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AGREEMENT FOR AUCTION OF ABANDONED MOTOR VEHICLES

THIS AGREEMENT is made by and between Polk County and the Polk County Sheriff's Office, hereinafter combined as the "County," and Texas Auto Title & Registration Consultants, Inc., hereinafter "Texas Auto Title."

SECTION 1: RECITALS

WHEREAS, from time to time motor vehicles are abandoned throughout the County:

WHEREAS, Chapter 683 of the TEXAS TRANSPORTATION CODE, hereinafter "Chapter 683" authorizes a law enforcement agency to take custody of an abandoned motor vehicle and sets out certain mandatory notification and procedures for the public auction of an abandoned motor vehicle to permit transfer to the purchaser of an abandoned motor vehicle free and clear of all liens and claims of ownership;

WHEREAS, the County desires to employ Texas Auto Title to send out the required notices and administer and conduct public auctions of abandoned motor vehicles, in accordance with the provisions of Chapter 683;

WHEREAS, Texas Auto Title is willing to provide notification services and to administer and conduct auctions of abandoned motor vehicles that are in the County's custody, in accordance with the provisions of Chapter 683, in exchange for the consideration hereinafter described:

NOW, THEREFORE, subject to the terms and conditions and in consideration of the mutual promises hereinafter stated, the County and Texas Auto Title agree as follows:

SECTION 2: DEFINITIONS

Abandoned Motor Vehicle shall mean the following:

- (1) a motor vehicle that is inoperable and more than five years old and left unattended on public property for more than 48 hours;
- (2) a motor vehicle that has remained illegally on public property for a period of more than 48 hours;
- (3) a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours;
- (4) a motor vehicle left unattended on the right-of-way of a designated county, state, or federal highway within this state for more than 48 hours or for more than 12 hours on a turnpike project constructed and maintained by the Texas Turnpike Authority or a controlled access highway as defined by Section 541.302 of the TEXAS TRANSPORTATION CODE or as it may be amended; or
- (5) a motor vehicle that has been reported abandoned to the Sheriff's Office by a garagekeeper, as set forth and provided in Section 683.031 of the TEXAS TRANSPORTATION CODE.

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Garagekeeper shall mean an owner or operator of a storage facility, set forth in Section 683.001(2) of Chapter 683, or as it may be amended.

Sheriff's Office shall mean Polk County Sheriff's Office.

Motor Vehicle shall mean a vehicle that is subject to registration under Chapter 501 of the TEXAS TRANSPORTATION CODE, or as it may be amended.

Storage Facility shall mean a garage, parking lot, or establishment of the servicing, repairing, and parking of motor vehicles, as set forth in Section 683.001(7) of Chapter 683 or as it may be amended.

SECTION 3: DUTIES OF THE SHERIFF'S OFFICE

(A) The Sheriff's Office shall determine that an automobile is "abandoned" as defined in Chapter 683 or as it may be amended.

(B) The Sheriff's Office shall verify for Texas Auto Title whether a vehicle is reported stolen and maintain records in their office for two years.

(C) The Sheriff's Office shall provide to each garagekeepers within the County a copy of the list below policies, which sets out certain obligations the Sheriff's Office shall require of a garagekeeper to perform, as follows:

- (1) Garagekeepers who hold, store, or possess a motor vehicle that is deemed to be abandoned, as set forth in Sec. 683.031 of Chapter 683, shall notify Texas Auto Title, with copy to the Sheriff's Office. Notice to Texas Auto Title shall be sent to:

Texas Auto Title & Registration Consultants, Inc.

P.O. Box 18717

Corpus Christ, Texas 78480-8717

- (2) Garagekeepers shall pay the \$10.00 notification/reporting fee directly to Texas Auto Title.
- (3) All abandoned motor vehicles reported to the Sheriff's Office shall be considered to be in the custody of the Sheriff's Office whether the abandoned motor vehicle is stored at the garagekeeper's storage facility or removed by the Sheriff's Office in accordance with the provisions of Chapter 683.

(D) A motor vehicle abandoned someplace other than at a garagekeeper's facility, the Sheriff's Office shall notify Texas Auto Title within 24 hours after the Sheriff's Office has taken custody of such abandoned motor vehicle.

(E) If the Sheriff's Office hires, employs or otherwise contracts with any party to tow, preserve and store an abandoned vehicle (the "Wrecker Service"), the Sheriff's Office shall provide to Texas Auto Title the name, address and telephone number of such Wrecker Service, and the Sheriff's Office shall advise the Wrecker Service to contact Texas Auto Title to administer all of the procedures required by Chapter 683. Any contract, agreement, or document of hire between the Sheriff's Office and the Wrecker Service shall protect Texas Auto Title's rights and interests under this agreement, as an

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intended third party beneficiary.

SECTION 4: DUTIES OF TEXAS AUTO TITLE

- (A) Texas Auto Title shall provide such notice as is required by Chapter 683 to the last known registered owner of the motor vehicle and all lienholders of record.
- (B) If the abandoned motor vehicle is not reclaimed before or on the date stated in the notice as the last day to reclaim, Texas Auto Title shall sell the vehicle at a public auction. Proper notice of the public auction shall be given and the garagekeeper shall also be notified of the time and place of the auction.
- (C) Any remaining proceeds after reimbursement of expenses of the auction, preservation, the cost of towing and storing the vehicle, and all notice and publication costs shall be deposited in an escrow fund to be maintained for 90 days for the owner or lienholder(s) to claim. Calculations of amounts placed in escrow shall be made and done on a vehicle by vehicle basis. Texas Auto Title shall be paid fifteen percent (15%) of the proceeds placed into this fund that are ultimately distributed to any other agency, County, garagekeeper, or other entity, as compensation for administering such fund.

