

**ADDENDUM TO AGREEMENT TO PURCHASE AND SELL  
Laramie County/ Ritchie Brothers, Auctioneers (America) Inc.**

THIS ADDENDUM is made and entered into by and between Laramie County, 310 West 19<sup>th</sup> Street, P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY") and Ritchie Brother Auctioneers, America) Inc., P.O. Box 6429, 3901 Faulkner Drive, Lincoln Nebraska 68506-0429 Hereinafter referred to as "CONTRACTOR"). The parties agree as follows:

**I. PURPOSE**

The purpose of this Addendum is to modify the Agreement to purchase and Sell between the parties (hereinafter referred to as the Agreement)

**II. TERM**

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum, and shall remain in full force until completely performed or terminated as provided herein or in the Agreement.

**III. MODIFICATIONS**

A. Section 9 of the Agreement titled "Indemnity", shall be stricken and henceforth of no force and effect.

B. Section 15 of the Agreement titled "Indemnity", shall be stricken and henceforth of no force and effect and replaced with the following:

Applicable Law and Venue: The parties mutually understand and agree the Agreement and Addendum shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning the Agreement and Addendum or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CONTRACTOR and to COUNTY in executing the Agreement and Addendum. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in the Agreement and Addendum.

**IV. ADDITIONAL PROVISIONS**

A. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible

for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CONTRACTOR is free to perform the same or similar services for others.

B. Termination: The Agreement and this Addendum may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; or (b) upon mutual written agreement by both parties.

C. Entire Agreement: The Agreement ( 7 pages including "Schedule A") and this Addendum (4 pages) represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

D. Assignment: Neither the Agreement, this Addendum, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

E. Modification: The Agreement and this Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

F. Invalidity: If any provision of the Agreement and this Addendum is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of the Agreement and this Addendum are fully severable.

G. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with the Agreement and this Addendum, nor were any fees, commissions, gifts or other considerations made contingent upon the award of the Agreement and this Addendum.

H. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of the Agreement and this Addendum because of race, color, gender, creed, handicapping condition, or national origin.

I. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

J. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. § 1-39-

101 et seq., by entering into the Agreement and this Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on the Agreement and this Addendum except as to actions brought by CONTRACTOR to enforce the terms and conditions of the Agreement and this Addendum.

K. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with services provided by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision.

L. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and the Agreement and this Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in the Agreement and this Addendum shall operate only between the parties to the Agreement and this Addendum, and shall inure solely to the benefit of the parties to the Agreement and this Addendum.

M. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Agreement and this Addendum described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from the Agreement and this Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Agreement and this Addendum.

N. Force Majeure: Neither party shall be liable to perform under the Agreement and this Addendum if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

O. Limitation on Payment: COUNTY's obligations are conditioned upon the availability of funds which are appropriated or allocated for the obligations. If funds are not allocated and available for the continuance of performance required pursuant to the Agreement and this Addendum the Agreement and this Addendum may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be effected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future obligations due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate the Agreement and this Addendum in order to acquire similar services from another party.

P. Notices: All notices required and permitted under the Agreement and this Addendum shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

Q. Addendum Controls: Where a conflict exists or arises between any provision or condition of the this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

LARAMIE COUNTY, WYOMING

By: Jack Knudson Date \_\_\_\_\_  
Jack Knudson, Chairman, Laramie County Commissioners

ATTEST:

By: Debbye Lathrop Date 2-19-04  
Debbye Lathrop, Laramie County Clerk

CONTRACTOR: Ritchie Brothers Auctioneers (America) Inc.

By: Willie D. Thompson Date 2-10-04  
Title: Territory Manager

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY

By: Mark Voss Date 2/9/04  
Deputy Laramie County Attorney

# interoffice

## MEMORANDUM

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**To:** Michelle  
**From:** Rhonda  
**Date:** February 20, 2004  
**Subject:** Ritchie Bros. Agreement

Attached is the agreement (040217-12) that was approved at the Commissioners' meeting. Please obtain signatures and return "Copy of Record" to me. Also attached is the second set. Thanks.

Attachments

040211-12

AGREEMENT TO PURCHASE AND SELL

THIS AGREEMENT MADE THIS 2 DAY OF February,  
2004.

