

ADDENDUM TO JJ KANE AUCTIONEERS

Laramie County/ JJ Kane Auctioneers

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming, P. O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and J.J. Kane Exchange, LLC, and J.J. Kane Associates Inc. d/b/a "J.J. Kane Auctioneers" and "Ken Porter Auctions," 33 Inverness Center Parkway, Birmingham, AL 35242 (hereinafter, "CONTRACTOR").

I. PURPOSE

The purpose of this Addendum is to modify the proposal to assist Laramie County with auction services, attached hereto as Attachment 'A' and fully incorporated herein (hereinafter "Agreement").

II. TERM

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum and Agreement and shall remain in full force pursuant to the terms of the Agreement and this Addendum.

III. RESPONSIBILITIES OF CONTRACTOR

A. CONTRACTOR shall provide and complete the services described in Attachment 'A', attached hereto and fully incorporated herein.

B. COUNTY shall pay CONTRACTOR \$0. Payment will be made upon receipt of the CONTRACTOR'S invoice to the COUNTY. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

IV. MODIFICATIONS

- A. Section 13(a) of the Agreement is stricken and of no force and effect.
- B. Section 16(a) of the Agreement is stricken and of no force and effect. Section 16(b) shall remain in effect.

V. ADDITIONAL PROVISIONS

1. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal

and local laws and shall maintain liability insurance for each of them. CONTRACTOR is free to perform the same or similar services for others.

2. Entire Agreement: The Agreement (7 pages) and Addendum (4 pages) represents the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

3. Assignment: Neither this Agreement and Addendum, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

4. Modification: This Agreement and Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

5. Invalidity: If any provision of this Agreement and Addendum is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of this Agreement and Addendum are fully severable.

6. Applicable Law and Venue: The parties mutually understand and agree this Agreement and Addendum shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement and Addendum or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming or the Federal District Court, District of Wyoming. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement and Addendum.

7. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement and Addendum because of race, color, gender, creed, handicapping condition, or national origin.

8. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

9. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Agreement and Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement and Addendum.

10. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement and Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement and Addendum shall operate only between the parties to the Agreement and Addendum, and shall inure solely to the benefit of the parties to this Agreement and Addendum.

11. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

12. Force Majeure: Neither party shall be liable to perform under this Agreement and Addendum if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

13. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

14. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

15. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

16. Compliance with Law: The parties agree that they shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

ADDENDUM TO JJ KANE AUCTIONEERS

Laramie County/ JJ Kane Auctioneers

Signature Page

LARAMIE COUNTY, WYOMING

By: _____
Chairman, Laramie County Commissioners

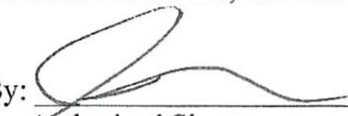
Date _____

ATTEST:

By: _____
Laramie County Clerk

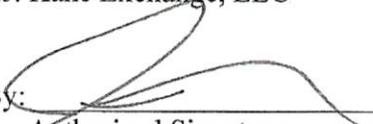
Date _____

J.J. Kane Associates, Inc. d/b/a J.J. Kane Auctioneers:

By:  _____
Authorized Signature


Date 5/6/2022

J.J. Kane Exchange, LLC

By:  _____
Authorized Signature

Date 5/6/2022

REVIEWED AND APPROVED AS TO FORM ONLY

By:  _____
Laramie County Attorney's Office

Date 5/11/22



Seller Name: Laramie County Public Works
Contact: Molly Bennett, John Poelma
Address: 13797 Prairie Center Circle

This agreement (this "Agreement"), effective as of April 1, 2022 is by and among Laramie County Public Works (hereinafter called "Seller"), J.J. Kane Exchange, LLC ("Exchange"), and J.J. Kane Associates Inc. d/b/a "J.J. Kane Auctioneers" and "Ken Porter Auctions" ("Associates" and, together with Exchange, hereinafter called "Auctioneer"), acting as agent for Seller. Seller and Auctioneer, 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 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) **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 2 shall survive the termination or expiration of this Agreement.
 - b) Seller hereby acknowledges and agrees that any auction conducted over the internet via online bidding will be conducted by Exchange and any applicable third party internet auction platform.
 - c) Auctioneer may, in its sole discretion, accept or reject any Auction Items proposed for auction sale by Seller.
- 3) **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.