SECTION 5: FEES TO TEXAS AUTO TITLE

- (A) Texas Auto Title shall be entitled to charge and collect fees in the following amounts:
- (1) For each abandoned motor vehicle reported by a garagekeeper, a notification, administration, and auction fee of \$ 100 .
 - (2) For each abandoned motor vehicle stored in the Sheriff's Office's impound yard and processed for the Sheriff's Office by Texas Auto Title, a fee equal to fifteen percent (15%) of the gross sales auction price
 - (3) In addition, Texas Auto Title shall receive from the auction proceeds two percent (2%) of the gross proceeds of the sale of each abandoned motor vehicle, unless the gross proceeds are less than ten dollars (\$10). If the gross proceeds are less than or equal to ten dollars (\$10), Texas Auto Title shall retain the amount generated, up and including ten dollars (\$10).
 - (4) Texas Auto Title reserves the right to charge a Buyer's Premium to the successful buyer at the time of auction.
- (B) The auction sales proceeds for each abandoned motor vehicle sold shall be distributed in the following order:
- (1) Texas Auto Title shall be entitled to all fees owed to Texas Auto Title.
 - (2) Sheriff's Office shall be entitled any towing, storage, and notification fees owed to the Sheriff's Office.
 - (3) Garagekeeper shall be entitled any towing, storage, and notification fees to the garagekeeper.
 - (4) All remaining proceeds shall be deposited in an escrow fund to be maintained for ninety

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(90) days for the owner or lienholder(s) to claim.

(C) Any abandoned motor vehicle not sold at the public auction shall be considered sold to garagekeeper for the towing, storage, and notification fees owed to the garagekeeper. A "not sold" vehicle is one for which the auctioneer announced as available, offered for sale, attempted to solicit bids, but did not sell because the minimum bid was not offered and/or accepted, for whatever, and any reason. In such an event, the garagekeeper shall owe Texas Auto Title any notification, administration, or auction fees.

(D) Texas Auto Title shall look solely to the proceeds from the auction sale revenue for payment of all the aforementioned fees. In no event shall the County be liable to Texas Auto Title for any fees, if the auction sale revenue is not sufficient to cover its fees.

SECTION 6: AUTHORIZATION

The County hereby authorizes Texas Auto Title to execute in its stead the (i) notices to owners and lien holders and (ii) the Auction Sales Receipt provided for in provisions of Chapter 683.

SECTION 7: PROPERTY OF TEXAS AUTO TITLE

Any and all buyers and customer lists composed, generated, or used by Texas Auto Title are and shall remain the property of Texas Auto Title. The County agrees that at the conclusion of the term of this Agreement that the County will not use or employ said buyers and customer lists for any purpose related to the auctioning or disposing of abandoned motor vehicles. The County further agrees that the County will not disseminate or divulge said buyers and customer lists to any third party or entity during the term of this Agreement or following the expiration of this Agreement.

SECTION 8: TERM OF AGREEMENT

This Agreement shall commence on _____, 200__, and shall continue in force and effect for a period of two years thereafter, unless terminated earlier by either party for cause upon thirty (30) days written notice of intent to terminate.

SECTION 9: LIABILITY

Texas Auto Title is an independent contractor and is not an employee or servant of the County.

SECTION 10: INDEMNIFICATION OF THE COUNTY BY TEXAS AUTO TITLE

Texas Auto Title agrees to Defend, Indemnify and Hold Harmless the County from any and all suits, actions, damages, losses, claims, costs, penalties, liabilities and expenses, including but not limited to court costs and attorneys' fees, asserted against the County, its employees or agents, arising from or incurred because of or with respect to the willful violation or neglect by Texas Auto Title, its employees or agents of the notification and auction procedures set forth in the Act, or negligence on the part of Texas Auto Title, its servants, agents and employees. Such indemnification shall not be applicable if the County, its insurer(s), counsel, or agents do not allow Texas Auto Title to

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select and retain legal counsel of its choice, or handle the litigation, processing, and settlement of any case as it alone deems appropriate.

SECTION 11: ACCESS TO RECORDS

The County, upon reasonable notice and during normal business hours, is hereby granted access to review any books, account, and records kept by Texas Auto Title pertaining to the performance of Texas Auto Title's duties under this Agreement.

SECTION 12: SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such provision or invalidity, without invalidating the remainder of such provision or the remaining provision of this Agreement.

SECTION 13: ASSIGNMENT

This Agreement may not be assigned by any party.

SECTION 14: BINDING EFFECT

Subject to the provisions of Section 13, of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. The provision of Section 12, shall apply, notwithstanding the foregoing.

SECTION 15: ENTIRE AGREEMENT

This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the matters covered hereby.

SECTION 16: AMENDMENT

This Agreement may be amended only by an instrument in writing, (subsequently dated) executed by the parties hereto, in the presence of a Notary Public.

SECTION 17: CAPTIONS

The section and paragraph headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 18: GOVERNING LAW

This Agreement shall be construed and enforced in accordance with and governed by the law of the State of Texas. The parties hereto agree that this Agreement was entered into and is performable in Livingston, Texas.

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SECTION 19: COUNTERPARTS

This Agreement may be executed in multiple original counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

SECTION 20: COMPLAINTS

Complaints against auctioneer may be directed to:

Texas Office of Licensing and Regulation
PO Box 12517 Austin Texas 78711
512-463-6599

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Livingston, Texas as of the date and year first above written.

AGREED AND ACCEPTED:

Texas Auto Title & Registration Consultants Inc.

By: _____ **COPY**

County of Polk

By: _____ **COPY**