



Contract Number

SAP Number

Purchasing Department

Department Contract Representative	<u>Bill Brock</u>
Telephone Number	<u>909-387-2464</u>
Contractor	<u>IronPlanet, Inc/Ritchie Brothers</u> <u>Auctioneers (America) Inc.</u>
Contractor Representative	<u>Kevin O'Donnell</u>
Telephone Number	<u>412-302-0051</u>
Contract Term	<u>August 20, 2019 – August 19, 2024</u>
Original Contract Amount	<u></u>
Amendment Amount	<u></u>
Total Contract Amount	<u></u>
Cost Center	<u></u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (County) desires to auction surplus County property such as heavy equipment for Public Works and vehicles for Fleet and Sheriff; and

WHEREAS, the County conducted a competitive process to find Contractors to provide these services, and

WHEREAS, the County finds Contractor qualified to provide auction services, including standalone or simultaneous online auctions; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. GENERAL RESPONSIBILITIES

Auction heavy equipment for Public Works and vehicles for Fleet and Sheriff, including standalone or simultaneous online auctions for these items

Contractor shall:

- A.1** Provide a detailed summary statement, "Final Auction Results", to the County accompanied by payment of those gross proceeds of sale to County no later than ten (10) working days after auction date. Final accounting shall include sale price, name and address of purchaser, itemized accounting of other fees and authorized expenses, including fees charged to the purchaser and revenue to the Contractor.
- A.2** Have a procedure in place to handle non-payment from bidders in order to minimize the number of bidders who renege on awarded auction items.
- A.3** Collect payment from successful bidders via cash, cashier's check or personal checks when accompanied by a correctly prepared bank "Letter of Guarantee", or credit/debit card.
- A.4** Submit all necessary documentation to the State Department of Motor Vehicles to facilitate transfer of ownership within two (2) working days after the sale of a vehicle.
- A.5** Provide the County 24/7 access to reports to obtain real-time bid history, sales tracking and inventory reports, customer data, fees and payment history. The County shall continue to have access to these reports without limitation or expiration.
- A.6** Ensure that reports shall be provided in a format that can be exported to Microsoft Excel™ and shall be customizable by the end user.
- A.7** Ensure the following information shall be accessible and provided in a monthly report in Excel format:
 - a. Items sold and amount
 - b. Number of bids received for each item
 - c. Date and time of each bid and bid amount
 - d. Names and contact information of winning bidders
 - e. Items paid for, items picked up and payments not yet received
 - f. Payment date, type of payment and receipt number
 - g. Current bids of all surplus property at auction
 - h. Cumulative data in any date range
 - i. Status of auction items such as those at auction, items sold, items listed as inactive as well as auction items that closed with no bids that did not meet any set minimum bid.
 - j. Final disposition of items not sold
 - k. All charges and fees to the buyer (buyer premium, smog fees, etc.) itemized.
 - l. Consigning County department

B. LIVE AUCTION REQUIREMENTS

(To be held at Contractor's Facility with Online Auction in conjunction with Live Auction)

Contractor shall:

- B.1** Conduct auctions of County designated property at Contractor's facility upon request from a County department. Contractor shall work with each department upon specific request to determine the sales price and other details necessary for the auction. Surplus property includes vehicles, construction equipment.
- B.2** Ensure that all auctions shall be open to the general public, and there shall be no fee charged to the Public for entry or participation as a potential buyer.
- B.3** Ensure that sales of surplus property shall be made only to the highest responsible bidder.
- B.4** Reschedule all unsold property to the next available auction at no additional cost to the County, unless otherwise directed by the County.

