

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

AGREEMENT

34453

THIS AGREEMENT is made and entered, in duplicate, as of October 18, 2016, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 11, 2016, by and between CHP ENTERPRISES DBA KEN PORTER AUCTIONS, a California corporation ("Contractor"), with a place of business at 21140 S. Avalon Blvd., Carson, California 90745, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with auctioneering services ("Project"); and

WHEREAS, City has selected Contractor in accordance with City's administrative procedures and City has determined that Contractor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Contractor perform these specialized services, and Contractor is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Contractor shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described at the rates or charges shown in Exhibit "B", attached to this Agreement and incorporated by this reference.

B. Contractor may select the time and place of performance for these services; provided, however, that access to City documents, records and the like, if needed by Contractor, shall be available only during City's normal business

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hours and provided that milestones for performance, if any, are met.

C. Contractor shall reimburse and provide payment to the City within 10 days of close of each auction with a certified bank check, cashier check or wire transfer. This process is more particularly described in Exhibit "A".

D. Consultant represents that Consultant has obtained necessary information on conditions and circumstances that may affect performance and has conducted site visits, if necessary.

E. CAUTION: Contractor shall not begin work until this Agreement has been signed by both parties and until Contractor's evidence of insurance has been delivered to and approved by City.

2. TERM. The term of this Agreement shall commence at midnight on November 1, 2016, and shall terminate at 11:59 p.m. on October 31, 2018, unless sooner terminated as provided in this Agreement, or unless the services or the Project is completed sooner. The parties have the option to extend the term for two (2) additional one (1) year periods.

3. COORDINATION AND ORGANIZATION.

A. Contractor shall coordinate its performance with City's representative, if any, named in Exhibit "C", attached to this Agreement and incorporated by this reference. Contractor shall advise and inform City's representative of the work in progress on the Project in sufficient detail so as to assist City's representative in making presentations and in holding meetings on the Project. City shall furnish to Contractor information or materials, if any, described in Exhibit "D", attached to this Agreement and incorporated by this reference, and shall perform any other tasks described in the Exhibit.

B. The parties acknowledge that a substantial inducement to City for entering this Agreement was and is the reputation and skill of Contractor's key employee, Gene Govoreau. City shall have the right to approve any person proposed by Contractor to replace that key employee.

1 4. INDEPENDENT CONTRACTOR. In performing its services,
2 Contractor is and shall act as an independent contractor and not an employee,
3 representative or agent of City. Contractor shall have control of Contractor's work and the
4 manner in which it is performed. Contractor shall be free to contract for similar services to
5 be performed for others during this Agreement; provided, however, that Contractor acts in
6 accordance with Section 9 and Section 11 of this Agreement. Contractor acknowledges
7 and agrees that (a) City will not withhold taxes of any kind from Contractor's compensation;
8 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
9 on Contractor's behalf; and (c) City will not provide and Contractor is not entitled to any of
10 the usual and customary rights, benefits or privileges of City employees. Contractor
11 expressly warrants that neither Contractor nor any of Contractor's employees or agents
12 shall represent themselves to be employees or agents of City.

13 5. INSURANCE.

14 A. As a condition precedent to the effectiveness of this
15 Agreement, Contractor shall procure and maintain, at Contractor's expense for the
16 duration of this Agreement, from insurance companies that are admitted to write
17 insurance in California and have ratings of or equivalent to A:V by A.M. Best
18 Company or from authorized non-admitted insurance companies subject to Section
19 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
20 by A.M. Best Company, the following insurance:

21 (a) Commercial general liability insurance (equivalent in scope to
22 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
23 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
24 coverage shall include but not be limited to broad form contractual liability,
25 cross liability, independent contractors liability, and products and completed
26 operations liability. City, its boards and commissions, and their officials,
27 employees and agents shall be named as additional insureds by
28 endorsement (on City's endorsement form or on an endorsement equivalent

1 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10
2 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),
3 and this insurance shall contain no special limitations on the scope of
4 protection given to City, its boards and commissions, and their officials,
5 employees and agents. This policy shall be endorsed to state that the
6 insurer waives its right of subrogation against City, its boards and
7 commissions, and their officials, employees and agents.

8 (b) Workers' Compensation insurance as required by the California
9 Labor Code and employer's liability insurance in an amount not less than
10 \$1,000,000. This policy shall be endorsed to state that the insurer waives
11 its right of subrogation against City, its boards and commissions, and their
12 officials, employees and agents.

13 (c) Professional liability or errors and omissions insurance in an
14 amount not less than \$1,000,000 per claim.

15 (d) Commercial automobile liability insurance (equivalent in scope
16 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
17 amount not less than \$500,000 combined single limit per accident.

18 B. Any self-insurance program, self-insured retention, or
19 deductible must be separately approved in writing by City's Risk Manager or
20 designee and shall protect City, its officials, employees and agents in the same
21 manner and to the same extent as they would have been protected had the policy
22 or policies not contained retention or deductible provisions.

23 C. Each insurance policy shall be endorsed to state that coverage
24 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
25 written notice to City, shall be primary and not contributing to any other insurance
26 or self-insurance maintained by City, and shall be endorsed to state that coverage
27 maintained by City shall be excess to and shall not contribute to insurance or self-
28 insurance maintained by Contractor. Contractor shall notify City in writing within five

1 (5) days after any insurance has been voided by the insurer or cancelled by the
2 insured.

