CITY OF GAUTIER
MEMORANDUM

To: Samantha Abell, City Manager

From: Cindy Steen, Purchasing Agent

Through: Cindy Russell City Clerk

Date: February 20, 2013

Subject: Auction Listing Agreement

REQUEST:
City Council authorization is requested for the City of Gautier to enter into an Auction Listing Agreement with Head Auctions & Realty to auction off items that were declared surplus on the January 15th 2013 council meeting. Order Number 181-2012.

BACKGROUND:
The City of Gautier will grant the Auctioneer the sole and exclusive right to sell the items that were declared surplus on January 15th 2013 for the highest and best bid or offer. The public auction shall be conducted online on the 7th – 15th of March until 7:00 p.m. Advertising expense for Auctioneer to advertise in paper will be $500.00. A seller's fee of 10% will be charged to the City of Gautier for all property items sold. All profits from this auction will be deposited back into the enterprise and general fund accounts.

RECOMMENDATION:
Based on the attached agreement, City staff recommends that City Council authorize entering into an Auction Listing Agreement with Head Auctions & Realty to auction off surplus items.

ATTACHMENT(S):
Head Auctions & Realty Agreement

HEAD AUCTIONS & REALTY

289 Commerce Park Dr., Suite A Ridgeland, MS 39157

AUCTION LISTING AGREEMENT FOR SALE OF REAL ESTATE AND/OR PERSONAL PROPERTY

1. **Agreement** - made this 9 day of August 2012 between Name: City of Gautier hereafter called Sellers and Head Auctions & Realty, 289 Commerce Park Dr. Suite A Ridgeland, MS 39157 hereafter called Auctioneer. Sellers grant the Auctioneer the sole and exclusive right to sell the following real and/or personal property described herein or on the schedule attached to and made past of this agreement. For the highest and best bid or offer, the Seller agrees to sell through Auctioneer, at public or private auction or a privately negotiated sale, the items (real and/or personal property) listed below and on the attached sheets. The Seller further warrants and represents that there are no other outstanding contracts or agreements of any kind for the sale or auction of this real and/or personal property. No item/s, lot/s or real estate shall be sold, removed, or withdrawn from the auction prior to the auction except by mutual written agreement between Sellers and Auctioneer. Real Estate to be auctioned:

_____.

Items: [ ] See Attached List [X] List to be Completed [ ] By Auctioneer [ ] By Sellers [ ] No Items [ ] No Real Estate
Other:

2. **Encumbrances** - Sellers represent that they have full power and authority to sell real estate and personal property and that the said property is free and clear of all liens and encumbrances except as follows; (If none, write none.)

Real Estate/Item	Address (Description)	Lien Holder	Address	Unpaid Balance
None				

Financing terms on real estate [ ] All Cash [ ] Owner Financing [ ] New Loan
Possession [ ] At Closing [ ] Other
Taxes to be prorated: County: _____ City: _____
Subject to the following leases or rights _____

3. **Delivery/Insurance** - It is the Seller's responsibility and liability to deliver to the Buyers a good and marketable title to all real and personal property, free and clear of all liens and encumbrances, etc. Sellers are liable for any and all claims, damages, expenses, or theft of any real or personal property prior to delivery of title to the Buyers irrespective of location. Sellers are responsible for properly insuring their own interest in the real estate and/or personal property, for any and all damage, liability, loss, theft, etc. Sellers understand that Auctioneer specifically does not take care, custody or control of the real and personal property. Auctioneer is authorized to stop people from trespassing. It is strictly and solely the Seller's responsibility and liability, irrespective of location, to insure and protect their real and personal property. Auctioneer is an agent only for the Seller and assumes no responsibility or liability for the real and personal property.

4. **Reserves** - It is mutually agreed that all real estate and personal property will be sold to the highest bidder or at a privately negotiated sale with the exception of items herein specified as reserved. If a bid price or offer equals or exceeds the reserve price, or the Sellers authorize the Auctioneer to accept the bid price or offer, the Auctioneer has earned his commission. Also, when the sale price on a reserved item, lot or real estate is above the reserve amount, the Auctioneer can apply this excess monetary amount towards the reduction of the reserve amount on other reserved items, lots or real estate thus reducing the other items, lots or real estate reserve price.

