

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.45
(ID # 4753)

MEETING DATE:

Tuesday, July 25, 2017

FROM : PURCHASING:

SUBJECT: PURCHASING AND FLEET SERVICES: Approve and Execute the Agreement With CHP Enterprises, dba Ken Porter Auctions C-Corporation, for Auctioning /Liquidation Services of Surplus Miscellaneous Equipment for Five Years. [All Districts], [\$4,000,000 – 5 Year Revenue] 100% Contract Revenue

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the revenue agreement with CHP Enterprises dba, Ken Porter Auctions C-Corporation, for auctioning services for an annual estimated revenue amount of \$800,000, for five years, and:
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to sign amendments that do not change the substantive terms of the Agreement as approved by County Counsel.

ACTION:

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: July 25, 2017
xc: Purchasing

Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	
NET COUNTY COST	\$0	\$0	\$ 0	\$0
SOURCE OF FUNDS: 100% Contract Revenue			Budget Adjustment No	
			For Fiscal Year: 17/18-21/22	

C.E.O. RECOMMENDATION: [CEO use]

BACKGROUND:

Summary

The County of Riverside utilizes licensed auctioneering and liquidation companies for the sale of surplus County property. The County seeks the best possible net return of proceeds on sales from auction service providers. The auctioneering categories include passenger cars and vans; Sheriff patrol cars; light, medium and heavy duty trucks; construction equipment; fire trucks; heavy equipment; diesel-powered highway road vehicles; and, miscellaneous equipment including, but not limited to furniture, shelving, office equipment/supplies, tools, and appliances. The revenue received from the sale of vehicles is returned to Fleet Services or departments such as Department of Waste Management, Transportation Land Management Agency and other county departments that own vehicles. The revenue of the sale of surplus office equipment/supplies is allocated to Supply Services to support the county's surplus operations.

Impact on Residents and Businesses

Citizens and businesses will benefit from the open and competitive public sales of public property.

SUPPLEMENTAL

Additional Fiscal Information

None

Contract History and Price Reasonableness

County Purchasing Department released a Request for Proposal (RFP) PUARC-1560, soliciting proposals for Auctioning/Liquidation Services of Surplus Miscellaneous Equipment. The RFP was sent to sixteen (16) potential bidders and was advertised on the Purchasing web site. Four (4) bid responses were submitted in response to the RFP. The proposals were reviewed by the evaluation team from the Sheriff Department, Fleet Services, and Department of Waste Resources. Each bid response was evaluated based on the criteria set forth in the RFP: overall response to the RFP requirements, bidders experience, ability, location of facilities, cost/sellers fee, references, credentials, resumes, licenses, certifications and financials.

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STATE OF CALIFORNIA**

The cost /seller auction fee proposals submitted ranged from 0% to 20%. Based on the overall evaluation of the proposals submitted, it is the recommendation of the evaluation team to select CHP Enterprises dba Ken Porter Auctions, as the most responsive/responsible bidder for these services.

Ken Porter Auctions will charge no fees or auction commission to the county on the sale of surplus items. Additionally, they are providing a 2.5% rebate on auction proceeds. No other responding vendor provided a rebate on auction proceeds.


Lisa Brandl, Director of Purchasing and Fleet Services

7/17/2017


Gregory V. Priamos, Director County Counsel

7/17/2017

SERVICE AGREEMENT

For

**AUCTIONEERING SERVICES / LIQUIDATING SERVICES FOR
COUNTY SURPLUS AND MISCELLANEOUS EQUIPMENT**

between

COUNTY OF RIVERSIDE

and

CHP ENTERPRISES, DBA KEN PORTER AUCTIONS C-CORPORATION



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This Agreement, made and entered into this ____ day of ____, 2017, by and between, CHP ENTERPRISES, DBA KEN PORTER AUCTIONS C-CORPORATION (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY").

The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, at the prices stated in Exhibit B, Payment Provisions.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms that it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continues in effect through June 30, 2022, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Compensation

3.1 The CONTRACTOR shall receive compensation based on the rates set forth in Exhibit B- Vendor Compensation, consisting of two (2) pages, for services performed in accordance with the terms of this Agreement, attached hereto and by this reference incorporated herein. The COUNTY is Not Responsible for any fees or costs Incurred above or beyond the Contracted Amount.

