

STAFF REPORT**CITY OF OCEANSIDE**

DATE: May 25, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH TNT AUCTION, INC.,
FOR AUCTION SERVICES TO DISPOSE OF EXCESS CITY PROPERTY**

SYNOPSIS

Staff recommends that the City Council approve a two-year Professional Services Agreement (PSA) with TNT Auction, Inc., of Salt Lake City, Utah, in an amount equal to 10 percent Buyer's Premium plus 5 percent Auction Sales Commission of total gross sales for auction services to dispose of excess City property, equipment and machinery; and authorize the City Manager to execute the agreement.

BACKGROUND

From time to time, the City consigns office furniture, light office equipment, vehicles (including cars, trucks, vans, trailers of any kind, make and model), light equipment, machinery, tools, parts and/or miscellaneous items for disposal. The disposal of the items is done through off-site public auctions conducted by an auction company. In August 2000, the City entered into an agreement with General Auction Company (GAC) of Norwalk, CA, to auction the City's consigned items. In March 2010, the agreement was amended to include the auction of unclaimed surplus property and assets seized by the Oceanside Police Department in the course of their investigations.

ANALYSIS

Section IX Procurement Clauses, F: Cooperative Purchasing Agreements of Administrative Directive-21 Procurement of Goods and Services allows the City to participate in any voluntary purchasing agreement or program entered into between the City, state, county, or other municipalities or agencies, if they are available and advantageous to the City. Because several auction companies have either gone out of business or declared bankruptcy, and due to the specialized nature of such services, the City has opted to "piggy-back" onto the County of San Diego agreement with TNT Auction, Inc. The agreement is for a term of approximately two years commencing on May 25, 2011, and ending June 30, 2013, to align with the contract period for County of San Diego Contract # 524154.

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The auctioning of Oceanside Police Department unclaimed surplus property and assets seized in the course of investigations will continue to be handled by GAC. These items require separate handling and accountability and must be reported to the Federal government.

FISCAL IMPACT

TNT Auction, Inc., will retain the following commission rates from the total gross sales:

Buyer's Premium Percentage	10%
Auction Sales Commission	5%

Fees for other incidental services involved in disposing of surplus items such as removal of decals and identifiers from City vehicles, replacement parts and mechanical repairs, are included in the agreement. TNT Auction, Inc., will deduct these fees out of the sales proceeds of the City after the payment of commission and expenses.

Per AD-23 Surplus Transfer, Disposal, Sale and Donation of Personal Property, Section V. C, all proceeds from the sale of surplus property will be allocated to the General Fund unless the property was originally purchased with monies from a specific enterprise or internal service fund, in which case the proceeds will be returned to that specific enterprise or internal service fund.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

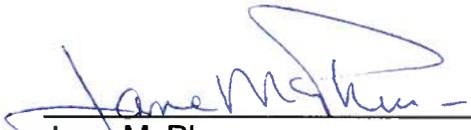
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

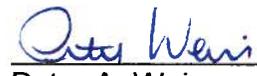
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PREPARED BY:

SUBMITTED BY:



Jane McPherson
Accounting Manager



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Teri Ferro, Financial Services Director



Attachments:

County of San Diego Agreement #524154 Agreement with TNT Auction for Auction Services
PSA with TNT Auction, Inc.

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: AUCTION SERVICES FOR DISPOSAL OF CITY SURPLUS PROPERTY

THIS AGREEMENT, dated _____, 2011 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and TNT Auction, Inc., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Auction services to dispose of City surplus vehicles, property, equipment and machinery and other miscellaneous items. A detailed description of the Scope of Work, County Agreement Pages 16-19, Agreement with TNT Auction for Auction Services, Statement of Work Exhibit A, is attached hereto and incorporated herein by this reference.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and

Auction Services to dispose of City surplus

employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

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- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written

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request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the commission rates from the total gross sales as follows:

10% Buyer's Premium Percentage
5% Auction Sales Commission

No work shall be performed by CONSULTANT in excess of the commission rates without prior written approval of the CITY. CONSULTANT shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing.

The term of this agreement is for (2) two years commencing May 25, 2011.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally

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or in any manner other than by an agreement in writing signed by the parties hereto.

12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

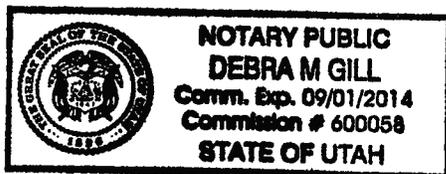
[NAME OF CONSULTANT]
By: *[Signature]*
Name/Title president

CITY OF OCEANSIDE
By: _____
City Manager

By: _____
Name/Title
87-0510418
Employer ID No.

APPROVED AS TO FORM:
[Signature]
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.



[Signature]
5/4/11

**COUNTY AGREEMENT NUMBER 524154
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES**

This Agreement ("Agreement") is made and entered into on the date shown on the signature page ("Effective Date") by and between the County of San Diego, a political subdivision of the State of California ("County") and Contractor TNT Auction located at 2353 North Redwood Road, Salt Lake City UT 84116 ("Contractor"), with reference to the following facts:

RECITALS

- A. Pursuant to Administrative Code section 401, the County's Director of Purchasing and Contracting is authorized to award this Contract for Auction Services
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County Charter.
- D. The Agreement shall consist of this pro forma Agreement, Exhibit A Statement of Work, Exhibit B Insurance Requirements and Exhibit C, Payment schedule. In the event that any provision of the Pro Forma Agreement or its Exhibits, A, A-1, B or C, conflicts with any other term or condition, precedence shall be: First (1st) the Pro Forma; Second (2nd) Exhibit B; Third (3rd) Exhibit A; Fourth (4th) Exhibit C.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I
PERFORMANCE OF WORK**

