State of North Carolina
County of Durham

Service Contract
Contract # 16-0005

Auctioneering Services

This contract is dated, made, and entered into as of the 11th day of September, 2015, by the **City of Durham** ("City"), a N. C. municipal corporation, and **Wester Auction & Realty, Inc.** ("Contractor" or "Company"), a corporation organized and existing under the laws of North Carolina;

The City and Contractor shall collectively be referred to as the "Parties", or individually, as "Party."

This is a service contract to provide Auctioneering Services for **six (6)** auctions. The sum to be paid by the City under this contract is **six point eight percent (6.8%)** of the gross sales of the auction.

Sec. 1. Attachments
The documents which are attached to this contract are a part of this Contract. These are the **Bid Forms, Instructions, Scope of Work, Special Conditions, Non-Discrimination Provision**, and EEO Provisions. In case of conflict, this contract "Service Contract" form shall control those documents.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's.
The Contractor shall comply with the provisions of this Contract and shall do all the work and furnish all of the materials and labor necessary to perform its obligations under this contract. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost
Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City Compensation
The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty (20) days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice. The City shall pay the Contractor for the Work as follows: The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors
(a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or
(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance

Company and any designated contractor performing Work under this Agreement shall maintain the minimum insurance as specified below:

Contractor shall purchase and maintain insurance coverage for not less than the following:

Commercial General Liability, covering:
- Premises/operations
- Products/completed operations (two years minimum, from completion of project)
- Broad form property damaged
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the agreement, in lieu of an original endorsement)
- Combined single limit not less than $1,000,000 per occurrence, with an annual aggregate on not less than $2,000,000.

Commercial Auto Liability, covering:
- Symbol 1, all vehicles
    - Owned, hired, and or borrowed vehicles
    - Employee vehicles if used in performance of this contract
- Combined single limit of $1,000,00
- City of Durham must be named additionally insured

Workers' Compensation Insurance, covering:
- Statutory benefits;
- Covering employees; covering office partners, officers, and relatives (who work on this contract)(this must be stated on the certificate)
- Employers liability, $1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:
- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII, or better.

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:

City of Durham Finance Department
Purchasing Division
101 City Hall Plaza
Durham N.C. 27701
Attention: Jonathan Hawley

Sec. 8. Performance of Work by City
If the Contractor fails to perform the Work in accordance with the schedule referred to in section 1 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits
The following exhibits are made a part of this contract: Bid Forms, Instructions, Scope of Work, Special Conditions, Non-Discrimination Provision and EOEA.
In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice
(a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Finance Department
Purchasing Division
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919) 560-4325.
Email: jonathan.hawley@durhamnc.gov

To the Contractor:

Wester Auction &Reality
269 Lancashire Run
Smithfield, NC 27577
The fax number is (866) 972-3322
Email: randy.wester@gmail.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal

Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. E-Verify Compliance

The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

Sec. 13. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing,

legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(*l*) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 14. Termination for Convenience ("TFC")

(a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 15. Trade Secrets; Confidentiality

The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

City of Durham
ATTEST:

CITY OF DURHAM

_____ By: _____

Pre-audit certificate, if applicable _____

Company
ATTEST:

Corporate Secretary
(Affix Corporate Seal)

Wester Auction & Realty Inc
Name of Corporation

by: Marsha L Wester

President ~~of Vice President~~

CITY OF DURHAM NORTH CAROLINA
SERVICE BID PROPOSAL FORM

(Use this form only)

Auctioneering Services

The **CITY OF DURHAM** invites your proposal for **Auctioneering Services** to be received until **3:00 p.m., August 28, 2015**, in the PURCHASING DIVISION, 101 City Hall Plaza, Durham, NC.

Proposal of WESTER AUCTION & REALTY INC
(hereinafter called **"BIDDER"**, organized and existing under the laws of the State of NC
doing business as (insert "a corporation", "a partnership", or as "an individual" as applicable) CORPORATION
to the **CITY OF DURHAM** (hereinafter called **"OWNER"**).