- B.5** Receive and protect all property consigned for disposal.
- B.6** Physically arrange property for public viewing prior to auction date.
- B.7** Supply all needed personnel and set up all needed auction equipment and facilities such as offices, customer seating, and auction stands.
- B.8** Comply with all pertinent provisions of the Bulk Sales Laws and laws and regulations of the State of California, including, but not limited to, obtaining all necessary licenses and permits, posting required bonds, payment of all fees and expenses thereof and publicizing the sale.
- B.9** Engage in a comprehensive advertising and marketing campaign in advance of each auction. Said campaigns shall include: advertisements in major newspapers in the surrounding major metropolitan areas, preparing, printing and distributing fliers and brochures on special interest property, and advertisements in trade journals as well as national and international campaigns when appropriate.

The County encourages distribution by first class mail of auction brochures to Contractor's current mailing list prior to each auction. Said brochures will contain descriptions and photographs of featured items of the property to be auctioned on the advertised auction date. A reasonable quantity of these brochures shall be provided to the County upon request.

- B.10** Register all bidders and issue bidder numbers, both onsite and online.
- B.11** Provide a detailed summary statement, "Final Auction Results", to the County no later than ten (10) working days after auction date. Final Auction Results shall include sale price, detailed accounting for other fees, and authorized expenses. Summary statements may be designed to fit consignor requirements. Name and address of purchaser can be provided upon County request.
- B.12** Ensure that all property is available for public inspection at least two (2) working days immediately preceding the auction sale date. No other public access will be allowed. Contractor's personnel and security employees will supervise this inspection period. Vehicles shall be washed prior to inspection days and again immediately before the auction sale. As requested by County, Contractor shall provide detail service for the property prior to auction.
- B.13** Arrange for the transportation of all property from the County's possession to Contractor's auction facility as requested by County. Licensed and insured sub-contractors may provide such transportation.
- B.14** Arrange for smog certificate or a statement that vehicle does not meet smog requirements prior to sale as requested by County and in compliance with California State laws.
- B.15** Arrange for property repair or reconditioning when requested by County. Contractor, upon direction of the County, will obtain price quotes, and upon receipt of written instructions from the County, shall have the necessary services performed. The fees for such services shall be deducted from auction proceeds.
- B.16** Allow the County the right to set a minimum selling price on certain items.
- B.17** Upon request, videotape auctions and provide the County with a copy of the video.
- B.18** Ensure that County employees are prohibited from bidding or purchasing either directly or through an intermediary at auction or other sales of County property.

- B.19** Supply all necessary personnel and computer hardware/software and facilities such as offices and office equipment.
- B.20** Comply with all pertinent provisions of the Bulk Sales Laws and laws and regulations of the State of California, including, but not necessarily limited to, obtaining all licenses and permits, posting required bonds, payment of all fees and expenses thereof and publicizing the sale.
- B.21** Engage in an Internet advertising and marketing campaign in advance of each auction. The Internet advertising campaign shall contain descriptions and photographs of featured items of the property to be auctioned by the online auction closing date.
- B.22** Provide real-time online reports of auction statuses, sales made and pending sales.
- B.23** Provide a fully functional internet auction service in conjunction with the live auction capable of the following:
 - B.23.1** Able to pre-qualify and register all bidders.
 - B.23.2** Allow real time bidding at any time on an item until the live auction on that item closes.
 - B.23.3** Be user friendly with a simple and uniform method for bidders to submit bids and shall allow online bidders to see the highest bid price.
 - B.23.4** Have the ability to upload the County's Terms and Conditions, policies and possible disclaimers and will ensure that bidder's understand and agree to them before bidding is allowed.
 - B.23.5** Provide email notification to bidders and the County. Email notifications shall be sent as follows:
 - a. Confirmation that bid(s) were received.
 - b. That the bidder has been outbid.
 - c. Awarded auction notification with payment instructions.
 - B.23.6** Provide security systems, anti-virus and firewalls that are capable of:
 - a. Preventing the hacking of any auction information from the auction servers.
 - b. Preventing the assimilation or distribution of viruses and other programs, and
 - c. Preventing any bidder from learning the identity of any other bidder.
- B.24** Provide website maintenance and upgrades at no cost to the County and shall notify the County of any upgrades in advance.
- B.25** Provide training to County staff to use the auction site at no additional charge to the County. Training may be provided through in-person instruction, webinars, or PowerPoint presentations.
- B.26** Identify and obtain approval from the County for any subcontractors or third parties that will be involved in the online auction services. Contractor is responsible for paying any such subcontractors or third parties for any services rendered.
- B.27** Have staff on-site at the County to assist in the preparation of items for auction and to run the auctions for temporary periods of time.