3 D. If this coverage is written on a "claims made" basis, it must
4 provide for an extended reporting period of not less than one hundred eighty (180)
5 days, commencing on the date this Agreement expires or is terminated, unless
6 Contractor guarantees that Contractor will provide to City evidence of uninterrupted,
7 continuing coverage for a period of not less than three (3) years, commencing on
8 the date this Agreement expires or is terminated.

9 E. Contractor shall require that all subconsultants or contractors
10 that Contractor uses in the performance of these services maintain insurance in
11 compliance with this Section unless otherwise agreed in writing by City's Risk
12 Manager or designee.

13 F. Prior to the start of performance, Contractor shall deliver to City
14 certificates of insurance and the endorsements for approval as to sufficiency and
15 form. In addition, Contractor shall, within thirty (30) days prior to expiration of the
16 insurance, furnish to City certificates of insurance and endorsements evidencing
17 renewal of the insurance. City reserves the right to require complete certified copies
18 of all policies of Contractor and Contractor subconsultants and contractors, at any
19 time. Contractor shall make available to City's Risk Manager or designee all books,
20 records and other information relating to this insurance, during normal business
21 hours.

22 G. Any modification or waiver of these insurance requirements
23 shall only be made with the approval of City's Risk Manager or designee. Not more
24 frequently than once a year, City's Risk Manager or designee may require that
25 Contractor, Contractor's subconsultants and contractors change the amount, scope
26 or types of coverages required in this Section if, in his or her sole opinion, the
27 amount, scope or types of coverages are not adequate.

28 H. The procuring or existence of insurance shall not be construed

1 or deemed as a limitation on liability relating to Contractor's performance or as full
2 performance of or compliance with the indemnification provisions of this Agreement.

3 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
4 contemplates the personal services of Contractor and Contractor's employees, and the
5 parties acknowledge that a substantial inducement to City for entering this Agreement was
6 and is the professional reputation and competence of Contractor and Contractor's
7 employees. Contractor shall not assign its rights or delegate its duties under this
8 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
9 of City, except that Contractor may with the prior approval of the City Manager of City,
10 assign any moneys due or to become due Contractor under this Agreement. Any
11 attempted assignment or delegation shall be void, and any assignee or delegate shall
12 acquire no right or interest by reason of an attempted assignment or delegation.
13 Furthermore, Contractor shall not subcontract any portion of its performance without the
14 prior approval of the City Manager or designee, or substitute an approved subconsultant
15 or contractor without approval prior to the substitution. Nothing stated in this Section shall
16 prevent Contractor from employing as many employees as Contractor deems necessary
17 for performance of this Agreement.

18 7. CONFLICT OF INTEREST. Contractor, by executing this Agreement,
19 certifies that, at the time Contractor executes this Agreement and for its duration,
20 Contractor does not and will not perform services for any other client which would create a
21 conflict, whether monetary or otherwise, as between the interests of City and the interests
22 of that other client. And, Contractor shall obtain similar certifications from Contractor 's
23 employees, subconsultants and contractors.

24 8. MATERIALS. Contractor shall furnish all labor and supervision,
25 supplies, materials, tools, machinery, equipment, appliances, transportation and services
26 necessary to or used in the performance of Contractor 's obligations under this Agreement,
27 except as stated in Exhibit "D".

28 9. OWNERSHIP OF DATA. All materials, information and data

1 prepared, developed or assembled by Contractor or furnished to Contractor in connection
2 with this Agreement, including but not limited to documents, estimates, calculations,
3 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
4 models, reports, summaries, drawings, designs, notes, plans, information, material and
5 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
6 and City shall have the unrestricted right to use and disclose the Data in any manner and
7 for any purpose without payment of further compensation to Contractor. Copies of Data
8 may be retained by Contractor but Contractor warrants that Data shall not be made
9 available to any person or entity for use without the prior approval of City. This warranty
10 shall survive termination of this Agreement for five (5) years.

11 10. TERMINATION. Either party shall have the right to terminate this
12 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
13 prior written notice to the other party. In the event of termination under this Section, City
14 shall pay Contractor for services satisfactorily performed and costs incurred up to the
15 effective date of termination for which Contractor has not been previously paid. The
16 procedures for payment in Exhibit "A" shall apply. On the effective date of termination,
17 Contractor shall deliver to City all Data developed or accumulated in the performance of
18 this Agreement, whether in draft or final form, or in process. And, Contractor acknowledges
19 and agrees that City's obligation to make final payment is conditioned on Contractor's
20 delivery of the Data to City.

21 11. CONFIDENTIALITY. Contractor shall keep all Data confidential and
22 shall not disclose the Data or use the Data directly or indirectly, other than in the course of
23 performing its services, during the term of this Agreement and for five (5) years following
24 expiration or termination of this Agreement. In addition, Contractor shall keep confidential
25 all information, whether written, oral or visual, obtained by any means whatsoever in the
26 course of performing its services for the same period of time. Contractor shall not disclose
27 any or all of the Data to any third party, or use it for Contractor's own benefit or the benefit
28 of others except for the purpose of this Agreement.

