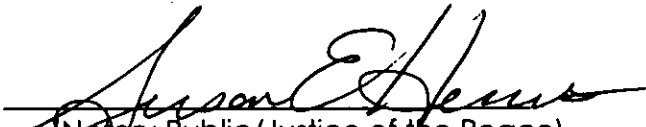
NOTARY PUBLIC/JUSTICE OF THE PEACE

On the 9 day of September, 2019,
There appeared before me, the state and
county foresaid a person who satisfactorily
identified himself as

James R. St Jean

And acknowledge that he executed this
document indicated above.

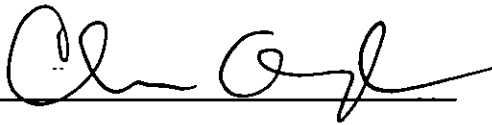
In witness thereof, I hereunto set my hand
and official seal.


(Notary Public/Justice of the Peace)

My commission expires:
01/13/21
(Date)


SUSAN E. HENNAS, Notary Public
State of New Hampshire
My Commission Expires January 13, 2021

STATE OF NEW HAMPSHIRE

By: 
Charles M. Arlinghaus
(Print Name)

Title: Commissioner,
Department of Administrative Services
Date: 9/24/19

OFFICE OF THE ATTORNEY GENERAL

By: 
Takhmina Pakhmatova
(Print Name)

Title: Attorney
Date: 10/2/2019

The foregoing contract was approved by
the Governor and Council of New
Hampshire on

Signed: _____

(Print Name)

Title: _____

State of New Hampshire

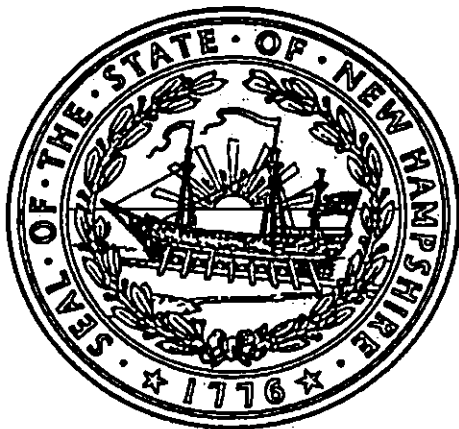
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that JAMES R. ST. JEAN AUCTIONEERS is a New Hampshire Trade Name registered to transact business in New Hampshire on January 06, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 606951

Certificate Number: 0004580768



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 9th day of September A.D. 2019.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

James R. St. Jean

A U C T I O N E E R S

September 9, 2019

Mr. Jeff Haley
Contract Manager
State of New Hampshire
Department of Administrative Services
Bureau of Purchasing and Property
25 Capitol Street, RM 102
Concord, NH 03301

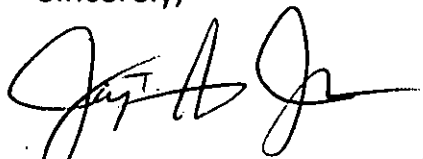
RE: Certificate of Vote/Authority

Dear Matt,

This letter will serve as verification that James R. St. Jean Auctioneers is registered to conduct business in the State of New Hampshire as a sole-proprietorship. The sole proprietor is James R. St. Jean who has a home address of 25 Atlantic Avenue, North Hampton, NH 03862. Our Federal Tax ID # is 02-0442482. James R. St. Jean serves as President of the company and is the only individual authorized to sign on behalf of the business.

If you have any questions or if I can be of additional assistance please do not hesitate to call.

Sincerely,



Jay T. St. Jean, Vice President
James R. St. Jean Auctioneers



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/28/2019

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 Slawsby Insurance Agency 3 Mound Ct, Suite B PO Box 1807 Merrimack NH 03054-1807	CONTACT NAME: Lisa Falzarano PHONE (A/C, No, Ext): (800) 258-1776 FAX (A/C, No): (603) 429-1843 E-MAIL ADDRESS: lfalzarano@minutamangroup.com
	INSURER(S) AFFORDING COVERAGE INSURER A: America Fire and Casualty Co INSURER B: The Ohio Casualty Insurance Company INSURER C: RLI Insurance INSURER D: INSURER E: INSURER F:
INSURED James R St Jean Auctioneers , Buzzsaw Realty, LLC PO Box 400 Epping NH 03042-0400	

COVERAGES **CERTIFICATE NUMBER:** 2019 Master **REVISION NUMBER:**

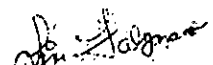
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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
A	<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 type="checkbox"/> LOC OTHER:			BKA58432909	03/30/2019	03/30/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employment Practices \$ 100,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAO58432909	03/30/2019	03/30/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$ 10,000			USO58432909	03/30/2019	03/30/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	XWO58432909	03/30/2019	03/30/2020	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Professional			RTP0015300	03/30/2019	03/30/2020	2,000,000 Retention 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

President/James St. Jean is excluded from Workers Compensation coverage.

