# OFFICE OF THE CITY ATTORNEY ROBERT E. SHANNON, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

#### AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of October 25, 2012, 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 23, 2012, by and between CHP ENTERPRISES DBA KEN PORTER AUCTIONS, a California corporation, with a place of business at 21140 S. Avalon Blvd., Carson, California 90745 ("Vendor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

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

WHEREAS, City has selected Vendor in accordance with City's administrative procedures using a Request for Proposals ("RFP"), attached hereto as Exhibit "A-1", and incorporated by this reference, and City has determined that Vendor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Vendor perform these specialized services, and Vendor 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. Vendor shall furnish specialized services more particularly described in Exhibit "A-2", 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. City shall pay Vendor in due course of payments following receipt from Vendor and approval by City of invoices showing the services or task

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performed, the time expended (if billing is hourly), and the name of the Project. Vendor shall certify on the invoices that Vendor has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Vendor during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Vendor's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

- C. Vendor represents that Vendor has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.
- By executing this Agreement, Vendor warrants that Vendor (a) D. has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. It the services involve work upon any site, Vendor warrants that Vendor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should Vendor discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, Vendor must immediately inform the City of that fact and may not proceed except at Vendor's risk until written instructions are received from the City.
- E. Vendor must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment,

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materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the City, except those losses or damages as may be caused by the City's own negligence.

- F. CAUTION: Vendor shall not begin work until this Agreement has been signed by both parties and until Vendor'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, 2012, and shall terminate at 11:59 p.m. on October 31, 2013, 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.

- Α. Vendor shall coordinate its performance with Citv's representative, if any, named in Exhibit "C", attached to this Agreement and incorporated by this reference. Vendor 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 Vendor 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.
- В. The parties acknowledge that a substantial inducement to City for entering this Agreement was and is the reputation and skill of Vendor's key employee, James Ido. City shall have the right to approve any person proposed by Vendor to replace that key employee.
- 4. INDEPENDENT CONTRACTOR. In performing its services, Vendor is and shall act as an independent contractor and not an employee, representative or agent of City. Vendor shall have control of Vendor's work and the manner in which it is

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performed. Vendor shall be free to contract for similar services to be performed for others during this Agreement; provided, however, that Vendor acts in accordance with Section 9 and Section 11 of this Agreement. Vendor acknowledges and agrees that (a) City will not withhold taxes of any kind from Vendor's compensation; (b) City will not secure workers' compensation or pay unemployment insurance to, for or on Vendor's behalf; and (c) City will not provide and Vendor is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Vendor expressly warrants that neither Vendor nor any of Vendor's employees or agents shall represent themselves to be employees or agents of City.

#### INSURANCE. 5.

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

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials,

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employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

- (b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (c) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- (d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.
- В. Any self-insurance program, self-insured retention, deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.
- C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Vendor. Vendor shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180)

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days, commencing on the date this Agreement expires or is terminated, unless Vendor guarantees that Vendor will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

- Ε. Vendor shall require that all sub-Vendors or contractors that Vendor uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.
- F. Prior to the start of performance, Vendor shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Vendor shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Vendor and Vendor's sub-Vendors and contractors, at any time. Vendor shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.
- G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Vendor, Vendor's sub-Vendors and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.
- Η. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Vendor's performance or as full performance of or compliance with the indemnification provisions of this Agreement.
  - 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement

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contemplates the personal services of Vendor and Vendor's employees, and the parties acknowledge that a substantial inducement to City for entering this Agreement was and is the professional reputation and competence of Vendor and Vendor's employees. Vendor shall not assign its rights or delegate its duties under this Agreement, or any interest in this Agreement, or any portion of it, without the prior approval of City, except that Vendor may with the prior approval of the City Manager of City, assign any moneys due or to become due Vendor under this Agreement. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of an attempted assignment or delegation. Furthermore, Vendor shall not subcontract any portion of its performance without the prior approval of the City Manager or designee, or substitute an approved sub-Vendor or contractor without approval prior to the substitution. Nothing stated in this Section shall prevent Vendor from employing as many employees as Vendor deems necessary for performance of this Agreement.

- 7. CONFLICT OF INTEREST. Vendor, by executing this Agreement, certifies that, at the time Vendor executes this Agreement and for its duration, Vendor does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of City and the interests of that other client. And, Vendor shall obtain similar certifications from Vendor's employees, sub-Vendors and contractors.
- 8. MATERIALS. Vendor shall furnish all labor and supervision, supplies, materials, tools, machinery, equipment, appliances, transportation and services necessary to or used in the performance of Vendor's obligations under this Agreement, except as stated in Exhibit "D".
- OWNERSHIP OF DATA. All materials, information and data 9. prepared, developed or assembled by Vendor or furnished to Vendor in connection with this Agreement, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material and

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memorandum ("Data") shall be the exclusive property of City. Data shall be given to City, and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Vendor. Copies of Data may be retained by Vendor but Vendor warrants that Data shall not be made available to any person or entity for use without the prior approval of City. This warranty shall survive termination of this Agreement for five (5) years.

- TERMINATION. Either party shall have the right to terminate this 10. Agreement for any reason or no reason at any time by giving fifteen (15) calendar days prior notice to the other party. In the event of termination under this Section, City shall pay Vendor for services satisfactorily performed and costs incurred up to the effective date of termination for which Vendor has not been previously paid. The procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective date of termination. Vendor shall deliver to City all Data developed or accumulated in the performance of this Agreement, whether in draft or final form, or in process. And, Vendor acknowledges and agrees that City's obligation to make final payment is conditioned on Vendor's delivery of the Data to City.
- 11. CONFIDENTIALITY. Vendor shall keep all Data confidential and shall not disclose the Data or use the Data directly or indirectly, other than in the course of performing its services, during the term of this Agreement and for five (5) years following expiration or termination of this Agreement. In addition, Vendor shall keep confidential all information, whether written, oral or visual, obtained by any means whatsoever in the course of performing its services for the same period of time. Vendor shall not disclose any or all of the Data to any third party, or use it for Vendor's own benefit or the benefit of others except for the purpose of this Agreement.
- BREACH OF CONFIDENTIALITY. Vendor shall not be liable for a 12. breach of confidentiality with respect to Data that: (a) Vendor demonstrates Vendor knew prior to the time City disclosed it; or (b) is or becomes publicly available without breach of this Agreement by Vendor; or (c) a third party who has a right to disclose does so to

Vendor without restrictions on further disclosure; or (d) must be disclosed pursuant to subpoena or court order.

- the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the RFP or make changes by altering, adding to or deducting from the work. No extra work may be undertaken unless a written order is first given by the City, incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement. Any increase in compensation of ten percent (10%) or less of the Agreement Sum, or in the time to perform of One Hundred Eighty (180) days or less, may be approved by the City Representative. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Vendor that the provisions of this paragraph do not apply to services specifically set forth in the RFP or reasonably contemplated in the RFP. Vendor acknowledges that it accepts the risk that the services to be provided pursuant to the RFP may be more costly or time consuming than Vendor anticipates and that Vendor will not be entitled to additional compensation for the services set forth in the RFP.
- any amount payable to Vendor (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the City for any losses, costs, liabilities or damages suffered by the City, and all amounts for which the City may be liable to third parties, by reason of Vendor's acts or omissions in performing or failing to perform Vendor's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Vendor, or any indebtedness exists that appears to be the basis for a claim of lien, the City may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the City to exercise the right to deduct or to withhold will not, however, affect the obligations of Vendor to insure, indemnify and protect the City as elsewhere provided in this Agreement.

