

5/21/20

RESOLUTION NO. 2020- 89

A RESOLUTION ACCEPTING AND APPROVING AN AUCTION & SALE AGREEMENT BETWEEN VRK AUCTIONS, LLC AND THE CITY OF ROCK SPRINGS, WYOMING, FOR THE SALE OF SURPLUS CITY PROPERTY AND AUTHORIZING TIMOTHY A. KAUMO, AS MAYOR OF THE CITY OF ROCK SPRINGS, WYOMING, AND MATTHEW L. MCBURNETT AS CITY CLERK OF THE CITY OF ROCK SPRINGS, WYOMING, TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Rock Springs wishes to enter into an Auction & Sale Agreement with VRK Auctions, LLC for the purpose of selling all City surplus property through an Internet Only Auction format; and,

WHEREAS, the Governing Body of the City of Rock Springs has the Agreement before it and has given it thoughtful review and consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROCK SPRINGS, STATE OF WYOMING:

Section 1. That the terms and provisions of the Auction & Sale Agreement with VRK Auctions, LLC, attached hereto and by this reference made a part hereof, is hereby accepted and approved by the City of Rock Springs, Wyoming.

Section 2. That the Mayor of said City be, and he is hereby authorized, empowered and directed to execute and confirm said Agreement on behalf of said City; and that the City Clerk of said City, be and he is hereby, authorized and directed to attach to said Agreement a certified copy of this Resolution.

PASSED AND APPROVED this _____ day of _____, 2020.

President of the Council

Mayor

Attest:

City Clerk

VRK AUCTIONS, LLC.

AUCTION & SALE AGREEMENT

This agreement entered into on the date set forth below by and between City of Rock Springs, (Seller), whose mailing address is: _____ and VRK Auctions, LLC., (VRK), whose mailing address is: 703 Ash Ave, Green River, WY 82935

1. Seller hereby employs VRK to sell all surplus property through an Internet Only Auction format. The Internet Only Auction will be conducted and shall begin and end on dates agreed upon between Seller and VRK. In the event of a postponement of the Auction for any reason, the Auction shall take place on a later date agreeable to both parties. If the Auction is postponed for any reason, there will be additional charges for advertising, in the event additional advertising is required or expended.
2. Seller grants to VRK the exclusive right to sell all its surplus property through the Internet Only Auction format. Seller agrees and understands that VRK will perform its duties and obligations to the best of its abilities. **VRK cannot and does not guarantee or warrant that any item will sell, nor that any item will bring a specific price at auction.** Nothing shall be sold, removed or withdrawn prior to the auction except by mutual written agreement between Seller and VRK. . In the event items are removed without a mutual agreement of the Parties, VRK shall receive, as earned payment for services already rendered, a fee in the amount of the total commission stated herein for those items. The value of withdrawn items will be established by VRK. or an independent appraisal conducted at Seller's expense.
3. Seller will arrange to have transferable titles for all titled vehicles and other titled equipment. Any vehicles or titled equipment sold without transferable titles will be sold as "Parts Only". Any Title fees will be added to the sale price and paid by the buyer and titles will be picked up at the Sweetwater County Courthouse or mailed to the buyer.
4. Seller agrees to assume all risk for damage to the property prior to sale. Seller will maintain an insurance policy covering the merchandise subject to this agreement until the auction is completed. Seller agrees that VRK is not responsible, in any way, for any damage to any auction property. Seller agrees to hold VRK harmless and indemnify it against all causes of action resulting from any activity associated with the auction, its set-up or load-out, with the exception of any negligent acts performed by VRK.
5. VRK agrees to use its professional skill, knowledge and experience for the benefit of both parties in arranging for and conducting the auction. VRK shall advertise and market the auction using the best methods it determines in its sole discretion. VRK may deduct any remaining sums owed to VRK. from the net proceeds of the sale of Seller's property.
6. VRK will use its best efforts to provide internet bidding for all auctions. Seller understands the inherent potential problems with internet connectivity and computers. If, for any reason, the internet component fails to work correctly at any time, VRK. shall determine whether to continue with an auction, modify its terms, change its ending times, or postpone it to a later date. VRK may, in its sole