In compliance with your Invitation for Bids, Bidder hereby proposes to furnish all materials, tools, machinery, equipment, apparatus, labor, and all means necessary to perform all work in connection with the **Auctioneering Services**, in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated hereinafter.

By submission of this Bid, each Bidder certifies, and in the case of a joint Bid, each party thereto as to his/her own organization, that this Bid has been arrived at independently, without consultation, communication or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder acknowledges receipt of the following Addenda (if any):

The undersign has carefully examined the site of this work, and has informed him/herself fully in respect of the conditions of the place where the work is to be performed, and has examined the Drawings (if any) and Specifications and/or Scope of Work (if any), Conditions (General and/or Special), the Proposed Contract, and the Contract Documents relating thereto.

It is understood that the Owner reserves the right to reject any or all bids, or to award the Contract to the low, responsive, responsible Bidder taking into consideration quality, performance and time specified in the bid.

CITY OF DURHAM NORTH CAROLINA
SERVICE BID PROPOSAL FORM

(Use this form only)

On being awarded a Service Contract, the undersigned will execute a Contract for the Service of the work described in conformity with the Contract Documents in the form hereto attached.

Bidder agrees to furnish all labor, materials, tools, equipment, fees, and services and to do all things necessary to perform the work described in the Contract Documents for this bid in the following unit and/or lump sum prices:

In consideration of the sum of 6.8% of gross sales, I hereby agree to deliver to the City at the time, at the price, and at the places listed the services of auctioneering. I further agree to pay for all advertising expenses associated with the auction from my 6.8% fee.

PROPOSED SUBCONTRACTORS:

1. Name: _____
   Address: _____
   Telephone number _____
   State and License Number _____
   Type, extent, and dollar value of work to be performed: _____

2. Name: _____
   Address: _____
   Telephone number _____
   State and License Number _____
   Type, extent, and dollar value of work to be performed: _____

The Contractor agrees to execute a contract in the form of the agreement attached to the Bid Proposal.

The undersigned hereby designates as his/her office to which such notice of acceptance may be mailed, faxed, telegraphed, or delivered:

Wester Auction & Realty, Inc. NCAFL # 7026
269 Lancashire Run
Smithfield, NC 27577
Phone: (919) 422-5679
Fax: (866) 972-3322
email: randywester@gmail.com

CITY OF DURHAM NORTH CAROLINA
SERVICE BID PROPOSAL FORM

(Use this form only)

This bid may be withdrawn at any time prior to the scheduled time for the opening of the bids or any authorized postponement thereof.

It is understood that the Owner reserves the right to reject any or all bids, to waive any and all informalities and to accept the Bid most favorable to the City of Durham.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment and is in all respects fair without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. The bidder hereby makes an offer to the City of Durham in accordance with the bid documents, including this Bid Proposal Form and all enclosures. The undersigned individual certifies that he or she is authorized to sign this bid for the bidder.

This the 28 (Date) day of August (Month), 2015 (Year).

WESTER AUCTION & REALTY, INC
OFFICIAL LEGAL NAME OF BIDDER

269 LANCASHIRE RUN
ADDRESS

SMITHFIELD NC 27577
CITY STATE ZIP CODE

Marsha L Wester
AUTHORIZED SIGNATURE

MARSHA L WESTER President
PRINT NAME TITLE

(919) 422 5679 (919) 972 3322
TELEPHONE NUMBER FAX NUMBER

56-2150050
FEDERAL I.D. NUMBER

IN APPLICATION PROCESS
CITY OF DURHAM PRIVILEGE LICENSE NUMBER

SCOPE OF WORK/SPECIAL CONDITIONS

1. Auctioneer must have a North Carolina Auctioneers License.

2. Auctioneer shall provide the City with three (3) references and the total sale amounts from three (3) different municipal auctions with receipts totaling over $300,000 each. Bids which do not supply this information will be considered non-responsive. (See Attached Referenced Sheet)

3. This contract is for six (6) auctions (to be held once or twice a year).

4. It is understood that the only items to be sold will be automobiles, trucks, heavy equipment, and other sundry equipment

5. It is agreed that all items are to be sold on an "as is, where is" basis and that the City will take no responsibility for the condition of any equipment sold.