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AMENDMENT. This Agreement, including all Exhibits, shall not be 15. amended, nor any provision or breach waived, except in writing signed by the parties which expressly refers to this Agreement.

#### 16. LAW.

- This Agreement shall be governed by and construed pursuant Α. to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Vendor shall comply with all laws, ordinances, rules and regulations of and obtain all permits, licenses and certificates required by all federal, state and local governmental authorities. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.
- If any part of this Agreement is found to be in conflict with В. applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.
- This Agreement, including all Exhibits, 17. ENTIRE AGREEMENT. constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

#### INDEMNITY. 18.

Consultant shall indemnify, protect and hold harmless City, its Α. Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Consultant's breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Consultant, its officers, employees, agents, subcontractors, or anyone under Consultant's control,

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in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").

- В. In addition to Consultant's duty to indemnify, Consultant shall have a separate and wholly independent duty to defend Indemnified Parties at Consultant's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Consultant shall be required for the duty to defend to arise. City shall notify Consultant of any Claim, shall tender the defense of the Claim to Consultant, and shall assist Consultant, as may be reasonably requested, in the defense.
- C. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.
- D. The provisions of this Section shall survive the expiration or termination of this Agreement.
- 19. If any party fails to perform its obligations FORCE MAJEURE. because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of such cause for failure to perform.
- AMBIGUITY. In the event of any conflict or ambiguity between this 20. Agreement and any Exhibit, the provisions of this Agreement shall govern.
  - COSTS. If there is any legal proceeding between the parties to 21.

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enforce or interpret this Agreement or to protect or establish any rights or remedies under it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

#### 22. NONDISCRIMINATION.

- In connection with performance of this Agreement and subject to applicable rules and regulations, Vendor shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. Vendor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- В. It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in City's procurement process, and Vendor agrees to use its best efforts to carry out this policy in its use of sub-Vendors and contractors to the fullest extent consistent with the efficient performance of this Agreement. Vendor may rely on written representations by sub-Vendors and contractors regarding their status. Vendor shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all sub-Vendors and contractors hired by Vendor for this Project and information on whether or not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).
- EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in 23. accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

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

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

- В. The failure of the Consultant to comply with the EBO will be deemed to be a material breach of the Agreement by the City.
- C, If the Consultant fails to comply with the EBO, the City may cancel, terminate or suspend the Agreement, in whole or in part, and monies due or to become due under the Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against the Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.
- E. If the City determines that the Consultant has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Agreement on behalf of the City. Violation of this provision may be used as evidence against the Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.
- 24. NOTICES. Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Vendor at the address first stated above, and to City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a

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copy to the City Clerk at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

- 25. COVENANT AGAINST CONTINGENT FEES. Vendor warrants that Vendor has not employed or retained any entity or person to solicit or obtain this Agreement and that Vendor has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement. If Vendor breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission or other monies.
- 26. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
- 27. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 18, 21 and 28 prior to termination or expiration of this Agreement.
- 28. TAX REPORTING. As required by federal and state law, City is obligated to and will report the payment of compensation to Vendor on Form 1099-Misc. Vendor shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. Vendor shall submit Vendor's Employer Identification Number (EIN), or Vendor's Social Security Number if Vendor does not have an EIN, in writing to City's Accounts Payable, Department of Financial Management. Vendor acknowledges and agrees that City has no obligation to pay Vendor until Vendor provides one of these numbers.
  - 29. ADVERTISING. Vendor shall not use the name of City, its officials

or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.

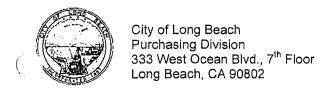
- 30. <u>AUDIT</u>. City shall have the right at all reasonable times during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of Vendor relating to this Agreement.
- 31. <u>THIRD PARTY BENEFICIARY</u>. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

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.

, 2012	CHP ENTERPRISES DBA KEN RORTER AUCTIONS, a California corporation  By Rey Dario Cario Cari
OCTOBER 3/, 2012	By Name Institute Title V-P CFo  "Vendor"
Mov 5, 2012	CITY OF LONG BEACH, a municipal corporation  Assistant City Manager  By  City Manager  EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER
This Agreement is approved	d as to form on, 2012.
	ROBERT E. SHANNON, City Attorney  By  Deputy

### EXHIBIT "A-1"

Request for Proposals



# City of Long Beach Request For Proposal Number FM12-041

For

#### **Auctioneer Services**

Release Date: August 7, 2012 Due Date: September 13, 2012

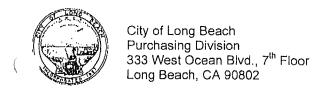
For additional information, please contact:

Purchasing Division, 562/570-6200

This RFP is available in an alternative format by calling 562/570-6200

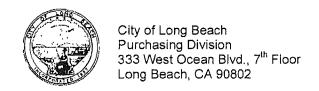
#### See Page 5, for instructions on submitting proposals.

Company Name Contact Person			
Address	City	State	Zip
Telephone ()	Fax ()	Federal Tax ID No	).
Prices contained in this pro	posal are subject to acce <sub>l</sub>	ptance within	calendar days.
I have read, understand, a	nd agree to all terms and o	conditions herein. Da	ite
Signed		Addition to the second	
Print Name & Title			
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The City will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile or telephone proposals will NOT be considered unless otherwise authorized; however, proposals may be modified by fax or written notice provided such notice is received prior to the opening of the proposals.

#### 1. OVERVIEW OF PROJECT

The City of Long Beach is soliciting proposals from qualified experienced firms for providing auctioneer services to be used for the disposal of surplus City property including vehicles and miscellaneous items.

#### 2. <u>ACRONYMS/DEFINITIONS</u>

For the purposes of this RFP, the following acronyms/definitions will be used:

Awarded Vendor The organization/individual that is awarded and has an approved contract with

the City of Long Beach, California for the services identified in this RFP.

Evaluation Committee

An independent committee comprised solely of representatives of the City established to review proposals submitted in response to the RFP, score the

proposals, and select a vendor.

May Indicates something that is not mandatory but permissible.

**RFP** Request for Proposal.

Shall/Must Indicates a mandatory requirement. Failure to meet a mandatory requirement

may result in the rejection of a proposal as non-responsive.

Should Indicates something that is recommended but not mandatory. If the vendor fails

to provide recommended information, the City may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the

information.

City The City of Long Beach and any department or agency identified herein.

Subcontractor Third party not directly employed by the vendor who will provide services

identified in this RFP.

**Vendor** Organization/individual submitting a proposal in response to this RFP.



#### 3. SCOPE OF PROJECT

The City of Long Beach (City) requires the services of an auction firm to provide auctioneering services for the purpose of selling 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. The intent is to maximize the return of funds to the City through public sales of the City's surplus property.

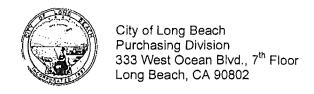
Contractor shall assign a sufficient number of employees to perform the required services. Contractor is responsible for providing the training and supervision of the personnel assigned to perform services under the contract. Contractor shall assign a contract manager, and a designated alternate, to act as liaison for the Contractor and 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 offerors 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. Contractor shall be responsible for the initiation, completion and associated costs for all marketing and advertising. An overview of the marketing plan shall be submitted with the contractor's proposal; including samples of ads, email brochures, and other media.