3.2 No price increases will be permitted during the term of this Agreement unless mutually agreed by both parties. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost

increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the completion of the reports, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. For this Agreement, send the original and duplicate copies of invoices to:

Send Payments and Reports to:
County of Riverside Purchasing and Fleet Services
2980 Washington Street
Riverside, CA 92504
Attn: Fiscal Services

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (PUARC-96209-001-06/22); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year-end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY. The material, reports or products may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected; the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce

the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

9. Independent Contractor/Employment Eligibility

9.1 The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

9.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

9.3 Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution

of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use by Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational

procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

PURCHASING AND FLEET SERVICES
2980 WASHINGTON STREET
RIVERSIDE, CA 92504
ATTN: PURCHASING AGENT

CONTRACTOR

CHP ENTERPRISES
DBA KEN PORTER AUCTIONS
C-CORPORATION
21140 S. AVALON BLVD
CARSON, CA 90745
ATTN: JIM IDO

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the

CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

21.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and

Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

By: 

Name: JOHN TAVAGLIONE

Title: CHAIRMAN, BOARD OF SUPERVISORS

Dated: JUL 25 2017

CHP ENTERPRISES DBA
KEN PORTER AUCTIONS C-CORPORATION

By: 

Name: James D. Porter

Title: VP

Dated: 6/20/2017

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 

Neal Kipnis,
Deputy County Counsel

ATTEST:

KEDIA HARPER-IHEM, Clerk

By: 

DEPUTY

EXHIBIT A SCOPE OF WORK

The CONTRACTOR shall be responsible for publicly auctioning both COUNTY vehicles and miscellaneous equipment. CONTRACTOR shall continue to maintain a current and valid auctioneer license issued by the California State Board of Equalization as well as possessing all other licenses and permits as required by state and local code, for the duration of this Agreement. CONTRACTOR (Auctioneer/Liquidator) will be a licensed auctioneer or a licensed auction house or auction company, possession of a license issued by the California State Board of Equalization for auctioneering of items, collection of taxes, except on vehicles, as well as possessing all other licenses and permits as required by state, city and local code. Auction Services for vehicles is governed by the Department of Motor Vehicles for the State of California and the auctioneer shall follow all the guidelines and regulations required. The COUNTY does not guarantee any amount of business to any vendor or vendors.

I. CONTRACTOR Responsibilities:

The following items will be the responsibilities of the CONTRACTOR for the Agreement:

A). Auction Location/Site:

1. CONTRACTOR shall be responsible for having one (1) site/location within COUNTY to allow departments to drop off COUNTY Surplus Equipment. Site will have 24 hour security system and fire alarm system.
2. The CONTRACTOR auction site shall have secure storage area with adequate 24-hour security intrusion and fire alarm system devices of sufficient size to accommodate high value material. Alarm devices shall be sufficient to provide reasonable security of the facility and shall be available for inspection by COUNTY personnel without notice. The site shall provide for the COUNTY minimum auction space of fifty (50) automotive vehicles, several heavy equipment diesel powered highway road vehicles and around eighty (80) pallets of miscellaneous items for each auctions. Auctioneer/Liquidator shall provide protection from the elements for the heavy equipment diesel powered highway road vehicles while in their possession. The site shall have ample sanitary restroom facilities and viewing area for the average attendance at the auction. The site shall provide adequate accommodations for the handicapped meeting all ADA title 74 codes.

B). Transportation to site: CONTRACTOR shall be responsible for transportation from possible multiple sites (*within the COUNTY of Riverside, which include location in the Western and Eastern COUNTY Areas*), of all sale items to site/location. The minimum response time following a request for service from the COUNTY shall be two (2) working days. CONTRACTOR shall be responsible for any damage incurred once the items have left the possession of the COUNTY, including during transportation from various COUNTY locations and be liable for any damage occurring to others as a result.

1. Vehicles: CONTRACTOR shall transport all vehicles to the auction site via motor carrier. Driving vehicles and heavy equipment diesel powered highway road vehicles to the site shall not be permitted without prior written permission of the COUNTY.
 - a. Selling out-of-state: In case heavy equipment diesel powered highway road vehicles are not equipped with a California State approved Diesel Trap, the vehicle must be sold and registered out-of-the-state-of-California.
2. Personal Property/Equipment: CONTRACTOR shall provide at least one enclosed trailer to be left at the COUNTY Purchasing and Fleet Services at all times for the loading of miscellaneous surplus items.