- 1.1 Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 Contractor's Representative. The person identified on the signature page ("Contractor's Representative") shall ensure that Contractor's duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor's Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor's Representative pursuant to this Agreement are unique: accordingly, Contractor's Representative shall not be changed during the Term of the Agreement without County's written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1 "Termination for Default", if Contractor's Representative should leave Contractor's employ, or if, in County's judgment, the work hereunder is not being performed by Contractor's Representative.
- 1.3 Contractor as Independent Contractor. Contractor is, for all purposes of this Contract, an independent Contractor, and neither Contractor nor Contractor's employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Contract according to the Contractor's own means and methods of work which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Contractor nor Contractor's employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 Contractor's Agents and Employees or Subcontractors. Contractor shall obtain, at Contractor's expense, all agents, employees and subcontractors required for Contractor to perform its duties under this Contract, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee or subcontractor shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees or subcontractors; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

Any subcontract, or a combination of subcontract to the same individual or firm for the Contract period which is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of the Contract, whichever is less must have prior written concurrence of the Contracting Officer's Technical Representative ("COTR"). Contractor shall provide the County's COTR with copies of all other subcontracts relating to this Contract entered into by Contractor within 30 days after the effective date of the subcontract. Such subcontractors of Contractor shall be notified of Contractor's relationship to County. "Subcontractor" means any entity, other than County, that furnishes to Contractor services or supplies relevant to this Contract other than standard commercial supplies, office space, and printing services.

- 1.4.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of subcontractors in accordance with

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this Agreement. No subcontract utilizing funds from this Agreement shall be entered into which has a term extending beyond the ending date of this Agreement.

- 1.4.2 Mandated Clause. All subcontracts shall include the Standard Terms and Conditions required of Contractor herein.

ARTICLE 2
SCOPE OF WORK

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right To Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.

ARTICLE 3
DISENTANGLEMENT

3.1 General Obligations

At County's discretion, Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to this Agreement (for purposes of this Article 3.1, these shall be referred to as the "Disentangled Services") being terminated from Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any interruption of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing to County or any new service provider all requested information or documentation, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is completed to the County's reasonable satisfaction, or 2) twelve (12) months after the Expiration Date of the Agreement.

3.2 Disentanglement Process

The Disentanglement process shall begin on any of the following dates: (i) the date County notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, Paragraph 4.1.3; (ii) the date designated by County not earlier than sixty (60) days prior to the end of any initial or extended term that County has not elected to extend pursuant to the Agreement's, Signature Page, Contract Term; or (iii) the date any Termination Notice is delivered, if County elects to terminate any or all of the Services pursuant to the Agreement, Paragraph 7.1. Subject to Exhibit A Contractor's obligation to perform Disentangled Services, and County's obligation to pay for Disentangled Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in this Agreement, Paragraphs 7.1 and 7.4; (B) at the end of the initial or extended term set forth in this Agreement's, Signature Page, Contract Term; or (C) on the Termination Date, pursuant to this Agreement, Paragraphs 7.1 and 7.4 (with the applicable date on which Contractor's obligation to perform the Services expires being referred to herein as the "Expiration Date"). Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of the Disentangled Services in process provided, however, that Contractor's obligation under this Agreement to provide all Disentangled Services shall not be lessened in any respect.

3.3 Specific Obligations

The Disentanglement shall include the performance of the following specific obligations:

3.3.1 No Interruption or Adverse Impact

Contractor shall cooperate with County and all of the County's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Disentangled Services or other work required under the Agreement, no adverse impact on the provision of Disentangled Services or other work required under the Agreement or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3.3.2 Third-Party Authorizations

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A herein, Contractor shall, subject to the terms of any third-party contracts, procure at no charge to County any third-party authorizations

COUNTY AGREEMENT NUMBER 524154
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES

necessary to grant County the use and benefit of any third-party contracts between Contractor and third-party contractors used to provide the Disentangled Services, pending their assignment to County. Similarly, at County's direction, Contractor shall obtain all legally necessary client consents or authorizations legally necessary to transfer client data to County or any new service provider.

3.3.3 Return, Transfer and Removal of Assets

3.3.3.1 Contractor shall return to County all County assets in Contractor's possession, pursuant to Paragraph 2.4 of the Agreement.

3.3.3.2 County shall be entitled to purchase at net book value those Contractor assets used for the provision of Disentangled Services to or for County, other than those assets expressly identified by the Parties as not being subject to this provision.. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.4 Transfer of Leases, Licenses, and Contracts

Contractor, at its expense, shall convey or assign to County or its designee such fully-paid leases, licenses, and other contracts used by Contractor, County, or any other Person in connection with the Disentangled Services, as County may select, when such leases, licenses, and other contracts have no other use by Contractor. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses, and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall reimburse County for any losses resulting from any claim that Contractor did not perform any such obligations.

3.3.5 Delivery of Documentation

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County Data, for archival purposes or warranty support.

3.4 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement which the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

3.5 Publication, Reproduction or Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of the County upon completion of this Agreement.

ARTICLE 4
COMPENSATION

The Payment Schedule is in Exhibit C and the compensation is on the signature page. The County is precluded from making payments prior to receipt of services (advance payments). Invoices are subject to the following requirements:

4.1 Fiscal

County will pay Contractor the agreed upon price, pursuant to the Payment Schedule in Exhibit C for the work specified in Exhibit A, Statement of Work.

4.1.1 Accounting System And Fiscal Monitoring. Contractor shall provide and maintain an accounting and financial support system to monitor and control costs to assure the Agreements completion.

4.2 Invoices and Payment

4.2.1 Invoices. Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall submit approved invoices monthly to the Contracting Officer's Technical Representative ("COTR") for work performed in the monthly period, accordingly. Contractor's monthly invoices shall be completed and submitted in accordance with written COTR instructions and shall include a statement certifying whether it is in compliance with Paragraph 8.15 of this Agreement

4.2.2 Payments. County agrees to pay Contractor in arrears only after receipt and approval by COTR of properly submitted, detailed and itemized original invoice referencing the Agreement number

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AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES

