



33 Inverness Center Parkway
Birmingham, AL 35242

Telephone 856-764-7163
www.jjkane.com

Contact: Derrick Winston
Seller Name: City of Aurora
Express Mail Address (No P.O. Boxes):
720 N. Broadway
Aurora, IL 60505

Phone: 630-256-3650

Fax:

Email: WinstonD@aurora.il.us

Date Emailed To Seller:

This agreement (this "Agreement" effective as of , **2025**, is by and among City of Aurora, a home rule Illinois municipal corporation (hereinafter called "Seller"), J.J. Kane Exchange, LLC ("Exchange"), and J.J. Kane Associates Inc. d/b/a "J.J. Kane Auctions," "Ken Porter Auctions" and "First Capitol Auction" ("Associates"), acting as agent for Seller. The parties, intending to be legally bound, hereby agree as follows:

- 1) Term and Termination. The term of this Agreement shall begin on the date hereof and shall continue until terminated by either party hereto. Either party hereto may terminate this Agreement at any time upon 60 days' prior written notice to the other party. Upon termination of this Agreement, Auctioneer (defined below) shall provide written notice to Seller describing any unsold Auction Items (defined below) and, unless otherwise mutually agreed to by the parties hereto, Auctioneer shall be permitted to attempt to sell such Auction Items at auction for an additional 60 days following the effective date of the termination of this Agreement. At the end of such additional 60 day period, any unsold Auction Items will be released to Seller; provided, that Seller shall be required to reimburse Auctioneer for any and all expenses incurred by Auctioneer in connection with the transportation, storage, decommissioning, and other related costs of preparing such unsold Auction Items for sale prior to Auctioneer's release of such Auction Items to Seller.
- 2) Auctioneer. For all sales of Auction Items hereunder that are located at physical site(s) owned or operated by Associates, Associates shall be deemed to be the "Auctioneer", and for all sales of Auction Items hereunder that are located at physical site(s) not owned or operated by Associates, Exchange shall be deemed to be the "Auctioneer". Seller acknowledges and agrees that Associates is authorized to engage Exchange or other third parties to provide certain services necessary for Associates to perform its obligations hereunder including, without limitation, the utilization of online auction platforms, invoicing, and billing services.
- 3) Engagement.
 - a) Seller hereby engages Auctioneer to facilitate the sale at public absolute auction sale Seller's property identified by Seller (the "Auction Item"), excluding any chemicals, hazardous materials or other environmentally unsafe equipment or materials unless mutually agreed upon in writing by Seller and Auctioneer.
 - i) Seller shall be responsible for clean-up/disposal of petroleum products/chemical spills coming from Auction Items that are offered for sale under this Agreement. The prompt and proper clean-up of any spills, leaks or other releases of petroleum or chemical substances and materials will be performed in accordance with all applicable federal, state and local laws and regulations. Seller acknowledges and agrees that in the event a spill has occurred, notification by Auctioneer to certain federal, state and/or local agencies may be required. Seller shall be responsible for all costs resulting in the clean-up of any spills/leaks or other