The auction services shall include, but not be limited to, the public sale of surplus motor vehicles and miscellaneous items. Contractor shall provide maintenance of all auction records and the chronology of the bidding for all auction items. The 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 on an "as is" basis.

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

Contractor may submit a proposal for on-line auction services to be considered by the City.



#### 4. <u>SUBMITTAL INSTRUCTIONS</u>

- 4.1 The City will accept questions in writing. Please submit all questions via e-mail to: <a href="mailto:RFPPurchasing@longbeach.gov">RFPPurchasing@longbeach.gov</a> by August 21, 2012 at 5:00 PM. Responses to the questions will be posted on the City's website: longbeach.gov/purchasing by August 28, 2012 at 5:00 PM.
- 4.2 RFP Timeline

TASK	DATE/TIME
Deadline for submitting questions	August 21, 2012 at 5:00 PM
Answers to all questions submitted available	August 28, 2012 at 5:00 PM
Deadline for submission of proposals	September 13, 2012 at 11:00 AM
Evaluation period	September 2012
Selection of vendor	October 2012

NOTE: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective vendors.

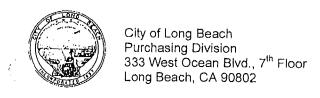
4.3 Vendors shall submit one (1) original proposal marked "ORIGINAL"; four (4) identical copies; and one electronic copy on CD or USB flash drive as follows:

City of Long Beach Purchasing Division Attn: Yvonne A. Lucas 333 West Ocean Blvd., 7<sup>th</sup> Floor Long Beach, CA 90802

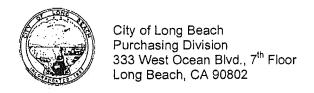
Proposals shall be submitted in a sealed envelope or box, <u>clearly labeled on the outside</u> <u>as follows:</u>

REQUEST FOR PROPOSAL NO. FM12-041 FOR: AUCTIONEER SERVICES

4.4 Proposals must be received by September 13, 2012 at 11:00 AM. Proposals that do not arrive by the specified date and time WILL NOT BE ACCEPTED. Vendors may submit their proposal any time prior to the above stated deadline.

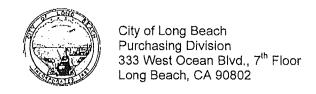


- 4.5 The proposal should be presented in a format that corresponds to and references sections outlined below and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. For ease of evaluation, proposals should be presented in the format described within this RFP.
- 4.6 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 4.7 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
- 4.8 The proposal must be signed by the individual(s) legally authorized to bind the vendor.
- 4.9 If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
- 4.10 Proposals shall be submitted in two (2) distinct parts the narrative/technical proposal and the cost proposal. THE NARRATIVE/TECHNICAL PROPOSAL MUST NOT INCLUDE COST AND PRICING INFORMATION. The narrative/technical proposal will be reviewed first and then the cost proposal. Therefore, each part should be packaged separately, but submitted together.



#### 5. PROPOSAL EVALUATION AND AWARD PROCESS

- 5.1 Proposals shall be consistently evaluated based upon the following criteria:
  - Demonstrated competence;
  - Experience in performance of comparable engagements;
  - Reasonableness of cost:
  - Expertise and availability of key personnel;
  - Financial stability; and
  - Conformance with the terms of this RFP.
- 5.2 Proposals shall be kept confidential until a contract is awarded.
- 5.3 The City may also contact the references provided in response to Section 8.3; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The City shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City of Long Beach.
- 5.4 The City reserves the right to request clarification of any proposal term from prospective vendors.
- 5.5 Selected vendor(s) will be notified in writing. Any award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the City reserves the right to negotiate a contract with another vendor or withdraw the RFP
- 5.6 Any contract resulting from this RFP shall not be effective unless and until approved by the City Council.



#### 6. **PROJECT SPECIFICATIONS**

- 6.1 Contractor shall pick up and transport all vehicles and miscellaneous items to be sold. Contractor shall be responsible for the safe transportation and the secure storage of all City vehicles and miscellaneous items released for auction. Contractor shall be responsible for any loss or damage to property during and after transport of City property to auction site
- 6.2 Contractor shall have a computer terminal that is connected to the Department of Motor Vehicles (DMV) database with access to check registration, Vehicle Identification Number (VIN), and provide DMV title search, as required.
- 6.3 Contractor shall turn in any articles found in vehicles and miscellaneous items within five (5) business days of receipt to the City.
- 6.4 Contractor shall provide the City a written estimate and justification of repairs.

  Contractor shall obtain prior approval for repairs in writing from the City.
- 6.5 Contractor shall remove all license plates left on vehicles and miscellaneous items and return to the City.
- 6.6 Contractor shall remove decals, logos, numbers, lettering and any other identification on vehicles and miscellaneous items as necessary (paint area as required) so there are no identifiable markings as City of Long Beach property.
- 6.7 Contractor shall videotape or digitally record the entire auction sale; and provide copy of recording upon request.
- 6.8 Contractor shall furnish the successful bidder at the point of sale with the following items if applicable:
  - Bill of sale
  - Title (Pink Slip)
  - Smog Certificate
  - Safety Inspection
  - A Certified Weight Slip
- 6.9 Contractor shall provide the City a summary of all sales transactions including but not limited to the following within (10) business days of each auction in which City vehicles and miscellaneous were sold, as applicable:
  - Vehicle Identification Number and description
  - Sale price and date
  - Buyer's premium amount and rate



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- Total gross sales
- Commission amount and rate
- Any City approved charges for repairs
- Net sales proceeds
- New owner of record information
- 6.10 Contractor must complete transfer of title if a vehicle and miscellaneous items is sold to a private party. Contractor must transfer title prior to vehicle and submit appropriate paperwork to DMV within thirty (30) days. Contractor shall provide on behalf of the buyer the services necessary to register, license or transfer title of vehicles or miscellaneous items to buyer.
- 6.11 Contractor shall provide the City a list of all unsold and salvaged/dismantler vehicles and miscellaneous items within (10) days of close of each auction. Contractor shall hold unsold vehicles and miscellaneous items until the next auction at no expense to the City.
- 6.12 Contractor shall reimburse and provide payment to the City within 10 days of close of each auction with a **certified bank check, cashiers check or wire transfer**.

#### **Contractor's Facility**

- 6.13 Contractor's auction facility shall have sufficient parking and on-site restroom facilities to accommodate customers and comply with the provisions of the Americans with Disabilities Act.
- 6.14 Contractor shall provide storage space at Contractor's facility at no cost to the City, until vehicles or miscellaneous items are sold and picked up by buyer.
- 6.15 Contractor shall provide access to auction and storage facilities for inspection by City.
- 6.16 Contractor shall be responsible for providing for the 24-hour security of all vehicles and miscellaneous items and proceeds from sales. Contractor's facility shall have a security system that includes, but it not limited to, security guards and an alarm system.
- 6.17 Contractor shall conduct auctions at the same facility unless otherwise specified and approved by the City. Contractor may not store vehicles and miscellaneous items at a location other than Contractor's facility unless otherwise specified and approved by the City.
- 6.18 Contractor shall maintain a business office Monday through Friday, from 8:00 a.m. until 5:00 p.m.



#### 7. WARRANTY/MAINTENANCE AND SERVICE

Not applicable.