- 4.2.3 Full Compensation. Pending any adjustments by the COTR, each invoice approved and paid shall constitute full and complete compensation to the Contractor for all work completed during the billing period pursuant to Exhibit A and Exhibit C. Contractor shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.2.4 Prompt Payment for Vendors and Subcontractors
- 4.2.4.1 Prompt payment for vendors and subcontractors.
- 4.2.4.1.1 Unless otherwise set forth in this paragraph, Contractor shall promptly pay its vendors and subcontractor(s) for satisfactory performance under its subcontract(s) to this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County and shall be paid out of such amounts as are paid to Contractor under this Agreement.
- 4.2.4.1.2 Contractor shall include a payment clause conforming to the standards set forth in Paragraph 4.2.4.1.1 of this Agreement in each of its subcontracts, and shall require each of its subcontractors to include such a clause in their subcontracts with each lower-tier subcontractor or supplier.
- 4.2.4.2 If Contractor, after submitting a claim for payment to County but before making a payment to a vendor or subcontractor for the goods or performance covered by the claim, discovers that all or a portion of the payment otherwise due such vendor or subcontractor is subject to withholding from the vendor or subcontractor in accordance with the vendor or subcontract agreement, then the Contractor shall:
- 4.2.4.2.1 Furnish to the vendor or subcontractor and the COTR within three (3) business days of withholding funds from its vendor or subcontractor a notice stating the amount to be withheld, the specific causes for the withholding under the terms of the subcontract or vendor agreement; and the remedial actions to be taken by the vendor or subcontractor in order to receive payment of the amounts withheld.
- 4.2.4.2.2 Contractor shall reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph 4.2.4.2.1 of this Agreement and Contractor may not claim from the County this amount until its subcontractor has cured the cause of Contractor withholding funds;
- 4.2.4.2.3 Upon the vendor's or subcontractor's cure of the cause of withholding funds, Contractor shall pay the vendor or subcontractor as soon as practicable, and in no circumstances later than ten (10) days after the Contractor claims and receives such funds from County.
- 4.2.4.3 Contractor shall not claim from County all of or that portion of a payment otherwise due to a vendor or subcontractor that Contractor is withholding from the vendor or subcontractor in accordance with the subcontract agreement where Contractor withholds the money before submitting a claim to County. Contractor shall provide its vendor or subcontractor and the COTR with the notice set forth in Paragraph 4.2.4.2.1 of this Agreement and shall follow Paragraph 4.2.4.2.3 of this Agreement when vendor or subcontractor cures the cause of Contractor withholding its vendors or subcontractor's funds.
- 4.2.4.4 Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that County has otherwise overpaid on a contract financing or invoice payment, Contractor shall immediately notify the COTR and request instructions for disposition of the overpayment.
- 4.2.5 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:
- 4.2.5.1 Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
- 4.2.5.2 Unauthorized Actions by Contractor. Contractor took any action pertaining to this Agreement, which required County approval, without having first received said County approval.
- 4.2.5.3 Default. Contractor was in default under any terms and conditions of this Agreement.
- 4.2.6 Withholding Of Payment. County may withhold payment until reports, data, audits or other information required for Agreement administration or to meet County or State reporting or auditing requirements are received and approved by COTR or designee. The County may also withhold payment if, in the County's opinion, Contractor is in non-compliance with this Agreement.
- 4.2.7 Availability of Funding. The County's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the

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County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.

County shall, in its sole discretion, have the right to terminate or suspend Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, County and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between County and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.

In the event of termination of this Agreement in accordance with the terms of this Section, Contractor shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Contractor be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

- 4.2.8 Disallowance. In the event the Contractor receives payment for services under this Agreement which is later disallowed by the County, Contractor shall promptly refund the disallowed amount to County on request, or at its option, County may offset the amount disallowed from any payment due or to become due to Contractor under any Agreement with the County.
- 4.2.9 Maximum Price. During the performance period of this Agreement, the maximum price for the items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.

ARTICLE 5
AGREEMENT ADMINISTRATION

- 5.1 County's Agreement Administrator. The Director of Purchasing and Contracting is designated as the Contracting officer ("Contracting Officer") and is the only County official authorized to make any Changes to this Agreement. The County has designated the individual identified on the signature page as the Contracting Officer's Technical Representative ("COTR")
- 5.1.1 County's COTR will chair Contractor progress meetings and will coordinate County's Agreement administrative functions. The COTR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required. The COTR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.
- 5.1.2 Notwithstanding any provision of this Agreement to the contrary, County's COTR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements, which do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement period or the total Agreement price. Each AA shall be in writing and signed by COTR and Contractor. All inquiries about such AA will be referred directly to the COTR.
- 5.2 Agreement Progress Meeting. The COTR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance. At these meetings the COTR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COTR and the Contractor. Should the Contractor not concur with the minutes, the Contractor shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 6
CHANGES

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc. and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by such an order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Such changes may require Board of Supervisors approval.
- 6.2 Claims. Contractor must assert any claim for adjustment under this clause within 30 days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the

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cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

ARTICLE 7
TERMINATION

- 7.1 **Termination For Default.** Upon Contractor's breach of this Agreement, County shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, County will send Contractor written notice specifying the cause. The notice will give Contractor 10 days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default, unless a different time is given in the notice. If County determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Agreement immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of County.

In the event of such termination, the County may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, Contractor shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Contractor, and County may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due County from Contractor is determined.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.

- 7.2 **Damages For Delay.** If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, County will be entitled to the resulting damages caused by the delay. Damages will be the cost to County incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by County.
- 7.3 **County Exemption From Liability.** In the event there is a reduction of funds made available by County to Contractor under this or subsequent Agreements, the County of San Diego and its Departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.
- 7.4 **Termination For Convenience.** The County may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Contract until such termination:
- 7.4.1 The unit or pro rata price for any delivered and accepted portion of the work.
 - 7.4.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
 - 7.4.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
 - 7.4.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
 - 7.4.4.1 Improperly submitted claims, or
 - 7.4.4.2 Any failure to perform the work in accordance with the Statement of Work, or
 - 7.4.4.3 Any breach of any term or condition of the Agreement, or
 - 7.4.4.4 Any actions under any warranty, express or implied, or
 - 7.4.4.5 Any claim of professional negligence, or
 - 7.4.4.6 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.

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- 7.5 **Suspension Of Work.** The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.
- 7.6 **Remedies Not Exclusive.** The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.
- 7.7 **Full Cost Recovery Of Investigation And Audit Costs.** Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement. Reimbursement for such costs shall be withheld from any amounts due to Contractor pursuant to the payment terms of the Agreement, or from any other amounts due to Contractor from County.

ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 **Conformance With Rules And Regulations.** Contractor shall be in conformity with all applicable Federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 **Contractor Permits and License.** Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 **Equal Opportunity.** Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 **Affirmative Action.** Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COTR or from the County of San Diego Internet website (www.co.san-diego.ca.us).
- 8.5 **Non Discrimination.** Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, or physical, mental disability, political affiliation and marital status in accordance with Title IX of the Education Amendments of 1972; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), the Age Discrimination of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, Title 9, Chapter 4, Subchapter 6 (Section 10800, et seq.) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 21.
- 8.6 **AIDS Discrimination.** Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Acquired Immune Deficiency Syndrome, AIDS-related complex (ARC), or AIDS-related status (ARS), as those terms are defined in Chapter 1, Section 32.1203, San Diego County Code of Regulatory Ordinances.
- 8.7 **American With Disabilities Act (ADA) 1990.** Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 **Political Activities Prohibited.** None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither the Agreement nor any funds provided thereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 **Lobbying.** Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and Federal Legislatures or the Board of Supervisors of the County.

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- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.11.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
- 8.11.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.11.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.11.1.3 Shall not sell, offer, or provide alcohol or a drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.11.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County 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.
- 8.11.3 The County may terminate for default or breach this Agreement, and any other Agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors:
- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements; and
- 8.12.3 Zero Tolerance For Fraudulent Conduct In County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by Contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by independent Contractors in connection with their performance under the Agreement, said Agreement shall be terminated; and.
- 8.12.4 Interlocking Directorate. In recognition of County Policy A-79, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors; and
- 8.12.5 Zero Tolerance In Coaching Medi-Cal Or Welfare Clients (Including Undocumented Immigrants). The County of San Diego in recognition of its unique geographical location and the utilization of Welfare and Medi-Cal system by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and Contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants), to obtain services for which they are not otherwise entitled.
- As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for the County, on County property or while using County equipment shall not:
- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- Contractor shall inform all employees that are performing service for the County on County property or using County equipment of County's Zero Tolerance Policy as referenced herein.
- County may terminate for default or breach this Agreement and any other Agreement Contractor has with County, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.
- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the

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Cartwright act (Chapter 1) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.

- 8.14 **Hazardous Materials.** Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County Facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.
- 8.15 **Debarment And Suspension.** As a sub-grantee of federal funds under this Agreement, Contractor certifies that it, its principals, its employees and its subcontractors:
- 8.15.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department or agency.
- 8.15.2 Have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 8.15.3 Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 8.15.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State, or local) terminated for cause or default.

ARTICLE 9
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 9.1 **Conflicts of Interest.** Contractor presently has no interest, including but not limited to other projects or independent Agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.
- 9.2 **Conduct of Contractor; Privileged Information.**
- 9.2.1 Contractor shall inform the County of all the Contractor's interests, if any, which are or which the Contractor believes to be incompatible with any interests of the County.
- 9.2.2 The Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 9.2.3 Contractor shall not use for personal gain or make other improper use of privileged information, which is acquired in connection with his employment. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or

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security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.

- 9.2.4 The Contractor, or employees thereof, shall not offer directly or indirectly gifts, gratuity, favors, entertainment, or other items of monetary value to an employee or official of the County.
- 9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.
- 9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:
- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body.
- 9.3.2 Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;
- 9.3.3 Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4 Profit-making firms or businesses in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.
- 9.4 Limitation Of Future Agreements Or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future Contracting with the County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.
- 9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County Agreement. It is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.
- 9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

ARTICLE 10
INDEMNITY AND INSURANCE

- 10.1 Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.
- 10.2 Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

ARTICLE 11
AUDIT AND INSPECTION OF RECORDS

The County shall have the audit and inspection rights described in this section.

- 11.1 Audit And Inspection. Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized Federal, State or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or Federal officials for examination all of its records with respect to all matters covered by this Agreement

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and will permit County, State or Federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. . If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accounting Office.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by Agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

- 11.2 **Cost or Pricing Data.** If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.
- 11.3 **Availability.** The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.3.1 and 11.3.2, below:
- 11.3.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- 11.3.2 Record which relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.
- 11.4 **Subcontract.** The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontract hereunder except altered as necessary for proper identification of the Contracting parties and the Contracting officer under the County's prime Agreement.

ARTICLE 12
INSPECTION OF SERVICE

- 12.1 **Subject to Inspection.** All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.
- 12.2 **Specification and Requirements.** If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by Agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

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- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement which the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
- 13.2 Ownership, Publication, Reproduction And Use Of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement 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. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. County and Contractor agree to maintain confidentiality of any information regarding applicants, project participants or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors or any other source. Without the written permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the audit and evaluation of the Agreement and then only to persons having responsibilities under the Agreement, including those furnishing services to Project under subcontract. County and Contractor agree that all information and records obtained in the course of providing services to project clients shall be subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations adopted pursuant thereto. However, at County's request, Contractor shall permit County access to all records and information regarding the project and confidentiality shall not be a bar to County's access to all records and information.
- 13.4 Maintenance Of Records. Contractor shall maintain and keep available all records for a minimum of three (3) years from the ending date of this Agreement unless County agrees in writing to an earlier disposition.
- 13.5 Custody Of Records. County, at its option, may take custody of Contractor's client records upon Agreement termination or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and Federal law. Said records shall be kept by County in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 13.6 Audit Requirement. At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or Federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or Federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accounting Office.
- If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by Agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.
- 13.7 Reports. Contractor shall submit reports required in Exhibit A and additional reports as may be requested by the COTR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement, and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 13.8 Evaluation Studies. Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

ARTICLE 14
(RESERVED)

ARTICLE 15
DISPUTES

COUNTY AGREEMENT NUMBER 524154
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if they dispute the medical necessity of care.