- releases of petroleum or chemical spills in accordance with any applicable laws and regulations. All clean-up/proper disposal costs will be billed back to Seller and deducted from Seller's sale proceeds. If said proceeds do not cover the total cost of spill cleanup/disposal, Seller will be billed the difference and Auctioneer shall be paid within 10 business days of dated invoice. The obligations set forth in this Section 3 shall survive the termination or expiration of this Agreement.
- b) Seller hereby acknowledges and agrees that Auctioneer may engage the services of Exchange and any applicable third party internet auction platform to conduct any auctions over the internet via online bidding.
 - c) Auctioneer may, in its sole discretion, accept or reject any Auction Items proposed for auction sale by Seller.
- 4) Auctioneer Personnel. Auctioneer shall provide all necessary auctioneers, accountants, clerks and office staff required to achieve the efficient and orderly performance of the auction sale contemplated by this Agreement. Auctioneer shall employ qualified personnel to perform these jobs and shall perform the engagement contemplated by this Agreement in a professional and skilled manner.
- 5) As-Is & Where-Is Auction Sales.
- a) Auction Items will be offered for sale individually, or in the case of small miscellaneous items sold in lots as determined by Auctioneer. All Auction Items will be sold on an "As-Is Where-Is" basis without any warranties of any kind, expressed or implied.
 - b) Seller agrees to disclose to Auctioneer any known defects or faults with Auction Items prior to listing such Auction Items with Auctioneer for sale.
 - c) In the case that a known defect or condition of any Auction Item is not disclosed by Seller to Auctioneer prior to listing, Auctioneers shall have the right, in its sole discretion, to declare such Auction Item a "No Sale" in which case Seller shall retain possession of such Auction Item and reimburse Auctioneer for any and all costs and expenses incurred by Auctioneer in connection with the transportation, storage, decommissioning and sale preparation of such Auction Item.
 - d) In accordance with applicable state and federal emissions regulations, Seller shall notify Auctioneer of any alterations of OEM emission systems that have occurred on vehicle or equipment Auction Items (e.g., dpf, def, system deletes or other engine control software or hardware alterations not approved by OEM).
- 6) Marketable Title.
- a) Seller specifically represents and warrants to Auctioneer that Seller is the sole owner of, and has good, valid and marketable title to, all of the Auction Items to be sold by Auctioneer pursuant to this Agreement, free and clear of any liens, security interests, mortgages, debts or other encumbrances or restrictions of any kind not otherwise disclosed in writing by Seller to Auctioneer on or prior to the date of this Agreement. Seller further represents and warrants that there are no outstanding judgments or liens against Seller and that there are no legal actions, claims or proceedings pending or, to the knowledge of Seller, threatened against or adversely affecting Seller whatsoever which in any way would hinder, prevent or otherwise affect Seller's or Auctioneer's right or ability to sell the Auction Items at auction sale.
 - b) Seller acknowledges and agrees that Auctioneer may elect to conduct UCC lien searches on any Auction Items deemed necessary by Auctioneer, in its sole discretion. Seller shall be responsible for the cost of any such lien searches payable in accordance with Section 12(c) below.
 - c) Seller agrees to deliver, upon Auctioneer's request, any documents, certificates, proofs of ownership or titles that may be required to effectively deliver and convey title to the Auction Items sold by Auctioneer pursuant to this Agreement.
 - d) In the case that there is a delay in the new purchaser receiving a free and clear title to any vehicle or trailer Auction Items sold hereunder, the net proceeds from the sale will be held by Auctioneer

until a free and clear title is delivered to the purchaser; provided, that, at the election of Auctioneer, in its sole discretion, the applicable Auction Item may be withdrawn from the auction sale and remain Seller's property.

- e) Seller acknowledges and agrees that, although Auctioneer guarantees free and clear title to the purchaser of each Auction Item and Auctioneer will use its commercially reasonable best efforts to obtain and convey such title in accordance with applicable law, Auctioneer shall in no way be responsible for any losses, damages, costs, expenses or fees (including, without limitation, attorneys' fees) arising out of or relating to any delay in obtaining and/or conveying free and clear title to the purchaser of any Auction Item sold hereunder.
- f) Seller acknowledges and agrees that, if requested, Auctioneer may provide the name of Seller to the applicable purchaser of any vehicle Auction Item sold hereunder.
- g) If Seller is a motor vehicle dealer, Seller's dealer state & dealer number are as follows: (list dealer state & dealer number): _____.
- h) The obligations set forth in this Section 6 shall survive the termination or expiration of this Agreement.

7) Titles On-Site.

- a) Seller agrees to deliver or cause to be delivered to Auctioneer all signed certificates of title, letters of authorization to sell vehicle Auction Items and any other related paperwork (e.g., a seller-specific bill of sale) no later than 10 days prior to the applicable auction sale.
- b) Seller further agrees to provide a letter of authorization and/or power of attorney in the form attached hereto as Exhibit A to accompany all certificates of title associated with Auction Items. Seller further agrees that it will provide Auctioneer with any other such authorizations or documentation as may be reasonably requested to facilitate sales or transfers of Auction Items, or to comply with regulatory requirements relating to the same.

