



PLACER COUNTY
SHERIFF
CORONER-MARSHAL



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EDWARD N. BONNER
SHERIFF-CORONER-MARSHAL

DEVON BELL
UNDERSHERIFF

To: Honorable Board of Supervisors
From: Edward N. Bonner, Sheriff Coroner-Marshal 
Date: May 3 2011
Subject: Agreement between the Placer County Sheriff-Coroner-Marshal and Brasher's Sacramento Auto Auction

Action Requested

Approve the agreement between the Placer County Sheriff Coroner-Marshal and Brasher's Sacramento Auto Auction for the disposal of surplus vehicles and authorize the Purchasing Manager to execute the agreement and all related documents. The agreement period is from May 5, 2011 to May 4, 2013 for a cost of \$210 per vehicle.

Background

Placer County Sheriff's Vehicle Maintenance Division worked with Fleet and Procurement staff to review and determine the best manner in which to dispose of leased vehicles. This is the first time leased vehicles will be disposed of through a surplus sale. Previously we have returned leased vehicles to the leasing company. Historically surplus vehicles and equipment have been disposed of utilizing our existing auction contract which has a wide range of auction items. For comparison purposes we will be sending our current surplus leased vehicles to both auctions to evaluate the services provided. Upon approval of your Board the process and sale will be under the supervision of the Purchasing Manager. These leased vehicles are of a higher quality and we expect to receive a greater return utilizing an auction that specializes in automobiles only.

Fiscal Impact

The auction costs consist of a \$150 sales fee and a \$60 transportation fee. The \$210 costs per vehicle will be deducted from the sale price once the vehicle has been sold. The agreement will be in effect for the period beginning May 5, 2011 and ending May 4, 2013. There is no impact to the General Fund.

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**MASTER AUCTION
SERVICES AGREEMENT**

COPY

This Auction Services Agreement (the "Agreement") is entered into as of _____ between Placer County Sheriff Department ("Consignor"), and Brasher's Sacramento Auto Auction ("Auction") executing the form of individual auction agreement attached hereto as Exhibit "A" (the "Auction Agreement").

Recitals

- A. Consignor desires from time to time to consign automobiles, light trucks, RVs, boats, motorcycles and other vehicles (individually, a "Vehicle", collectively, "Vehicles") designated by it, to Auction for sale at auction; and
- B. Auction desires to receive, sell and otherwise provide certain services with respect to the Vehicles as more fully described in this Agreement and in the Auction Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Consignment.

Consignor shall furnish Vehicles to Auction on consignment in such mix and quantity and at such times as Consignor deems appropriate. Auction reserves the right to reject, in its sole discretion and with or without cause, any Vehicle. All Vehicles furnished to Auction shall be on consignment and no title or property rights shall be transferred until sold by Auction. The period of consignment of each such Vehicle shall begin at the time the Vehicle is delivered to the possession of Auction and shall end when either the Vehicle (i) is sold to purchaser by Auction, or (ii) possession of the Vehicle is returned by Auction to Consignor.

Auction shall provide storage space for Vehicles delivered to it by Consignor at no expense to Consignor until the Vehicles are sold by Auction or until possession of the Vehicles is returned to Consignor. Should Consignor for any reason fail to retake possession of any Vehicle following Auction's tender of possession of the Vehicle to Consignor, Consignor shall be responsible for Auction's regular storage fees until such time as Consignor retakes possession. Consignor shall promptly retake possession of any Vehicle for which Auction tenders return of possession.

2. Certificate of Title and Registration.

Consignor will forward to Auction the certificate of title and/or registration for the Vehicles, together with any other documents in possession of

Consignor necessary to effect transfer upon sale, prior to the sale date for the Vehicles. Unless Auction has a valid power of attorney to act on behalf of Consignor, in which case Auction is specifically authorized to exercise such power of attorney by executing and endorsing such documents as may be necessary or convenient to effect transfer upon sale, and if the Consignor's representative will not be attending the sale, all documents necessary to effect transfer upon sale shall be endorsed as required prior to their being forwarded to Auction prior to the sale date. If the Consignor's representative does attend the sale, endorsement of documents necessary to effect transfer upon sale may be accomplished by the representative on the day of the sale. Consignor agrees to provide a completed Federal Odometer Disclosure Statement. Auction will not deliver, endorse or otherwise give up possession of such documents, except to the purchaser of the Vehicle after sale and receipt of payment in accordance with the terms of this Agreement.

