

ADDENDUM TO ONLINE AUCTION SERVICES AGREEMENT
Between
Laramie County and Al Rose Auctions & Realty LLC/Wears Auctioneering Inc.

THIS Auction Agreement is made and entered into by and between Laramie County, 310 West 19th Street, P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY") and Al Rose Auctions & Realty LLC/Wears Auctioning Inc. (hereinafter referred to as "CONTRACTOR"). The parties agree as follows:

I. PURPOSE

This Addendum modifies CONTRACTOR'S Online Auction Agreement, for purposes of conducting online auction for the sale of items/equipment owned by COUNTY.

II. TERM

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties, and shall remain in full force until completely performed or terminated as provided herein.

III. PAYMENT

COUNTY shall pay CONTRACTOR a percentage of the proceeds of sale by commission based on the type of item sold at the auction. CONTRACTOR shall bill COUNTY by detailed invoice submitted to the Laramie County Clerk, Finance Office. Payments shall be made in accordance with Wyo. Stat. § 16-6-602, as amended. No payment shall be made before the last signature is affixed to this Agreement.

IV. MODIFICATION

- A. The following sentences in Paragraph D of the "Personal Property Contract Addendum" are stricken out and are of no further force and effect:

"Any dispute arising under the terms of this agreement shall be through binding arbitration. The parties shall share the costs of this process equally with each party responsible for its attorney's fees."

- B. Paragraphs F and J of the "Personal Property Contract Addendum" are entirely stricken from the agreement, and are of no further force and effect.

V. RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR shall conduct an online auction for the sale of certain items/equipment owned by the COUNTY.

VI. RESPONSIBILITIES OF COUNTY

COUNTY shall be responsible for the cost associated with advertising the auction sale, in addition to payment for conducting the online auction sale.

VII. ADDITIONAL PROVISIONS

A. 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.

B. Termination: The Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; or (b) upon mutual written consent by both parties.

C. Entire Agreement: The Agreement, (3 pages) and this Addendum (4 pages) represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

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

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

F. Invalidity: If any provision of the Agreement or 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 that the provisions of this Agreement are fully severable.

G. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with the Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of the Agreement.

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

I. 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.

J. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. § 1-39-101 *et seq.*, by entering into this Agreement. 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.

K. Indemnification: CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with the negligence of the CONTRACTOR. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision.

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

M. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Agreement and 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.

N. Force Majeure: Neither party shall be liable to perform under this Agreement 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.

O. Limitation on Payment: COUNTY's obligations are conditioned upon the availability of funds which are appropriated or allocated for the obligations. If funds are not allocated and available for the continuance of performance required pursuant to this Agreement, 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 effected 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 obligations 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.

P. 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.

Q. Applicable Law and Venue: The parties mutually understand and agree this Agreement 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 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. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CONTRACTOR and to COUNTY in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

LARAMIE COUNTY, WYOMING

By: _____ Date _____
K.N. Buck Holmes, Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CONTRACTOR: AL ROSE AUCTION & REALTY LLC

By: Porzella Weston Date 8/28/18
Title: owner

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY

By: [Signature]
Gladys Ayokosok
Deputy Laramie County Attorney

Date 8/28/18

ONLINE AUCTION CONTRACT

This contract entered into on _____, 2018, by _____, grants Al Rose Auctions & Realty LLC/Wears Auctioneering Inc. (Auctioneer) the exclusive right and authority to sell at ABSOLUTE PUBLIC AUCTION, the property listed, and inventoried by Auctioneer, including, but not limited to, the items set forth on the attached exhibit A. Seller agrees to make the property available for auction and to cooperate with all reasonable requests of Auctioneer including, but not limited to, preparation of auction on:

Date(s): _____, 20__ Time(s) _____ AM/PM Ending: _____, 20__ Time(s) _____ AM/PM

Auction Location: 13797 Prairie Center Circle, 82007 Special Directions:

Preview Dates: _____

Owner(s): _____ Contact Name & Phone: _____

Payment Address: _____

Seller warrants he/she is owner and all property is free of liens and encumbrances except listed below:

Commission:

Al Rose Auction & Realty LLC/Wears Auctioneering Inc.

15% commission - on vehicles, trailers (titled items)

20% all other personal property

10-12% of gross sales for marketing, lotting, check out, online fee and preparation labor

Sales Tax: Yes Special Commission(s) _____ % Item(s): _____

Acceptable methods of payment include but are not limited to: Cash, Check, MasterCard, Visa, Discover, Wire Transfers, sellers give auction company the right to determine other methods of payment without any guarantee or liability for non performing methods of payment presented by buyer.

Proceeds from the auction will be deposited in the Customer Trust Account of Wears Auctioneering Inc. At which time all purchases are paid for and payments are secured for said purchases, a Closing Statement showing gross proceeds, itemized list of authorized expenses, and net proceeds will be provided, usually WITHIN TEN BANKING DAYS.

Returned and non-collectable checks, counterfeit bills or credit card chargeback's; seller agrees to reimburse auctioneer for the aforementioned methods of payments if such defaults occur after settlement has been made to seller. Any returned methods of payment outstanding at the time of auction settlement will be withheld from the sellers' proceeds until collected.

