



CONTRACT MA-017-22010439
BETWEEN
THE COUNTY OF ORANGE
AND
LIQUIDITY SERVICES OPERATIONS, LLC
FOR
ONLINE SURPLUS AUCTION SERVICES

THIS Contract MA-017-22010439 for Online Surplus Auction Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Liquidity Services Operations, LLC (hereinafter referred to as “Contractor”) with a place of business at 100 Capitol Commerce Blvd., Suite 110, Montgomery, AL 36117, with County and Contractor sometimes referred to individually as (“Party”) or collectively as (“Parties”).

RECITALS

WHEREAS, County solicited via a Request for Proposal (“RFP”) for Online Surplus Auction Services; and,

WHEREAS, Contractor responded to RFP and represented that Contractor is qualified to provide Online Surplus Auction Services to County; and,

WHEREAS, Contractor agrees to provide Online Surplus Auction Services to County as more specifically described in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, Contractor agrees to accept payment as set forth in the Compensation, Pricing and Revenue, attached hereto as Attachment B and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred to another county.
- B. Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties, agreements, or undertakings, other than those set forth herein or referred to herein. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have been incorporated into this Contract. Further, any other provision or other unilateral terms which may be issued by Contractor before or during the term of this Contract, irrespective of whether any such provisions or terms may be affixed to or accompany the goods and services being purchased, are hereby superseded and are not valid or binding on County unless authorized by County in writing in an amendment to this Contract.

Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless authorized by County in writing in an amendment to this Contract. All automated end-user agreements (including, but not limited to, click-throughs, shrink-wrap, browse wrap and other non-negotiated terms and conditions provided with any of Contractor's services) and documentation provided with any of the services are specifically excluded and null and void. All terms and conditions in such agreements and documentation do not constitute a part or amendment of this Contract and shall have no force and effect and shall be non-binding on County, its employees, agents, and other authorized users, even if access to or use of such service or documentation requires affirmative acceptance of such terms and conditions.

- C. Amendments:** Except as expressly provided herein, no changes, modifications, or amendments to the terms and conditions of this Contract are valid or binding on County unless made in writing and signed by the duly authorized representative of the Parties. No other act, document, usage, or custom shall be deemed to change, modify, or amend this Contract. Nor shall any oral understanding or agreement not incorporated herein be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, the price stated in Attachment B does not include California state sales or use tax. Out-of-state contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County pursuant to Paragraph F.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance in accordance with the requirements of Attachment B, Compensation, Pricing and Revenue.
- G. Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and County Indemnitees, as more fully described in Paragraph Z, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Paragraph Z, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses and attorney's fees.

- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express prior written consent of County. Contractor shall provide County no less than sixty (60) calendar days' written notification of its intent to assign, sell, delegate or otherwise dispose of the rights and obligations of this Contract. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express prior written consent of County shall be void and invalid and shall constitute a material breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor must comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause shall include, but not be limited to, any breach of contract, any misrepresentation or fraud on the part of Contractor, and any change of ownership without prior written approval. County's decision to exercise the right to terminate the Contract shall relieve County of all further obligations under this Contract. The right of either Party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous cause. The Parties also may mutually terminate this Contract by written agreement at any time. The rights, obligations, and conditions, that by their express terms or nature and context are intended to survive the termination or expiration of this Contract, survive any termination or expiration of this Contract.
- L. Consent to Breach Not Waiver:** Any action or inaction by County or failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to enforce any right or provision contained herein shall not be construed as a waiver or relinquishment by County of its rights hereunder and shall not prevent County from enforcing such provision or right on any future occasion. Further, no term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- O. Insurance Provision:** Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with County during the entire term of this Contract.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents', employees' or subcontractors' performance of this Contract, Contractor shall defend County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and Contractor's SIR provision shall be interpreted as though Contractor was an insurer and County was the insured.