ARTICLE 16
GENERAL PROVISIONS

- 16.1 **Assignment and Subcontracting.** Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld.. The Contractor shall make no Agreement with any party for furnishing any of the work or services herein contained without the prior written consent of the COTR, pursuant to Paragraph 1.4.
- 16.2 **Contingency.** This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.
- 16.3 **Entire Agreement.** This Agreement, together with all Sections attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 **Sections and Exhibits.** All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 **Further Assurances.** Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 **Governing Law.** This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 **Headings.** The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 **Modification Waiver.** Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 **Neither Party Considered Drafter.** Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 **No Other Inducement.** The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 **Notices.** Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three (3) business days after deposit in the U.S. Mail, as the case may be to the COTR and Contractor's Representative identified on the signature page..
- 16.12 **Severability.** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 **Successors.** Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 **Time.** Time is of the essence of each provision of this Agreement.

COUNTY AGREEMENT NUMBER 524154
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES

- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for Contracted programs identified in this Agreement. Copies of publicity materials related to Contracted programs identified in this Agreement shall be filed with the COTR. County shall be advised at least 24 hours in advance of all locally generated press releases and media events regarding Contracted services identified in this Agreement.
- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving instances of violence or threat of violence directed toward staff or clients, breach of confidentiality, fraud, unethical conduct, or instances of staff or client drug and/or alcohol use at the program. Contractor shall report all such incidents to the COTR within one work day of their occurrence.
- 16.20 Responsiveness to Community Concerns. Contractor shall notify County within 48 hours of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor verbally or in writing, regarding the operation of Contractor's program or facility under this agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.
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COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
SIGNATURE PAGE

AGREEMENT TERM. This Agreement shall be effective this First day of March 2008 ("Effective Date") and end on June 30, 2008 ("Initial Term") for a total Agreement period of 4 months years.

OPTION TO EXTEND. The County's option to extend is for two (2) increments of one (1) year for a total of one (1) year beyond the expiration of the Initial Term, not to exceed June 30, 2010, pursuant to Exhibit C Payment Schedule Unless County notifies Contractor in writing, not less than 30 days prior to the expiration date that they do not intend to renew the Agreement, the Agreement will be automatically renewed for another year.

Options To Extend For One To Six Additional Months At End Of Agreement. County shall also have the option to extend the term of this Agreement in one or more increments for a total of no less than one (1) and no more than six (6) calendar months at the discretion of the County Purchasing and Contracting Director. Each extension shall be effected by written unilateral Agreement amendment delivered to Contractor no less than fifteen (15) calendar days prior to expiration of any Agreement term.

The rates set forth in Article 4, Exhibit C, or other pricing section of this Agreement shall apply to any option exercised pursuant to this option clause unless provision for appropriate price adjustment has been made elsewhere in this Agreement or by Agreement amendment. All payments are subject to "Availability of Funds."

COMPENSATION: Pursuant to Exhibit C, County agrees to pay Contractor in accordance with the method of payment stipulated in Article 4 and Exhibit C It is understood that the parties will meet and confer on the contract price if adjustments are made to the scope of work for an extension of the term or terms. These discussions shall not obligate either party to make a requested adjustment to the scope of work or price except as otherwise set forth in this Agreement, nor shall it relieve either party of its obligations under the Agreement.

COTR. The County has designated the following individual as the Contracting Officer's Technical Representative ("COTR")

Dee Merrill
4000 Ruffin Road Suite I
San Diego CA. 92123
(858) 565-5003 Fax (858) 715-6455
Email dee.merrill@sdCounty.ca.gov

CONTRACTOR'S REPRESENTATIVE. The Contractor has designated the following individual as the Contractor's Representative.

Mitch McKee
2353 North Redwood Road,
Salt Lake City UT 84116
801-519-0123 Fax 801 519-0124
Email mitch@tntauction.com

IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date first set forth above

COUNTY OF SAN DIEGO

By: Bruce F. Petry
WINSTON F. McCOLL, Director,
Department of Purchasing and Contracting

Date: 4-17-08

TNT Auction,

By: Mike McKee
Mike McKee, President
TNT Auction.

Date: 4-15-08

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
STATEMENT OF WORK**

1. Scope of Work

The County of San Diego periodically holds auctions to dispose of surplus vehicles, construction equipment, and other miscellaneous equipment. In the past the County has invited other public agencies to participate in the Auction. This has led to quarterly sales volume in excess of one million dollars. The Selected vendor will provide auction services at vendor sites as well as be able to provide mobile or offsite auctions services should the need arise.

2. Background

Over the past 18 years the County, has developed the concept of cooperative auction. This concept allows two or more cooperating agencies to combine their disposal requirements to secure more attractive selling prices utilizing the services of a licensed auctioneer/auction company. Costs incurred in the disposal process are distributed to the participating agencies. These auctions were held three times a year and gross an average of over \$1million dollars in sales

3. Definitions of terms

- 3.1. The term" County" shall mean all public agencies that have a resolution on file with the County of San Diego, Department of Purchasing and Contracting. Unless specify state The County of San Diego
- 3.2. Consigner" is any public agency that has a resolution on file with the County of San Diego, Department Purchasing and Contracting".

4. General Requirements

- 4.1. Contractor shall have the administrative and fiscal capability to provide and manage the proposed services.
- 4.2. Contractor shall ensure that no property assigned to the Contractor may be sold before an auction without prior written agreement of the County
- 4.3. Should both parties agree to a sale prior to auction, the proceeds of said sale should be treated as part of the gross proceeds of the auction.

5. County Requirements

- 5.1. The County and shall provide in a timely manner the free and clear Title or Certificate of Ownership and all documents necessary to affect Transfer of Title for motor vehicles, trailers, and vehicle equipment and other property. At the option of the contractor, vehicles may not be offered at auction unless the Certificate of Ownership and all other documents necessary to affect a Transfer of Title for motor vehicles, trailers, and vehicle equipment a resubmitted at least ten (10) days prior to sale.
- 5.2. Submit to contractor a list of property released for sale. It is understood that minor changes in said list may be submitted to contractor at any time prior to two (2) weeks in advance of the auction. Notwithstanding the foregoing, the County may withdraw property from said list upon notice to Contractor ten (10) days prior to auction.
- 5.3. County warrants title to all property to be unencumbered at the time of sale. All property shall be sold "as is, where is "without any warranty by or contractor as to condition or usability. This disclaimer shall be obtained in all auction brochures and incorporated into the "Terms and Conditions of Sale "as well as on the sale in voice.
- 5.4. The County at its option may choose to transport County property to the contractor's auctions site using transportation other than that provided by the contractor. County property will be delivered to the contractor's site between the hours 8: am and 5pm Monday through Friday.
- 5.5. The County at its option may choose to use the transportation provided by the contractor at the contractor's current rates.