6. The auctioneer shall provide on the day of the auction the following personnel:

   a) A minimum of three (3) licensed auctioneers to conduct the sale. (List names and license numbers below)

   NAME JAMES R. WESTER LICENSE NO. 4558
   NAME JOHN T. MARTIN LICENSE NO. 9812
   * NAME RICKY L. LASHMIT LICENSE NO. 7543
   NAME RICHARD A. SMITH LICENSE NO. 5265
   NAME SANDRA SMITH-McLAMB LICENSE NO. 7876

   b) A minimum of two (2) "Floor Bid Catchers" to encourage bidders and to keep the Auctioneer informed of bids received.

   c) A minimum of two (2) cashiers to receive all monies for goods sold. Cashiers shall be responsible for final accounting of all monies in a satisfactory manner acceptable to the Purchasing Division. (4 cashiers on roster)

   d) A minimum of one (1) Title Clerk, who is a Notary Public, to issue titles of vehicles sold. (4 notaries on roster)

   e) A minimum of one (1) Clerk to record highest bid received and bidder's number on all items sold.

* See attached roster

Wester Auction & Realty, Inc.

Staff Auctioneers 2015

Name	*NCAL #*
James R. Wester	4558
Richard A. Smith	5265
Ronald W. Faison	1670
E. Scott Williams	2883
Sandra Smith-McLamb	7376
Rickey A. Lashmit	7543
John T. Martin	9812

SCOPE OF WORK/SPECIAL CONDITIONS

In addition to above personnel, the auctioneer shall at all times maintain an adequate staff of employees on duty for efficient operations as well as on-site supervision.

It is agreed that the personnel required in items 6a) through 6e) may be utilized to assign registration numbers to potential buyers.

7. Podium and Public Address System:

   a) The auctioneer shall provide a movable auctioneer's podium, stage, or platform complete with public address system. (Exceptions to this may be acceptable with prior approval from the Purchasing Division).

   b) The podium will be moved around the semi-circle of items as they are sold. Podium may be motorized vehicle or pulled by vehicle.

   c) The public address system should have a sufficient volume which will enable the Auctioneer to be adequately heard by a group of approximately 400 persons.

8. Advertising:

   a) The auctioneer shall arrange and be responsible for all promotions and advertisements of the sale. The advertising program selected for the sale shall be coordinated with and approved by the Purchasing Division in advance of each original publication date as to the scope and content of the advertising.

   b) Advertising shall include the printing and mailing of an official sale list. The mailing of this list will include individuals and companies on the Auctioneer's mailing list as well as the approximate 500 individuals and companies on the City's Purchasing Division mailing list.

   c) Newspaper advertisements in the Durham Herald-Sun, News & Observer are encouraged, but not required. News ad release shall appear not less than seven (7) days prior to the sale date: although, repetitious ads are encouraged continuously until the sale. Other advertisements for the sale such as TV, radio, Internet, or poster, etc. are also encouraged.

9. Refreshments:

   a) The auctioneer shall arrange and be responsible for refreshments (i.e. food and drink) to be provided at the auction.

SCOPE OF WORK/SPECIAL CONDITIONS

b) On the day of the auction the concessionaire shall be set up by 9:30 a.m., and shall remain at the auction until the auction is over.