C. GENERAL CONTRACT REQUIREMENTS

C. AUCTION REQUIREMENTS (Online Auctions Only)

Contractor shall:

- C.1** Provide all hardware, software and servers needed to operate the online auction service. The County shall be given full access to the assigned online auction account and shall allow the County to utilize all aspects of the system via a common internet browser. The system shall be available to the County 24 hours a day, 7 days a week, 365 days a year. The County shall be able to upload items whenever it best suits the schedule of the County.
- C.2** Provide and absorb all costs of a secure hosting facility to operate the online auction system and allow County full access to that account. The County shall not be required to install any additional computer hardware or software at the County location. The only requirement shall be that the County has an internet connection via a common web browser. The auction service shall not interact with any County computer hardware, software or database systems other than accessing the County account through a common web browser.
- C.3** Provide all maintenance and upgrades to the hardware and software provided over the term of the contract. All maintenance and upgrades shall be provided at no cost to the County.
- C.4** Provide system connectivity to the internet such that it is accessible through industry standard internet connections, web browsers and email. The system shall allow access from Windows™ based systems and Apple™ compatible systems of the County.
- C.5** Provide all maintenance and support, including email and telephone support needed to operate the auction site. Live customer service support shall be available Monday through Friday between the hours of 8:00 AM and 5:00 PM Pacific Standard Time.
- C.6** Ensure that all security systems, anti-virus and firewalls are capable of: (a) preventing the hacking of any auction information from the auction servers, (b) preventing the assimilation or distribution of viruses and other programs and (c) preventing any bidder from learning the identity of any other bidder.
- C.7** Have contingency plans in place to backup and recover information. Additionally, a disaster recovery plan shall be in place that covers internet failure, electricity failure or systems failure.
- C.8** Provide a documented process and tools for continually marketing and promoting the site to the public.
- C.9** Provide training tools and processes to train County staff on use of the system. Onsite training shall be provided to the County prior to rollout of the system at no additional charge to the County.
- C.10** Provide a system which can provide both pre-formatted and ad hoc reports. County shall be able to run and customize reports that will be available in Excel™, PDF and HTML formats.
- C.11** Provide a system that allows the County to set a minimum opening bid price and minimum bid increments for each auction item.
- C.12** Provide a system which shall allow the County to stop auctions, create addendums, move to the next highest bidder and retract offers, all without the intervention or penalty of the Contractor. The system shall notify bidders if an auction has been amended, withdrawn or cancelled.