6. Contractor Requirements

- 6.1. Contractor shall provide County and such documents as County may request to protect County's rights.

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
STATEMENT OF WORK**

- 6.2. Contractor shall maintain any and all records considered necessary by the County other than those provided by the Contractor. County will also provide contractor such additional documents as contractor may reasonably request in order to assist contractor in performing its duties under the agreement.
- 6.3. Contractor shall comply with the consignment terms of the California Commercial Code and such other codes and regulations as may apply to the services provided by the Vendor.
- 6.4. The contractor shall obtain and provide to the County of San Diego an irrevocable letter of credit in the amount of two hundred and fifty thousand dollars (\$250,000.00). The County of San Diego shall be able to make demand on the letter of credit in the event that the contractor fails to remit entire funds due to the County of San Diego and other participating County public entities within ten (10) business days of the date the property belonging to the County and any participating county public entity is sold.
 - 6.4.1. The County and it's cosigners, after receiving and verifying the proceeds of any one Auction will provide a release of the letter of credit for that particular Auction.

7. Auction Requirements

- 7.1. Contractor shall ensure all auctions will be open to the general public, and there shall be no fee charged for participation as a potential buyer.
- 7.2. Contractor shall ensure sales of such property will be made only to the highest responsible bidder. The proceeds from all sales shall be collected in the form of cash, cashier's check, traveler's check, money order, or a check guaranteed by a bank letter of credit.
- 7.3. Contractor shall ensure that unless otherwise directed by the County, all unsold property shall be rescheduled to the next available auction at no additional cost to the County.
- 7.4. Contractor shall receive and protect and properly insure, pursuant Exhibit B Insurance, all property pursuant to consigned for disposal.
- 7.5. Contractor shall physically display property in a manner that is conducive to proper inspection and will encourage the highest bid possible, i.e. clean, accessible for inspection, free from obstruction, and in general displayed in an efficient orderly manner allowing potential bidders unfettered access to the items to be auctioned.
- 7.6. Contractor shall supply all needed personnel and set up all needed auction equipment and facilities such as office, customer seating, and auction stands and refreshment area.
- 7.7. Contractor shall 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 necessary licenses and permits, posting required bonds, payment of all fees and expenses there of.
- 7.8. Contractor shall register all bidders and issue bidder numbers.
- 7.9. Contractor shall accept proxy bids with proper registration and when the bidder has submitted a written request for a proxy bidder within 12 hours of start of auction.
- 7.10. Contractor shall ensure that all property is available for public inspection at least two (2) working days immediately preceding the auction sale date.
 - 7.10.1. No other public access will be allowed. Contractor's personnel and security employees will supervise this inspection period.
 - 7.10.2. Vehicles shall be washed prior to inspection days and again immediately before the auction sale, or as requested by County.
 - 7.10.3. Contractor shall, when requested by County, provide transportation of all property from the County's possession to Contractor's auction facility.
 - 7.10.3.1. Contractor shall ensure licensed and insured subcontractors provide such transportation.

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
STATEMENT OF WORK**

7.10.3.2. The fees for such services shall be deducted from the auction proceeds by consigner. All fees shall be listed in a schedule of values and are fixed for each contract and option year.

7.11. Contractor shall, when requested by County and in compliance with California State Laws, arrange for smog certificate or a statement that a vehicle does not meet smog requirements prior to sale. The fees for such services shall be deducted from auction proceeds by consigner.

7.12. Contractor shall, when requested by County, arrange for property repair, detailing or reconditioning.

7.12.1. 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.

7.12.2. The fees for such Services shall be deducted from auction proceeds by consigner.

7.13. The County reserves the right to set a minimum selling price on certain items and shall require consigning agencies to coordinate minimum bid requests with contractor for purpose of ensuring reasonableness of minimum bid.

7.13.1. If a minimum bid item is not sold the auctioneer will be entitled to commission based on minimum bid set by consigner.

7.13.2. Contractor shall prepare and present to the new owner the necessary documentation to transfer ownership or title, including DMV forms.

7.14. The Contractor shall not merge or combine lots offered for sale unless they are from the same consigner.

7.15. Participating consigner frequently consign items that are extremely heavy items, large difficult to transport items or items with a fixed or semi-fixed location, large bulky items, or it is determined that it is economically more feasible to sell the item off-site.

7.15.1. The consigning agency will provide contractor with available inspection time prior to auction or allow the vender to move the consigned property to the vendor's site for inspection.

7.15.2. The contractor may auction off-site items using photograph or other means. The display will include a general description of each item and related public inspection information.

7.15.3. The contractor shall include such items in its advertising plan and shall be knowledgeable about the off-site items being offered.

8. Advertising

8.1. Contractor shall engage in a comprehensive advertising and marketing campaign in advance of each auction.

8.1.1. The campaigns shall include: advertisements in major newspapers in the surrounding major metropolitan areas, preparing, printing, and distributing fliers and brochures on special interest property, advertisements in trade journals as well as national and international campaigns when appropriate.

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

8.1.3. The contractor shall state in advertisements that the vehicles are from the County of San Diego.

8.2. At any time and at the termination of the contract for any cause all artwork, mailing lists proofs and/or negatives in either print or digital format and other documents or items necessary for the performance of this contract used in the by the vendor in the performance of this contract become the property of the County.

8.2.1. The above-mentioned items shall be returned to the County within ten (10) days upon written notification to the Contractor.

8.3. The contractor shall provide information regarding the auction on the contractor's website.

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
STATEMENT OF WORK**

8.3.1. The contractor shall place on its website photographs of major auction items.

8.3.1.1. The photographs shall be of sufficient resolution to allow the viewer to identify the item and ascertain the over all condition of the item.

9. Records and Reports

9.1. Contractor shall 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.

9.1.1. Final accounting will include sale price name and address of purchaser, detailed accounting for other fees, and authorized expenses.