10. Hours of Work:

a) The auctioneer or a responsible member of his staff must be available 1-2 days prior to the sale date to finalize the placement of items and the order of items for sale. He must also number or tag each item using the City's fixed asset number at least 24 hours prior to the sale as previously mentioned and be available to discuss and work out any last minute arrangements for the auction with a member of the Purchasing Division.

b) On the day of the auction the auctioneer and his complete staff shall be at the City's Fleet Maintenance Facility and set up by 9:00 a.m., the auction will commence at 10:00 a.m., following one (1) hour review of the merchandise by the public from 9:00 a.m. to 10:00 a.m. The auction is expected to last around four (4) hours.

c) Upon completion of auctioning all items for sale, a preliminary gross auction total will be provided to the City Purchasing Division.

11. Payment:

a) All checks accepted and cash accepted for the sale of equipment must be guaranteed by the auctioneer or his company.

b) A cashier's, certified, treasurer's, or official bank check shall be issued payable to the City of Durham Purchasing Division within twenty (20) working days of the sale for net monies collected from the auction. This payment will represent the total monies remaining from gross sales after deducting the 6.8 % Auctioneer Fee for conducting and advertising auction.

12. Records Required for Sale:

a) The auctioneer will submit to the Purchasing Division a computer generated report of all items sold which shall be shown by item, successful bidder's name and address, auction number, city fixed asset number, and department for division name, bid amount, amount collected and total gross sales.

b) A detailed list of advertising expenses incurred shall be submitted with issuance of payment to the City. This list must include invoices to verify the expenses and their scope.

SCOPE OF WORK/SPECIAL CONDITIONS

c) Special consideration may be given to firms that use Microsoft Excel for their record keeping. If available, the auctioneer shall provide the City Purchasing Division with all sales records on a USB Drive or CD-ROM.

13. The auctioneer agrees to abide by and be bound by all requirements relating to the "Code of Ethics" for public auctioneers as compiled by the North Carolina Auctioneer License Board.

14. The auctioneer shall train all personnel and be responsible for their appearance in appropriate clothing while conducting the sale. Some means of identification or connection with the auction company such as a uniform, all members of the auction company must wear matched color clothing, or accessory. The Purchasing Manager reserves the right to require the auctioneer to dismiss any employee from the sale site not conducting themselves in a proper manner.

15. The auctioneer and his staff must comply with all policies governing the operation of the sale as may be established by the Purchasing Division.

16. The Purchasing Manager shall reserve the right to audit the records of the auctioneer at any time during the sale.

17. The auctioneer shall be willing to hold as many conferences as may be required by the Purchasing Division to work out the details of the auction and/or the advertisement program.

18. This contract may be extended for up to four (4) additional auctions upon written agreement of both parties.

19. The City's Small and Disadvanataged Business Enterprises Ordinance is a part of this contract. Questions concerning these forms shall be directed to the Equal Opportunity/Equity Assurance Department at 919-560-4179.

20. Questions concerning this bid shall be directed to Jonathan Hawley, Purchasing Supervisor, by e-mail at jonathan.hawley@durhamnc.gov or by telephone at 919-560-4132.

SCOPE OF WORK/SPECIAL CONDITIONS

21. The Contractor to whom the award is made must carry insurance in the following minimum amounts:

Commercial General Liability, covering
- premises/operations
- products/completed operations
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than $1,000,000 per occurrence.

Automobile Liability Insurance, covering
- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than $1,000,000 per occurrence
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than $1,000,000 per occurrence

Crime Insurance, which shall include Employee Dishonesty Coverage, covering
- Crime/Fidelity Coverage: sufficient to cover all employees employed by the Auctioneer, who shall be responsible for handling all monies; Employee Dishonesty $500,000, Forgery/ Alteration $100,000, Theft, Disappearance, Destruction, Inside/Outside $10,000.

Workers' Compensation Insurance, covering
- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract); certificate must specify these individuals as covered ("ghost policies" not acceptable)
- employers' liability, $1,000.000.

Insurance shall be provided by:
- companies authorized to do business in the State of North Carolina.