- C.13** Provide a system which allows the County to upload multiple attachments per auction item. These attachments may include photos, videos and PDF documents that can be viewed by bidders as part of the auction.
- C.14** Provide that the County's own Terms and Conditions shall be posted for each asset offered for sale and a quick link shall be provided to the County's Terms and Conditions. Before a bidder can place their first bid on an asset being auctioned, the bidder shall be required to agree to the County's posted Terms and Conditions, which will explain payment and pickup terms, as well as the penalty for not paying or picking up on time. If a bidder does not pay on time, the County shall be able to immediately offer the item to the second highest bidder, or repost the item for auction.
- C.15** Provide an online auction system that shall have:
- C.15.1** Simple and uniform methods for bidders to submit bids and have the highest bid price to date posted on the bidding site for all bidders to see.
 - C.15.2** The ability to confirm to a bidder that their bid(s) were received.
 - C.15.3** A system to notify a bidder if the bidder's bid has been rejected and such notification shall identify the reason for such rejection.
 - C.15.4** The ability to notify that a bidder has been out-bid via email notification.
 - C.15.5** A dynamic closing time on each item. Auctions shall automatically extend five (5) minutes from the last bid at least one (1) minute from the auction closing, allowing the County to benefit from any last minute bidding activity.
 - C.15.6** The ability to notify successful bidders of auction award(s) with payment instructions via email.
 - C.15.7** An internal method of recording all bids, a method of identifying both the winning bidder and the second highest bidder and shall allow the County to award to the second highest bidder should the winning bidder renege on payment.
 - C.15.8** The ability to automatically generate and send to the County and buyer a "PAID" email notice when payment is received and shall allow the County to mark each auction item as "Picked Up" after a transaction is complete.
 - C.15.9** Allow the County to require a bid deposit before bidders may place bids on designated items in order to certify bidder's ability and willingness to pay. The County, at its discretion, may set a restriction that requires a bidder to make a deposit, in any amount to be determined by the County, before placing a bid on an item. Once the deposit is received by the Contractor, the bidder's account will be approved for bidding on the designated item.
 - C.15.10** Be capable of adding shipping costs to the sale if the County has to package and ship an item(s).

D. GENERAL CONTRACT REQUIREMENTS

D.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

D.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

D.3 Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

D.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

D.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

D.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

D.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

D.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

D. 9 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by

conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

D.10 RESERVED

E.11 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

D.12 County Representative

The Director of Purchasing or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

D.13 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

D. 14 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

D.15 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

D.15.1 Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

D.15.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

- D.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

D.16 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

D.17 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

D.18 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

D.19 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

D.20 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or

any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

D.21 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

D.22 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

D.23 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

D.24 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

D.25 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

D.26 Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of

this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

D.27 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

D.28 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section IV–Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

D.29 Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within San Bernardino and Riverside counties requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

D.29.1 Such governmental body does not have and will not have in force any other contract for like purchases.

D.29.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

D.30 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

D.31 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

D.32 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

D.33 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

D.34 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

D.35 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

D.36 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

D36.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

E36.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

D36.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

D. 37 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

D.38 Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

D.39 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

D.40 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

D.41 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

D.42 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

D.43 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also

reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

D.44 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

D.45 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

E TERM OF CONTRACT

This Contract is effective as of August 20, 2019 and expires August 19, 2024 but may be terminated earlier in accordance with provisions of this Contract.

F. COUNTY RESPONSIBILITIES

- F.1** The County will provide the Contractor with vehicles, equipment and surplus property on a regular basis.
- F.2** The County will provide the Contractor with any documentation required in order for the Contractor to fulfill their responsibilities in the auctioning and sale of surplus County property.

G. FISCAL PROVISIONS

- G.1** Contractor shall supply personnel to collect proceeds from all sales directly from buyers, in the form of cash, cashier's check, traveler's check, money order, or a check guaranteed by a bank letter of credit.
- G.2** Within 10 days following each auction, Contractor shall remit net auction proceeds to the County. Net auction proceeds is defined as sales price (buyer's bid plus buyer's premium), less contracted buyer's premium, applicable fees and the cost of repairs requested by the County (if applicable). See Attachment A for pricing and fees.
- G.3** Contractor shall charge the County a commission of 9% of the sale price of an item/piece of equipment.
- G.4** Contractor is responsible for paying any such subcontractors or third parties for any services rendered. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages.
- G.5** The County shall only be obligated to pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- G.6** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

H. INDEMNIFICATION AND INSURANCE REQUIREMENTS

H.1 Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

H.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

H.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

H.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

H.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

H.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

H.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

H.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

H.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

H.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

- H.11** The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- H.11.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- H.11.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

- H.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a

combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- H.11.4** **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

I. RIGHT TO MONITOR AND AUDIT

- I.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- I.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

J. CORRECTION OF PERFORMANCE DEFICIENCIES

- J.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- J.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - c. Withhold funds pending duration of the breach; and/or
 - d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item “b” of this paragraph; and/or
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

K. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino
Purchasing Department
777 East Rialto Avenue
San Bernardino CA 92415

Iron Planet, Inc. and Ritchie Brothers
4000 Pine Lake Road
Lincoln, NE 65816

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

L. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

IronPlanet, Inc/Ritchie Brothers
Auctioneers (America) Inc.