Reserve (Real Estate, Item or Lot)	Amount
	$Absolute

5. **Sole and Exclusive Right** - The Sellers grant the Auctioneer the sole and exclusive right to sell the real estate and/or personal property described herein or on the attached schedules. The Sellers will pay the Auctioneer commission whether said real estate or personal property is sold by whomsoever including the Sellers, whether at public or private auction or a privately negotiated sale. It is further agreed that the Auctioneer shall receive full commission on all real estate and personal property, reserved, sold (whether before, at or after the auction, to anyone who registered at the auction), withdrawn from the auction or transferred within 180 days after the auction.

6. **Cancellation** - In the event of any cancellation of this auction by the Sellers (direct or indirect), the Auctioneer will be reimbursed by the Sellers the full contract commission as established by an independent appraisal, plus all costs involved for advertising, advertising retractions, promotion, out of pocket expenditures, labor (including travel time), travel, tents, port-a-john, mobile office, etcetera, including attorney fees and court costs, if necessary.

Seller Initials ✓ CB Seller initials _____ Seller initials _____ Seller Initials _____

7. **Seller Compliance** - The Sellers agree to execute and deliver any and all required documents to Auctioneer or the intended parties in an efficient and prompt manner. The Sellers also agree to comply with all laws including, but not limited to, the Bulk Sales Act, the Uniform Commercial Code, Seller disclosures, etc. If requested, the Sellers will complete and sign any and all disclosure forms pertaining to condition of the real estate and/or personal property. These disclosures will be made available to potential Buyers, upon request or in bidder's packets. The Sellers are responsible for all compliance's and all expenses involved for compliances. During the term of the contract or any extensions, Seller agrees to refer to Broker all inquiries he may receive. Seller hereby acknowledges that the herein contained obligations of Broker constitute sufficient consideration for the execution of this contract. Seller agrees that exterior photos of stated property may be taken for listing, advertising, and appraisal. Seller further agrees to the use of his legal name on all documents.

8. **Deposits** - Seller agrees all deposits or down payments will be held in a trust account by Head Auctions & Realty, unless stated otherwise in the auction sales agreement. Upon Buyers forfeit of a deposit or down payment, the said deposit or down payment is considered payment to Head Auctions, up to Auctioneer's full commission and the Auctioneer in no case or manner will be held responsible by the Sellers for the Buyer's performance or non-performance to purchase.

9. **Promotion/Lotting** - The Auctioneer is granted the authority from the Sellers to prepare ads, place ads, post on website/s, promote, market, place signs and to set the terms, conditions, date, time and place for the auction in a manner the Auctioneer deems necessary. The Auctioneer is also granted the authority from the Sellers to piecemeal, lot, group and regroup all items (real and personal property) in a manner Auctioneer deems necessary.

10. **Indemnify** - Sellers further agree to indemnify and save harmless Auctioneer and his employees, agents, successors or assigns, against any and all claims, loss, liabilities, damages, demands, action or cause of action whatsoever in any manner arising from this auction or privately negotiated sale: before, during or after the auction. Auctioneer is not responsible for accidents. Sellers must insure their own liabilities, interests, real estate and personal property.

11. **Date** - Said public or private auction shall be conducted at online / ~~onsite~~ City: Gautier County: Jackson
State of: Mississippi Zip: 39553, on or about the 7 day of March, 2013, Time: [illegible]
Online auction Starts 3/7 End 3/13/13 @ 7pm. ~~[illegible]~~ ~~2012~~ 2013