#### 8. COMPANY BACKGROUND AND REFERENCES

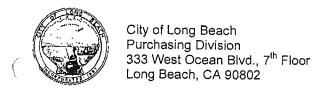
#### 8.1 PRIMARY CONTRACTOR INFORMATION

Vendors must provide a company profile. Information provided shall include:

- Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation. An out-of-state vendor must register with the State of California Secretary of State before a contract can be executed (http://www.sos.ca.gov/business/).
- Location of the company offices, including **plot plan** of the facilities to be utilized for auctions.
- Location of the office servicing any California account(s).
- Number of employees both locally and nationally.
- Location(s) from which employees will be assigned.
- Name, address and telephone number of the vendor's point of contact for a contract resulting from this RFP.
- Company background/history and why vendor is qualified to provide the services described in this RFP.
- Length of time vendor has been providing services described in this RFP to the <u>public and/or private sector</u>. Please provide a brief description.
- Resumes for key staff to be responsible for performance of any contract resulting from this RFP.
- Financial Statements

#### 8.2 SUBCONTRACTOR INFORMATION

8.2.1	2.1 Does this proposal include the use of subcontractors?		
	Yes	No Initials	
	If "Yes", \	rendor must:	
	8.2.1.1	Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.	
	8.2,1.2	Provide the same information for any subcontractors as is indicated in Section 8.1 for the vendor as primary contractor.	



- 8.2.1.3 References as specified in Section 8.3 below must also be provided for any proposed subcontractors.
- 8.2.1.4 The City requires that the awarded vendor provide proof of payment of any subcontractors used for this project. Proposals shall include a plan by which the City will be notified of such payments.
- 8.2.1.5 Primary contractor shall not allow any subcontractor to commence work until all insurance required of subcontractor is obtained.

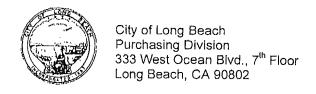
#### 8.3 REFERENCES

Vendors should provide a minimum of three (3) references from similar projects performed for state and/or large local government clients within the last three years. Information provided shall include:

- Client name
- Project description
- Project dates (starting and ending)
- Technical environment
- Staff assigned to reference engagement that will be designated for work per this RFP
- Client project manager name and telephone number

#### 8.4 BUSINESS LICENSE

The Long Beach Municipal Code (LBMC) requires all businesses operating in the City of Long Beach to pay a business license tax. In some cases the City may require a regulatory permit and/or evidence of a State or Federal license. Prior to issuing a business license, certain business types will require the business license application and/or business location to be reviewed by the Development Services, Fire, Health, and/or Police Departments. For more information, go to www.longbeach.gov/finance/business\_license.



#### 9. COST

Refer to Exhibit A, Pricing Sheet. Contractor must complete Exhibit A, Pricing Sheet and submit with proposal.

#### 10. MINIMUM MANDATORY REQUIREMENTS

- 10.1 Contractor must be licensed by the Department of Motor Vehicles as a vehicle dealer. A copy of valid license must be submitted with proposal.
- 10.2 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.
- 10.3 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.

Failure to submit copies of required documents may cause the proposal to be rejected as non-responsive.

#### 11. TERMS, CONDITIONS AND EXCEPTIONS

- 11. 1 This contract will be for a period of 12 months with two annual renewal options at the option of the city. The contract term will not exceed 36 months total.
- 11.2 The City reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the City to do so.
- 11.3 The City reserves the right to waive informalities and minor irregularities in proposals received.
- 11.4 The City reserves the right to reject any or all proposals received prior to contract award.
- 11.5 The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Long Beach after all factors have been evaluated.
- 11.6 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.



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- 11.7 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the vendor's standard contract language. The omission of these documents may render a proposal non-responsive.
- 11.8 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 11.9 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 11.10 Proposals may be withdrawn by written notice received prior to proposal opening.
- 11.11 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor.
- 11.12 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 11.13 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.
- 11.14 The City is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the City.
- 11.15 Proposal will become public record after the award of a contract unless specific parts of the proposal can be shown to be exempt by law. Each vendor may clearly label part of a proposal as "CONFIDENTIAL" provided that the vendor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the information.
- 11.16 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that



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the subcontractor has read and will agree to abide by the awarded vendor's obligations.

- 11.17 The awarded vendor will be the sole point of contract responsibility. The City will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.
- 11.18 The awarded vendor must maintain, for the duration of its contract, insurance coverages as required by the City. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages.
- 11.19 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. The City reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.
- 11.20 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The City reserves the right to reject any proposal based upon the vendor's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.
- 11.21 The City will not be liable for Federal, State, or Local excise taxes.
- 11.22 Execution of Attachment A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment B contract form and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes.
- 11.23 The City reserves the right to negotiate final contract terms with any vendor selected. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded vendor's proposal, and the awarded

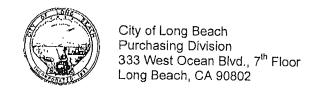


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vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

- 11.24 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the City in evaluation of the proposal. Any vendor misrepresentation shall be treated as fraudulent concealment from the City of the true facts relating to the proposal.
- 11.25 No announcement concerning the award of a contract as a result of this RFP may be made without the prior written approval of the City.
- 11.26 Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Long Beach Municipal Code Section 2.73 et seq, the **Equal Benefits Ordinance**. Proposers shall refer to attachment/appendix for further information regarding the requirements of the ordinance.

All Proposers shall complete and return, with their bid, the Equal Benefits Ordinance Compliance form contained in the attachment/appendix. Unless otherwise specified in the procurement package, Proposers do not need to submit with their bid supporting documentation proving compliance. However, supporting documentation verifying that the benefits are provided equally shall be required if the proposer is selected for award of a contract.



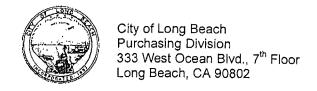
#### Exhibit A

#### **PRICING SHEET**

#### **Auction Services**

The percentage of gross sales shall include <u>all direct and indirect costs</u> 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	
Buyer's Premium Percentage	



#### **Attachment A**

## CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP

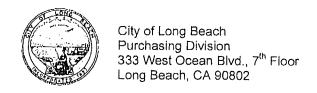
I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal. Any exceptions MUST be documented.

YESNO	
AUTHORIZED SIGNATURE AND DATE	<del></del>
PRINTED NAME AND TITLE	<del></del>
OMPANY NAME	

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

#### **EXCEPTION SUMMARY FORM**

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)



#### **Attachment B**

#### STATEMENT ON NON-COLLUSION

The proposal is submitted as a firm and fixed request valid and open for 90 days from the submission deadline.

This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal and the proposer has not in any manner sought by collusion to secure for himself or herself an advantage over any other proposer.

In addition, this organization and its members are not now and will not in the future be engaged in any activity resulting in a conflict of interest, real or apparent, in the selection, award, or administration of a subcontract.

AUTHORIZED SIGNATURE AND DATE	
PRINTED NAME AND TITLE	<del>1</del>
COMPANY NAME	



#### **Attachment C**

W-9 FORM

#### (Rev. October 2007 Department of the Treasury Internal Revenue Service

#### Request for Taxpayer **Identification Number and Certification**

Give form to the requester. Do not send to the IRS.

