

AGREEMENT FOR SERVICES

An Agreement is hereby entered into between Bertolotto Real Estate & Auction Inc., and the City of Rapid City, South Dakota, a municipal corporation under the laws of the State of South Dakota, as follows:

1. Bertolotto Real Estate & Auction Inc. will conduct an auction of surplus property on Saturday, June 13, 2015 beginning at 10:00 A.M. at the City Street Department, 605 Steele Street, and shall furnish all equipment and personnel necessary to conduct such auction, including auctioneer, clerk and cashier, advertising and portable restrooms in accordance with standard auction procedures.
2. That the City of Rapid City agrees to pay for the services rendered a commission of 4.7% of gross auction proceeds. Advertising at actual cost, based on a budget not to exceed \$1000.00 and porta toilets based on a budget not to exceed \$250.00. Proceeds shall be delivered to the City Finance Office the first working day after the auction. Including bidder's list, sales tax summary, summary of total proceeds broken out by item, bid amount and bidder number. Payment shall be made as soon as possible upon submittal of an invoice and expense receipts by the auctioneer.
3. This agreement is with the option to renew for the following two years.

Dated this _____ day of _____ 2015.

THE CITY COUNCIL

ATTEST:

Sam Kooiker, Mayor

Pauline Sumption
Finance Officer

(SEAL)

United County / Bertolotto Real Estate
and Auction, Inc.

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
BRADEEN REAL ESTATE AND AUCTIONS, INC. FOR AUCTION SERVICES**

This Agreement is entered into this ____ day of _____, 2015, by and between the City of Rapid City, a municipal corporation organized under the laws of the state of South Dakota, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the "City," and Bertolotto Real Estate and Auctions, Inc., of 1102 Junction Avenue, Sturgis, South Dakota 57785, hereinafter referred to as the "Contractor." The parties agree to the following terms:

1. Auction Services. The Contractor agrees to conduct an auction of City's surplus property on June 13, 2015, beginning at 10:00 a.m. The auction shall take place at the City's Street Division property located at 605 Steele Street in Rapid City.

2. Personnel. Contractor shall furnish experienced and qualified personnel as necessary to professionally conduct the auction.

3. Equipment. Contractor shall furnish its own equipment for conducting the auction, including but not limited to computer hardware, software, and public address system. Contractor shall also furnish portable restrooms for use by the public; reimbursement not to exceed \$250.00.

4. Advertising. Contractor shall provide professional, accurate and appropriate advertising, using brochures, newspapers, signs, posters or other such media as determined by the Contractor to be in the best interest of the auction, for the purpose of soliciting prospective bidders and buyers. Advertising costs, which shall be paid by City, shall not exceed \$1,000 unless specifically approved in writing by the City Finance Officer.

5. Commission. The Contractor agrees to conduct the auction as described herein in exchange for a commission of 4.70% of the gross auction proceeds. The Contractor shall submit an invoice to the City itemizing its commission and advertising expenses with supporting receipts, which shall be paid by City as soon as practicable following receipt of the invoice.

6. Contractor's Warranties. The Contractor warrants that it shall

- a. Conduct the auction at the time and place specified
- b. Use its best efforts to obtain the highest price possible for the property;
- c. Have no liability or obligation to any person, firm or corporation with respect to sale of the property, except as specifically set forth in this Agreement;
- d. Pay the proceeds to the City the first working day following the auction;
- e. Provide an accounting of the auction to City that includes bidder's list, sales tax summary, proceeds broken out by item, bid amount and bidder number;
- f. Comply with all provisions of law relating to the conduct of this auction.

7. City's Warranties. The City warrants

- a. It is the legal owner of all property to be auctioned with full right and authority to sell the property;
- b. The property to be sold is free from any and all liens and encumbrances;
- c. It shall make the auction site available at least 2 days prior to the auction to allow Contractor to set up and prepare for the auction.
- d. It will execute all required instruments of conveyance as required to pass title of any property sold to the winning bidder; and
- e. Provide the Contractor all available information related to the property.

8. Insurance. The Contactor shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$100,000
B. Comprehensive General Liability (Including Contractual Liability and Completed Operations) Bodily Injury and Property Damage General Aggregate	\$1,000,000 each occurrence \$2,000,000

Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City's failure to obtain from the Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

9. Indemnity. Contractor agrees to indemnify, defend and hold the City harmless from and against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Contractor.

10. Option to Renew. City retain the right to renew this contract for the annual surplus auction in the years 2016 and 2017. City shall renew by giving Contractor written notice of renewal via first class mail at least ninety days prior to any proposed auction date.

11. Authority. This Agreement is entered into by the Finance Officer pursuant to the authority granted by SDCL 9-1-5 and § 3.04.090 of the Rapid City Municipal Code.

12. Relationship between the Parties. Contractor is an independent contractor of the City. This Agreement does not create an employment relationship between the City of Rapid City and Contractor or Contractor's agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Contractor and the City of Rapid City. No agent of Contractor shall be the agent of the City, and Contractor covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

13. Time of Essence. Time is of the essence of this Agreement.

14. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

15. Entire Agreement. This Agreement along with attached Quote Request and Proposal signed by Contractor constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Agreement may only be amended by a written document duly executed by all parties.

16. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

17. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

18. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

BERTOLOTTO REAL ESTATE AND AUCTIONS, INC.

CITY OF RAPID CITY

Bob Bertolotto, President

Pauline Sumption, Finance Officer