When advised by the COUNTY, the CONTRACTOR shall exchange with an empty trailer. CONTRACTOR may be required, on occasion, to pick up and provide labor to load, miscellaneous surplus at other locations throughout the COUNTY.

3. Storage Trailer: The COUNTY requires an empty replacement storage trailer at the time of full trailer pick-up. If the CONTRACTOR cannot affect the immediate dropping off of an empty storage trailer, when picking up the full trailer, a maximum of 48 hours shall be allowed to deposit an empty storage trailer. The designated contact of the COUNTY must be kept informed of the replacement trailer status.

- a. Non-performance: Failure to deliver an empty storage trailer, within the 48-hour time frame will seriously jeopardize the performance of the contract and could be considered "just-cause" to terminate the contract for non-performance.

4. Direct Deliveries: On a rare occasion a COUNTY department completely redecorates their offices and replaces all their furniture, it may be necessary to have the office furniture supplier directly transport to your location the old desks, file cabinets etc., to be sold at the next regularly scheduled auction. The COUNTY will coordinate the furniture supplier delivery with your receiving people and should be treated like any other surplus COUNTY property.

C). Advertising: CONTRACTOR shall be responsible for all auction advertising in accordance with California Civil Code 2080.4, preparation and expense including, but not limited to, printing and mailing the auction flyers, ads in trade publications and regional and local newspapers five(5) business days before the auction. At a minimum the Press Enterprise and Desert Sun Newspapers shall be used. Copies of auction flyers and evidence of advertising shall be provided to the COUNTY for each auction.

1. CONTRACTOR shall state in each advertisement of announcement of the auction that all items are sold "as is" and/or other language advising that there are no expressed or implied warranties connected with the item being sold, and that all items are not returnable. Items that appear to be new or in a manufacturer's packaging are not presumed to be complete with all parts present, or to function as intended.
2. CONTRACTOR shall prepare catalogs or brochures of material and any vehicles to be offered at the auction, listing, among other matters, any minimum prices, make, year and model description of the vehicles and equipment to be sold. The COUNTY will also receive copies of these catalogs and/or brochures.
3. CONTRACTOR shall advise the bidder of known defective conditions of items offered for sale and shall advise the bidder of such defective conditions before offering the item at auction.

D). Sales Planning: CONTRACTOR shall be responsible for all sale planning and shall use his knowledge, expertise, experience, advertising and good marketing practices in grouping and exhibiting COUNTY vehicles and material in order to bring maximum returns to the COUNTY.

E). Auctions: CONTRACTOR shall be responsible for all labor, materials, equipment and accessories needed for conducting the sale. All auctions shall be conducted in accordance with California Vehicle Code Section 24007.5 and all other applicable state and local code sections.

1. Auction Dates: CONTRACTOR shall hold a minimum of fifteen (15) auctions per calendar year. In no event shall the period of time between auctions exceed thirty (30) calendar days.