A. If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

B. Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Employee Dishonesty Insurance (Client Coverage)	\$100,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

Contractor shall notify County in writing within thirty (30) calendar days of any policy cancellation and ten (10) calendar days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation constitutes a material breach of the Contract, upon which County may suspend or immediately terminate this Contract.

If Contractor’s Professional Liability are “Claims-Made” policy(ies), Contractor shall maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interest clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 Policy).

Insurance certificates must be emailed to CEOCPOInsurance@ocgov.com.

Insurance certificate holders must state:

County of Orange
c/o: CEO/County Procurement Office
Attn: Insurance
1300 S. Grand Ave., Ste. A, 2nd Floor, Santa Ana, CA 92705-4434

Any insurance documents not addressed as shown above will be “Return to Sender”.

If Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by CEO/County Procurement Office or the agency/department purchasing division, County may suspend or immediately terminate this Contract for cause pursuant to Paragraph K, Termination.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without County's express prior written consent via an amendment.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

County reserves the right to immediately terminate the Contract in the event County determines that the assignee is not qualified or is otherwise unacceptable to County for the provision of services under the Contract.

In addition, Contractor shall notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also shall notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor is required to provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor also shall provide an update to County of its status in these areas whenever requested by County.

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to Contractor, this obligation shall apply to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to, establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of County.

R. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract to the extent such delay is caused by any act of God, war, civil disorder, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails itself of any available remedies to end the delay and minimize the effects of such delay. County may terminate this Contract by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more.

S. Confidentiality: Contractor must maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued

by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Paragraph Z, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- U. **Freight:** Intentionally Omitted.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear its own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
- Y. **Employee Eligibility Verification:** Contractor warrants that it is and will remain in full compliance with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor shall permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify Contractor's records before final payment is made.

Contractor shall maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor shall include a similar right to County to audit records and interview staff in any subcontract related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** Contractor shall notify the County of Orange assigned Deputy Purchasing Agent (DPA) in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. County shall not be responsible for any expenditure overruns and shall not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS

- 1 Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which Contractor will provide Online Surplus Auction Services as described in Attachment A, Scope of Work, under a fixed price Contract, as set forth herein.
- 2 Term of Contract:** This Contract shall commence on approval by County and execution of all necessary signatures and continue for five (5) calendar years from that date, unless otherwise terminated by County.
- 3 Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
- 4 American with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.
- 5 Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a.** Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - b.** Discontinue payment to Contractor for and during the period in which Contractor is in breach and offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
 - c.** Terminate the Contract immediately for cause without penalty pursuant to Paragraph K, Termination.
- 6 Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting

discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability

- 7 **Conflict of Interest - Contractor's Personnel:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor and Contractor's employees, agents, and subcontractors associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of County.
- 8 **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
- 9 **Conditions Affecting Work:** Contractor is responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents during or prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract and the Contract expressly provides that County assumes the responsibility.
- 10 **Contractor Personnel – Uniforms/Badges/Identification:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract.

All Contractor's employees shall be required to wear uniforms, badges or other means of identification which are to be furnished by Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) calendar days of execution of Contract, of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) calendar days prior to any changes in this procedure.

- 11 **Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

For breach or violation of this warranty, County has the right to terminate this Contract in accordance with the termination clause and at its sole discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.

- 12 **Contractor Bankruptcy/Insolvency:** If Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of Contractor's insolvency, County may terminate this Contract immediately for cause pursuant to Paragraph K, Termination.
- 13 **Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. County will not provide free parking for any service in the County Civic Center.
- 14 **Contractor's Power and Authority:** Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of County under this Contract.