RE: Live Auction Services

CERTIFICATE HOLDER State of New Hampshire Bureau of Purchase & Property 25 Capitol Street, Room 102 Concord NH 03301	CANCELLATION 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 
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State of New Hampshire
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

CHARLES M. ARLINGHAUS
Commissioner
(603)-271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603)-271-3204

November 7, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services, State Surplus Distribution, to enter into a contract with James R. St. Jean Auctioneers, Epping, NH (Vendor No. 231036), for the administration of live auction services, and for the sales and financial processing of surplus property. The term shall be effective upon Governor and Council approval, for the period effective January 1, 2018 through December 31, 2022.

The proceeds from the sales of surplus property shall be directly deposited into 01-14-14-149710-8160000-402085 and then shall be transferred in accordance with Adm. 611 State Surplus Management to state agencies.

EXPLANATION

On July 19, 2017, the Bureau of Purchase and Property issued a request for bid for live auction services. On August 9, 2017, two compliant bids were received. The bids were evaluated on the basis of the bidders' lowest fixed buyer fee, lowest credit card fee and the largest return percentage that shall be issued back to the state for the sale of municipal and miscellaneous items. The scoring criteria placed James R. St. Jean Auctioneers as the winning bid.

There shall be no charge to the State of New Hampshire for the services provided by the auctioneer and the auctioneer's revenue shall be achieved with an 8% Buyers fee and shall charge a maximum credit card fee of 3%. The Auctioneer shall reimburse the State of New Hampshire 4.5% of the selling price of municipal and other miscellaneous property. Attached is a copy of the bid tabulation.

Based on the foregoing, I am respectfully recommending approval of the contract with James R. St. Jean Auctioneers.

Respectfully submitted,

Joseph Bouchard Asst. Comm.
for Charles M. Arlinghaus
Commissioner

Subject: Live Auction Services

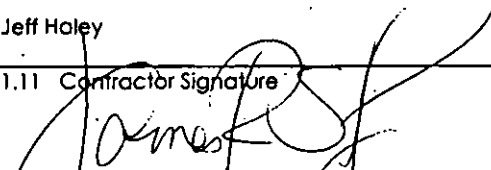
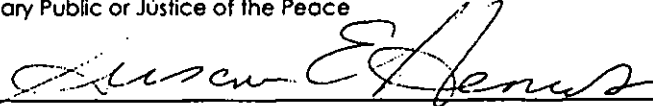
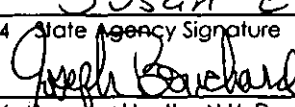
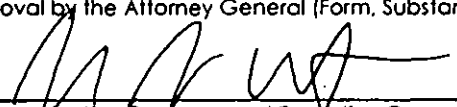
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address 25 Capitol Street, Concord, NH 03301	
1.3 Contractor Name James R. St. Jean Auctioneers		1.4 Contractor Address 45 Exeter Road, Epping, NH 03042	
1.5 Contractor Phone Number 603-734-4348	1.6 Account Number	1.7 Completion Date December 31, 2022	1.8 Price Limitation \$0.00
1.9 Contracting Officer for State Agency Jeff Haley		1.10 State Agency Telephone Number 603-271-2202	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory James R. St. Jean, President	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>11/6/17</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  (Seal)			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Susan E Hennas Notary</u>			
1.14 State Agency Signature  Date: <u>11-9-17</u>		1.15 Name and Title of State Agency Signatory <u>Charles M. Adinghaus, Commissioner</u> <u>Joseph Bouchard Assistant Commissioner</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>11/13/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

ARS
7/12/12

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default");

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H.

Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

Contractor Initials

Date

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14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**EXHIBIT A
SCOPE OF SERVICES**

1. INTRODUCTION

James R. St Jean Auctioneers (hereinafter referred to as the "Contractor") hereby agrees to provide the State of New Hampshire (hereinafter referred to as the "State"), Department of Administrative Services, with Live Auction Services in accordance with the bid/proposal submission in response to State Request for Bid/Proposal 1994-18 and as described herein.