ERIE INSURANCE

LOCAL AGENT:
BLINSON INSURANCE
503 HWY 70 E STE N
GARNER NC 27529
(919)772-2332

SCOPE OF WORK/SPECIAL CONDITIONS

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
  City of Durham, North Carolina
  attention: Finance Director
  101 City Hall Plaza
  Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

REFERENCES

(MUNICIPAL SELLERS ONLY)

NAME: City of Raleigh & Surrounding Municipalities

SALE DATE: 04/24/99

SALE AMOUNT: $1,143,630

TELEPHONE NUMBER: (919) 890-3241

CONTACT PERSON: Purchasing Agent (C. Ellis Wheeler, Jr, retired)

(See attached listing of previous auctions conducted for the City of Raleigh)

NAME: City of Raleigh & Surrounding Municipalities

SALE DATE: 05/04/02

SALE AMOUNT: $653,867

TELEPHONE NUMBER: (919) 831-6506

CONTACT PERSON: Vehicle Fleet Supervisor (Charlie Johnson, retired)

(See attached listing of previous auctions conducted for the City of Raleigh)

NAME: City of Durham

SALE DATE: 11/01/14

SALE AMOUNT: $496,730.00

CONTACT PERSON: Joseph W, Clark, (former) Purchasing Manager

(current) Fleet Management Director

TELEPHONE NUMBER: (919) 560-4101

(See attached listing of previous auctions conducted for the City of Durham)

Municipal Sellers for whom auctions have been conducted in past years that totaled less than $300,000:

Town of Cary, Cheryl Perry, Purchasing Manager, (919) 469-4077

County of Johnston, Steve Bizzell, Sheriff, (919) 989-5010

AUCTION RESULTS FOR
COMBINED MUNICIPAL AUCTIONS HELD AT
CITY OF RALEIGH FACILITY

SELLER	10/23/92	05/01/93	09/17/94	05/06/95	10/14/95	05/11/96	11/16/96	09/20/97	06/13/98	04/24/99	04/29/00	11/18/00	05/19/01	05/04/02	TOTALS BY SELLER
APEX		9,850	7,975	1,950		11,800	8,000	6,345	11,297	2,500	9,283	17,310		4,800	90,910
BENSON													10,600		10,600
CARY		58,157	65,325	16,750	35,420	71,750	22,910	150,785	68,240	88,700	142,205	39,730	144,895	138,725	1,043,592
CHATHAM CO								35,500				8,000		24,000	67,500
CLAYTON				9,400		5,200	11,950								26,550
CLEVELAND VFD								2,100							2,100
GARNER		8,569	19,149		12,635	9,900	9,100	21,240	52,950	59,305	38,050	13,660	17,958	4,560	267,076
JOHNSTON CO										87,450	56,450	35,900	9,650	33,850	223,300
MORRISVILLE		825	705		95		2,100			8,240	2,010	450		3,220	17,645
RALEIGH	125,255	150,979	148,315	193,395	116,675	143,042	162,740	232,377	346,624	889,405	409,783	259,055	381,680	406,131	3,964,547
RAL HOUSING												5,900	1,900	1,250	9,050
SELMA											13,950		11,250	8,700	33,900
WAKE FOREST													6,250	24,750	31,000
ZEBULON									2,179	8,030	9,235	10,765	4,100	4,081	38,390
TOTALS	125,255	227,471	241,469	221,495	164,825	241,892	216,800	448,347	481,290	1,143,530	680,966	390,770	588,283	653,867	5,826,150

Wester Auction Realty

City of Durham
Surplus Auctions
Conducted by Wester Auction Realty, Inc

SALE DATE	*GROSS SALES*	
11/07/98	$	227,812.00
11/06/99	$	355,746.00
11/04/00	$	435,450.00
09/08/01	$	306,117.22
05/15/02	$	631,243.00
11/20/04	$	278,128.50
11/12/05	$	286,755.50
10/14/06	$	486,112.50
01/27/07	$	324,173.00
06/23/07	$	487,395.00
04/05/08	$	649,040.00
11/05/08	$	388,210.62
09/26/09	$	923,735.00
09/25/10	$	440,770.00
11/12/11	$	495,532.50
10/06/12	$	402,652.50
10/26/13	$	501,095.00
11/01/14	$	496,730.00
H-T-D TOTAL	***$***	***8,116,698.34***