A listing of items sold will be provided to the seller at time of settlement. The above commissions DO NOT include advertising costs. Advertisements will be coordinated and submitted by auctioneer and billed to the seller on the final settlement. All advertising will be paid by seller. Advertising shall be as follows:

Sale Bills and Direct Mail: Yes

Internet Listing may occur on some of the following websites: : Al-Rose Auction & Realty LLC, Wears Auctioneering, Iowa Auctioneers Assn, Wyoming Auctioneers Assn, Colorado Auctioneers Assn, National Auctioneers Assn, MarkNet Alliance, Craigslist, AuctionZip, Global Auction Guy, Social media may include Facebook, Twitter, and others.

Additional Items: _____

This contract includes an addendum page (see reverse side) that the seller should familiarize themselves with and review prior to signing.

The undersigned accepts this Auction Contract and the terms thereon this _____ day of _____, 20__

Seller/Exec _____ Spouse/Co-Exec _____

Address _____ Phone _____

E-Mail _____

Auction Representative _____ Title _____



6207 Brimmer Rd, Cheyenne, WY 82009*307-634-3448



PERSONAL PROPERTY CONTRACT ADDENDUM

This addendum is meant to accompany the ON LINE Auction Contract, Please read over as it outlines the majority of responsibilities of the seller in relationship to the auction company conducting your auction.

- A. Sellers recognize, and agree, they are responsible through transfer to buyer, for casualty, loss and theft up to time of sale. The parties hereto agree all property consigned to Auctioneer pursuant to this agreement, shall be delivered and once in the possession of Auctioneer, will be returned only if Auctioneer is unable to sell the property or withdraws the property as set forth above. Seller shall have no authority to withdraw property or cancel auction following execution of this agreement. No items may be sold prior to auction.
- B. The seller may (at sole discretion of Auctioneer) be billed \$65.00 each, or full commission whichever is greater, for items withdrawn from, or sold prior to auction after items have been contracted to sell.
- C. All risk of loss of personal property shall remain with Seller thru transfer to Buyer. Auctioneer shall not be responsible for any loss due to theft, breakage, decline in value or other loss whatsoever. Seller acknowledges that they have made inquiry regarding insurance coverage for the items to be sold hereunder and release and discharge Auctioneer from any responsibility for theft, loss, or damage of property.
- D. Any disputes arising under the terms of this agreement shall be through binding arbitration. The parties shall share the costs of this process equally with each party being responsible for its own attorney's fees. Further, any disputes shall be decided according to the laws of the State of Wyoming and venue of matters under jurisdiction of the District Court of Wyoming shall be proper only in Laramie County District Court.
- E. All names, addresses, and information gathered from auction attendees/buyers become the sole property of Auctioneer and may be used only by Auctioneer. Unauthorized use of lists compiled by Auctioneer is strictly prohibited.
- F. Auctioneer shall have the right to withdraw any property before or during the auction at Auctioneer's sole discretion and shall have no liability to Seller whatsoever for such withdrawal.
- G. Auctioneer reserves the right to reject any bid, without giving any reason for doing so. Auctioneer further has the right to accept absentee and/or electronic/telephone bids and to formulate and adopt terms, from time to time, for accepting such bids. The highest bidder acknowledged by Auctioneer shall be the purchaser. Seller gives Auctioneer the authority to settle disputes concerning bids.
- H. Seller agrees Auctioneer and or auction company employees may participate in and purchase items offered through the auction process by entering into the competitive bidding process.
- I. Seller acknowledges he/she is not relying upon any expression of value or opinion which may have been made by Auctioneer in determining value of any item to be auctioned hereunder. It shall be Seller's responsibility to determine the fair market value of any item consigned to Auctioneer.
- J. Seller shall be responsible to pay commission to Auctioneer on all property sold to a purchaser, regardless of whether purchaser closes on said transaction or whether said buyer delivers funds sufficient to pay for the bid accepted.
- K. Buybacks are a direct violation of this contract. Commissions on items bought back will be charged at the same rate as the selling commission agreed to in this contract PLUS an additional 10%.
- L. Sales Tax: Sales Tax will be collected by Al-Rose Auction & Realty LLC/Wears Auctioneering Inc and paid to the Wyoming Department of Revenue for all items requiring tax to be collected.
- M. Al-Rose Auction & Realty LLC/Wears Auctioneering Inc reserves the right, at their discretion, to charge a Buyer's Premium to buyers participating in this auction. The buyer's premium will be retained by Al-Rose Auction & Realty LLC/Wears Auctioneering Inc.
- N. This agreement sets forth the entire agreement between these parties. The terms hereof shall not be modified, except by subsequent written agreement signed by the parties hereto and is binding upon me or us, our separate heirs, administrators, executors, assignees, and successors in interest. The parties state time shall be of the essence hereof.
- O. Sellers have read the foregoing contract and thoroughly understand the contents thereof; and further represent the statements made hereof are true to the best of my, or our knowledge; this contract contains and sets out the entire agreement of the parties and is binding upon me or us, our separate heirs, administrators, executors, assignees and successors in interest. Seller hereby directs Auctioneer to proceed with the sale as contracted hereunder.
- P. Seller will provide at a minimum one fork lift for load out on pickup day.

Seller's Initials _____

Seller's Initials _____