2. CONTRACT DOCUMENTS

This Contract consists of the following documents ("Contract Documents") in order of precedence:

- a. State of New Hampshire Terms and Conditions, General Provisions Form P-37
- b. EXHIBIT A Scope of Services
- c. EXHIBIT B Payment Terms
- d. EXHIBIT C Special Provisions
- e. EXHIBIT D RFB 1994-18

3. TERM OF CONTRACT

This Contract shall commence upon the approval of Governor and Executive Council and shall terminate on December 31, 2022, a period of approximately five (5) years.

4. SCOPE OF WORK

CONTRACTOR RESPONSIBILITIES:

1. Contractor shall be NH licensed. NH Auctioneer License# 2279
2. Contractor shall provide, at a minimum, two (2) annual Auctions, one (1) spring and one (1) fall on behalf of the State of New Hampshire. Historically, Spring Auctions are held on the Saturday after Mother's Day in May and Fall Auctions are held on the Saturday after Columbus Day in October. Preview Day for vehicles shall be held on the Friday prior to the Auction date. Preview for inside items shall be held the morning of the Auction starting at 7:30 AM. Auctions shall begin at 8:30 AM and run until all items are sold. It shall be at the discretion of the State whether or not more Auctions will occur outside of the regularly scheduled annual Auctions.
3. Contractor shall follow all provisions of RSA 311B.
4. Contractor shall comply with all State and Local laws.
5. Contractor shall not require registration fees.
6. Contractor shall not include personal items for bid in Auction.
7. Contractor and any associate Contractors if applicable, providing services to the State of New Hampshire shall be qualified to sell a diverse category of products.
8. Contractor shall provide experienced staff to prepare a listing of all Auction items. The

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list of Auction items must be complete with required information including State control numbers. The list must be received and available via electronic media approximately two (2) weeks prior to the Auction.

9. Contractor shall have previously conducted a minimum of two (2) on site auctions of the type and size of the State Auction. For informational purposes only, the typical number of auction items would be between 900 – 1200.
10. Contractor shall maintain a bidder listing consisting of bidder name and bid number. The Contractor shall provide the list to the State upon request and keep records of historical listings for a minimum of two (2) years after expiration of contract.
11. Contractor shall maintain a current professional web site, and post details and photos of upcoming auctions on said site on a continuous basis for the duration of the contract.
12. Contractor shall be prepared to provide local area networking (Wi-Fi) service as necessary; the State shall not provide this service.
13. Contractor shall place advertisements in a minimum of three (3) major New Hampshire newspapers once a week for four (4) weeks prior to the Auction. Advertisement shall include a general listing of items that may be found at each upcoming Auction; the minimum dimensions required for the advertisement shall be 2X4. Including a photo, or photos, of some of the items is also strongly encouraged. The Contractor shall also advertise the Auction on their professional website. Contractor shall advertise by other various methods as mutually agreed upon by the State and the Contractor prior to each Auction. The cost of all advertisements shall be solely borne by the Contractor.
14. Contractor shall arrange and be financially responsible for one (1) City of Concord Police Officer to be present at the Preview and for one (1) New Hampshire State Police Officer to be present at the Auction. Historically, Officers are required on Preview Day from 8:00 AM through 3:00 PM (7 hours); and on Auction Day from 9:00 AM through 5:00 PM (8 hours).
15. Contractor shall provide food truck services during both Preview and Auction day. Alcoholic beverages are not permitted on State Property during the time of the Preview or Auction. The State shall not provide indoor food preparation or refrigeration to the Vendor. The State shall provide one (1) outdoor power outlet to the Vendor.
16. Contractor shall provide all necessary staff during time of Auction. This shall include but will not be limited to: auctioneers, runners, scribes, registration staff, payment processors, security, etc. Historically it has been approximately twenty five (25) staff. State is not responsible for security and item check during auction. All Contractor staff shall wear name badges and identifiable clothing.
17. Contractor shall have the capability to receive and process purchases via debit/credit cards, cash, business checks etc. Fees associated with purchase transactions shall be the sole responsibility of the Contractor.
18. Contractor shall arrange for and be financially responsible for portable toilets for both Preview and Auction days. There shall be one (1) disability unit and five (5) each regular units on both days. Portable toilets shall be cleaned between Preview and Auction days.