discretion and under its standard terms, accept other internet or absentee bids for any items. VRK will not be responsible, in any way, for any missed absentee or internet bids. Seller agrees that the names and other personal information provided to VRK by bidders is proprietary information and solely the property of VRK. VRK will not disclose any bidder information to Seller. All auctions shall be Public Auction and as such, VRK shall allow every qualified bidder to bid including its employees and owners. VRK may, in its sole discretion, refuse to accept bids from persons or entities that it determines may be injurious to the auctions or that fail to properly qualify to bid.

7. Seller warrants that all the property is free from any lien or encumbrance including liens from the Internal Revenue Service and that Seller has the right to sell the property.

8. Seller agrees that, for the performance of its obligations under this agreement, VRK shall be paid a fee equal to **Twenty Percent (20%) on all items under \$999 and (10%) on items that exceed \$1000 of the gross proceeds of the sale of Seller's property.** These fees do not include any buyer's premiums. In addition to the commission, VRK will also charge its customary buyer's premiums of 10% to all buyers, which it shall keep for itself as additional commission. VRK may charge those who choose to pay with credit cards an additional 3% fee to cover credit card charges. VRK shall be paid its commissions, fees & expenses before anyone else. VRK agrees to turn over to Seller an accounting of the Auction proceeds and shall pay Seller the net proceeds within 15 days after all of Seller's property has been sold and all payments have been collected.

9. VRK will diligently attempt to collect payment from all buyers. In the event VRK is unable to collect payment from a buyer or a buyer's payment is not honored, VRK may, in its sole discretion, choose to resell that item or items, in any way it chooses, or return the item, unsold, to Seller. If returned to Seller, VRK shall be entitled to retain the commission earned on the unpaid sale of said item.

10. If the Auction is cancelled for any reason by Seller, Seller shall immediately pay to VRK a cancellation fee equal to the total of the entire advertising and marketing fee agreed to herein, any internet auction fee paid by VRK, and any other expenses advanced by VRK on Seller's behalf. Seller hereby grants a security interest to VRK in all of Seller's property to be auctioned and in the auction proceeds to secure all of Seller's obligations under this agreement.

11. This Agreement is binding upon and shall inure to the benefit of the parties themselves, as well as their respective representatives, successors, permitted assigns, heirs and estates. This agreement supersedes all prior agreements or representations of the parties and constitutes the entire agreement between the parties. All parties specifically acknowledge that, in entering into this agreement, they rely solely upon the representations and agreements contained in this agreement and no others. This agreement may be executed by each of the parties separately. When so executed by all the parties, such copies taken together are deemed to be a full and complete agreement between the parties. This agreement may only be modified by a written agreement signed by both parties. Any generally recognized form of electronic signature shall be considered valid and binding.

12. Any disagreement concerning this agreement shall be heard in a court of competent jurisdiction in Sweetwater County, Wyoming. Both parties waive any right to a jury trial and hereby agree to a bench trial before a judge. This agreement shall be governed in all respects by the laws of the State of Wyoming. If for any reason, a court of competent jurisdiction finds any part of this agreement to be invalid or unenforceable, such invalid or unenforceable part will be deemed severable from the other parts herein and will not affect the validity or enforceability of the remaining parts. In the event of any

litigation arising out of this Contract, the court shall award the prevailing party all reasonable costs and expenses, including reasonable attorney's fees. In the event VRK is required to retain legal counsel as a result of Seller's actions under this agreement, Seller agrees to reimburse VRK. for its reasonable attorney fees incurred.

Mutually agreed to this _____ day of _____ 2020

This is a legal instrument.

If not understood, legal counsel should be consulted before signing.

City of Rock Springs:

By: _____

Title: _____

VRK Auctions, LLC, a Wyoming limited

Liability Company:

Veldon Kraft, Managing Member