7	Name (as shown on your Income tax return)				
on page	Business name, if different from above				
Print or type Specific Instructions o	Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership ☐ Limited Hability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ►			Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester	Requester's name and address (optional)		
Specif	City, state, and ZIP code				
See	List account number(s) here (optional)		<u> </u>		
Par	Taxpayer Identification Number (TIN)				
backu	Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is				
your e	one proprietor, or disregarded critity, see the real trinsit details on page 3. For other appropriate in the page 3. For o	TIN on page 3.		or	
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.				lentification number	
Par	Certification				
Under	penalties of perjury, I certify that:			***	
1. Th	number shown on this form is my correct taxpayer identification number (or I am w	valting for a nun	nber to be is	sued to me), and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and					
3. la	n a U.S. citizen or other U.S. person (defined below).				
For marrang	cation instructions. You must cross out item 2 above if you have been notified by to ding because you have failed to report all interest and dividends on your tax return. It gage interest paid, acquisition or abandonment of secured property, cancellation of ment (IRA), and generally, payments other than interest and dividends, you are not your correct TIN. See the instructions on page 4.	For real estate of debt. contribute	transactions,	, item 2 does not apply.	
Sign	Signature of				

#### U.S. person ▶ General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

Here

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- 1. Certify that the TIN you are giving is correct (or you are walting for a number to be issued),
  - 2. Certify that you are not subject to backup withholding, or
- 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9,

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- · An individual who is a U.S. citizen or U.S. resident alien,
- · A partnership, corporation, company, or association created or organized in the United States or under the laws of the United
- An estate (other than a foreign estate), or

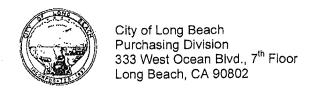
Date >

• A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

• The U.S. owner of a disregarded entity and not the entity,



# **Attachment D**

## **DEBARMENT CERTIFICATION**

# Debarment, Suspension, Ineligibility Certification (Please read attached Acceptance of Certification and Instructions for Certification before completing)

This certification is required by federal regulations implementing Executive Order

- 1. The potential recipient of Federal assistance funds certifies, by submission of proposal, that:
  - Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
  - Have not within three (3) year period preceding this bid/agreement/proposal had a civil judgment rendered against them for commission of fraud or been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - Are not presently or previously indicted for or otherwise criminally or civilly charged by a
    governmental entity (Federal, State, or local) with commission of any of the offenses
    enumerated in the above paragraph of this certification; and
  - Have not within a three (3) year period preceding this bid/agreement/proposal had one or more public (Federal, State, or local) transactions terminated for cause of default.
- 2. Where the potential prospective recipient of Federal assistance funds is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to the applicable bid/agreement/proposal.

Signature of Authorized Representative	-
Title of Authorized Representative	
Business/Contractor/ Agency	. Date

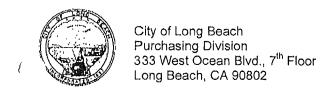
## **Acceptance of Certification**

- 1. This bid/agreement/proposal or like document has the potential to be a recipient of Federal funds. In order to be in compliance with Code of Federal Regulations, the City requires this completed form. By signing and submitting this document, the prospective bidder/proposer is providing the certification and acknowledgement as follows:
- 2. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
- 3. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 4. The potential recipient of Federal assistance funds agrees by submitting this bid/agreement/proposal or like document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

# Instructions for completing the form, Attachment – Debarment Certification

- 1. The City of Long Beach sometimes receives Federal funding on certain purchases/projects. To ensure that the City is in compliance with Federal regulations we require this form to be completed.
- 2. The City of Long Beach checks the <u>Excluded Parties List System</u> at <u>www.epls.gov</u> to make sure that vendors who are awarded City contracts and/or purchase orders are not debarred or suspended. Prospective contractors should perform a search on this website for your company and or persons associated with your business. The finding that "Your search returned no results" is an indicator of compliance.
- 3. If your business is in compliance with the conditions in the form, please have the appropriate person complete and sign this form and return with your bid/proposal/agreement.
- 4. If at anytime, your business or persons associated with your business become debarred or suspend, we require that you inform us of this change in status.
- 5. If there are any exceptions to the certification, please include an attachment. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception, indicate to whom it applies, initiating agency and dates of action.
- 6. Note: Providing false information may result in criminal prosecution or administrative sanctions.

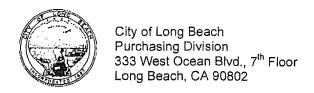
If you have any questions on how to complete this form, please contact the City of Long Beach, Business Relations, Purchasing Division at 562-570-6200.



## **Attachment E**

## SMALL BUSINESS ENTERPRISE PROGRAM

Although SBE/VSBE/LSBE subcontracting goals were not assigned to this procurement, the City strongly encourages SBE/VSBE/LSBE firms to submit proposals for this procurement opportunity.



# Attachment F

## **EQUAL BENEFITS ORDINANCE**

# **EQUAL BENEFITS ORDINANCE DISCLOSURE**

As a condition of being awarded a contract with the City of Long Beach ("City"), the selected Contractor/Vendor ("Contractor") may be required during the performance of the Contract, to comply with the City's nondiscrimination provisions of the Equal Benefits Ordinance ("EBO") set forth in the Long Beach Municipal Code section 2.73 et seq. The EBO requires that during the performance of the contract, the Contractor shall provide equal benefits to its employees with spouses and employees with domestic partners. Benefits include but are not limited to, health benefits, bereavement leave, family medical leave, member ship and membership discounts, moving expenses, retirement benefits and travel benefits. A cash equivalent payment is permitted if an employer has made all reasonable efforts to provide domestic partners with access to benefits but is unable to do so. A situation in which a cash equivalent payment might be used if where the employer has difficulty finding an insurance provider that is willing to provide domestic partner benefits.

### The EBO is applicable to the following employers:

- For-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements and other construction projects in the amount of \$100,000 or more
- For-profit entities that generate \$350,000 or more in annual gross receipts leasing City property pursuant to a written agreement for a term exceeding 29 days in any calendar year

Contractors who are subject to the EBO must certify to the City before execution of the contract that they are in compliance with the EBO by completing the EBO Certification Form, attached, or that they have been issued a waiver by the City. Contractors must also allow authorized City representatives access to records so the City can verify compliance with the EBO.

The EBO includes provisions that address difficulties associated with implementing procedures to comply with the EBO. Contractors can delay implementation of procedures to comply with the EBO in the following circumstances:

- 1) By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or
- 2) At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or
- 3) Upon expiration of the contractor's current collective bargaining agreement(s).

#### Compliance with the EBO

If a contractor has not received a waiver from complying with the EBO and the timeframe within which it can delay implementation has expired but it has failed to comply with the EBO, the Contractor may be deemed to be in material breach of the Contract. In the event of a material breach, the City may cancel, terminate or suspend the City agreement, in whole or in part. The City also may deem the Contractor an irresponsible bidder and disqualify the Contractor from contracting with the City for a period of three years. In addition, the City may assess liquidated damages against the Contractor that may be deducted from money otherwise due the Contractor. The City may also pursue any other remedies available at law or in equity.

By my signature below, I acknowledge that the Contractor understands that to the extent it is subject to the provisions of the Long Beach Municipal Code section 2.73, the Contractor shall comply with this provision.