3. Covenants of Auction.

During the term of this Agreement and until all obligations of Auction to the Consignor have been fulfilled, Auction shall:

- A. Be responsible for the marketing, merchandising and sale of Vehicles in accordance with this Agreement. Auction agrees to use its commercially reasonable best efforts to sell every Vehicle consigned pursuant to this Agreement
- B. Not use any Vehicle or permit its use by any of Auction's employees, agents, or any other person (other than Client or its officers, employees and agents) except in the furtherance of its obligations under this Agreement.
- C. Not sell, mortgage, pledge, subject to a lien or security interest, or attempt to do any of the foregoing or otherwise encumber or convey or transfer any interest in any Vehicle except as permitted under this Agreement.
- D. Not file theft or conversion complaints with the authorities on a Vehicle prior to giving Consignor written notice that such Vehicle has been stolen, converted, is missing, or is otherwise unaccounted for and shall complete such reports as are reasonably requested by Consignor.
- E. Comply with all laws, regulations and ordinances of any governmental authority having jurisdiction with respect to this Agreement, and shall obtain and maintain any and all material permits, licenses, approvals and consents necessary for the lawful conduct of the activities contemplated under this Agreement.

- F. Repair at Auction's sole cost and expense any damage to Vehicles, including without limitation the replacement of lost or damaged parts, which occurs while in the Vehicle is in the control of Auction, its agents or employees, except for those resulting from war, riot, natural disaster and other acts of God.
- G. Upon receipt of Vehicle, Auction shall provide Consignor with a vehicle condition report for each Vehicle. Auction shall have the responsibility of illustrating the imperfections of each Vehicle on the condition report, along with making recommendations as to the repairs that should be performed on each Vehicle. Auction shall use its *commercially reasonable best efforts to determine* such imperfections; however Auction does not warrant or guarantee that all such imperfections shall be indicated on the condition report. Auction shall not have the authority to perform any repair work without the approval of the Consignor.

4. Sale of Vehicles.

- A. A sale shall be complete when the Auction so announces by the fall of the hammer, or in the case of an auction conducted by Internet, when a final bid has been accepted by Auction. The Auction shall withdraw a Vehicle from the sale if: (a) the authorized Consignor representative withholds approval of the pending bid; or (b) no bid exceeds the minimum price communicated by Consignor to the Auction as acceptable. Within three (3) business days following the date of the sale, Auction shall remit to Consignor its check or checks for the full net amount owing to Consignor along with an itemization of Vehicles sold by identification number and sale prices. Auction shall be responsible for all collection matters relating to the sale of consigned Vehicles, and shall guarantee payment to Consignor. All charges and fees due Auction shall be deducted from the sales proceeds, whether or not such charges and fees are directly related to the actual Vehicles sold. In the event a Vehicle is returned to Consignor or is delivered to another location at the request of Consignor, Auction shall invoice the Consignor for the total amount of fees and charges payable by Consignor pursuant to this Agreement for such Vehicle. Consignor shall pay Auction such invoiced amount within thirty (30) days from the date of the invoice.
- B. Consignor agrees to pay Auction fees and charges in accordance with the Auction Agreement applicable to Auction. Auction shall notify Consignor in writing of any changes in the fees and charges at least thirty (30) days prior to the effective date of any such

change. If Consignor fails to notify Auction in writing of its objection to the changes in fees and charges within sixty (60) days of Auction's notification of Consignor of the same, Consignor shall be deemed to have consented to and agreed to pay the revised fees and charges.

- C. Consignor agrees to cooperate with Auction before, during and after the sale of a Vehicle to ensure that title to such Vehicle passes to its purchaser. Consignor's obligation shall include without limitation the execution of such documents, including corrective documents, as may be necessary or convenient to the accomplishment of the transfer of title.

5. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The AUCTION shall save, keep, hold harmless, defend, and indemnify PLACER COUNTY from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing work which may be occasioned by any willful or negligent act or omissions of the AUCTION, any of the AUCTION 'S employees, or any subcontractors.

The AUCTION shall be responsible for any liability imposed by law and for death, injury, or damage to property of any person including, but not limited to, workmen, subcontractors, and the public, resulting from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

If any judgment is rendered against PLACER COUNTY for any injury, death, or damage caused by AUCTION as a result of work performed or completed, pursuant to this agreement, AUCTION shall, at its own expense, satisfy and discharge any judgment.

As used above, the term PLACER COUNTY means PLACER COUNTY, its officers, agents, employees, and volunteers.

6. **INSURANCE:**

AUCTION shall file with the COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing.

7. **WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Workers' Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one

million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to PROVIDER'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Workers' Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

AUCTION shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

8. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of AUCTION, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Products and completed operations;
- (2) Contractual liability insuring the obligations assumed by AUCTION in this Agreement; and
- (3) Broad form property damage (including completed operations)

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to AUCTION'S work under the Contract.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If AUCTION carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

D. If AUCTION carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

AUCTION shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) aggregate for Products Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

(2) The insurance coverage provided by AUCTION shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

9. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the AUCTION, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

10. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

11. INSURANCE/RISK OF LOSS

While Consignor's Vehicles are in Auction custody and control, Auction agrees to provide general liability insurance with limits of not less than \$1 million bodily injury and property damage combined per occurrence, automobile liability insurance with limits of not less than \$1 million bodily injury and property damage combined, workers' compensation insurance as required by law, and garage-keepers legal liability insurance (comprehensive and collision) with a limit of not less than \$1 million per location. Auction shall maintain physical damage insurance on the Vehicles.

Auction assumes the risk of loss for each consigned Vehicle from the earlier of:

- A. The time the Vehicle is delivered to the possession of Auction; or
- B. The time the Vehicle is delivered to a transport company owned, possessed, contracted, or operated by Auction.

Auction will continue to bear the risk of loss with respect to a Vehicle until such Vehicle is in the possession of the purchaser following sale or until Auction returns possession of the Vehicle to Consignor, whichever is earlier.

12. INDEMNIFICATION.

- A. Indemnity by Auction – Theft or Conversion. Auction shall be responsible to

Consignor for, and indemnify and hold it harmless from, any theft, conversion, or total loss of any Vehicles after the same has been consigned to Auction and until sold to a purchaser at auction. Value for total loss of any Vehicle by theft or conversion shall be determined by averaging the clean wholesale values as indicated in the Kelly Blue Book, the Black Book and the NADA Official Used Car Guide. The values shall be adjusted to reflect equipment, mileage and condition of the Vehicle.

- B. Indemnity by Auction – Unauthorized Transfers. Auction shall be responsible to Consignor for and indemnify and hold it harmless from and against any and all claims (including reasonable attorneys' fees) resulting from the transfer of a Vehicle not in accordance with this Agreement, except where such transfer is authorized by Consignor.
- C. Indemnity by Consignor – Odometer. Consignor represents and warrants that the mileage shown on the odometer of each Vehicle is accurate, and Auction shall be entitled to rely on such representation and warranty in preparing any odometer statement with respect to each Vehicle, unless Consignor specifically informs Auction otherwise. In preparing any odometer statement with respect to a Vehicle ten years or more in age, Auction shall indicate that such vehicle is "EXEMPT" unless otherwise directed by Consignor. Auction assumes no responsibility for the correctness of the odometer reading on any Vehicle. Consignor shall defend, indemnify and hold Auction harmless from and against any and all claims, demands, damages, lawsuits, expenses or costs of any kind, including without limitation attorneys' fees, arising out of or related in any way to the odometer reading on any Vehicle.
- D. Indemnity by Consignor – Title. Consignor represents and warrants that it has free and clear title for all Vehicles and is legally entitled to convey the same. Consignor shall defend, indemnify and hold Auction harmless from and against any and all claims, demands, damages, lawsuits, expenses or costs of any kind, including without limitation attorneys' fees, arising out of or related in any way to the title to any Vehicle.
- E. Indemnity and Release by Consignor – General. In addition to any other specific indemnification otherwise provided for pursuant to this Agreement, and provided that Auction has acted in accordance with the provisions of this Agreement, Consignor shall defend, indemnify, release and hold Auction harmless from and against any and all claims, demands, damages, lawsuits, expenses or costs of any kind, including without limitation attorneys' fees, arising out of or related in any way to the any Vehicle.