9.2. Summary statements may be designed to fit consignor requirements

9.3. Contractor shall videotape auctions and provide the County original videotape to the County.

9.4. The contractor shall have the ability to electronically transmit all data by Internet electronic mail to the County.

9.5. Vendor shall provide County itemized monthly invoices, in arrears, for services performed under this Contract with in twenty (20) days of the end of the previous month.

10. Taxes

County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Vendor or on any taxes levied on employee wages. The County shall only 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.

11. Participation Clause

11.1. The County desires that Municipalities, School Districts, and other Tax Exempt Districts within the County of San Diego requiring Auctioneer Services, may at their option and through the County Purchasing Agent, avail themselves of the Contract resulting from this agreement.

11.2. Contractor shall, upon notice, in writing, will extend of the terms of this agreement to any such Governmental bodies as though they have been expressly identified in this agreement, with the provision that:

11.2.1. Such Governmental body does not have and will not have in force any other contract for like purchases.

11.2.2. Such Governmental body does not have under consideration for award any other bids or quotations for like purchases.

11.2.3. Such Governmental body shall make purchases and payment directly through the Contractor. The County of San Diego will not be liable for any such purchase made between the Contractor and another Governmental body who avail them of this Contract.

12. All sales conducted for the County or joining agencies under this agreement will be in accordance with the terms and conditions and cost pricing of the most recent State of Nevada Request for Proposal No. 1618 and subsequent contract. In the event of a conflict in terms between the terms and conditions of between Nevada Request for Proposal 1618 and this agreement, the language of the agreement shall prevail. All sales conducted in Nevada will be subject to State of Nevada rules and regulations.

13.

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
INSURANCE REQUIREMENTS**

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non owned, hired auto Insurance Services Office form CA0001.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Liability required if Contractor provides or engages any type of professional services, including but not limited to medical professionals, counseling services, or legal services.

2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
- D. Professional Liability: \$1,000,000 per claim with an aggregate limit of not less than \$2,000,000. Any self-retained limit shall not be greater than \$25,000 per occurrence/event without County's Risk Manager's approval. Coverage shall include contractual liability coverage. If policy contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any such aggregate limit has been paid or reserved, County will require additional coverage to be purchased by Contractor to restore the required limits. This coverage shall be maintained for a minimum of two years following termination of completion of Contractor's work pursuant to the Contract.

3 Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the County's Risk Manager. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

4 Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement

Any general liability policy provided by Contractor shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
INSURANCE REQUIREMENTS**

B. Primary Insurance Endorsement

For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County at the address shown in section of Contract entitled "Notices".

D. Severability of Interest clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insured's shall not reduce or avoid coverage to the other named insured's.

GENERAL PROVISIONS

5 Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.

6 Evidence of Insurance

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Contractor shall furnish certified copies of the actual required insurance policies within thirty days after commencement of Contract. Thereafter, copies of renewal policies, certificate and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any policies of insurance, which Contractor has not delivered to County.

7 Failure to Obtain or Maintain Insurance; County's Remedies

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

8 No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

9 Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10 Self-Insurance

Contractor may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

11 Claims Made Coverage

**COUNTY AGREEMENT NUMBER
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES
INSURANCE REQUIREMENTS**

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Contractor's commencement or work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insured's.
- C. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

12 Subcontractors' Insurance

Contractor shall require that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractors coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost or expense, including attorney fees, incurred by County as a result of Subcontractors failure to maintain required coverage.

13 Waiver of Subrogation

Contractor and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled "Indemnity" of the Pro Forma Contract), but only to the extent that the proceeds received from any policy of insurance carried by County or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Contractor hereunder shall be a standard waiver of rights of Subrogation against County by the insurance company issuing said policy or policies.

**COUNTY AGREEMENT NUMBER 524154
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES**

EXHIBIT C PRICING

CONTRACTOR WILL RETAIN THE FOLLOWING COMMISSION RATE FROM TOTAL GROSS SALES

	Commission Rate
A. Buyer's Premium Percentage* (Not to exceed 10%)	<u>10%</u>
B. Auction Sales Commission	<u>5%</u>
1. Incidental Services:	Fixed Unit Price
A. Remove decals, bumper stickers, any identifiers of County of San Diego County, and paint over the area	<u>0</u>
B. Remove light bar	<u>0</u>
C. Replace battery (including parts and labor)	<u>\$32.50</u>
D. Transport of each Car and Light Truck	<u>\$250.00</u>
E. Large Trucks (over one ton) and Equipment	<u>Cost plus 5 %; quoted on a case by case basis</u>
	Labor Rate Per Hour
2. A. Mechanical repairs	<u>\$47.50</u>
Parts Mark-Up (from retail	(price) Percentage
B. Replacement parts associated with mechanical repairs	<u>Cost, plus 10%</u>

Note: See the following fee explanation per the State of Nevada contract.

The following fees apply regardless of whether an auction is conducted on-site, online, online broadcast, as a concurrent broadcast of an on-site auction, or if a sale is approved as a negotiated direct sale (sale outside of an auction). All fees and costs described herein will be accounted for in the post sale documentation and deducted from Seller's proceeds.

Standard Fees Charged To Seller

Auction Sales Commission on Vehicles and Heavy Equipment: 5% of gross sales

Auction Sales Commission on Miscellaneous Accountable Property: 5% of gross sales

Non-accountable property: Auctioneer retains proceeds

Appraisals: Appraisal services are included in the Auction Sales Commission if Auctioneer is selling the property being appraised, or if Seller is considering an Auction sale versus other means of

**COUNTY AGREEMENT NUMBER 524154
AGREEMENT WITH TNT AUCTION FOR AUCTION SERVICES**

disposal (i.e. trade-ins, etc.). Appraisal fees for property not being sold by Auctioneer are \$100.00 per hour plus travel costs. TNT Auction employs a full time Certified Appraiser. Appraiser is a member of the Certified Appraisers Guild of America (CAGA).

Auction Sales Commission on Real Estate (includes complete turn-key service): 5% of gross sales plus advertising costs. A custom, detailed proposal is designed and submitted for each project.