- 8) Delivery of Auction Items. Unless Seller requests for Auctioneer to arrange for the pickup and transportation of any Auction Items to the applicable auction site by a third party service provider in accordance with Section 12(b) below, Seller shall deliver or cause to be delivered the Auction Items to the auction sale site no later than ten days prior to the applicable auction sale or to such other location agreed to in writing by Auctioneer. All Auction Items shall be delivered to Auctioneer in running condition (except as noted by Seller) with adequate fuel levels and a duplicate set of keys.

9) Insurance Coverage.

- a) Seller shall, at its own expense, maintain and carry in full force and effect appropriate insurance coverage on the Auction Items being sold hereunder until the Auction Items are sold to a purchaser.
- b) Auctioneer and owner of the auction sale site property will not be responsible for any damages to Auction Items resulting from acts of nature, theft, accident and/or vandalism while such Auction Items are located at the sale site and prior to delivery and transfer of risk of loss to the purchaser.
- c) Except to the extent caused directly by Auctioneer's willful or grossly negligent acts or omissions, Auctioneer shall not be responsible for any loss or damage to Auction Items.

10) Commission.

- a) Seller agrees that Auctioneer will charge the buyer of each Auction Item sold hereunder a base buyer's fee equal to 10% of the gross sale price paid for such Auction Item, subject to increase depending on the applicable (i) sales platform (e.g., live auction or internet only), (ii) type of buyer (on-site or internet) and/or (iii) Auction Item location, which shall not exceed 15% of the gross sales price paid for the Auction Item.

b) Commission - Fixed Rate

Seller agrees to pay Auctioneer a Seller's commission equal to 0 % of the total gross sale price for sold Auction Items.

c) Seller agrees that, when applicable, Auctioneer may deduct its commission from the gross proceeds of the auction sale.

11) Non-Sales.

- a) In the event that a successful bidder fails to pay for an Auction Item for which such bidder is designated to be the high bidder, then the applicable Auction Item will be deemed a "Non-Sale," no commission will be charged on such Auction Item and Seller will retain ownership of such Auction Item.
- b) In certain instances Auctioneer may be required to refund the would-be purchaser of an Auction Item that has been deemed a "Non-Sale." In the event Seller has already received the proceeds for such a "Non-Sale" Auction Item, Auctioneer will be entitled to relist the Auction Item on Seller's behalf. Seller agrees to assist Auctioneer in obtaining all title and registration paperwork necessary to relist the Auction Item (including duplicate title). Auctioneer will not assume ownership of the Auction Item at any time. Seller agrees that Auctioneer shall be entitled to use the proceeds of any auction sale following such a relisting to recover any amounts previously refunded to the would-be purchaser, together with administrative fees and costs as may be charged or incurred by Auctioneer.

12) Reimbursed Expenses.

- a) If applicable and pre-approved by Seller, Seller agrees that Auctioneer may deduct the exact cost for any additional services that Auctioneer provides Seller from the proceeds of the auction sale.
 - (1) Advertising: \$ Included
 - (2) Decommissioning & Washing: \$ 55-\$350 depending on size and location of logos - if applicable
 - (3) Repairs: \$ Cost + 10% if applicable
 - (4) Other: \$ Cost + 10% if applicable
- b) If Seller requests for Auctioneer to arrange for the pickup and transportation of Auction Items by a third party service provider, Auctioneer will invoice Seller a transportation fee equal to the cost of pickup and transportation plus 10%.
- c) If Auctioneer elects to conduct UCC lien searches on any Auction Items, Auctioneer will be entitled to deduct the cost of such lien searches from the gross proceeds of the auction sale or, if no sale occurs, invoice Seller for such cost.

13) Payment.