Printed Name:	Title:
Signature:	Date:
Business Entity Name:	

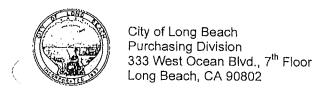
# EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

# Section 1. CONTRACTOR/VENDOR INFORMATION

Name: _	Fede	eral Tax ID	No	
Address;				
Oitγ.	Sta	te:	ZIP:	
Contact F	Person: Tele	phone:		
Email:	Fax:			
Section 2	2. <u>COMPLIANCE QUESTIONS</u>			
Α.	The EBO is inapplicable to this Contraction of the EBO is inapplicable to the	ot because t	he Contractor/Vendor ha	IS
B. Does your company provide (or make available at the employees' ex any employee benefits?Yes No				)
	(If "yes," proceed to Question C. If "no, does not apply to you.)			
C.	Does your company provide (or make a any benefits to the spouse of an employYes No	available at a yee?	the employees' expense)	)
D.	Does your company provide (or make a any benefits to the domestic partner of	an employe	e?	)
E.	YesNo (If you answered proceed to section 5, as the EBO is not answered "yes" to both Questions C and you answered "yes" to Question C and section 3.)  Are the benefits that are available to the benefits that are available to the dolYesNo	d "no" to bot t applicable od D, please "no" to Que e spouse of mestic partr	th questions C and D, to this contract. If you continue to Question E. estion D, please continue an employee identical to ner of an employee?	to
	(If "yes," proceed to section 4, as you a continue to section 3.)	re in compli	ance with the EBO. If "n	ο,"

## Section 3. PROVISIONAL COMPLIANCE

A.	Contractor/vendor is not in compliance with the EBO now but will comply by the following date:			
	following the contract start da	ate after the first open enrollment process ate, not to exceed two years, if the vidence of taking reasonable measures to		
	At such time that the a nondiscrimination in benefits exceed three months; or	idministrative steps can be taken to incorporate in the Contractor/vendor's infrastructure, not to		
	Upon expiration of the agreement(s).	contractor's current collective bargaining		
B. If you have taken all reasonable measures to comply with the EBG unable to do so, do you agree to provide employees with a cash of (The cash equivalent is the amount of money your company pays benefits that are unavailable for domestic partners.)  Yes No				
Section 4.	REQUIRED DOCUMENTAT	<u> </u>		
your plans	Nide documentation (copy of $\epsilon$	contract award, you may be required by the employee handbook, eligibility statement from it, etc.) to verify that you do not discriminate in		
Section 5.	CERTIFICATION			
foregoing By signing Equal Ber	is true and correct and that I a this certification, I further agre	the laws of the State of California that the im authorized to bind this entity contractually. See to comply with all additional obligations of the orth in the Long Beach Municipal Code and in der with the City.		
Executed	this day of	, 20, at		
Name		Signature		
Title		Federal Tax ID No		



# Attachment G

PRO-FORMA (SAMPLE) AGREEMENT

# OFFICE OF THE TY ATTORNEY ROBERT E. SHALL JN, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

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# PRO-FORMA (SAMPLE) A G R E E M E N T

THIS AGREEMENT is made and entered, in duplicate, as of \_\_\_\_\_ for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on \_\_\_\_\_, 200\_, by and between (NAME OF CONSULTANT), a (STATE) corporation/limited liability company etc ("Consultant"), with a place of business at (ADDRESS), and the CITY OF LONG BEACH, a municipal corporation ("City"). WHEREAS, City requires specialized services requiring unique skills to be performed in connection with (SCOPE OF WORK ETC.) ("Project"); and WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and WHEREAS, City desires to have Consultant perform these specialized services, and Consultant 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. Consultant 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 below, not to exceed \_\_\_\_\_ Dollars \_\_\_\_\_), at the rates or charges shown in Exhibit "A". B. Consultant 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 Consultant, shall be available only during City's normal business

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

- C. Consultant has requested to receive regular payments. City shall pay Consultant in due course of payments following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.
- D. Consultant represents that Consultant has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.
- E. CAUTION: Consultant shall not begin work until this Agreement has been signed by both parties and until Consultant's evidence of insurance has been delivered to and approved by City.
- 2. <u>TERM.</u> The term of this Agreement shall commence at midnight on (BEGINNING DATE), and shall terminate at 11:59 p.m. on (ENDING DATE), unless sooner terminated as provided in this Agreement, or unless the services or the Project is completed sooner.

#### COORDINATION AND ORGANIZATION.

A. Consultant shall coordinate its performance with City's representative, if any, named in Exhibit "B", attached to this Agreement and

incorporated by this reference. Consultant 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 Consultant information or materials, if any, described in Exhibit "C", 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 Consultant's key employee, \_\_\_\_\_\_. City shall have the right to approve any person proposed by Consultant to replace that key employee.
- 4. <u>INDEPENDENT CONTRACTOR</u>. In performing its services, Consultant is and shall act as an independent contractor and not an employee, representative or agent of City. Consultant shall have control of Consultant's work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others during this Agreement; provided, however, that Consultant acts in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation; (b) City will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of City.

#### 5. <u>INSURANCE</u>.

A. As a condition precedent to the effectiveness of this Agreement, Consultant shall procure and maintain, at Consultant's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best

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Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

- (a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (c) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- (d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.
  - B. self-insurance program, self-insured Any retention.

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deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

- Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.
- E. Consultant shall require that all subconsultants or contractors that Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.
- F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's subconsultants and

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contractors, at any time. Consultant shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

- Any modification or waiver of these insurance requirements G. shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Consultant, Consultant's subconsultants and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.
- Η. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.
- 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement contemplates the personal services of Consultant and Consultant's employees, and the parties acknowledge that a substantial inducement to City for entering this Agreement was and is the professional reputation and competence of Consultant and Consultant's Consultant shall not assign its rights or delegate its duties under this employees. Agreement, or any interest in this Agreement, or any portion of it, without the prior approval of City, except that Consultant may with the prior approval of the City Manager of City, assign any moneys due or to become due Consultant under this Agreement. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of an attempted assignment or delegation. Furthermore, Consultant shall not subcontract any portion of its performance without the prior approval of the City Manager or designee, or substitute an approved subconsultant or contractor without approval prior to the substitution. Nothing stated in this Section shall prevent Consultant from employing as many employees as Consultant deems necessary for performance of this Agreement.

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- 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement, certifies that, at the time Consultant executes this Agreement and for its duration, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of City and the interests of that other client. And, Consultant shall obtain similar certifications from Consultant's employees, subconsultants and contractors.
- 8. MATERIALS. Consultant shall furnish all labor and supervision. supplies, materials, tools, machinery, equipment, appliances, transportation and services necessary to or used in the performance of Consultant's obligations under this Agreement, except as stated in Exhibit "C".
- 9. <u>OWNERSHIP</u> OF DATA. All materials, information and data prepared, developed or assembled by Consultant or furnished to Consultant in connection with this Agreement, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material and memorandum ("Data") shall be the exclusive property of City. Data shall be given to City, and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Consultant. Copies of Data may be retained by Consultant but Consultant warrants that Data shall not be made available to any person or entity for use without the prior approval of City. This warranty shall survive termination of this Agreement for five (5) years.
- 10. TERMINATION. Either party shall have the right to terminate this Agreement for any reason or no reason at any time by giving fifteen (15) calendar days prior notice to the other party. In the event of termination under this Section, City shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. The procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective date of termination, Consultant shall deliver to City all Data developed or accumulated in the

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performance of this Agreement, whether in draft or final form, or in process. And, Consultant acknowledges and agrees that City's obligation to make final payment is conditioned on Consultant's delivery of the Data to City.

- 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and shall not disclose the Data or use the Data directly or indirectly, other than in the course of performing its services, during the term of this Agreement and for five (5) years following expiration or termination of this Agreement. In addition, Consultant shall keep confidential all information, whether written, oral or visual, obtained by any means whatsoever in the course of performing its services for the same period of time. Consultant shall not disclose any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit of others except for the purpose of this Agreement.
- 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a breach of confidentiality with respect to Data that: (a) Consultant demonstrates Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available without breach of this Agreement by Consultant; or (c) a third party who has a right to disclose does so to Consultant without restrictions on further disclosure; or (d) must be disclosed pursuant to subpoena or court order.