Real Estate Auction or Specialty Personal Property Auction (staffing only): A custom, detailed proposal is designed and submitted for Seller approval for each project.

Optional Services Seller Fees

Light Duty Vehicle Transport or Towing to auction site in San Diego County: \$ 75.00 per unit unless the cost of the tow exceeds \$75.00, in which case the fee will be cost plus 5%. Auctioneer will endeavor to negotiate the best possible prices available in the current market in each market area.

Light Duty Vehicle Transport or Towing to auction site in Las Vegas Nevada: \$ 250.00 per unit unless the cost of the tow exceeds \$250.00, in which case the fee will be cost plus 5%. Auctioneer will endeavor to negotiate the best possible prices available in the current market in each market area.

Note: Costs to tow or transport vehicles belonging to The County of San Diego from County Purchasing facilities San Diego to the auction site in San Diego are borne by Auctioneer.

Long Distance Transportation (towed, hauled, or driven): quoted on a case by case basis.

Heavy Towing or Transportation for Heavy Equipment: Cost plus 5 %; quoted on a case by case basis.

Miscellaneous Property Removal (accountable property): At Auctioneer's discretion our storage trailer system will be provided; we will pick up items loaded by the Seller for free. Otherwise, if we pick up items, individually or in quantities, from the Seller's location, the cost is \$75.00 per hour for a truck and laborer.

Miscellaneous Property Removal (non-accountable property): Auctioneer will retain proceeds and remove property at no additional charge (non-hazardous only).

Decal removal:

Light-Duty Vehicles (1 Ton or Smaller): \$50.00

Heavy-Duty Vehicles (Over 1 Ton): \$75.00

Paint & Repairs: Pricing to be quoted on a case by case basis.

Title Fees: If Auctioneer is requested to acquire a duplicate title or salvage title, a fee of \$100.00 per unit will be charged.

Note: In some cases, a vehicle may require bonding and additional costs may become necessary. In the event of a vehicle requiring bonding or additional documentation costs, Auctioneer will promptly contact the Seller to determine the feasibility of obtaining titling documentation and associated costs.

If Seller provides proper titles and documentation no title fees will be charged.

Fees Charged to Buyer

Vehicles, Heavy Equipment, Specialty and Miscellaneous Property: 10% of gross sales

Real Estate Auction (case by case basis): Up to 10 % of gross sales.

Emission Certificate Fees:

Light Duty Gas Vehicles: *Up to \$38.00 each

COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING
CONTRACT NO. 524154 AMENDMENT NO. 2

To TNT Auction. Pursuant to the contract changes clause, you are directed to make the changes described herein to the Contract or do the following described work not included in the previous agreed on Statement of Work.

Title of Contract, Project, or Program: Auction Services

Effective Date: December 1, 2010

Description of Contract Change(s) and/or Work To Be Done:

1. Per the Changes clause, the County of San Diego is exercising the extension of the term of the Contract services through June 30, 2013 and to align the contract period with the State of Nevada Contract #1618.

All other Terms and Conditions remain in effect.

IN WITNESS WHEREOF, County and Contractor have executed this Amendment effective as of the date first set forth above.

We, the undersigned Contractor, have given careful consideration to the change proposed and hereby agree, if this proposed change is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work specified herein.

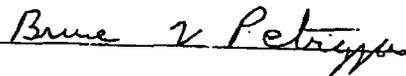
Contract time for completion is June 30, 2013.

By: 
MIKE McKEE, President
2353 North Redwood Road
Salt Lake City, UT 84116
801-519-0123
mckee@tntauction.com

Date: 12-1-2010

THIS AMENDMENT IS NOT VALID UNLESS APPROVED BY THE DIRECTOR, DEPARTMENT OF PURCHASING AND CONTRACTING.

Department Review and Recommended Approval:

By: 
WINSTON F. McCOLL, Director
Department of Purchasing and Contracting

Date: 12-07-10

APPROVED:

By: 
WINSTON F. McCOLL, Director
Department of Purchasing and Contracting

Date: 12-07-10

**TNT AUCTION CONTRACT
EXHIBIT C PRICING**

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	Fixed Unit Price
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B. Remove light bar <u>basis</u>	<u>Cost plus 5 %; quoted on a case by case</u>
C. Replace battery (including parts and labor)	<u>\$32.50</u>
D. Transport of each Car and Light Truck	<u>\$75.00</u>
E. Large Trucks (over one ton) and Equipment <u>case by case basis</u>	<u>Cost plus 5 %; quoted on a</u>
	Labor Rate Per Hour
2. A. Mechanical repairs	<u>\$47.50</u>
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Decal removal:

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Fees Charged to Buyer

Vehicles, Heavy Equipment, Specialty and Miscellaneous Property: 10% of gross sales

Real Estate Auction (case by case basis): Up to 10 % of gross sales.

Emission Certificate Fees:

Light Duty Gas Vehicles: *Up to \$75.00 each

Diesel Vehicles: *Up to \$100.00 each.

Note: Currently there is no title fee charged on units sold for California government or municipal agencies. California DMV currently allows us to give titles directly to the buyers. If this changes in the future, the appropriate fee listed above will be charged to the buyer.

Note: Auctioneer reserves the right to increase emission and titling fees charged to buyers to cover costs that may be associated with any significant fee increases, out of our control, that may be instituted by the State of California, California DMV, or other agencies.

Credit Card Convenience Fee: If a buyer chooses to pay with a credit card they will pay a 3% convenience fee on the amount charged to the buyer's card.

Debit Card Convenience Fee: If a buyer chooses to pay with a credit card they will pay a 1% convenience fee on the amount charged to the buyer's card.

No fees will be charged to buyers who choose to pay by a method other than credit and debit cards. Acceptable payment types with no additional fees include: Cash, Certified Cashiers Checks, Money Orders, and Wire Transfers.

Note: Auctioneer reserves the right to charge a convenience fee to cover these fees or any significant fee increases, out of our control, that may be instituted by financial agencies or merchant card service providers in the future.

All fees to be charged to potential buyers will be posted in our standard terms and conditions, on all auction advertising brochures and web site, as well as being posted at the sale site.