- a) Auctioneer will charge and collect from the purchaser the purchase price for the Auction Items sold at the auction sale, together with all applicable taxes. Auctioneer will collect payment in full from the purchaser prior to the removal of any Auction Items from the auction site. Seller shall be responsible for the payment of all income taxes resulting from or payable in connection with the sale of the Auction Items hereunder.
- b) Within 14 business days following the auction sale, Auctioneer shall remit to Seller the net proceeds from the Auction Items sold at auction, less Auctioneer's applicable commission as outlined in Section 10 above and any expenses as outlined in Section 12 above, together with a written report listing all Auction Items sold by Auctioneer and proof of payment for expenses.

Payment shall be made by Auctioneer via electronic transfer or by a check made payable to Seller. Any proceeds check will be made payable to Seller and mailed to the same name and address of Seller set forth on the first page of this Agreement unless otherwise directed in writing by Seller.

14) Absolute Unreserved Auction Sales.

- a) Seller understands that Auctioneer conducts absolute unreserved public auction sales where each Auction Item is sold to the highest bidder regardless of price.
- b) Furthermore, Seller understands/agrees that it is illegal for Seller or any agent thereof to bid on and/or buy-back any Auction Items owned by Seller.
- c) If Seller or any agent of Seller attempts to bid on and/or buy back any of the Auction Items, Auctioneer will, at Auctioneer's discretion, choose one of the following actions:
 - (1) Pass the Auction Item currently being offered for sale along with all other Auction Items.
 - (2) Sell the Auction Item to the last "Good Faith" bidder before Seller or its agent began bidding on such Auction Item.
- d) Seller shall reimburse Auctioneer for any lost revenue, including seller's commission, buyer's fee and/or any pre-approved reimbursed expenses in the event of a "Buy Back".

15) Advertised Auction Items. At Auctioneer's discretion, in the event that Seller removes any advertised Auction Item from the auction sale, Seller agrees to pay Auctioneer a handling fee of \$500.00 for each such Auction Item that is removed from the sale.

16) Breach of Contract. In the event that Seller breaches any covenant or makes any misrepresentation in this Agreement, to the extent expressly authorized by Illinois state law, Seller agrees to indemnify, defend and hold Auctioneer harmless from any and all costs, expenses, damages and liabilities arising out of or relating to such breach or misrepresentation, including, without limitation, attorneys' fees and other costs incurred by Auctioneer in any action or proceeding arising out of or relating to such breach or misrepresentation. The obligations set forth in this Section 16 shall survive the termination or expiration of this Agreement.

17) Indemnification.

(a) To the extent expressly authorized by Illinois state law, Seller hereby agrees to indemnify, defend and hold Auctioneer and its parent, subsidiaries and affiliates and each of their respective directors, officers, employees and other representatives (collectively, "Indemnified Persons") harmless from any and all costs, expenses, damages and liabilities (including, without limitation, attorneys' fees) incurred or sustained by, or imposed upon any Indemnified Person and arising out of or relating to: (i) Seller's ownership and maintenance (or lack thereof) of the Auction Items, (ii) the condition of the Auction Items at time of auction and prior to delivery to purchaser, (iii) the applicable purchaser's use of the Auction Items and/ or any property damage or bodily injury arising therefrom, (iv) any title defects or delays in delivering free and clear title to the Auction Items, (v) any breach of this Agreement by Seller, (vi) any violations of applicable state and federal laws, including, without limitation, state and federal emissions laws and regulations, or (vii) the enforcement of this indemnity by Auctioneer. This indemnity obligation applies solely to claims brought by third parties.

(b) Auctioneer shall indemnify, defend, and hold harmless the Seller, the City, its elected officials, officers, and employees from and against all claims, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees arising from or out of Auctioneer's negligent or more culpable acts in the performance of its obligations under this Agreement. This indemnity obligation applies solely to claims brought by third parties.

(c) In the event that the occurrence triggering any such third-party claim(s) is subject to indemnification under both Section 17(a) and Section 17(b), the indemnity obligations of Seller under Section 17(a) shall take control

and the indemnity obligations of Auctioneer under Section 17(b) shall be of no effect for such claim.