EEO PROVISIONS

During the performance of this Contract the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these provisions.

b. The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

c. The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.

d. In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts.

e. Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

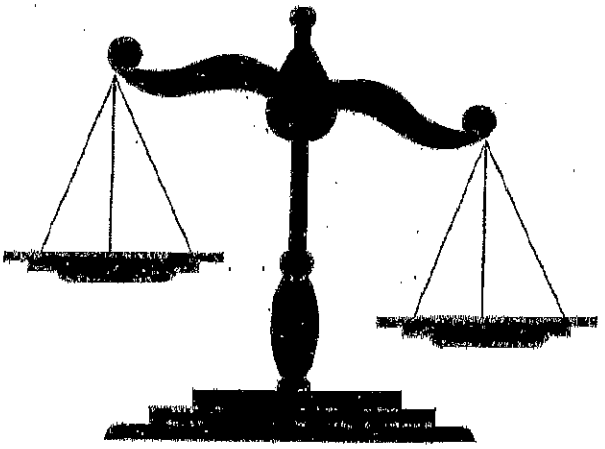
NON-DISCRIMINATION PROVISION

"The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under city contracts."

CITY OF DURHAM
SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PROCUREMENT FORMS

Revised 06/08



Mailing Address:

101 City Hall Plaza
Durham, North Carolina 27701
Phone: 919-560-4180
Facsimile: 919-560-4513

Street Address:

101 City Hall Plaza (Annex Building)
Durham, North Carolina 27701

The Department of Equal Opportunity/Equity Assurance
Good Things Are Happening In Durham

Small Disadvantaged Business Enterprise Ordinance
SDBE Procurement Documentation

If applicable information is not submitted with your bid, your bid will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your bid.

Managerial Profile must be used to list the managerial persons in your work force who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your bid.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

COMPLETE THIS FORM
DECLARATION OF PERFORMANCE BY VENDOR/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:

2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:

3. List anyone outside of your company with whom you will contract on this bid:

The undersigned vendor/contractor certifies that:

(a) It is normal business practice of the vendor/contractor to perform all elements of the contract with its own work force without the use of subcontractors/vendors; and

(b) That the above documentation demonstrates this firm's capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.

08/15/15
Date

Marsha L. Wester
Authorized Signature
President

DECLARATION OF PERFORMANCE BY VENDOR/CONTRACTOR

(1) Wester Auction & Realty, Inc. is a corporation chartered in and operating in North Carolina to provide auctioneering services to both public and private sector clients. These services entail marketing the auction, conducting the auction, handling financial transactions at the auction, providing detailed settlement to buyers and sellers, and managing the removal of merchandise after the auction. The only stockholders in the corporation are James R. (Randy) Wester and Marsha L. Wester. The president and majority stockholder of the corporation is Marsha L. Wester. Prior to incorporation, the company operated as a sole proprietorship, with James R. (Randy) Wester as owner.

(2) With a contract to liquidate municipal surplus, the normal flow involves securing the necessary sales inventory information and documents from the municipality, entering that data into a computerized data base, and preparing marketing materials to promote the auction. On the day of the auction, in addition to handling the live bidding process, the auction company staff processes buyer payments and vehicle titles. The auction company coordinates removal of the sold items from the site, based upon the municipality's pre-determined schedule.

(3) Wester Auction & Realty, Inc. does not utilize permanent employees to stage and conduct auctions. Staff needed to complete the above tasks are hired on an as-needed basis and a paid as subcontractors, not employees, to provide day labor services. The auction company maintains a revolving roster of these subcontractors and utilizes them based on their availability, skills relevant to the particular auction, and staffing needs for the particular auction. The most frequently used subcontractors are listed on the "Employee Breakdown" chart enclosed in this package. These subcontractors work under the direction and supervision of Wester Auction & Realty, Inc. and are bound by the same standards of performance. In addition, these subcontractors, when working on the auction site for the auction company, are covered by the auction company's business liability policy with the Erie Insurance Group. The City of Durham is listed as an additional insured on this policy.