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19. Contractor shall reimburse State for all items sold.
20. Contractor shall provide (by 3:00 PM on the Monday following the Auction), an itemized list of all State, Municipal and miscellaneous items, with the purchase price of each item, as well as a legible copy of the Auction bidders registration list.
21. Contractor shall make every reasonable effort to remove all sold items at the time of Auction. Ownership of all items paid for but not picked up by 2:00 PM on the Monday following the Auction shall revert back to the State. An Auction representative shall be present during pick-up hours. Pickup hours shall be until 5:00 PM on the day of the Auction, 8:00 AM to 12:00 PM on the day following the Auction and 8:00 AM to 2:30 PM on the Monday following the Auction.
22. All financial agreements described in the Offer Section of this bid shall be reported and paid to the State within twenty (20) business days from the date of Auction by check payable to the "Treasurer, State of New Hampshire". The Contractor is liable for payment to the State for all items that are sold by bid at the Auction, regardless of whether or not the successful bidder(s) has/have paid the Contractor.
23. Contractor shall be required to submit reporting after each Auction. At a minimum, the report shall include contract number, all items present at Auction (broken out by municipal and State), total amount reimbursed to the State, municipal and other miscellaneous sales; see Attachment's A&B for reference.

STATE RESPONSIBILITIES:

1. State shall provide Auction location at the State Surplus Facility (White Farm), 144 Clinton Street, Concord, New Hampshire for the sale of State, Municipal and miscellaneous property.
2. State shall coordinate the line-up for all items with the Contractor prior to the Preview.
3. State shall coordinate and arrange both Preview and Auction dates with Contractor.
4. State shall provide approximately (3) three personnel employees to arrange state property prior to the Auction and designate space, if available, for the placement of municipal property, and coordinate this activity with the Contractor.
5. State shall have present approximately ten (10) personnel employees during the time of the Auction. This number shall include Department of Safety personnel (DMV) to issue temporary license plates (for those states who allow it) to winning bidders if required. State employees shall perform work for the State only, and represent themselves as employees of the State only.
6. State shall issue keys to State owned vehicles during Preview day.
7. State staff shall assign titles and provide keys to State owned vehicle purchases after Auction.

The State shall require correction of defective work or damages to any part of a building or its appurtenances when caused by the Contractor's employees, equipment or supplies. The Contractor shall replace in satisfactory condition all defective work and damages rendered thereby or any other damages incurred. Upon failure of the Contractor to proceed promptly with the

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 Date 11/16/17

necessary corrections, the State may withhold any amount necessary to correct all defective work or damages from payments to the Contractor.

The work staff shall consist of qualified persons completely familiar with the products and equipment they shall use. The Contracting Officer may require the Contractor to dismiss from the work such employees as deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.

The Contractor or their personnel shall not represent themselves as employees or agents of the State.

While on State property, employees shall be subject to the control of the State, but under no circumstances shall such persons be deemed to be employees of the State.

All personnel shall observe all regulations or special restrictions in effect at the State Agency.

The Contractor's personnel shall be allowed only in areas where services are being performed. The use of State telephones is prohibited.

If **sub-contractors** are to be utilized, Contractor shall provide information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.

5. TERMINATION

The State of New Hampshire has the right to terminate the contract at any time by giving the Contractor thirty (30) days advance written notice.

6. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR

The Contractor shall provide all services strictly pursuant to, and in conformity with, the specifications described in State RFB #1994-18, as described herein, and under the terms of this Contract.

The Contractor shall agree to hold the State of NH harmless from liability arising out of injuries or damage caused while performing this work. The Contractor shall agree that any damage to building(s), materials, equipment or other property during the performance of the service shall be repaired at its own expense, to the State's satisfaction.

7. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

The Contractor certifies, by signature of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

8. INSURANCE

Certificate of insurance amounts must be met and maintained throughout the term of the contract and any extensions as per the P-37, section 14 and cannot be cancelled or modified until the State receives a 10 day prior written notice.

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**EXHIBIT B
PAYMENT TERMS**

The Contractor hereby agrees to provide live auction services in complete compliance with State of New Hampshire Terms and Conditions, General Provisions Form P-37 and with all of the provisions described herein.

There shall be no fees or charges made to the State. The Contractor shall charge a maximum buyer fee of 8%, a maximum credit card fee of 3%, and the Contractor shall be responsible to reimburse the State 4.5% of the selling price of municipal, non-profit, court ordered, and other miscellaneous property.

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**EXHIBIT C
SPECIAL PROVISIONS**

There are no special provisions of this contract.

Contractor Initials
Date

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11/17

EXHIBIT D

RFB #1994-18 is incorporated here within.

Contractor Initials *f.p.s.*
Date *11/6/17*