BETWEEN:

**RITCHIE BROS. AUCTIONEERS (AMERICA) INC.**, having its Head  
Office at P.O. Box 6429, 3901 Faulkner Drive, in the City of Lincoln, in the  
State of Nebraska, 68506-0429 Web site - [www.rbauktion.com](http://www.rbauktion.com)

(the "Purchaser")

OF THE FIRST PART

AND:

Laramie County, having a  
place of business at 2503 E Fox Farm Road, in the  
City of Cheyenne, in the State of Wyoming

Telephone No. 307 - 633-4302

Fax No. 307 - 633-4313

E-Mail Address: \_\_\_\_\_

(the "Vendor")

OF THE SECOND PART

TERMS AND CONDITIONS OF THIS AGREEMENT

Agreement

Vendor is desirous of selling and Purchaser is desirous of purchasing certain  
equipment more particularly described in Schedule "A" attached hereto (the  
"Equipment") for the purpose of reselling same at Public Auction or otherwise,  
subject to the following terms;

RBA USE ONLY

SALE SITE:

SALE DATE:

US PUR\_SELL Fill-In R01\_04  
Created by Laurey Rasmussen  
Last saved by newuser

Initials \_\_\_\_\_

Owner Code: \_\_\_\_\_

Created on 1/29/2004 4:11 PM

Last printed 1/29/2004 4:12 PM

C:\Documents and Settings\wilthom\Desktop\Fillin US Pur\_Sell R01\_04.doc

**COPY OF RECORD**

1. Purchase Price - On closing, Purchaser will pay to Vendor a total purchase price of one hundred seventy two thousand five hundred dollars (\$172,500), for the Equipment.

2. Title and Condition

Vendor represents and warrants (and confirms Purchaser relies on such representations and warranties) that:

- (a) the description and condition of the Equipment is accurately set forth in Schedule "A" attached;
- (b) Vendor is solvent and has not made any assignment, proposal or other proceeding for the benefit of its creditors;
- (c) the offering for sale, advertising or selling of the Equipment does not contravene or infringe upon any patent, copyright, trademark or franchise agreement;
- (d) Equipment shall, at closing:
  - i. be owned by Vendor free and clear of any and all registered or unregistered liens and encumbrances, including without limitation, assessment for any taxes or duty arising from the sale;
  - ii. be in condition equivalent or better to that when viewed by Purchaser's representative on January 26<sup>th</sup>, 20 04 or about ORB;
  - iii. be in good running order, painted, cleaned, repaired and supplied with fuel and batteries to a standard acceptable to Purchaser; As is with New Felber ORB;
  - iv. will not be subject to any agreement or option or any right capable of being or becoming an agreement for purchase by any firm, person or corporation other than Purchaser; and
  - v. be in compliance with all applicable laws and regulations including without limitation, all Environmental Protection Agency regulations.
- (e) Vendor and its signatories are duly authorized to enter into this Agreement.

3. Prior to Closing

WOT Ritchie Bros. to Pickup equipment Mayenne location

(a) ORB deliver the Equipment to Purchaser at its' yard in Wyoming;

(b) provide all documents evidencing Vendor's title, and/or necessary to give free and clear marketable title in the Equipment to Purchaser. Without limitation, execute all titles, transfers, bills of sale, assurances, assignments and consents, including consents required by an authority of competent jurisdiction relating to the sale and documents required to register and title the Equipment in the State of Wyoming.

4. **CLOSING** - shall be on or before February 23, 2004, at the offices of Laramie County at Cheyenne WY.

5. **Use of Equipment** - Vendor will not use the Equipment in any way whatsoever, except as required for delivery to or refurbishing at Purchaser's or Vendor's yard.

6. **Use of Vendor's Name** - Vendor authorizes the use of it's name and logo in advertising and promoting the resale of the Equipment;

7. **Risk of Loss, Insurance** - Equipment shall be and remain at the risk of Vendor until closing. Vendor shall insure same to its full replacement value in both the name of Vendor and Purchaser.

8. **Taxes** - personal property or like taxes assessable in respect of the Equipment, for any period ending prior to closing, will be the responsibility of and be paid by Vendor.

9. **Indemnity** - Vendor indemnifies and saves harmless Purchaser against all claims, demands, suits, actions, causes of action, damages, costs or charges whatsoever, including, but not limited to those arising from:

- (a) encumbrances against or defects in title to the Equipment or any part thereof;
- (b) inaccuracies in the description or condition of the Equipment set forth in Schedule "A"
- (c) hazardous materials associated with the Equipment;
- (d) taxes or duties payable in respect of the Equipment;
- (e) any infringement of patent, copyright, trademark, agreement or similar right of any third party caused by the offering for sale, advertising or sale of any part of the Equipment pursuant to paragraph 2 (c); and