RFP No - 16-0005
Renewed/updated 08/15/15
Marsha Wester

COMPLETE THIS FORM
Managerial Profile

Name of Firm: Wester Auction & Realty, Inc.

Contact person: James R (Randy) Wester

Title: VP - CEO & Lead Auctioneer

Address: 269 Lancashire Lane, Smithfield NC 27577

Telephone No.: (919) 422-5679

Date: 08/15/15

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Minority and Women Business Enterprises Ordinance.

Managerial Employees

NAME	POSITION	(YES/NO) MINORITY/WOMAN
Marsha L Wester	Pres/CFO	No/YES
James R Wester	V-P/CEO	No/NO
John T Martin	Auction Site Manager	No/NO

*"Minority" means an individual who is a citizen or lawful permanent resident of the United States and who is a "Black American", a person having origins in any of the Black racial groups of Africa. On building contracts, construction over $100,000.00 or federally funded projects, the federal and/or state definitions apply.

WESTER AUCTION & REALTY, INC.

ROSTER OF AUCTION STAFF

Professional	*Office/Clerical*	*Labor/Auction Floor*
James R. (Randy) Wester (NP)	Marsha L. Wester (NP)	Bradley Morrow
Richard A. Smith	Brenda Jones	Randy Wallace
Ronald W. Falson	Cynthia Smith	Westley Wallace
E. Scott Williams	Melissa Jones	Eddie Cruz
Sandra Smith-McLamb (NP)	Marilyn Moore	William Glassford
Rickey A. Lashmit	Robert Jones	Herschel A. Fields
John T. Martin	Michael McLamb (NP)	Andrew Amaya

(NP) denotes current Notary Public

RFP No. 16-0005

August 28, 2015

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

As a corporation chartered in and operating in the State of North Carolina, Wester Auction & Realty, Inc. does not currently utilize permanent employees to conduct auctions. All duties not handled by the two stockholders, James R. (Randy) Wester, auctioneer, and Marsha L. Wester, office manager, are subcontracted to other individuals on an as-needed basis. Wester Auction & Realty, Inc. selects those subcontractors best qualified to service the needs of the auction company's clients. The decision to select a subcontractor is based on a combination of factors including previous experience in the field, skills appropriate to the tasks, reliability, and past performance. Wester Auction & Realty, Inc. does not discriminate in its choice of subcontractors based on race, color, national origin, sex, age, religion, veteran status, sexual orientation, or disability. Wester Auction & Realty, Inc. maintains a working environment free of sexual harassment and intimidation. Wester Auction & Realty, Inc. complies in good faith with applicable local, state, and federal statutes concerning Equal Employment Opportunity.

City of Durham
Bid # 16-0005

Reviewed & Updated 08/15/15
Marsha Wester

COMPLETE THIS FORM OR ATTACH COMPUTERIZE FORM

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

Employment Category	Total Employees	Total Males	Total Females	White (M)	Black (M)	Hispanic (M)	Asian or Pacific Islander (M)	Indian or Alaskan Native (M)	White (F)	Black (F)	Hispanic (F)	Asian or Pacific Islander (F)	Indian or Alaskan Native (F)
Project Manger	2	1	1	1					1				
Professional	5	4	1	4					1				
Labor	7	7		5		2							
Clerical	7	2	5	2					5				
Totals	21	14	7	12		2			7				

Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)

Employment Category	Total Employees	Total Males	Total Females	White (M)	Black (M)	Hispanic (M)	Asian or Alaskan Islander (M)	Indian or Alaskan Native (M)	White (F)	Black (F)	Hispanic (F)	Asian or Pacific Islander (F)	Indian or Alaskan Native (F)
Project Manger													
Professional													
Labor													
Clerical													
Totals													