1 12. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a
2 breach of confidentiality with respect to Data that: (a) Contractor demonstrates Contractor
3 knew prior to the time City disclosed it; or (b) is or becomes publicly available without
4 breach of this Agreement by Contractor; or (c) a third party who has a right to disclose does
5 so to Contractor without restrictions on further disclosure; or (d) must be disclosed pursuant
6 to subpoena or court order.

7 13. ADDITIONAL COSTS AND REDESIGN.

8 A. Any costs incurred by City due to Contractor's failure to meet
9 the standards required by the scope of work or Contractor's failure to perform fully
10 the tasks described in the scope of work which, in either case, causes City to request
11 that Contractor perform again all or part of the Scope of Work shall be at the sole
12 cost of Contractor and City shall not pay any additional compensation to Contractor
13 for its re-performance.

14 B. If the Project involves construction and the scope of work
15 requires Contractor to prepare plans and specifications with an estimate of the cost
16 of construction, then Contractor may be required to modify the plans and
17 specifications, any construction documents relating to the plans and specifications,
18 and Contractor's estimate, at no cost to City, when the lowest bid for construction
19 received by City exceeds by more than ten percent (10%) Contractor's estimate.
20 This modification shall be submitted in a timely fashion to allow City to receive new
21 bids within four (4) months after the date on which the original plans and
22 specifications were submitted by Contractor.

23 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
24 amended, nor any provision or breach waived, except in writing signed by the parties which
25 expressly refers to this Agreement.

26 15. LAW. This Agreement shall be construed in accordance with the laws
27 of the State of California, and the venue for any legal actions brought by any party with
28 respect to this Agreement shall be the County of Los Angeles, State of California for state

1 actions and the Central District of California for any federal actions. Contractor shall cause
2 all work performed in connection with construction of the Project to be performed in
3 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
4 county or municipal governments or agencies (including, without limitation, all applicable
5 federal and state labor standards, including the prevailing wage provisions of sections 1770
6 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any
7 fire marshal, health officer, building inspector, or other officer of every governmental
8 agency now having or hereafter acquiring jurisdiction.

9 16. PREVAILING WAGES.

10 A. Contractor agrees that all public work (as defined in California
11 Labor Code section 1720) performed pursuant to this Agreement (the "Public
12 Work"), if any, shall comply with the requirements of California Labor Code sections
13 1770 *et seq.* City makes no representation or statement that the Project, or any
14 portion thereof, is or is not a "public work" as defined in California Labor Code
15 section 1720.

16 B. In all bid specifications, contracts and subcontracts for any
17 such Public Work, Contractor shall obtain the general prevailing rate of per diem
18 wages and the general prevailing rate for holiday and overtime work in this locality
19 for each craft, classification or type of worker needed to perform the Public Work,
20 and shall include such rates in the bid specifications, contract or subcontract. Such
21 bid specifications, contract or subcontract must contain the following provision: "It
22 shall be mandatory for the contractor to pay not less than the said prevailing rate of
23 wages to all workers employed by the contractor in the execution of this contract.
24 The contractor expressly agrees to comply with the penalty provisions of California
25 Labor Code section 1775 and the payroll record keeping requirements of California
26 Labor Code section 1771."

27 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
28 constitutes the entire understanding between the parties and supersedes all other

1 agreements, oral or written, with respect to the subject matter in this Agreement.

2 18. INDEMNITY.

3 A. Contractor shall indemnify, protect and hold harmless City, its
4 Boards, Commissions, and their officials, employees and agents ("Indemnified
5 Parties"), from and against any and all liability, claims, demands, damage, loss,
6 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
7 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
8 in connection with (1) Contractor's breach or failure to comply with any of its
9 obligations contained in this Agreement, including any obligations arising from the
10 Project's compliance with or failure to comply with applicable laws, including all
11 applicable federal and state labor requirements including, without limitation, the
12 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
13 acts, errors, omissions or misrepresentations committed by Contractor, its officers,
14 employees, agents, subcontractors, or anyone under Contractor's control, in the
15 performance of work or services under this Agreement (collectively "Claims" or
16 individually "Claim").

17 B. In addition to Contractor's duty to indemnify, Contractor shall
18 have a separate and wholly independent duty to defend Indemnified Parties at
19 Contractor's expense by legal counsel approved by City, from and against all
20 Claims, and shall continue this defense until the Claims are resolved, whether by
21 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
22 breach, or the like on the part of Contractor shall be required for the duty to defend
23 to arise. City shall notify Contractor of any Claim, shall tender the defense of the
24 Claim to Contractor, and shall assist Contractor, as may be reasonably requested,
25 in the defense.

26 C. If a court of competent jurisdiction determines that a Claim was
27 caused by the sole negligence or willful misconduct of Indemnified Parties,
28 Contractor's costs of defense and indemnity shall be (1) reimbursed in full if the

1 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
2 percentage of willful misconduct attributed by the court to the Indemnified Parties.

3 D. The provisions of this Section shall survive the expiration or
4 termination of this Agreement.

5 19. AMBIGUITY. In the event of any conflict or ambiguity between this
6 Agreement and any Exhibit, the provisions of this Agreement shall govern.

7 20. NONDISCRIMINATION.

8 A. In connection with performance of this Agreement and subject
9 to applicable rules and regulations, Contractor shall not discriminate against any
10 employee or applicant for employment because of race, religion, national origin,
11 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
12 disability. Contractor shall ensure that applicants are employed, and that employees
13 are treated during their employment, without regard to these bases. These actions
14 shall include, but not be limited to, the following: employment, upgrading, demotion
15 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
16 or other forms of compensation; and selection for training, including apprenticeship.