- (f) any transportation costs incurred by Purchaser as a result of Vendor's failure to deliver the Equipment as required.
10. **Buybacks** – Vendor will not bid directly or indirectly, by agency or otherwise on any of the Equipment at sale.
  11. **Timeliness**– time is of the essence of this Agreement and should either party fail to perform its obligations hereunder within the time specified such defaulting party shall be liable for all damages and losses suffered by the other party.
  12. **Legal Costs** – should either party be required to participate in any action or proceeding in respect of this Agreement, the prevailing party shall be entitled to recover all costs including lawyers fees.
  13. **Waiver** – a waiver by either party of any breach of any of the provisions herein shall be limited to such particular instance and shall not operate as a waiver of, or be deemed to waive, any other or future breaches of the same or any other provisions hereof.
  14. **Entire Agreement** – this Agreement
    - (a) constitutes the entire agreement between the parties; supersedes and takes the place of all prior contracts, understandings, representations or warranties;
    - (b) may not be amended except in writing. There are no understandings, agreements, promises, terms, conditions or warranties expressed or implied, whether orally or by law, statute or trade usage, other than as specifically stated herein; and
    - (c) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
  15. **Jurisdiction** – this Agreement is subject to, and any dispute arising hereof will be determined by a court of competent jurisdiction in, and under the laws of the State of Wyoming, excepting only those in respect of fair market value of the Equipment which shall be submitted to binding arbitration pursuant to the laws in respect of commercial arbitration of that State.
  16. **Facsimile** – receipt of a signed copy of this Agreement by facsimile shall, upon acceptance by Purchaser, be effective and binding on both parties; and
  17. **Notice** – any notice given hereunder shall either be delivered, sent by facsimile or by prepaid registered mail to the parties at the address set out on page 1.

This Agreement has been executed by the parties as of the day and month first written above.

*(If a Corporation)*

\_\_\_\_\_  
(Company name of Vendor)

Per: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Cust. #:
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**(If not a Corporation)**  
**SIGNED & DELIVERED**  
 By Vendor in the presence of:

Jack Knudson  
 (Signature of Witness)

\_\_\_\_\_  
 (Print Name of Witness)

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Occupation

)  
 )  
 ) Jack Knudson  
 ) (Signature of Vendor)  
 )  
 ) Jack Knudson  
 ) (Print Name of Vendor)  
 ) Attest: Rebecca G. Gentry  
 )  
 )  
 )  
 )  
 )  
 )

Cust. #:

**RITCHIE BROS. AUCTIONEERS (AMERICA) INC.**

Per: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

Attached to and forming part of  
**PURCHASE AND SELL AGREEMENT**

**LIENHOLDER INFORMATION**

Vendor Name: \_\_\_\_\_

Sale Site: \_\_\_\_\_ Sale Date: \_\_\_\_\_

Sch A #	Lienholder	Contact Person	Phone # & Fax #	Amount

OWNER CODE: \_\_\_\_\_

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**LARAMIE COUNTY CLERK**  
**BOARD OF COUNTY COMMISSIONERS**  
**AGENDA ITEM PROCESSING FORM**

1. DATE OF PROPOSED ACTION: February 17, 2004

2. AGENDA ITEM: ☐ Appointments ☐ Bids/Purchases ☐ Claims  
☒ Contracts/agreements/leases ☐ Grants ☐ Land Use: Variances/Board App/Plats  
☐ Proclamations ☐ Public Hearings/Rules & Reg's ☐ Reports & Public Petitions  
☐ Resolutions ☐ Other \_\_\_\_\_

3. DEPARTMENT: Public Works

APPLICANT: Don Beard

AGENT: Don Beard

4. DESCRIPTION: Consideration of Addendum to Agreement to Purchase and Sell between Laramie County and Ritchie Brothers, Auctioneers (America) Inc.

Amount \$ \_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_

5. DOCUMENTATION: 2 Originals (4) four copies

Clerks Use Only:

Commissioners

Humphrey \_\_\_\_\_  
Knudson \_\_\_\_\_  
Ketcham \_\_\_\_\_  
Action \_\_\_\_\_

Postponed/Tabled \_\_\_\_\_

Signatures

Co Attny \_\_\_\_\_  
Assist Co Attny \_\_\_\_\_  
Grants Manager \_\_\_\_\_  
Outside Agency \_\_\_\_\_

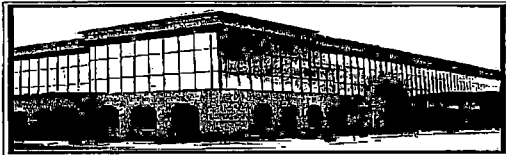
# Confirmation Report - Memory Send

Date & Time: Feb-20-2004 10:32  
Tel line : 3076334240  
Machine ID : LARAMIE COUNTY CLERK

Job number : 615  
Date & Time : Feb-20 10:29  
To : 913036592902  
Number of pages : 011  
Start time : Feb-20 10:29  
End time : Feb-20 10:32  
Pages sent : 011  
Status : OK

Job number : 615

\*\*\* SEND SUCCESSFUL \*\*\*



**Laramie County Government**

**Laramie County Clerk  
Debra K. Lathrop**

**FAX TRANSMITTAL  
FAX NUMBER 633-4240**

TO:

*Deb*

FROM:

*Shonda  
307 - 633 - 4246*

DATE:

*2-20-04*

NUMBER OF PAGES (INCLUDING TRANSMITTAL SHEET)

*11*

COMMENTS:

*Ritchie Brothers*