13. TERM.

This Agreement shall be effective as of the date first indicated above and shall continue to be in effect for a period of two (2) years or until the earlier termination by

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either party upon 30 days' prior written notice to the other.

14. CONFIDENTIALITY.

Consignor shall keep the provisions of this Agreement and the provisions of the Auction Agreement confidential including, without limitation, all information relating to pricing and any other fees and charges under the Agreement and the Auction Agreement (the "Confidential Information"). Except as may be authorized by Auction in writing, Consignor shall not disclose any confidential information during the term of this agreement and for a period of two (2) years following its termination. The foregoing notwithstanding, Auction agrees and acknowledges that Consignor is a California public entity subject to the California Public Records Act (Cal. Govt. Code Section 6250 et seq.; hereafter the "PRA") and that records in the possession of the Consignor in furtherance of this Agreement may be considered public records and therefore subject to disclosure under PRA. Consignor agrees to notify Auction in writing in the event Consignor receives a request for disclosure pursuant to the PRA."

15. NON-EXCLUSIVITY.

This Agreement does not create an exclusive relationship between the parties. Accordingly, Consignor and Auction are free to negotiate and enter into identical or similar arrangements with any other party.

16. GOVERNING LAW AND GENERAL TERMS.

- A. Except to the extent specifically indicated in this Agreement, Auction is not the express, implied or apparent agent of Consignor for any purpose whatsoever.
- B. All notices, demands, or other communications required to be given hereunder shall be given in writing and shall be (1) personally delivered, (2) sent registered or certified United States mail, return receipt requested with postage prepaid, (3) sent by telecopy, or (4) sent by commonly recognized overnight express delivery service, as follows:
 - i. If to Consignor, at the address indicated below.
 - ii. If to Auction, at Auction's regular place of business.
- C. No modification or waiver of any of the terms hereof shall be valid or effective unless made in writing and executed by duly authorized officers of both parties. No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

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EXHIBIT "A"
FORM OF
AUCTION AGREEMENT

This Auction Agreement is entered into as of May 5, 2011 and binds and obligates the undersigned Auction ("Auction" and the Consignor to all of the provisions and conditions of the Master Auction Services Agreement (the "Master Agreement" to which it is attached. The capitalized terms herein have meaning as those indicated in the Master Agreement.

1. **LIMITS OF LIABILITY** – Any liability or responsibility of the Auction will be limited to its own operations and course of business with Consignor. Auction will have no liability or responsibility under the contract relating to the consignment or sale of Vehicles to any other auction pursuant to the Master Agreement.

2. **FEE SCHEDULE** – The Auction fees set forth below will apply to all Vehicles consigned to Auction for sale; optional services are available at the following rates:

Auction Fees:

Sales Fee	- \$150 Per Vehicle
Transportation	- \$60 Per Vehicle

Optional Individual Services:

Detail/Environmental	- \$80 Per Vehicle
Wash & Vac Fee	- \$35 Per Vehicle
KSR Fee (California Only)	- \$10 Per Vehicle
Internet Success Fee	- \$50 Per Vehicle
Title Fee	- DMV Fee + 10%
Parts	- Cost + 10%
Sublets	- Cost + 10%
Gasoline	- At Local Auction Rates

Labor Rates:

Paint & Body Work (Includes Paint & Materials)	- \$50 Per Hour
Mechanical & Parts Installation	- \$50 Per Hour
Dent Repair (Auction to provide PDR service)	- \$55 Per Hour