- 15 Contractor's Project Manager:** Contractor's Project Manager, as specified in Paragraph 31, Notices, shall direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld. Contractor's Project Manager and key personnel shall be assigned for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines.
- 16 County's Project Manager:** County's Project Manager, as specified in Paragraph 31, Notices, will act as liaison between County and Contractor during the term of this Contract.
- County's Project Manager has the right to require the removal and replacement of Contractor's Project Manager and Contractor personnel from providing services to County under this Contract. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within three (3) calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld. County is not required to provide any information, reason or rationale in the event it requires the removal of Contractor's Project Manager or personnel.
- 17 Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written approval from the County of Orange DPA.
- 18 Contractor Personnel – Reference Checks:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the department issuing this Contract.
- 19 County of Orange Disabled Veteran Business Enterprise Preference Requirements:** Intentionally Omitted.
- 20 County of Orange Local Small Business Preference Requirements:** Intentionally Omitted.
- 21 Data – Title To:** All materials, documents, data, information or other materials obtained from County data files or any County medium furnished by or on behalf of County to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express prior written consent of County. All such materials, documents, data, information and other materials, including copies, must be promptly returned or delivered to County upon expiration or earlier termination of this Contract pursuant to Paragraph 32, Orderly Termination. In addition, Contractor shall provide County upon request during the term of the Contract a copy of all such materials, documents, data, information and other materials being stored/hosted by Contractor under this Contract.
- 22 Debarment:** Contractor certifies that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency.
- 23 Pick Up/Delivery Location – No Loading Dock:** Pickup and delivery locations may not have loading docks. Contractor is required to make all necessary arrangements for lift trucks or other means necessary to complete pickup and/or delivery. Inside pickup and/or delivery to secured facilities may be required.
- 24 Disputes – Contract:**
- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Project Manager and County's Project Manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:

- i. Contractor shall submit to the department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 - ii. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor shall diligently proceed with the performance of this Contract. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If County fails to render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this paragraph shall be construed as affecting County's right to terminate the Contract for cause or for convenience as provided in Paragraph K, Termination.

- 25 Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing in Attachment B shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and the Contract number.
- 26 Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
- 27 Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County has the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in this paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- 28 Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection

with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- 29 News/Information Release:** Contractor shall not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from County through the County DPA. Any requests for interviews or information received by the media should be referred directly to County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from County.
- 30 No Third-Party Beneficiaries:** This Contract is an agreement by and between the Parties, and neither: (a) confers any rights upon any of the employees, agents, or contractors of either Party, or upon any other person or entity not a party hereto; or (b) precludes any actions or claims against, or rights of recovery from, any person or entity not a party hereto.
- 31 Notices:** Any and all notices, request, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Liquidity Services Operations, LLC
 Attn: Steve Kranzusch, Vice President & General Manager
 100 Capitol Commerce Blvd, Suite 110,
 Montgomery, AL 36117
 Phone: (800) 613-0156

Liquidity Services Operations, LLC
 Attn: Jason Weber, Project Manager
 100 Capitol Commerce Blvd, Suite 110,
 Montgomery, AL 36117
 Phone: Cell: 310-600-3651
 Email: jweber@govdeals.com

County: County of Orange
 County Executive Office/County Procurement Office
 Attn: Neil Jessen, Project Manager
 1300 S. Grand Ave., Bldg. A, 2nd Floor
 Santa Ana, CA 92705-4434
 Phone: 714-567-7341
 Email: Neil.Jessen@ocgov.com

cc: County of Orange
 County Executive Office/County Procurement Office
 Attn: Sapreena Leoso, County Deputy Purchasing Agent
 1300 S. Grand Ave., Bldg. A, 2nd Floor
 Santa Ana, CA 92705-4434
 Phone: 714-567-7363
 Email: Sapreena.Leoso@ocgov.com

- 32 Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of

this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party. Contractor shall return all County data in the file format specified by County within thirty (30) days of expiration or earlier termination of this Contract, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor). At County's sole discretion, Contractor shall return to County or dispose of County surplus property in the possession of Contractor within thirty (30) days of expiration or earlier termination of this Contract, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor); provided that, for any County surplus property in Contractor's possession that has been sold at the time of Contract expiration or earlier termination, Contractor shall complete the sale process notwithstanding the expiration or earlier termination of the Contract.