4) 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, Auctioneer 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).

5) 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 11(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): N/A .

- h) The obligations set forth in this Section 5 shall survive the termination or expiration of this Agreement.
- 6) 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) In order to comply with applicable motor vehicle rules and to enable new purchasers to assume ownership with minimal problems, a letter of authorization on Seller's letterhead must accompany all certificates of title associated with Auction Items. Set forth below is a sample letter:
- 7) 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 11(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.
- 8) Insurance Coverage.
- a) Seller shall, at their own expense, maintain and carry in full force and effect appropriate insurance coverage on the Auction Items being sold hereunder until the day of the auction sale.
 - 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.
 - c) Auctioneer shall be responsible for any loss or damage to Auction Items due to Auctioneer's willful or negligent acts or omissions.
- 9) 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) **[Seller agrees to pay Auctioneer a Seller's commission equal to 3% 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.
- 10) No Sales. 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 Items will be deemed a "No Sale", no commission will be charged on such item and Seller will retain ownership of such Auction Item.
- 11) 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: \$ N/A
 - (2) Decommissioning & Washing: \$ N/A
 - (3) Repairs: \$ N/A
 - (4) Other: \$ N/A

- b) If Seller requests for Auctioneer to arrange for the pickup and transportation of Auction Items by a third party service provider. Transportation of equipment within 50 miles of JJ Kane's holding yards will be no cost to the customer. Outside of 50 miles the customer will be quoted shipping charges before equipment is moved.
- c) If Auctioneer elects to conduct UCC lien searches on any Auction Items, Auction 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.

12) 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 to remit to Seller the net proceeds from the Auction Items sold at auction, less Auctioneer's applicable commission as outlined in Section 9 above and any expenses as outlined in Section 11 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.

13) 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".

14) 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.

15) Breach of Contract. In the event that either of Auctioneer or Seller breaches any covenant or makes any misrepresentation in this Agreement, the breaching party agrees to indemnify, defend and hold the non-breaching party 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 the non-breaching party in any action or proceeding arising out of or relating to such breach or misrepresentation. The obligations set forth in this Section 15 shall survive the termination or expiration of this Agreement.

16) Indemnification.

- a) 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 arising out of or relating to: (a) Seller's ownership and maintenance (or lack thereof) of the Auction Items, (b) the condition of the Auction Items at time of auction, (c) the applicable purchaser's use of the Auction Items and/or any property damage or bodily injury arising therefrom, (d) any title defects or delays in delivering free and clear title to the Auction Items, (e) any breach of this Agreement by Seller, (f) any violations of applicable state and federal laws, including, without limitation, state and federal emissions laws and regulations, or (g) the enforcement of this indemnity by Auctioneer. The obligations set forth in this Section 16 (a) shall survive the termination or expiration of this Agreement.

- b) Auctioneer hereby agrees to indemnify, defend and hold Seller 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 arising out of or relating to: (a) Auctioneer's negligence or intentional misconduct in carrying out its obligations under this agreement and/or any property damage or bodily injury arising therefrom, (b) any breach of this Agreement by Auctioneer, (c) any violations of applicable state and federal laws, including, without limitation, state and federal emissions laws and regulations, or (d) the enforcement of this indemnity by Seller. The obligations set forth in this Section 16 (b) shall survive the termination or expiration of this Agreement.

17) 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.

18) Digger Derricks and Aerial Devices.

- a) Section 18(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 15 above for which Auctioneer shall be entitled to indemnification pursuant to Section 16 above.

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

SELLER:

(Seller Name)

By: _____

Name: _____

Title: _____

ASSOCIATES:

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

By: _____

Name: John Onders

Title: Account Manager

EXCHANGE:

J.J. Kane Exchange, LLC

By: _____

Name: John Onders

Title: Account Manager