(Print or type name of corporation, company, contractor, etc.)

By _____
(Authorized signature - sign in blue ink)

Kevin O'Donell

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address 4000 Pine Lake Road

Lincoln, NE 65816

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Suzanne Bryant, Deputy County Counsel	► _____	► Laurie Rozko, Director
Date _____	Date _____	Date _____

IronPlanet, Inc/Ritchie Brothers Auctioneers (America) Inc.

**EXHIBIT A
COST / BID SHEET
PART I**

1. COMMISSION FEES **PROPOSED PERCENTAGE/DOLLAR AMT.**

- A. Cars, Vans & Light Duty Trucks (up to 1 Ton) % 9.0
- B. Heavy Equipment, Heavy Duty Trucks % 9.0
- C. Additional Services as needed \$65 document processing

2. OTHER SERVICES

ONLY LIST COSTS THAT ARE PART OF ROUTINE SERVICE AND ARE NOT CONTAINED IN PROPOSED COST/PERCENTAGE AMOUNT.

- A. Detail Services prior to Auction.
Includes wax exterior, interior shampoo
engine steam clean and emblem removal

\$40 decal removal; CAT 966B wheel loader or comparable-\$605;
CAT 627G motor scraper or comparable- \$1,045; CAT D8T crawler
or comparable- \$595; CAT 140H motor grader or comparable- \$565

- B. Smog Check \$ 110

- C. Safety Inspection \$ 0

- D. Transportation charges

- C. Vehicle Repairs \$ Cost upon approval

3. BUYER'S PREMIUM

- A. Indicate (if applicable) buyer's premium

Buyer transaction fees for live, onsite auctions are based on final sales price: 10% on lots selling under \$5,000; 3.85% on lots selling between \$5,000-\$33,500; and \$1,290 on lots selling above \$33,500. Buyer transaction fees for online auctions are a flat 10%.

4. Physical Location/Address of Live Auction site
765 West Rider Street Perris, CA 92571

5. State the frequency of live auctions (ex. Monthly, 2X per month) Live on site auctions are held quarterly.
Online auctions are held twice per week.

6. Does your company dispose of miscellaneous equipment/surplus property? X Yes No

7. Can your company, if requested, pick up surplus property from any location within the County?

 Yes X No

If "No", what is the geographic area your company can provide surplus property pick ups (See Map separately attached to the RFP document in e-Pro.)

We can provide pick up from locations in the County but would like to have items centralized for pick up out of key central locations to better manage this service and ensure adequate load per truck to maximize efficiencies.

~~\$85 + fuel 48 ft flatbed / \$95/hour + 10% fuel 5 axles low bed~~
~~\$ (50 for sale in place online)~~

8. Does your company conduct Internet Auctions? ☒ Yes ☐ No

If "Yes", is your online auction in conjunction with a live auction or online only?

Both. Our live on site auctions are simulcast online and we offer online only auctions in multiple formats to better serve our client base (DIY, Full-Service and Reserve Auctions).

9. Will your company provide two twenty foot length (minimum) trailer(s) at no charge to the County at County location for miscellaneous surplus property? ☐ Yes ☒ No.

Our company does not own trailers but we would be willing to rent trailers from a local vendor for use by the County at cost.

10. Will your company provide one (1) sea container at no charge to the Sheriff's Department property division?

☐ Yes ☒ No

Our company does not own sea containers but we would be willing to rent one for the Sheriff's Dept. at cost.

10. For both physical (live) and online auctions – Does your company have a secure, physical location to store items being auctioned? ☒ Yes ☐ No