- 33 Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County.
- 34 Price Increase/Decrease:** No price increases will be permitted during the initial term of the Contract. County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30) business days advance notice in writing is required to secure such adjustment. No retroactive price adjustments shall be considered. All price decreases shall automatically be extended to the County of Orange. County may enforce, negotiate, or cancel escalating price contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing Contractor's profit are not allowed.
- 35 Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County. The use and/or reproduction of County's name, trademark, logo and/or symbol for any purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or Services.
- 36 Publication:** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic artwork, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without County's express prior written consent, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered by County or only after County approval.
- 37 Regional Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract are responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall include in any contract entered into with another agency or entity that uses the terms and pricing of this Contract, a contract provision that states Contractor shall hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Any contract that attempts to use the terms and pricing of this Contract without this contract provision is not permitted under this Contract. Further, the failure to include the contract provision will be considered a material breach of this Contract and grounds for County to immediately terminate the Contract for cause. The cooperative entities using this Contract are responsible for obtaining all certificates of insurance and bonds required. Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

Contractor is required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to County, at County's request.

- 38 Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- 39 Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the Services and requirements as set forth in this Contract. County's Project Manager and Contractor's Project Manager shall meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
- 40 Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. County shall look to Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.
- 41 Data Location:** Except where Contractor obtains County's express prior written consent, the physical location of the data center where County data is stored must be within the United States.
- 42 Trans-Border Data Flows:** Contractor shall not transfer any County data across a country border.
- 43 Extraction of County Data:** During the term of this Contract, County shall be able to extract County data from Contractor's system itself without cost at any time. For up to thirty (30) calendar days after expiration or earlier termination of this Contract, cessation of business by Contractor, or any other event preventing Contractor from continuing to perform under this Contract, County shall be able to extract County data from Contractor's system without cost.
- 44 Conduct on County Premises:** Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of County (or that may be established thereby, from time to time) that pertain to conduct on County's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on County's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the term, it, and its employees, agents, and subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.
- 45 Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon past usage. Contractor agrees to supply services requested, as needed by County, at rates/prices listed in the Contract, regardless of quantity requested.
- 46 Waivers:** County reserves the right to waive at its discretion any irregularities or informalities which County deems correctable or otherwise not warranting rejection of a bid or proposal. Failure of County in any one or more instances to insist upon strict adherence to the requirements of the solicitation shall not

be construed as a waiver or relinquishment to any extent of the right to require adherence to any other requirements of this solicitation or on any future occasion.

- 47 **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract may be subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

LIQUIDITY SERVICES OPERATIONS, LLC*

* If Contractor is a corporation, signatures of two (2) specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board, 2) the President or 3) any Vice President. The second corporate officer signature must be one of the following: 1) Secretary, 2) Assistant Secretary, 3) Chief Financial Officer or 4) Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

* If Contractor is a limited liability company (LLC), signature of any member of the LLC is acceptable, unless the LLC's articles of organization indicate that the LLC is a manager-managed LLC, in which case signatures of two managing-members of the LLC are required.

Steve Kranzusch	VP & GM
_____ Print Name	_____ Title
<small>DocuSigned by:</small> <i>Steve Kranzusch</i>	9/15/2021
<small>6399AE8B380E419...</small> Signature	_____ Date

_____ Print Name	_____ Title
_____ Signature	_____ Date

COUNTY OF ORANGE A political subdivision of the State of California

_____ Print Name	Deputy Purchasing Agent Title
_____ Signature	_____ Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Brittany McLean	Deputy County Counsel
_____ Print Name	_____ Title
<small>DocuSigned by:</small> <i>Brittany McLean</i>	9/22/2021
<small>9713A4061D4343D...</small> Signature	_____ Date

**ATTACHMENT A
SCOPE OF WORK**

I. INTRODUCTION:

Contractor shall provide a complete auction program for County surplus personal property. This Contract sets out the requirements, which includes a web-based system for the reallocation of County surplus within the County of Orange and its partner entities and for the sale of County surplus to the public. Requirements also include Contractor picking up of all County surplus personal property from County, transporting these surplus items to Contractor's warehouse(s), posting these surplus items for sale to public on Contractor's website, handling the collection of monies, and releasing the surplus items to the buyer(s).