17 B. It is the policy of City to encourage the participation of
18 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
19 procurement process, and Contractor agrees to use its best efforts to carry out this
20 policy in its use of subconsultants and contractors to the fullest extent consistent
21 with the efficient performance of this Agreement. Contractor may rely on written
22 representations by subconsultants and contractors regarding their status.
23 Contractor shall report to City in May and in December or, in the case of short-term
24 agreements, prior to invoicing for final payment, the names of all subconsultants
25 and contractors hired by Contractor for this Project and information on whether or
26 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
27 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

28 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in

1 accordance with the provisions of the Ordinance, this Agreement is subject to the
2 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
3 Long Beach Municipal Code, as amended from time to time.

4 A. During the performance of this Agreement, the Contractor
5 certifies and represents that the Contractor will comply with the EBO. The
6 Contractor agrees to post the following statement in conspicuous places at its place
7 of business available to employees and applicants for employment:

8 "During the performance of a contract with the City of Long Beach, the
9 Contractor will provide equal benefits to employees with spouses and its
10 employees with domestic partners. Additional information about the City of
11 Long Beach's Equal Benefits Ordinance may be obtained from the City of
12 Long Beach Business Services Division at 562-570-6200."

13 B. The failure of the Contractor to comply with the EBO will be
14 deemed to be a material breach of the Agreement by the City.

15 C. If the Contractor fails to comply with the EBO, the City may
16 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
17 to become due under the Agreement may be retained by the City. The City may
18 also pursue any and all other remedies at law or in equity for any breach.

19 D. Failure to comply with the EBO may be used as evidence
20 against the Contractor in actions taken pursuant to the provisions of Long Beach
21 Municipal Code 2.93 et seq., Contractor Responsibility.

22 E. If the City determines that the Contractor has set up or used its
23 contracting entity for the purpose of evading the intent of the EBO, the City may
24 terminate the Agreement on behalf of the City. Violation of this provision may be
25 used as evidence against the Contractor in actions taken pursuant to the provisions
26 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

27 22. NOTICES. Any notice or approval required by this Agreement shall
28 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,

1 postage prepaid, addressed to Contractor at the address first stated above, and to City at
2 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
3 to the City Engineer at the same address. Notice of change of address shall be given in
4 the same manner as stated for other notices. Notice shall be deemed given on the date
5 deposited in the mail or on the date personal delivery is made, whichever occurs first.

6 23. COPYRIGHTS AND PATENT RIGHTS.

7 A. Contractor shall place the following copyright protection on all
8 Data: © City of Long Beach, California _____, inserting the appropriate year.

9 B. City reserves the exclusive right to seek and obtain a patent or
10 copyright registration on any Data or other result arising from Contractor's
11 performance of this Agreement. By executing this Agreement, Contractor assigns
12 any ownership interest Contractor may have in the Data to City.

13 C. Contractor warrants that the Data does not violate or infringe
14 any patent, copyright, trade secret or other proprietary right of any other party.
15 Contractor agrees to and shall protect, defend, indemnify and hold City, its officials
16 and employees harmless from any and all claims, demands, damages, loss, liability,
17 causes of action, costs or expenses (including reasonable attorney's fees) whether
18 or not reduced to judgment, arising from any breach or alleged breach of this
19 warranty.

20 24. COVENANT AGAINST CONTINGENT FEES. Contractor warrants

21 that Contractor has not employed or retained any entity or person to solicit or obtain this
22 Agreement and that Contractor has not paid or agreed to pay any entity or person any fee,
23 commission or other monies based on or from the award of this Agreement. If Contractor
24 breaches this warranty, City shall have the right to terminate this Agreement immediately
25 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
26 due under this Agreement or otherwise recover the full amount of the fee, commission or
27 other monies.

28 25. WAIVER. The acceptance of any services or the payment of any

1 money by City shall not operate as a waiver of any provision of this Agreement or of any
2 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
3 Agreement shall not constitute a waiver of any other or subsequent breach of this
4 Agreement.

5 26. CONTINUATION. Termination or expiration of this Agreement shall
6 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
7 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

8 27. TAX REPORTING. As required by federal and state law, City is
9 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
10 Contractor shall be solely responsible for payment of all federal and state taxes resulting
11 from payments under this Agreement. Contractor shall submit Contractor's Employer
12 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
13 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
14 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
15 Contractor provides one of these numbers.

16 28. ADVERTISING. Contractor shall not use the name of City, its officials
17 or employees in any advertising or solicitation for business or as a reference, without the
18 prior approval of the City Manager or designee.

19 29. AUDIT. City shall have the right at all reasonable times during the
20 term of this Agreement and for a period of five (5) years after termination or expiration of
21 this Agreement to examine, audit, inspect, review, extract information from and copy all
22 books, records, accounts and other documents of Contractor relating to this Agreement.

23 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
24 designed to or entered for the purpose of creating any benefit or right for any person or
25 entity of any kind that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.


OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

CHP ENTERPRISES DBA KEN PORTER AUCTIONS, a California corporation

October 31, 2016

By 
Name Raymond Claridge
Title PRESIDENT

October 31, 2016

By 
Name JAMES LIDO
Title VICE PRESIDENT

"Contractor"

CITY OF LONG BEACH, a municipal corporation

Nov. 18, 2016

By 

City Manager
Assistant City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Agreement is approved as to form on November 15, 2016.

CHARLES PARKIN, City Attorney

By 
Deputy

EXHIBIT “A”

Scope of Work



City of Long Beach
Purchasing Division
333 West Ocean Boulevard, 7th Floor
Long Beach, CA 90802

3. SCOPE OF PROJECT/SERVICES OVERVIEW

The City requires the services of an auction firm to provide auctioneering services, which shall include, but are not limited to, the public sale of surplus motor vehicles and miscellaneous items with no out-of-pocket expense to the City. The successful firm (contractor) shall conduct all auctions in accordance with all Federal and State laws, rules and regulations, as well as necessary licenses, permits, and certificates.

Contractor shall provide all personnel, advertising and marketing, and services required for conducting public auctions for the City's surplus property. Contractor shall supply their own auction space where these services shall take place. The intent is to maximize the return of funds to the City through public sales of the City's surplus property.

Contractor shall assign a sufficient number of employees to perform the required services. Contractor is responsible for providing training and supervision of the personnel assigned to perform services under the contract. Contractor shall assign a contract manager, and a designated alternate, to act as a liaison for the Contractor. The contract manager and designated alternate shall have full authority to act on behalf of the Contractor in all matters related to the daily operation of the contract. Contractor shall ensure a high standard of conduct by its personnel, including compliance at all times with any applicable State and Federal regulations related to auctions and the specific requirements of the contract.

Contractor shall develop a marketing plan including advertising for the auction services to ensure the availability of sufficient buyers to attain a reasonable value of sales. The marketing plan shall include newspaper, other print media, electronic or Internet advertising, direct mail, and contractor's website. Costs for the initiation, completion or any such associated costs for all marketing and advertisement are entirely the responsibility of the Contractor, and shall not be reimbursed in any manner by the City. An overview of the marketing plan shall be submitted with the contractor's proposal; including samples of ads, e-mail brochures, and other media.

Contractor shall provide maintenance of all auction records and the chronology of the bidding for all auction items. Contractor shall furnish all tools, equipment apparatus, facilities, transportation, labor and materials necessary to provide the auction services. The services shall be performed at such times and places as directed by and subject to the approval of the City. All vehicles and items provided are on an "as is" basis.

Contractor shall conduct at least two (2) auctions per month.



City of Long Beach
Purchasing Division
333 West Ocean Boulevard, 7th Floor
Long Beach, CA 90802

7.14 MINIMUM MANDATORY REQUIREMENTS

- 7.14.1 Contractor must be licensed by the Department of Motor Vehicles as a vehicle dealer. A copy of valid license must be submitted with proposal.
- 7.14.2 Contractor must possess a valid and unrevoked Seller's Permit from the State Board of Equalization pursuant to California Vehicle Code, Section 11617 (a)(6) 11701(f). A copy of valid permit must be submitted with proposal.
- 7.14.3 Contractor must have an Auctioneer/Auction Company Bond on file with the Secretary of State pursuant to California Civil Code, Section 1812.600 in the amount of \$20,000. A copy of bond must be submitted with proposal.

Copies of all licenses, permits, and bond shall be submitted with Proposal. Failure to submit copies of required documents may cause the City to deem the Proposal as non-responsive.



Our History

Ken Porter Auctions has delivered “Full-Circle” auction services to Southern California since 1962. We are one of the oldest and most trusted PUBLIC auto auctions in North America, specializing in “Government Agencies” vehicle and equipment disposal.

We are locally owned and deliver personalized services to many agencies in a fully “customizable” format. Regardless of what your vehicle remarketing or miscellaneous disposal needs are, we will deliver. We sell anything from golf carts, cars and trucks, to computers, furniture and office equipment, to yachts, airplanes and helicopters. If you need to convert it to cash, call us.

Everyone is a major customer at Ken Porter Auctions. Whether you need to sell one vehicle or item or hundreds, your business is always important to us

Our Services

Ken Porter Auctions offer “One Call Does It All” services for our clients. Here is all you need to do:

- Fax, e-mail, or click the mouse and your Consignment Agreement goes directly to KPA or you can enter your data from our website, it’s your choice. Your Consignment Agreement will immediately be entered into our system and given to our In-House Transportation Department or you may choose to delivery your vehicle(s) or item(s) directly to us.
- All current and historical data will be available to you on our secured website, 24 hours a day, 7 days a week, 365 days of the year.
- Your vehicle will be sold at the next scheduled KPA auction.
- A complete and detailed expense breakdown of each vehicle of item sold will accompany your settlement check.

Online Auctions: Multiple ways to bid Online!

- 1st thru KPA’s Custom Built Live Online Auction System.
- 2nd thru our Partnership with Proxibid expanding Bidders to over 400,000 Potential Buyers.
- Every Ken Porter Auction has the availability for Live Online Auctions, Timed Auctions and Prebidding to Live Events

In addition, KPA provides the following:

- Large Public and Dealer attendance at each bi-monthly auction.
- Dynamic website, receiving more than 1,500,000 visits per year.
- Convenient access to updated the City of Long Beach’s records via our website.
- Radio, TV, and Newspaper advertising including Bakersfield Californian, Hoy, Orange County Register, San Diego Union Tribune, KNX, Machinery Trader, Truck Paper, just to name a few.
- Reconditioning and repair service is available.
- COLOR brochures mailed out before each sale, plus e-mail blasts.
- Title documentation is completed by our In-House DMV Department. “Special” DMV services are also available.
- Vehicle storage at NO cost to our clients.
- Conveniently located in Carson, CA, near the 110 and 405 freeways.