2. Public Inspection: CONTRACTOR shall make vehicles and material available for inspection at least one day prior to the auction.
 3. DMV Forms: CONTRACTOR shall prepare all routine Department of Motor Vehicles forms required to sell heavy equipment diesel powered highway road and regular gas powered vehicles, including but not limited to Release of Liability Form and Odometer Disclosure Statement.
 4. Title/Registration: CONTRACTORS shall provide on behalf of the buyer the services necessary to register, license or transfer title to the vehicle or other personal property to the buyer.
 5. Grouping of Items: All vehicles shall be sold separately. As the CONTRACTOR deems appropriate, CONTRACTOR may combine lots or items offered by the Supply Services Division for the purpose of maximizing return and facilitating the sale, while leaving remaining items sufficiently intact to encourage their sale.
 6. Access to Auctions: The CONTRACTOR shall provide access to authorized COUNTY employees to the vehicle storage facilities and to the COUNTY property auction sales to monitor and record bid prices.
- F). Reporting/Disbursement of Funds: CONTRACTOR shall account for all sales revenues resulting from any sales, and to disburse any funds from such sales within seven (7) working days from the auction date. The Director of Purchasing or his designee shall receive as a minimum the following reports within seven days following the sale:
1. A complete listing of all successful bidders by bid number, indicate name, address, email, and phone number.
 2. Copy of all bills of sales.
 3. Late Payment: In the event the CONTRACTOR fails to remit within the time stipulated, the COUNTY will charge an additional 2% per month on amounts past due.
- G) Surety Bond: A Surety Bond in the amount of \$125,000; this amount maybe raised as auction sale amount warrants, provided by an "A" Rated Surety.
- H) Sales Expenses: It is understood that the COUNTY will perform a safety inspection on all vehicles pursuant to the California Vehicle Code prior to the vehicles being offered up to the auction company; the inspection includes the following:
- | | | |
|------------------|-------------------------|--|
| Operating Lights | Windshield | Tires 6/32 of an inch of tread or more |
| Seat Belts | Brakes 50% or less wear | No significant fluid leakage |
- Remove all logos, decals and numbers off any COUNTY Vehicles if present
1. It also understood that the CONTRACTOR will obtain the necessary smog certificate and pass along any charges to the buyer. Those vehicles meeting the standards will be offered for sale to the public through the normal auction process. Vehicles not in compliance will be offered for sale in conjunction with CONTRACTOR regularly scheduled events to licensed dealers and/or auto dismantlers only.

2. The COUNTY of Riverside Fleet Services will provide to the CONTRACTOR the current DMV title when the vehicle is picked up for transport to their auction site/location. If this is not practicable the document(s) will be sent via overnight letter.
- I) Diesel Vehicles: Highway Road Vehicles, Heavy Diesel Powered Equipment without proper Diesel traps will need to be sold "as is" out-of-the-state of California and Registered "out-of-state" in accordance with Title 13 of the California Code.
- J) Vendor must provide detail of their "Green Program" for recycling of products in a proper manner that is in compliant with all State and Federal Regulations.

II. Online Bidding Specifications

- A. CONTRACTOR to provide a comprehensive web-based online auction system for disposal of surplus property and material.
- B. The web-based auction system shall use the latest Internet technologies to provide an easy to use/user friendly solution for accessing, interacting, communicating and conducting surplus disposal tasks and related activities, including but not limited to program administration, posting of auctions, marketing of auctions, receiving and evaluating bids, blocking bidders, invoicing awarded bidders, and receiving payments.
- C. The web-based auction system shall allow the seller to determine and enter auction dates, amount of time bids may be submitted, minimum acceptable bids, bid increment amounts, reserve amounts, and terms of sale.
- D. The web-based auction system shall allow the seller to enter a purchase description of the item(s) to be auctioned. The description area, if limited, shall be of sufficient size to provide a complete description of the auctioned item.
- E. The web-based auction system shall be equipped with an image capture feature that allows photos to be automatically cropped, scaled and stored for viewing by bidders.
- F. The web-based auction system shall allow the seller to conduct multiple and ongoing auctions while complying with all state and local laws and requirements.
- G. The web-based auction system shall provide online real time or near real time reporting of bids. An online summary of bid activity shall also be provided.
- H. The web-based auction system shall require potential bidders to register prior to submitting a bid.
- I. The web-based auction system shall provide the seller with the ability to block certain bidders.
- J. The ability to control daily bids and sales must be a feature of the proposed system.
- K. The web-based auction system shall be updated and maintained on an ongoing basis to meet current and future needs and requirements, and to resolve system defects and problems.

- L. All activities and transactions processed through the web-based auction system must be fully auditable for a period of five (5) years after the transaction.
- M. The web-based auction system shall allow the seller to retrieve and print the documentation required to substantiate the surplus disposition and provide a complete audit trail.
- N. The web-based auction system shall provide a variety of reports detailing the system's utilization and activities. The reports shall track in-progress and completed activities.
- O. A comprehensive log must be available in printed form after each transaction. The transaction log shall include the following: Identification of the seller, description and quantity of each item auctioned, list of all bids, winning bid, summary of invoices issued, and summary of payments received.
- P. CONTRACTOR shall provide complete training to the contracting Agency Members. Training may be web-based.
- Q. CONTRACTOR shall have and maintain a customer help desk to be accessed via telephone and/or email.
- R. CONTRACTOR shall provide marketing of the web-based auction service to promote utilization of the site by potential buyers.
- S. CONTRACTOR shall provide links from contracting Riverside COUNTY Member Agency web sites to auction site.
- T. CONTRACTOR shall provide contracting Riverside COUNTY Member Agency a reconciliation report with each admin fee payment to substantiate the amount of the payment.
- U. A web-based auction system that provides a seller with the ability to first offer the surplus property for reallocation within the agency is desired.
- V. Web based system auction system should have the ability to provide direct billing.