II. BACKGROUND

The County of Orange is a de-centralized government organization comprised of 26 individual departments employing over 17,000 individuals with locations spread out over a 948 square mile territory. County operates a Surplus Program to handle the large amount of surplus personal property generated by the departments. The main objective of the surplus program is to have the items reallocated back into use within County. To complete this objective, County needs a web-based software platform where County designated representatives can list their surplus items. Every County employee should be able to view and claim available surplus items for their department from this web-based system. County also operates a donation program where surplus items can be donated to local Orange County school districts and a pre-determined list of 501 (c) (3) non-profits that provide services to Orange County residents. This donation program must be able to utilize the same online software platform and operate in a multi-tiered format. Items that are listed would first appear and be available to County employees for a period of seven (7) days. On the eighth (8th) day, the items would become available to school districts to claim for a period of seven (7) days. On the fifteenth (15th) day, the items would become available for the non-profit groups for seven (7) days. After 21 days, if the items are not claimed, the listing would close and the representative from the listing department would be notified electronically via the system. If not internally reallocated, the department representative would then determine if the item is an electronic item (e-waste) or a non-electronic item. Non-electronic items would be picked up by Contractor and transported to their facility where the item(s) would be placed for sale as an online public auction. Electronic item(s) will not be sold and will be picked up by the contracted e-waste recycler. County does not have a designated surplus warehouse available to store the items nor does it have the manpower and vehicles to transport them. Therefore, County surplus will remain onsite until either claimed internally via Contractor's web-based platform or removed by the appropriate contractor.

County surplus includes, but is not limited to: cars, trucks, heavy equipment, aircraft, vans, other miscellaneous equipment and office furniture. Contractor must collaborate with Orange County Public Works Transportation for the pick-up and sales of surplus vehicles.

III. WEB-BASED SYSTEM:

Contractor shall supply a fully functional online surplus auction system for the purpose of internally reallocating and/or selling surplus equipment.

A. System Requirements:

- 1) System shall be a role-based system for all internal users. System shall have an overall Administrator account that oversees all sub-accounts within County departments.
- 2) System shall segregate all County auction activity so that end users from each County department have administrative access to only the auctions that department owns while still allowing all County end users the ability to view all items posted for internal reallocation and/or public sale by other County departments.