Transportation Fleet

KPA provides transportation services using company owned and operated transportation vehicles for the pick- up and transport of vehicles, equipment and miscellaneous items.



The fleet includes:

- 3 Tractor Trucks each with 53 foot hydraulic low beds
- 2 Tractor Trucks each with an 8 car carrier
- 1 Tractor truck to haul dry van semi-trailers
- 18 45 foot 3-foot dry van trailers
- 2 24-foot stake bed trucks for misc. items

Facility

Ken Porter auctions has over 300 auction spaces for vehicles, large and oversized trucks. 2 Secure Surplus Warehouses for housing surplus items and small Equipment. Ample parking for over 300 Persons within walking distance from KPA as well as 8 ADA Compliant Parking Spaces On-Site. Auction Facility has 24-hour security when non KPA personnel not onsite as well as 24 video surveillance, Intrusion Alarm and Fire Alarm.

Workflow

Notification & Transportation

Requests for pick up should be sent electronically by e-mail or faxed to KPA. The request shall contain the VIN number, make and model of the vehicle, location and who the driver should contact upon arrival for pick-up.

The Contract Administrator shall then schedule the pick-up with the in house transportation department. Documentation with details of the pick-up is prepared and given to the driver.

Pick-up usually occurs within seventy-two hours of notification or as requested. KPA strives to ensure that all the City of Long Beach pick-up requests occur in an efficient and timely manner. Twenty-four hours prior to the scheduled pick up KPA will telephone the appropriate contact to confirm the pickup and ask if there are any further instructions regarding gaining access to the facility.

When the driver arrives at the location for pick up the contact provided will be notified.

Prior to loading the vehicle for transport, the driver will verify by checking the VIN, that the right vehicle is being picked-up.

Vehicles will be transported directly to the auction facility. KPA becomes fully responsible for the vehicles at the time they are picked up by our transport vehicles.

Upon arrival at the auction facility, the Yard Manager will check the VIN numbers of the vehicles as they are unloaded. The vehicles will immediately be logged and entered into the database. After being entered into the database the vehicle is placed in line to be inspected and to be scheduled for any pre- auction services necessary (See Sales Preparation and Finalization)

The City of Long Beach shall provide to KPA, free and clear title and ownership documentation, if applicable, within a timely manner, to allow KPA to confirm and address any fees, penalties, lien status or other information that may inhibit or negatively affect the anticipated value of the item or vehicle. The City of Long Beach agrees to deliver required documentation within three (3) days of the sale date and acknowledges KPA's right to remove an item or vehicle from the sale should the lack of said documentation be viewed as critical to transfer or anticipated worth of such.

The City of Long Beach will maintain any records regarded as important or relative, outside of those delivered by KPA. The City of Long Beach will also provide such documents as requested by KPA to assist with compliance of duties set forth in this agreement. KPA will also comply with and provide documentation of such to protect the City of Long Beach's rights under the consignment provisions of the Uniform Commercial Code and other such sales related documentation not included in the reports otherwise provided to the City of Long Beach.

The City of Long Beach warrants that all titles to property, if applicable, are free and clear of any liens or encumbrances.



It is further stipulated that all property shall be sold **“As Is, Where Is”** without any warranty by the City of Long Beach of KPA as to the condition or workability at the time of the sale and that the buyers have purchased such property based on their own inspection and assessment.

Sales Preparation and Finalization

AUCTION PREPARATION - To prepare LA DWP’s vehicles for auction, KPA will at the minimum perform the following:

- Complete an Equipment Inspection Report on each vehicle;
- Wash and vacuum interior and exteriors of vehicles;
- Removal of all decals and identification numbers
- Have Smog and Safety tests made as required;
- Remove all exempt license plates and return to City of Long Beach;
- Place AS IS notice and a Lot Number on each vehicle.
- Place any pertinent stickers on items (OSHA Crane, CARB Notices, NMVTIS Statement)

Miscellaneous items will be sorted into the most saleable lots utilizing KPA’s marketing and auction expertise and experience. The City of Long Beach’s items will be kept in separate lots from others’ lots.

KPA will obtain a smog certification test for vehicles requiring such to transfer a title to a new buyer. The fees, if any, for arranging such services will be charged by KPA to the buyer. In the event the car does not pass the inspection, KPA will provide the City of Long Beach with the estimated cost to repair or modify the vehicle to comply for certification. Upon receipt of said estimate, the City of Long Beach will either advise KPA to repair or not repair the vehicle to comply. In the event, the repair is not authorized and the car remains in the auction, KPA will clearly label, announce and stipulate the vehicles current inability to meet the safety or smog certification standards and such vehicles will be sold only to Dealers, Dismantlers or out of state buyers.

KPA agrees to provide all needed equipment and devices to conduct and facilitate the event. In addition, KPA will provide all needed personnel to setup/teardown auction equipment, provide all auction related administrative services, marketing, security and miscellaneous services to market and conduct event.

