

AUCTION SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____ 2014, between the CITY OF STOCKTON, a municipal corporation ("City"), and South Bay Auto Auction, an auction company whose address is 4101 S. Airport Way, Stockton, CA 95206, and telephone number is (209) 690-9191, ("Contractor").

RECITALS

- A. Contractor is qualified to and experienced in providing auction services for the purposes specified in this Agreement.
- B. City finds it necessary and advisable to use the services of the Contractor for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Contractor agree as follows:

1. Contractor's Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A. Contractor shall provide said services at that time, place and in the manner specified in Exhibit A.

2. City Assistance, Facilities, Equipment and Clerical Support. Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. City shall furnish to Contractor only the facilities and equipment listed in Exhibit A according to the terms and conditions set forth in Exhibit A.

The City shall provide the Contractor with an inventory list of all City-owned vehicles and equipment and forfeiture vehicles to be auctioned. Additions to such list may be made up to five (5) calendar days prior to the date of the auction and deletions may be made up to the time of actual sale. The City reserves the right to remove any personal property scheduled to be sold from the auction sale and from the Contractor's facility at any time for actual sale. If said personal property is removed from the auction facility, Contractor will be reimbursed for actual cost incurred in transportation of said property to/from Contractor's facility. City shall not be obligated to pay any storage charges.

City shall remove all City identification from property including: property decals from miscellaneous property terms, decals and striping from vehicles, and all City-identifying numbers. City shall repaint as may be necessary. Should City be unable to remove all items, contingency fees relating to such is as noted in Exhibit A.

3. Term. This Agreement shall commence on the date written above and shall expire in three (3) years with the option for 2 annual extensions. The Agreement can be terminated

for convenience by the Contractor with thirty (30) days written notice. The Agreement may be terminated for convenience by the City as provided in Section 9.

4. Compensation. City shall pay Contractor for services rendered pursuant to this Agreement based on contingency fees from sales proceeds as described more particularly in Exhibit A. Net sales proceeds shall be made to the City of Stockton on a monthly basis. Total compensation for services and reimbursement for costs shall not exceed percentages as indicated in Exhibit A.

5. Sufficiency of Contractor's Work. All reports, drawings, designs, plan review comments and work product of Contractor shall be adequate and sufficient to meet the purposes for which they are prepared.

6. Ownership of Work. All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Contractor in the performance of this Agreement shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

7. Changes. City may request changes in the scope of services to be provided by Contractor. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. Contractor's Status. In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City.

9. Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. Non-Assignability. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written

consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

11. Indemnity and Hold Harmless. Contractor agrees to indemnify, save, hold harmless, and at City's request, defend the City, its officers, agents, and employees from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to the City in connection with the performance, or failure to perform, by Contractor, its officers, agents, sub-contractors, employees, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable under this Agreement, and from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of Contractor, its officers, agents, or employees under this Agreement. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

12. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B and shall otherwise comply with the other provisions of Exhibit B.

13. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Contractor: Mark Rubino
South Bay Auto Auction
4101 S. Airport Way
Stockton, CA 95206

To City: PW Fleet Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

14. Conformance to Applicable Laws. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. Licenses, Certifications and Permits. Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. Records and Audits. Contractor shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final

payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. Confidentiality. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. Conflicts of Interest. Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor will immediately notify the City.

19. Waiver. In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. Governing Law. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the United States District Court, Eastern District of California, Sacramento Division.

21. No Personal Liability. No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

22. Exhibits. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. Scope of Agreement. This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

CONTRACTOR

City Manager

By: _____
Signature

Print name

Title: _____

ATTEST:

*[Note: If Contractor is a corporation
signature(s) must comply with
Cal. Corporations Code §313.]*

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A**Scope of Contractor's Services**

Contractor agrees to provide non-exclusive service of auctioning City miscellaneous surplus items, vehicles, equipment, and forfeiture vehicles. The City reserves the right to sell certain items by sealed bid in which the City will coordinate the sale and transfer of the property. Contractor shall not prohibit City from selling surplus City property at an auction or otherwise at a City-owned or controlled premises.

The Contractor shall, unless otherwise directed by the City, sell said property to the highest bidder without minimum or reservation. The City has the right to set minimums or reservations on said property. If such minimum is set, Contractor shall make no sale below any set minimum sale price or appraised value. Contractor shall provide all personnel uniforms (or identification such as badges or vests), tools, equipment, parts, records/logs, paper goods, advertising, and services required for conducting public auctions for surplus City property. Contractor shall use its knowledge, expertise, experience, advertising and good marketing experiences in grouping and exhibiting City property in order to bring maximum returns to the City.