- 3) System shall provide both pre-formatted and ad hoc reporting capabilities. County shall be able to run and customize reports that will be available in Excel format. Reports shall have the capability to be created from all auction activities including internally reallocated items as well as detailed financial and summary reports of all transactions to County. These reports shall have the capability to be generated from an overall system administrator (county-wide) level as well as an end-user level for each County department user.
- 4) System shall automatically notify internal County departments and other governmental entities of available County surplus personal property prior to the items being made available to the general public on the auction site. Notification to be made in a multi-step (tiered) format; County departments shall be able to claim items first; Orange County School Districts second; and members of County's non-profit program third. In cases of a transfer to an internal County department or another governmental entity/school district/non-profit, Contractor shall **NOT** receive a commission on those transfers.
- 5) System shall have the capability for County to set a zero-dollar amount on all internal reallocations.
- 6) For all public auctions, County shall be able to set a minimum opening bid price, minimum bid increments, as well as a reserve price for each auction.
- 7) System shall allow County to stop auctions, create addendums, move to the next highest bidder, and retract offers, all without any intervention or penalty by Contractor. Contractor shall describe its system of notifying bidders if an auction has been amended, withdrawn, or canceled.
- 8) System shall provide County a method of duplicating prior auctions and cutting, pasting and editing information from prior auctions that will assist County in saving time posting new auctions to the system.
- 9) System shall allow County to upload multiple attachments per auction item. These attachments should include photos, videos and PDF documents that can be viewed as part of the auction.
- 10) System shall allow Contractor to post County's own Terms and Conditions for each asset offered for sale and provide a quick link to County's Terms and Conditions. The system must also provide a section on the asset auction page for posting special instructions for each asset that can include important terms from County's Terms and Conditions such as when payment should be made and when an item should be picked up by the winning bidder. This section can also be used to provide the bidder contact information to inquire about the asset being auctioned or any other helpful information that the bidder may need to make a bid.
- 11) System shall have simple and uniform methods for bidders to submit bids and have the highest bid price to date posted on the bidding site for all bidders to see. It shall also have a mechanism to notify a bidder if the bidder's bid has been rejected and such notification shall identify the reason for such rejection.
- 12) System shall have a dynamic closing time on all public sale auctions. Auctions shall automatically extend 5 minutes from the last bid allowing County to benefit from any last-minute bidding activity.
- 13) System shall have an internal method of recording all bids, a method of identifying the winning bidder and a method of identifying the second highest bidder in those instances where the winning bidder reneges on completing the sale. A report of these methods in Excel format shall be made available from Contractor upon County's request.
- 14) System shall automatically generate and send both County and Buyer a "PAID" e-mail notice when payment is received or when an item is reallocated to an internal County department or other governmental entity.
- 15) System shall allow County to create a customizable bill of sale for each auction.
- 16) System shall allow County to mark each auction as "picked up" after transactions are complete.

- 17) System shall provide sufficient audit trails that record the user ID and date/time stamp for all transactions so the transactions can be audited.
- 18) System should allow County to upload documents to closed auctions for record keeping and future audit purposes.
- 19) System should allow County to extract all information and documents from County's assigned online surplus auction account at any time during the term of the Contract.

B. Additional Requirements

- 1) Contractor must provide a method of collecting payments from bidders. Contractor shall accept, at minimum, payment via Pay Pal, wire transfer or credit card.
- 2) Contractor must have process in place for handling disputes involving payments.
- 3) Contractor must have documented training tools and processes to train County on use of the system. Contractor agrees to create a transition team and provide onsite training to County prior to rollout of system at no additional charge. This includes the creation or amendment to any written training materials, guides or handouts.
- 4) Contractor shall provide all hardware (any specialized equipment needed to utilize the online auction), software and servers needed to operate the system.
- 5) Contractor shall supply all operating software and applications needed for the system to function.
- 6) Contractor shall provide all maintenance and upgrades to the hardware and software over the term of the Contract. All maintenance and upgrades shall be provided at no cost to County.
- 7) Contractor shall provide and absorb all costs of a secure hosting facility to operate the system and allow County full access to that account.
- 8) Contractor shall give County full access to its assigned online surplus auction account and must allow the user to utilize all aspects of the system via a common internet browser. The system should be available to County 24 hours a day, 7 days a week, 365 days a year. Contractor shall ensure that County can upload items whenever it best suits the schedule of County.
- 9) County shall not be required to install any additional computer hardware or software at the County location. The only requirement shall be that County has an internet connection via a common web browser. The system shall not interact with any County computer hardware, software or data base systems other than accessing County account through a common web browser.
- 10) Contractor shall provide system connectivity to the internet such that it is accessible through industry standard internet connections, web browsers and email. The system must allow access from Windows based systems and Apple compatible systems. The system provided will not require the installation of any special software on the computer systems of any County user.
- 11) Contractor shall provide all maintenance and support, including email and telephone support needed to operate the auction site. Live customer service support must be available Monday – Friday between the hours of 8:00 A.M. and 5:00 P.M. Pacific Time.
- 12) Contractor shall provide an emergency phone number to report any after-hours issues related to system failures/outages.
- 13) Contractor shall provide all security systems, anti-virus and firewalls capable of preventing the hacking of any auction information from the auction servers, capable of preventing the assimilation or distribution of viruses and other programs and capable of preventing any bidder from learning the identity of any other bidder.
- 14) Contractor shall have contingency plans to backup and recover information, and a disaster recovery plan that covers internet failure, electricity failure or system failures.