KPA agrees to comply, obtain and qualify for any and all local, county, state or federal rules and regulations that may be required to conduct and solicit the event in the State of California. Any applicable event mandates shall include and comply with all dictated provisions that may apply from the Bulk Sales Laws and the like, including any required bond or payment of fees that may be set forth for such.

Vehicle Title work and Processing

KPA is a California licensed used car dealer and performs all the required function with its in house staff. Currently, KPA is processing 300 to 350 such transactions per month. The City of Long Beach’s DMV paperwork will be processed with the other like transactions.

Upon receipt of title work from the City of Long Beach for vehicles to be sold, KPA will review and prepare the documentation to assure all items are available for a smooth transfer. All associated fees and mandates, such as smog and weight certifications, will be addressed and obtained for the sale. At the sale, KPA will process the DMV paperwork of title transfer to the new buyer's name and then coordinate the filing of the transfer paperwork with the DMV.

Marketing

KPA understands that to achieve high auction attendance, resulting in the highest sales prices possible, marketing and advertising is of the utmost importance. All auctions are open to the public. To produce the best event exposure all sales are advertised on our own website (KenPorterAuctions.com), in local and regional newspapers, trade publications and on other internet sites. Advertisements in specialty publications are placed when specialty equipment will be available at a sale.



Some of the publications that are regularly utilized are El Clasificado, Truck Paper, Machinery Trader, Hoy, the Orange County Register, the Long Beach Telegram, the San Diego Union Tribune and Bakersfield California.

KPA was recently featured on all of the local television stations including KTLA Channel 5, In the Morning show.

KPA creates and designs, in house, for each auction an event flyer/brochure using state of the art production equipment. These straightforward, clean and concise full color mailers feature available inventory. First class brochures are printed and mailed directly, or otherwise distributed to approximately 15,000 prospective buyers. These buyers have been identified thru past auctions. Occasionally a mailing list may be purchased when specialty items are available which significantly increases the number of brochures mailed. Items that are to be pictured in the direct mailing brochure must be received at the auction site 10 days prior to the sale date.

KPA also sends e-blasts to in house email addresses informing registered bidders and past buyer of upcoming sales events. These e-mail blasts are updated daily and sent out at a minimum twice weekly to direct attention to specific assets that will be offered. Along with KPA's In-house emails, KPA does targeted blasts to Proxibid's vast amount of worldwide registered bidders along with Web banners during the week of sale, reaching a possible 4-500,000 potential buyers.

The sales team also, on occasion places direct phone calls to prospective buyers to alert them of a specific asset to be sold which is known to be of interest to that individual prospective buyer.

KPA maintains on its website the complete catalog of inventory available to promote the sale of the City of Long Beach's property and attract to the widest possible audience. All vehicle listings are updated daily.

The Auction

KPA fully understands and always strives, through all of their events, to obtain and secure the highest final bid amount from an individual for all items placed on the auction block. All auction houses will acknowledge that their longevity and success is based on bringing the most potential bidders together at an event to create the utmost competitive bidding scenario on each item to provide the highest sale prices for the City of Long Beach. We, KPA, are fully confident that our event process, developed from years of experience, will provide the City of Long Beach with this comfortable state of mind.

KPA conducts vehicle, equipment, and miscellaneous item auctions on the 1st Saturday and 3rd Saturday of each month. KPA conducts periodic auctions at either on-site or at a site requested by the City of Long Beach. KPA will provide all equipment, materials, accessories and labor required to conduct the sales. This will include obtaining and maintaining all mandated licenses and permits to conduct the events in accordance with all applicable laws. Event site will accommodate all participants' needs in seating, restrooms, and food concessions. The events will be conducted in a secured area with armed security present at all times.

Entrance to all events by potential buyers will be conducted at no charge to the individual. Attendance at KPA's monthly auction events has ranged from 300 to 500 attendees per auction giving KPA an exceptional vehicle to bidder ratio. With the addition of our KPA DIRECT-live online auction and Pre-bidding and Live Bidding thru Proxibid our bidder attendance has reached a worldwide level bringing the City of Long Beach's assets to a national/worldwide buyer base

KPA will register potential bidders by completing a form documenting their identity and contact information. In addition, they must acknowledge by signature their understanding of the rules, procedures, the auction process, and payment terms. Then, and only then, will a bidder receive their assigned Bidder Card to participate at the event. KPA may also require a Bidder Deposit to ensure potential buyer's ability to fulfill a successful bid.

KPA has a large indoor with a/c waiting area for bidder registration/cash out. Area has ample seating as well as ADA Compliant lavatory facilities. Area includes 6 regular and 1 ADA Compliant registration/cash out windows, as well as a separate ADA Compliant office for title work processing.



Sales of stipulated property, as set forth in our agreement, shall be made to the highest registered bidder, unless the item has been assigned a minimum selling price, at the City of Long Beach's sole discretion. As a licensed California car dealer, KPA will process any and all DMV documentation required to transfer the ownership or title into the successful buyer's name.

Successful bidders will be charged a Buyer's Premium for each lot. Tax, License, Document and Smog fees (if applicable) will also be added to the sale price.