(d) The obligations set forth in this Section 17 shall survive the termination or expiration of this Agreement.

18) Entire Agreement; Headings.

- a) This Agreement contains the entire agreement between the parties and there are no other terms, obligations or representations, written or oral, other than those contained in this Agreement. This Agreement may be modified only by a further writing that is duly executed by both parties.
- b) Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
- c) Illinois Freedom of Information Act. The Auctioneer acknowledges the requirements of the Illinois Freedom of Information Act (FOIA) and agrees to comply with all requests made by the Seller for public records (as that term is defined by Section 2(c) of FOIA in the undersigned's possession and to provide the requested public records to the Seller within two (2) business days of the request being made by the Seller. The undersigned agrees to indemnify and hold harmless the Seller from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Seller under this agreement.
- d) Jurisdiction and Venue. The Parties agree that in the event of litigation arising from this Agreement, the exclusive venue for the adjudication of such disputes shall be the Circuit Court of the Sixteenth Judicial Circuit, Kane County and that the Illinois law shall apply to such disputes without regard to its choice of law principles.

19) Digger Derricks and Aerial Devices.

- a) Section 19(b) below shall apply to digger derricks and the following vehicle-mounted aerial devices (hereinafter referred to as an "aerial device") sold as Auction Items hereunder:
 - (1) Extensible boom aerial devices;
 - (2) Aerial ladders;
 - (3) Articulating boom aerial devices;
 - (4) Vertical towers; and
 - (5) A vehicle or other combination of any of the above, which vehicle may be a truck, a trailer, or an all-terrain vehicle.
- b) Seller acknowledges and agrees that it shall be the sole and exclusive responsibility of Seller to provide Auctioneer with, and Seller shall provide to Auctioneer, all of the operations, maintenance and manufacturer's manual(s) (collectively, "Manuals") for each digger derrick or aerial device to be auctioned by Auctioneer hereunder and that such responsibility shall continue in perpetuity notwithstanding Auctioneer's auction of the corresponding digger derrick or aerial device for Seller. In the event Seller does not provide all Manuals for each digger derrick or aerial device to Auctioneer, Auctioneer shall, in its own discretion, refuse to auction the associated digger derrick or aerial device until such time as the Manuals have been provided by Seller to Auctioneer. Auctioneer may notify Seller of the name and location of the successful purchaser of a digger derrick or aerial device within a reasonable time following completion of the sale. Seller hereby acknowledges its responsibilities in accordance with American National Standards Institute A92.2-2009 (including, without limitation, Section 8.7 thereof) and A10-31 in full, including, without limitation, section 8.7 thereof. Seller hereby acknowledges and agrees that failure by Seller to provide all Manuals for any digger derrick or aerial device sold at public auction hereunder shall be deemed a breach of Section 16 above for which Auctioneer shall be entitled to indemnification pursuant to Section 17 above.



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[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

seller: Click here to attach additional documents, for example, a letter of authorization, completed POA and/or dealer's license. -->

Account Manager:
Upload Documents

for seller.

SELLER:

City of Aurora
(Seller Name)

By: _____

Name: _____

Title: _____

ASSOCIATES:

~~J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers~~

By:  _____

Name: Dan Tomasek

Title: Account Manager

EXCHANGE:

~~J.J. Kane Exchange, LLC~~

By:  _____

Name: Dan Tomasek

Title: Account Manager

EXHIBIT A

Official Letter of Authorization

Date: _____

To Whom It May Concern:

I, _____, as _____ for City of Aurora, for a

period of ____ years from the date listed above hereby authorizes J.J. Kane Associates, Inc. and J.J. Kane Exchange, LLC (including any of their authorized personnel) to sell any and all vehicles and/or

equipment owned by City of Aurora which City of Aurora chooses to

list for sale with J.J. Kane Associates, Inc. or J.J. Kane Exchange, LLC.

Sincerely,

Signature: _____

Date: _____

Printed Name: _____

Job Title: _____

Phone Number: _____

Email: _____