- 15) Contractor shall provide, at no additional cost to County, extraction of all information and documents in County's assigned online surplus auction account, in the file format specified by County, within thirty (30) days of expiration or earlier termination of the Contract.
- 16) Contractor must have documented process and tools for continually marketing and promoting the system to entice new bidders.

IV. CONTRACTOR RESPONSIBILITIES:

A. Contractor shall provide the following pick up, transportation and storage of County surplus:

- 1) Contractor shall be responsible for pick-up, transportation, warehousing, inventory services, accounting, cash handling, tracking, record keeping, security, sales, handling, labor and any other related services in order to ensure the successful operation of County's surplus sales program.
- 2) Contractor shall provide all necessary transportation of County surplus personal property from County department locations to Contractor's warehouse(s) where the items will be kept during the online sale period. Rental of additional equipment needed for the de-installation and/or transportation of heavy equipment (such as cranes, safe movers, scissor lifts, etc.) shall be billed 'at cost' to County. Contractor shall obtain two (2) written price quotes related to such costs and provide a copy of the quotes to County for consideration. Written approval in advance by County is required for all rentals of additional equipment.
- 3) Contractor's warehouse(s) shall be located within 50 miles of Santa Ana, CA 92705.
- 4) Contractor shall have vehicles, staff/personnel and equipment available to pick up surplus items from County.
- 5) Contractor shall provide pick-up services within seventy-two (72) hours of request from County.
- 6) Contractor shall provide secure facility for storage of auction items picked up from County.
- 7) Contractor shall have tracking system to track surplus items from time item is picked up until it is sold.
- 8) Contractor shall assure County that items will be sold "as-is" and the purchaser will hold County harmless from any potential liability after the sale.
- 9) Contractor must make at least three (3) attempts to sell item(s) at online auction. If item(s) remain unsold after the third (3rd) auction, item(s) can be declared valueless. Item(s) can then be disposed of and report provided to County.
- 10) Contractor shall, at no additional cost to County and at County's sole discretion, return to County or dispose of County surplus property in the possession of Contractor within thirty (30) calendar days of expiration or earlier termination of the Contract; provided that, for any County surplus property in Contractor's possession that has been sold at the time of Contract expiration or earlier termination, Contractor shall complete the sale process notwithstanding the expiration or earlier termination of the Contract.
- 11) Contractor shall be responsible for the collection of monies and reimbursement.
- 12) Contractor shall pay County with proceeds from sales in accordance with Attachment B.
- 13) Contractor shall keep records of all financial matters pertaining to the sales in accordance with generally accepted accounting principles and financial records must be made available to representatives of County (or any other governmental entity with the jurisdiction to audit).
- 14) Reallocation / Revenue Report – Contractor shall submit usage reports to the County Procurement Office (CPO)/County of Orange, Attn: Surplus Program Administrator during the term of the Contract in a format specified by CPO, when requested.

- 15) Contractor shall be responsible for any loss or damage to County's surplus property while in Contractor's possession.
- 16) For vehicles, Contractor shall be responsible for towing/transporting all vehicles to be sold by County.
- 17) Contractor shall be responsible for performing the smog check, safety inspection and filling out and filing all DMV and title paperwork after the completion of vehicle sale transaction.
- 18) Contractor shall transfer all certificates of ownership and perform any necessary weighing of vehicles.
- 19) Contractor shall obtain buyer signature on a California DMV form REG 138 "Notice of Transfer and Release of Liability." The originals of said notices shall be filed with the DMV by Contractor and copies submitted to County.
- 20) Contractor shall be responsible for submitting State of California, Air Resources Board "Out-of State Sales Verification" for vehicles sold, if applicable.