12. **Expenses** - Sellers agree that the Auctioneer's fee/commission and all expenses incurred for conduction of the auction as agreed below (such as advertising, promotion, marketing, signage, labor (including travel time), travel, tent, port-a-john, equipment rental, etcetera) shall first be paid from the proceeds realized from the auction or privately negotiated sale before payment and satisfaction of any of the above described liens or encumbrances or legal fees. Sellers further agree that any and all checks or forms of payment made payable to Auctioneer, or taken as payment, are taken subject to collection. Auctioneer assumes no responsibility for collection of payments.
Real Estate NA with $ NA minimum fee and $ NA no sale fee.
Labor Fee Per Person Per Hour: $ NA Computer Operator Fee Per Person Per Hour: $ NA
All Marketing Expenses (est.): $ 500 Tent: $ NA Port-a-John: $ NA Other: $ NA
Clerk's Fee per Hour: $ NA Cashiers Fee per Hour: $ NA

13. **Sellers Fee:** A 10% Sale Fee will be charged to the seller for all personal property items sold. (~~To be determined~~)

14. **Commission** - The Sellers shall pay to the Auctioneer for services rendered a commission rate (Sale Fee) of the high bid price as shown in Section 13. Sellers agree that Auctioneer has the right to add a 15% Buyers Premium to any and all purchases. A Buyers Premium is a flat fee amount or a percentage of the high bid, which is added to the high bid amount to achieve the final contract price. This commission or fee shall be paid from all sales made during the period of this contract whether such sales are made at auction, by private treaty or otherwise. This commission or fee is considered payment to the Auctioneer.

15. **Binding** - It is agreed that this agreement shall be binding upon the undersigned and their respective heirs, administrators, executors, powers of attorney, trustees, agents, receivers, successors and assigns, etc. The terms and conditions of this agreement shall survive settlement or lack thereof. If there is more than one owner, the obligations imposed by this agreement shall be joint and several. If any term of this agreement is determined by a court to be unenforceable, the remainder of this agreement shall not be affected.

Seller Initials ✓ [illegible] Seller initials _____ Seller initials _____ Seller Initials _____

AGENCY DISCLOSURE: the Listing Broker is hereby authorized to:
(A) Offer other licensed Brokers sub-agency and compensation. [ ] Yes [ ] No
(B) Offer other licensed Brokers cooperation and compensation who represent the Buyer. [ ] Yes [ ] No
(C) Participate in and offer disclosed dual agency and compensation. [ ] Yes [ ] No

PROPERTY DISCLOSURE: Seller shall complete and sign a "Seller's Disclosure Statement" as required by law in the State of Mississippi. This form shall be returned to the Listing Broker within twenty-four (24) hours after signing this listing agreement.

DISCRIMINATION: Seller acknowledges understanding that he is required by law not to discriminate in the sale of property on the basis of race, color, religion, sex or national origin. Seller further understands that the real estate industry is also bound by law to not discriminate on the basis of race, color, religion, sex or national origin and that the industry cannot honor any request to observe discriminatory requirements.

BID RIGGING: Bid rigging is a felony and will be reported to the proper authorities if observed.

16. Signatures - In witness whereof the parties have executed this agreement in (triplicate) on the date set forth above. Sellers have had the opportunity to read the foregoing agreement and have had the opportunity to have legal advice as to its contents, requirements and liabilities, and agree to the responsibilities, obligations, and conditions thereof. This written agreement constitutes the entire agreement between the parties and no modification of this agreement shall be effective unless made in writing and signed by the parties. Sellers acknowledge receipt of a copy of this agreement and attached schedules (if any). The parties agree that any litigation or dispute concerning enforcement of this contract shall be brought in the State of Mississippi, the jurisdiction shall be in the County of Madison and that Mississippi law shall govern. The prevailing party shall be entitled to an award of court costs and attorney fees incurred.

Seller Cindy Steen Phone 228-497-3518 Address 3330 Hwy 90

Seller _____ Phone _____ Address _____

Seller _____ Phone _____ Address _____

Seller _____ Phone _____ Address _____

Auctioneer Head Auctions, William L. Head Auctioneer's License MS LISC # 892

Real Estate Company Head Auctions & Realty Broker's License R.E. 19794

Agent _____ Broker _____

Representative: Kent Prejean Title: Sales + Marketing Manager