#### ADDITIONAL COSTS AND REDESIGN. 13.

- Α. Any costs incurred by City due to Consultant's failure to meet the standards required by the scope of work or Consultant's failure to perform fully the tasks described in the scope of work which, in either case, causes City to request that Consultant perform again all or part of the Scope of Work shall be at the sole cost of Consultant and City shall not pay any additional compensation to Consultant for its re-performance.
- B. If the Project involves construction and the scope of work requires Consultant to prepare plans and specifications with an estimate of the cost of construction, then Consultant may be required to modify the plans and

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specifications, any construction documents relating to the plans and specifications, and Consultant's estimate, at no cost to City, when the lowest bid for construction received by City exceeds by more than ten percent (10%) Consultant's estimate. This modification shall be submitted in a timely fashion to allow City to receive new bids within four (4) months after the date on which the original plans and specifications were submitted by Consultant.

- 14. AMENDMENT. This Agreement, including all Exhibits, shall not be amended, nor any provision or breach waived, except in writing signed by the parties which expressly refers to this Agreement.
- 15. <u>LAW</u>. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and regulations of and obtain all permits, licenses and certificates required by all federal, state and local governmental authorities.
- 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.
- 17. <u>INDEMNITY</u>. Consultant shall, with respect to services performed in connection with this Agreement, indemnify and hold harmless City, its Boards, Commissions, and their officials, employees and agents (collectively in this Section, "City") from and against any and all liability, claims, allegations, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including attorney's fees, court costs, and expert and witness fees) (collectively "Claims" or individually "Claim") arising, directly or indirectly, in whole or in part, out of any negligent act or omission of Consultant, its officers, employees, agents, sub-consultants or anyone under Consultant's control (collectively "Indemnitor"), breach of this Agreement by Indemnitor, misrepresentation or willful misconduct by Indemnitor, and Claims by any employee of Indemnitor relating in any way to workers' compensation. Independent of the duty to

OFFICE OF THE YATTORNEY ROBERT E. SHAL, N, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

indemnify and as a free-standing duty on the part of Consultant, Consultant shall defend City and shall continue this defense until the Claim is resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach or the like on the part of Indemnitor shall be required for the duty to defend to arise. Consultant shall notify City of any Claim within ten (10) days. Likewise, City shall notify Consultant of any Claim, shall tender the defense of the Claim to Consultant, and shall assist Consultant at Consultant's sole expense, as may be reasonably requested, in the defense.

- 18. <u>AMBIGUITY</u>. In the event of any conflict or ambiguity between this Agreement and any Exhibit, the provisions of this Agreement shall govern.
- 19. <u>COSTS</u>. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies under it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

#### 20. NONDISCRIMINATION.

- A. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in City's procurement process, and Consultant agrees to use its best efforts to carry out this policy in its use of subconsultants and contractors to the fullest extent consistent with the efficient performance of this Agreement. Consultant may rely

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on written representations by subconsultants and contractors regarding their status. City's policy is attached as Exhibit "D" to this Agreement. Consultant shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all subconsultants and contractors hired by Consultant for this Project and information on whether or not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

21. NOTICES. Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Consultant at the address first stated above, and to City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to the City Engineer at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

#### 22. COPYRIGHTS AND PATENT RIGHTS.

- A. Consultant shall place the following copyright protection on all Data: © City of Long Beach, California , inserting the appropriate year.
- B. City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's performance of this Agreement. By executing this Agreement, Consultant assigns any ownership interest Consultant may have in the Data to City.
- C. Consultant warrants that the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. Consultant agrees to and shall protect, defend, indemnify and hold City, its officials and employees harmless from any and all claims, demands, damages, loss, liability, causes of action, costs or expenses (including reasonable attorney's fees) whether or not reduced to judgment, arising from any breach or alleged breach of

this warranty.

23. <u>COVENANT AGAINST CONTINGENT FEES.</u> Consultant warrants that Consultant has not employed or retained any entity or person to solicit or obtain this Agreement and that Consultant has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement. If Consultant breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission or other monies.

- 24. <u>WAIVER</u>. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
- 25. <u>CONTINUATION</u>. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 17, 19, 22 and 28 prior to termination or expiration of this Agreement.
- 26. TAX REPORTING. As required by federal and state law, City is obligated to and will report the payment of compensation to Consultant on Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. Consultant's Employer Identification Number is \_\_\_\_\_\_. If Consultant has a Social Security Number rather than an Employer Identification Number, then Consultant shall submit that Social Security Number in writing to City's Accounts Payable, Department of Financial Management. Consultant acknowledges and agrees that City has no obligation to pay Consultant until Consultant provides one of these numbers.
- 27. <u>ADVERTISING</u>. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference,

without the prior approval of the City Manager or designee.

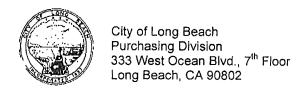
- 28. <u>AUDIT</u>. City shall have the right at all reasonable times during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of Consultant relating to this Agreement.
- 29. <u>THIRD PARTY BENEFICIARY</u>. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

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.

	(NAME OF CONSULTANT)
, 200	By
	Type or Print Name
, 200	By
	Type or Print Name
	"Consultant"
	CITY OF LONG BEACH, a municipal corporation
, 200	ByCity Manager
	"City"
This Agreement is approved a	as to form on, 200
	ROBERT E. SHANNON, City Attorney
	By Deputy

# EXHIBIT "A-2"

Scope of Work or Services



#### 3. SCOPE OF PROJECT

The City of Long Beach (City) requires the services of an auction firm to provide auctioneering services for the purpose of selling 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. 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 the 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 liaison for the Contractor and 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 offerors 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. Contractor shall be responsible for the initiation, completion and associated costs for all marketing and advertising. An overview of the marketing plan shall be submitted with the contractor's proposal; including samples of ads, email brochures, and other media.

The auction services shall include, but not be limited to, the public sale of surplus motor vehicles and miscellaneous items. Contractor shall provide maintenance of all auction records and the chronology of the bidding for all auction items. The 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 on an "as is" basis.

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

Contractor may submit a proposal for on-line auction services to be considered by the City.



#### WORK PROGRAM

C.H.P. Enterprises, Inc. d.b.a. Ken Porter Auctions, herein referred to as KPA, proposes to provide the following Auctioneer Services for City of Long Beach, herein referred to as consignor, upon finalization and acceptance of this proposal/contract.

KPA will provide the following services for consignor with the understanding that the costs to consignor will be those as dictated on the separate sheet, located in the Exhibit A "Pricing Sheet" section of the proposal/contract. Unless otherwise requested and approved by consignor during the course of our agreement. KPA's services are provided as follows:

#### TRANSPORT OF VEHICLES OR ITEMS

KPA will provide transportation service for all sale vehicles from the designated Consignor location to KPA's auction facility. KPA will use company owned vehicles and company drivers. The maximum response time by KPA following a request from the Consignor for such transportation shall be two (2) working days. KPA will assume liability of each vehicle and equipment at the time of pick-up from the Consignor. As each vehicle is received, KPA will verify the vehicle identification number, year, make, model and odometer reading and other needed information on and Equipment Inspection Report. KPA will decommission each vehicle prior to transport.