V. COUNTY RESPONSIBILITIES:

- A. Surplus Program Manager shall provide Contractor with the name, address, telephone/facsimile number, and email address of the Site Coordinator(s) for each individual department.
- B. Site Coordinator(s) shall notify Contractor when items are ready for pick-up to be auctioned/sold.
- C. Site Coordinator(s) are responsible for coordinating with Contractor the lot sizes and minimum bid requirements for County surplus items/lots, if necessary.
- D. County departments are responsible for reporting fixed assets and controlled equipment disposition to the County of Orange Auditor Controller.
- E. County shall provide Contractor with access to County property, buildings, yards, etc. to facilitate the pickup of surplus items.
- F. County shall provide payment information and addresses to Contractor.
- G. For Vehicles, County shall:
 - 1) Remove all County markings/decals/logos/stickers/from vehicles.
 - 2) Provide a spreadsheet listing of all vehicles for pick-up to Contractor.
 - 3) Provide vehicle titles and any extra keys to Contractor.

**ATTACHMENT B
COMPENSATION, PRICING AND REVENUE**

I. COMPENSATION

This is fixed fee revenue contract between County and Contractor for Online Surplus Auction Services as provided in Attachment A, Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, tax, shipping, freight, insurance requirements, and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of total Contract amount specified unless authorized by an amendment in accordance with Paragraph "C" – Amendments and Paragraph "P" – Changes of County's General Terms and Conditions.

II. PRICING

The rate, as set forth herein, shall be fixed for the term of the Contract. The rates specified herein shall be inclusive of all costs for labor, transportation (e.g. vehicles, gas etc.), overhead, profit and all other costs associated with providing Online Surplus Auction Services as set forth in the Scope of Work.

The rate also includes Contractor picking up all surplus items and vehicles from County, transporting surplus items to Contractor's warehouse, posting surplus items for sale to public on Contractor's website, handling the collection of monies, and releasing the surplus items to the buyer(s).

Base Services	Contractor's commission from gross sales	Buyer's premium*
For vehicles and heavy equipment	12%	12%
For miscellaneous items	30%	10%

*Note: Buyer's premium shall be wholly incurred by buyer.

Additional Services for Vehicles

Description	Cost
A. Smog Check/Safety Check (only vehicles sold in CA to non-dealers)	\$95
B. Minor Repairs for Vehicle	Contractor shall provide quote to County for approval
C. Heavy Equipment Rental	Contractor shall provide quote to County for approval

A. Smog Check/Safety Check – Contractor will perform smog check and safety inspection on required vehicles being sold for County. This fee includes any necessary transportation to/from the smog facility as well as any necessary DMV paperwork/certificates.

B. Minor Repairs for Vehicle – Minor repair for vehicles, up to \$100.00 in total cost, may be performed by Contractor in order to enhance the value of County vehicles to be sold at

Contractor's facility. An itemized list of repairs for each vehicle shall be provided to OC Public Works/Facilities/Fleet Services personnel for consideration. Written approval in advance by OC Public Works/Facilities/Fleet Services personnel is required for all repairs. Repairs that do not increase the value of the vehicle above the cost of the repairs will not be authorized.

- C. Heavy Equipment Rental** – Rental of additional equipment needed for the de-installation and/or transportation of heavy equipment (such as cranes, safe moving, wide-load trailers, scissor lifts, etc.) shall be billed at cost. Contractor shall obtain two (2) written quotes related to such rentals and provide the quotes to County for consideration. Written approval in advance by County is required for all rentals of additional equipment.

The costs for the additional services listed in sections A through C above, shall be deducted from funds due to County after the sale of item(s) for which the costs were incurred and properly documented on sales report for the item(s).

III. REVENUE

Payment/Revenue shall be in the form of a single check payable monthly and mailed to:

Payable: **County of Orange**

County Executive Office/County Procurement Office

1300 S. Grand Ave., Bldg. A, 2nd Floor

Santa Ana, CA 92705-4434