III. Software Functionality

- A. CONTRACTOR will provide the URL for web-based online auction system.
- B. CONTRACTOR to describe the capabilities and functionality of web-based online auction system.
- C. CONTRACTOR will indicate how often upgrades are made to the system, including the testing processes used before implementation of an upgrade.
- D. CONTRACTOR will provide customer feedback (from sellers and buyers) is received, considered and responded to. What is the typical methodology for requesting customization and typical time frame for responding to such a request?
- E. CONTRACTOR accounting process and online accounting capabilities, including but not limited to documentation of invoicing, payment and non-payment by bidders.

- F.** CONTRACTOR tools and customizations available to the seller for creating auctions, including but not limited to, internal reallocation; dutch or split auctions, reserve prices, minimum bid requirements, bidder deposit requirements, ability to copy previous auctions, ability to repost previous auctions, etc.
- G.** CONTRACTOR tools available to the bidder for participating in auctions, including but not limited to, email notifications, proxy bidding, identity protection, etc.
- H.** CONTRACTOR reporting capabilities available to the seller. Provide sample copies of a transaction log and admin fee payment reconciliation report.
- I.** CONTRACTOR will indicate how long auction records are maintained for download by the seller.
- J.** CONTRACTOR will maintain system's security capabilities and the privacy protection available to both sellers and buyers.
- K.** CONTRACTOR will provide website information to include administrative access to the site. Include instructions and screen shots for navigating the various site tools.
- L.** CONTRACTOR will describe the steps for a member to begin using the web-based auction system.
- M.** CONTRACTOR will describe the process for creating and conducting an auction on line.

EXHIBIT B
PAYMENT PROVISIONS

Service	Patrol Vehicle / Patrol SUV	Associated Fees
	*Buyer Fee	15%
	Transportation	No cost
	De-Logo/Clean-Up	No cost
	Paint Doors	No cost
	*Smog Fee	\$58.25
	*DMV Doc Fee	\$65.00
Service	Cars	
	*Buyer Fee	15%
	Transportation	No cost
	De-Logo/Clean-Up	No cost
	Paint Doors	No cost
	* Smog Fee	\$58.25
	*DMV Doc Fee	\$65.00
Service	Pick UP Trucks	
	*Buyer Fee	15%
	Transportation	No cost
	De-Logo/Clean-Up	No cost
	Paint Doors	No cost
	* Smog Fee	\$58.25
	*DMV Doc Fee	\$65.00
Service	Vans	
	*Buyer Fee	15%
	Transportation	No cost
	De-Logo/Clean-Up	No cost
	Paint Doors	No cost
	* Smog Fee	\$58.25
	* DMV Doc Fee	\$65.00
Service	(SUV) Sport Utility Vehicle	
	*Buyer Fee	15%
	Transportation	No cost
	De-Logo/Clean-Up	No cost
	Paint Door	No cost
	*Smog Fee	\$58.25
	*DMV Doc Fee	\$45.00

Service	Heavy Equipment Diesel Powered Vehicles	
	*Buyer Fee	15%
	Transportation	No cost
	De-Logo/Clean-Up	No cost
	Paint Doors	No cost
	* Smog Fee	No cost
	*DMV Doc Fee	\$65.00

Service	Misc. Surplus 48 Foot Trailer	
	*Buyer Fee	15%
	Hourly Rate labor to load trucks	\$40.00 PER HOUR
	Extra rate for pick up at sites other than the greater Riverside area.	\$40.00 PER HOUR

Explanation of Fees:

*Buyer Fee: Fee will be charged to the Buyer and not to the COUNTY.

* Smog Fee: Fee will be charged to the Buyer and not to the COUNTY.

* DMV Doc. Fee: Fee will be charged to the Buyer and not to the COUNTY.

2.5% Rebate will apply to all categories in Exhibit B. Rebate based on Sales.