After a bidder is awarded the high bid, they sign an agreement and place a deposit of not less than 25% of the sale price. They then have until 5:00p.m the following business day to complete their payment in full in cash; cashier's check or personal checks when accompanied by a correctly prepared bank "Letter of Guarantee". KPA also has the capability to accommodate major credit cards for bidder convenience. Upon payment for items, the buyer must remove all items by the end of the following business day, unless otherwise approved by KPA.

KPA's Facility is divided into 2 Live auctions.

- Ring 1-Vehicles and Equipment consisting of covered seating for over 300 persons directly in front of auctioneer with Public Address System. Seating area also provides several screens giving the ability to see lot being sold along with the bid being accepted as well as a screen showing live bidding from Ring 2. Also in the main area of Ring 1 is Concessions along with available lavatories both regular and ADA compliant.
- Ring 2 – Surplus Items and Small Equipment consisting of a Secure warehouse with seating for over 75 persons directly in front of auctioneer with Public Address System. On Auction Block is a Large Screen showing items up for bid as well as accepted bid, as well as a large screen showing live bidding and bid accepted for Ring 1

KPA videotapes and/or audio tapes each auction event, recording from a position that will provide a reasonable visual and audio quality for review. In the event any individual or authority should request a viewing of such after the event, KPA shall provide a copy of the video and/or audio tape to the City of Long Beach, immediately upon request.

In the event any items are not purchased at a sale, all such items, unless otherwise directed by the City of Long Beach, will be retained and re-entered into the next auction event conducted by KPA on behalf of the City of Long Beach. This re-entry will be conducted at no cost to the City of Long Beach with the same conditions of sale as if entered for the first time. Unless directed by the City of Long Beach, the items will continue to rerun if unsold, until sold or termination of this agreement. In the event of a "Bad Bidder" whether live or KPA Online System, Bidder will be flagged as a "Bad Bidder" and no longer able to purchase at our auction events. Proxibid "Bad Bidders" will also be flagged as a "Bad Bidder" and no longer able to bid at our events along with future Proxibid events. Items, as stated before, will be retained and reentered into the next auction

Payment

Upon finalization of all transactions of each event, KPA will provide the City of Long Beach a detailed summary statement designated as "Final Auction Results". This statement will be accompanied by a payment of gross proceeds, less Commissions, any fees and authorized expenses in compliance with this statement. This detailed report will also include item purchased, item sale price, and buyer name and address and a copy of the Buyer's invoice. This report will be provided to the City of Long Beach no later than Ten (10) calendar days after the auction date.

KPA states and confirms that it is a licensed auctioneer in possession of a license issued by the California Auctioneer Commission as well as possessing all other licenses as required by State and Local Codes.

KPA states that has on site 2 licensed Vehicle Verifiers

KPA employees its own "in-house" consultants and currently has no plans to change.



Environmental Policies and Practices

KPA is committed to reducing its impact on the environment. We will strive to improve our environmental performance over time and to initiate additional projects and activities that will further reduce our impacts on the environment.

Our commitment to the environment extends to our customers, our staff, and the community in which we operate. We are committed to

- Comply with existing environmental regulations
- Comply with applicable codes of practice.
- Assess the environmental effects of all operations.
- Continuously seek to improve environmental performance.
- Reduce pollution, emissions and waste Including all current CA ARB regulations
- All 8 of KPA's Fleet are currently CARB Compliant
- Reduce the use of all raw materials, energy, and supplies.
- Raise awareness, encourage participation, and train employees.
- Expect similar environmental standards from all suppliers and contractors.
- Assist customers in making environmentally sensitive choices.
- Work with the local community.
- Participate in discussions about environmental issues.
- Monitor progress and review performance annually from ARB and other Government Agencies
- Attending periodically various meetings from MEMA and other agencies on green waste and Environmental training courses

EXHIBIT “B”

Rates or Charges



City of Long Beach
 Purchasing Division
 333 West Ocean Boulevard, 7th Floor
 Long Beach, CA 90802

PROPOSAL COST FORM

Please read this form carefully. Submission of an incomplete Proposal may cause the City to deem the Proposal non-responsive and reject the Proposal.

COMPANY NAME: Ken Porter Auctions

The percentage of gross sales shall include all direct and indirect costs with no out-of-pocket expenses incurred by the City; with the exception of vehicle repairs for which contractor must obtain approval from the City prior to auction.

Commission as Percentage (%) of Gross Sales 0% *See Rebate Below

Buyer's Premium Percentage (%) 15%

Rebate Percentage (%) if applicable See Chart Below

*Rebate Based on Gross vehicle/misc sales by the City of Long Beach on a per sale Basis

A. \$ 0 - 50,000	\$ 5.0%
B. \$ 50,001 - 100,000	\$ 6.0%
C. \$100,001 - 150,000	\$ 7.0%
D. \$150,001 - 200,000	\$ 8.0%
E. \$200,001 - Plus	\$ 10.0%

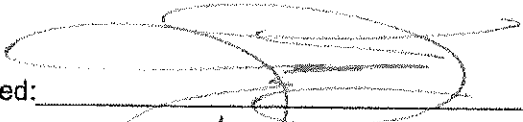
Signed: 
 Name & Title: JAMES IDO VICE PRESIDENT

EXHIBIT “C”

City’s Representative:

John Seevers

(562) 570-5406

EXHIBIT “D”

Materials/Information Furnished: None