KPA will be responsible for maintaining each vehicle delivered to the auction site in the same condition as when it was received. In the event that the vehicle is damaged, lost, stolen, or an accident occurs, KPA will either repair the vehicle at no cost to the Consignor or pay the Consignor the value of the vehicle at the time the incident occurred. Miscellaneous items will likewise be logged in upon receipt and receive the same liability coverage as vehicles and equipment.

KPA maintains and has in-house access to an affiliated vehicle transportation service that has a fleet of transportation vehicles varying from 1 to 9 unit load capacity. This provides KPA with the benefit of immediate attention capability and control of pick-up and delivery times.

KPA's fleet consists of 27 vehicles. We have four (4) 8 to 9 car haulers, five (5) large equipment transports, two (2) stakebed trucks and sixteen (16) 45 foot trailers for miscellaneous items.

Consignor shall provide to KPA its vehicles, trailers, equipment and any other-items-for auction, in a timely manner to provide for the highest impact on solicitation and



presentation through KPA's planned advertising campaign.

Consignor will provide a list of property to be auctioned to KPA by fax, e-mail or regular mail as soon as possible. Consignor may make, and can submit, minor changes to said list at any time up to three (3) days prior to and in advance of the auction date. Not withstanding the aforementioned, Consignor may withdraw property from said list upon written notice to KPA three (3) days prior to the auction date.

Consignor 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. Consignor 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.

Consignor will maintain any records regarded as important or relative, outside of those delivered by KPA. Consignor 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 Consignor'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 Consignor.

Consignor 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 Consignor 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.

#### MARKETING PLAN

Ken Porter Auctions (KPA) will conduct and deliver an advertising campaign based on 49 years of experience to produce the best event exposure and marketing to provide the highest attendance and participation possible. This will include the production of an effective auction flyer/brochure that is mailed out prior to each auction to over 20,000 current and/or previous customers; advertising in local and regional publications, radio markets and/or internet sites, and on our own web site. Additional Advertising into various media for buyer specific items such as aircraft, heavy machinery or other type items will be done to maximize the exposure and buyer base to bring the highest dollar amount to the county. Notably, our advertising exposure can be considerably more than most companies, due to our regular, long-term use of our selected publications.

KPA will create and design the auction event flyers/brochures in house using our experienced production team that utilizes state of the art production equipment. These straightforward, clean, concise, full color mailers featuring available inventory



pictures are sent first class to our customer mailing list. Consignor will advise and receive a quantity of these brochures for distribution as they see fit.

KPA will maintain and update a KPA web site to promote the sale of Consignor's property and to help attract the widest possible audience. All vehicles listings will be updated daily to generate maximum interest. The full listing is available at our auction yard and on our web site the Thursday prior to each auction. In addition, all sales will be posted to the www.kenporterauctions.com web site by Monday evening following each sale for Consignor's immediate use.

KPA shall ensure and solicit that all property will be available for public inspection two (2) working days immediately preceding the auction sale date. No other public access will be allowed. During the inspection period, KPA's personnel and security officers will be present to supervise and oversee the viewing process. KPA agrees to wash and clean, in our environmentally friendly clarification wash areas, all vehicles prior to inspection days and immediately prior to auction. Upon request by Consignor, KPA will also provide a vehicle detail service for selected property prior to the auction.

#### SALES PREPARATION AND FINALIZATION

<u>AUCTION PREPARATION</u> - To prepare Consignor'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;
- Picture each vehicle and surplus item for immediate exposure on our website
- Have Smog and Safety tests made as required;
- Remove all exempt license plates and return to Consignor:
- Place AS IS notice and a Lot Number on each vehicle.

Miscellaneous items will be sorted into the most saleable lots utilizing KPA's marketing and auction expertise and experience. Consignor's items will be kept in separate lots from others' lots.

KPA, upon request by Consignor, or by research of vehicle's DMV status through their in-house State of California DMV research information, 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 Consignor with the estimated cost to repair or modify the vehicle to comply for certification. Upon receipt of said estimate, Consignor 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 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. Consignor's DMV paperwork will be processed with the other like transactions.

Upon receipt of title work from Consignor 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.

#### 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 Consignor. We, KPA, are fully confident that our event process, developed from years of experience, will provide Consignor with this comfortable state of mind.

KPA conducts vehicle, equipment, and miscellaneous item auctions on the 1<sup>st</sup> Saturday and 3<sup>rd</sup> Saturday of each month. KPA conducts periodic auctions at either on-site or at a site requested by a consignor. 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 live online auction our bidder attendance has reached a national to at times worldwide level bringing our consignors assets to a national buyer base.

Consignors are welcome to attend our auction event and will have full access to Consignor Reconciliation room, which has a live video feed of auction along with computers and internet access.

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.

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 Consignor'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 cash 10% Buyers 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 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 videotape to Consignor, immediately upon request.

In the event any items are not purchased at a sale, all such items, unless otherwise directed by Consignor, will be retained and re-entered into the next auction event



conducted by KPA on behalf of Consignor. This re-entry will be conducted at no cost to Consignor with the same conditions of sale as if entered for the first time. Unless directed by Consignor, the items will continue to rerun if unsold, until sold or termination of this agreement.

#### **PAYMENT**

Upon finalization of all transactions of each event, KPA will provide Consignor a detailed summary statement designated as "Final Auction Results". This statement will be accompanied by a payment of gross proceeds, less applicable sales tax, DMV fees, or any other 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 Consignor 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 agrees that upon the date of receipt and recording by City of Long Beach, the offer made in this proposal becomes immediately firm and binding for 90 days from that date.

KPA states and confirms that all aspects of this proposal, including costs and time frame have been determined independently, without malice of forethought to limit or disdain any proposals that may be submitted by another contractor and/or competitor that could be interpreted to limit the courses of consideration by City of Long beach.

KPA declares that all statements, references and all related attachments of facts contained in this proposal are true and accurate. KPA further acknowledges that in the event any of our claims are proven to be falsely presented, the City of Long Beach may pursue any remedy by law at their decision.

KPA agrees that when this proposal is accepted and a contract is awarded, all aspects of this proposal shall be considered unequivocally binding.

In the event the City of Long Beach determines and thereby requests additional information to validate KPA's ability to provide the proposed services, KPA will deliver such information immediately upon request.

Upon the awarding of this contract, KPA agrees, without exception, to comply with any and all applicable rules, laws and regulations exercised by the City of Long Beach.

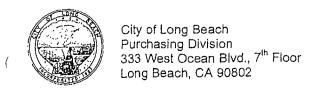


KPA employees its own "in-house" consultants and currently has no plans to change.

KPA employees all staff required to exercise the terms and conditions of the proposal/contract. KPA uses no subcontractors or has any joint ventures at the present time and currently has no plans to change.

# EXHIBIT "B"

Rates or Charges



#### **PRICING SHEET**

#### **Auction Services**

The percentage of gross sales shall include all direct and indirect costs with no out-ofpocket 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	10%

\* Rebate based on gross vehicle/misc sales by the City of Long Beach

a.	\$ 0	_	50,000	\$ 1.0%
b.	\$ 50,001	_	100,000	\$ 1.5%
c.	\$100,001	_	150,000	\$ 2.0%
d.	\$150,001	_	200,000	\$ 3.0%
e.	\$200,001	_	Plus	\$ 4.0%

Name & Title:

# EXHIBIT "C"

City's Representative: Erik Sund, Business Relations Manager

# EXHIBIT "D"

Materials/Information Furnished: None