As requested by the City, Contractor shall provide safe transportation and secure storage of all City vehicles and property released into their possession either directly or through a subcontractor. Contractor or Contractor's designated agent shall sign a receipt for all City vehicles and/or equipment released into its' own transportation. Contractor assumes all liability for vehicles and/or equipment in its possession and shall defend and indemnify City and its employees, agents, or assigns for all acts of omissions, whether intentional or negligent, of itself, its employees, agents, or assigns.

Contractor will be liable for the appraised or negotiated value of vehicles and/or equipment, whichever is higher (not to exceed reserved or floor price of vehicles), if vehicles and/or equipment are lost, stolen or damaged while being transported by Contractor or Contractor's agent to Contractor's site. Payment to City will be made on a monthly basis, inclusive of all sales within ten (10) working days of sale.

Contractor shall provide auction space at no cost to the City. Contractor shall have adequate space for large trucks and oversized equipment. Contractor shall physically arrange property prior to the auction date.

Contractor shall have an auction facility, available for inspection by City personnel. Contractor's facilities shall be adequately and comfortably-sized, appropriate by typical professional auction facility business standards, accommodating the public in a safe and pleasant manner, including parking, registration, payment processing, customer service, and treatment. All City vehicles and equipment in a given auction held at the Contractor's facility, shall be displayed and sold at the same facility. Contractor shall provide access at any time to authorized City employees to the secured storage area and to Contractor's auction sales to monitor and

record bid prices. Contractor shall be responsible for providing security for all vehicles and equipment.

Contractor shall abide by requirement of California Civil Code 1812.607 for posting of signs with proper statutes, regulations, etc. Contractor, their employees, officers, and agents shall not be authorized to bid on City property when it is auctioned. Contractor shall post or distribute to the audience the terms and conditions, restrictions, and procedures whereby goods will be sold at the auction. Contractor shall advise the bidder of known defective conditions of any vehicle and/or equipment offered for sale before offering the vehicle and/or equipment for auction.

For vehicles, Contractor may be requested to provide safety and smog inspections pursuant to the California Vehicle Code. City reserves the right to perform safety and smog inspections prior to releasing vehicle to auctioneer. If requested to perform a smog inspection, Contractor shall provide smog certificates or other certifications required by federal, state or local laws, rules, regulations and ordinances. Contractor shall notify City of Stockton Public Works Fleet Manager if a vehicle does not pass the smog test. Contractor shall provide the City with estimated cost of repair in order for vehicle to pass the smog test. The City may, at their option, have Contractor repair vehicle or authorize the sale of vehicle with a Bill of Sale and without title, to dealers only.

If the City requests repair of the vehicle, repairs shall be at the rates as specified in this Exhibit. Contractor's mechanical repair labor rate billed to the City shall not exceed the Motor Parts and Time Guide allowance. Replacement parts, if applicable, shall be billed at Contractor's invoice cost plus three (3) percent. Repair work or replacement parts, if requested, shall meet or exceed Original Equipment Manufacturer's (OEM) specifications. Repair work, if requested, shall be completed within three (3) working days of City's request unless additional time is approved by the City. All repair work, except detail, shall be approved by the City.

Costs for safety and smog inspections and repairs shall be deducted from the net proceeds of that particular vehicle, and shall be itemized on auctioneer's records to the City. It is very important that costs associated with each vehicle be itemized and be deducted from the net proceeds of that vehicle.

City vehicles that do not pass the smog test, which had problems identified during the safety check and were not repaired, are considered wrecked, salvaged, or rebuilt, and are to be sold "AS IS" with a bill of sale and without title, to dealers only. Contractor shall clearly label and identify such vehicles with signs in the windows. Contractor shall advise bidders of the above prior to accepting bids.

Contractor shall remove City "E" plates and seals or identification markings. Contractor to return any removed "E" plates to the City.

Advertising

Contractor shall pay for and provide sufficient advertising to insure quality responsive bids by potential purchasers. Contractor shall provide a ten (10) working day public notice of auction

which includes a minimum one (1) hour inspection period the morning of auction prior to the public sale. Said property shall be located at a site approved by the City and in conformance with all applicable laws or ordinances in force at the site where the property is to be sold or auctioned.

Contractor shall maintain current active bidder lists and notify individuals of any auctions that include property from the City. Acceptable forms of notification include online posts, U.S. mail, email, fax, or telephone. Contractor shall prepare a detailed brochure listing all vehicles, equipment, and personal property, as well as other items scheduled for auction or sale. The brochure, which shall list descriptions of the vehicles and equipment slated for auction or sale, shall state, at a minimum, the year the vehicle was manufactured, the make and model, the vehicle identification number (VIN), location of sale, and lot number or date of sale.

All of Contractor's advertising shall include a condition of the sale or auction that neither City nor Contractor makes any guarantee or warrantee of any kind or nature, express or implied, as to the condition of the property, articles, vehicles, equipment or personal property items offered for sale; that items are sold "as is." Contractor shall bear all expenses as the result of the failure to advise all buyers.

Compensation

City agrees to pay Contractor contingency fees deducted from sales proceeds as indicated below:

	South Bay
Selling Fees:	
Motor Vehicles and off-road vehicles	0.0%
Misc. Property (non-motor)	N/A
Non running vehicles	0.0%
Vehicle Safety inspection	No Charge, At cost if certificate required
Smog Service	No Charge, At cost if certificate required
Transportation and Other Charges:	At Cost, When Outsourced
Standard Towing; Non-Operational Units	\$0-\$50 per vehicle
Standard Towing per car carrier (based on 6-8)	\$0-\$50 per vehicle
Low Bed Trailer Service	\$0-\$50 per vehicle
Surplus Personal Property	N/A
Standard Auto Wash	No Charge
Major Auto Wash (Inside and outside)	\$65/vehicle
Minor De-Identification	No Charge
Complete Painting (Doors and roof)	At Cost, When Outsourced
"E" plate processing	No Charge
Storage Fees	No Charge
ARB Administrative Fee	No Charge

Payment to the City

Contractor shall collect all money and settle with all buyers within five (5) working days of the sale or auction date and forward said funds to the City within the stated ten (10) working days from the date of the sale or auction.

Contractor shall have sole responsibility for collecting all monies from successful bidders. Payment to the City by Contractor is independent of buyers' ability to pay Contractor.

In addition to collecting the sales price, Contractor shall be accountable and liable for the collection of any and all applicable sales taxes and other fees payable by or reimbursable by the buyer of the property.

Contractor shall transmit and is accountable to the appropriate governmental agencies for any and all taxes and fees, which are due such governmental agencies.

Vehicle Title

City agrees to furnish title for all City-owned vehicles, and copies of court orders for forfeiture vehicles sold in the auction. All titles/documents are to be on-hand the day of the sale. Contractor shall furnish the successful bidder at the point of sale with the following items, as applicable:

1. Bill of Sale
2. Title (Pink Slip)
3. Smog Certificate
4. Safety Inspection
5. Certified Weight Slip (if applicable)

Records

Contractor shall furnish City with complete written records of all sales transactions and make full payment to City at the accepted bid prices for all items sold within ten (10) working days after the auction or sales. Contractor is authorized to publish and record a "Notice of Intention to Sell at Public Auction Sale" where appropriate, in accordance with the California Commercial Code – Bulk Transfers, California Uniform Commercial Code Sections 6105 and following.

Contractor is required to provide the following records at time of payment to the City to ensure receipt and disposition of all property it sells to the City:

1. Detailed consignment sales recap sheet containing property description, lot/VIN number, sales price, and bidder number.
2. Complete bidder list including name, address, and bidder number.
3. Sheets produced during an auction which records the item, sale price, and bidder number.

4. A list of unsold items. Contractor shall receive specific directions from the City with respect to unsold merchandise at the end of each auction.
5. Evidence of advertising (the catalog or brochure that contains the items for the respective auction).
6. For vehicle auctions, the following documents:
 - a. Completed original "Notice of Release of Liability" DMV document
 - b. Completed copy of "Vehicle/Vessel Transfer Form" DMV document

**EXHIBIT B
INSURANCE REQUIREMENTS
SERVICES AND PRODUCTS VENDORS**

VENDOR shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the VENDOR, its agents, representatives, volunteers, or employees.

1. **INSURANCE** Throughout the life of this Contract, the Vendor shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

- A. **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence.
- B. **WORKERS' COMPENSATION** insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.
- C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR **ADDITIONAL** REQUIREMENT(S):

- (i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 Aggregate limit.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

1. The Commercial General Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.*
2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date VENDOR completes its performance of services under this Agreement.
3. For any claims related to services or products provided under this contract, the Vendor's insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Vendor's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
5. Regardless of these contract minimum insurance requirements, the Vendor and its insurer shall agree to commit the Vendor's full policy limits and these minimum requirements shall not restrict the Vendor's liability or coverage limit obligations.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.
7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.
8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
425 N. El Dorado Street
Stockton, CA 95202
9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Vendor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-8617. Our fax is (209) 937-8558.

If at any time during the life of the Contract or any extension, the Vendor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Vendor should subcontract all or any portion of the work to be performed in this contract, the Vendor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.