

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Roger Ernst & Associates, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 824 Kiernan Avenue (mailing: Post Office Box 3251) Modesto, California 95353-3251; (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide auctioneer services for the disposal of personal property declared surplus by the County Board of Supervisors; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to provide personnel, equipment, facilities and services necessary to provide for the disposal of personal property declared surplus by the County Board of Supervisors. County shall provide Contractor a listing of the property to be picked up and the location for pickup. Upon a call for request of pickup by County, Contractor will accommodate the pickup within five (5) to a maximum of ten (10) business days. Property may only be picked up between the hours of 8 a.m. to 12 p.m. and 1 p.m. to 4 p.m., except for all County holidays. Contractor shall provide services to include, but not be limited to, the following:

- Pick-up and transportation of all merchandise to the sale site, including pick-up and transport of vehicles and heavy equipment. All pick-up and transportation fees are to be assumed by Contractor.
- Adequate security of County property prior to and during sale.
- Assignment of lot numbers to sale items. All vehicles and equipment will be tagged as single lots and sold separately.
- Separate sale of property specifically marked and remit proceeds on a separate check (i.e., DOT, Sheriff's Evidence, etc).
- Notify County at least seven (7) business days prior to scheduled auction.
- Marketing, merchandising of sale items and advertising, to include but not be limited to, web site updates, notice in local newspapers of general circulation, and issuance of bi-weekly mailers noticing auction dates, times, materials, etc. All auction procedures and advertisements must conform to all California State laws, local ordinances, County policies, and Purchasing Agent's directives pertaining to public auctions and the disposal of public property.
- State in its advertising, flyers, circulars, notices, and brochures that all sales of County property are "AS IS, WHERE IS," as well as, stating all terms of sale, including reserves or minimum bid amount(s), established by the County Board of Supervisors or Purchasing Agent. For property having a minimum bid requirement established by the County Board of Supervisors or Purchasing Agent, the Auctioneer shall state the bidding process at no less than said minimum bid amount and, for accountability purposes, said property shall be offered at the auction separately and shall not be grouped with other items in or in lots, unless so directed by the County.
- Publicly advertise the auction, noting time and place and describing items to be auctioned in an official newspaper of the County ten (10) days prior to sale. Provide proof of advertising to the County Purchasing Agent.
- Personal property appraisal services at the County's request will be performed at no charge.
- Audio and/or video recording of all sales.
- Conduct a public preview of the property as required by the County for sale preceding the planned auctions.
- All auctions will be open to the general public.
- Provide for all auctioneers needed to conduct auctions of personal property on behalf of the County, in addition provide for all check out personnel, accounting, insurance, bonding, pre-sale, sale, and post-sale organization, forklift drivers, mechanics for vehicle checkout, cashiers for the collection of all funds, ring men for all auctions, and sheriff's deputies in order to "keep the peace".
- The County Purchasing Agent may require Contractor to conduct an auction on-site on County premises. In the event that the Purchasing Agent requires an on-site auction on County premises, the Contractor shall be responsible for providing all equipment necessary to conduct an on-site auction.
- Where no lavatory facilities are readily available, the Contractor will provide lavatory facilities for use by the public on the day of the auction if auction is to be held on County property.

- Possess a State of California Vehicle Dealer License; California Sellers Permit; California DMV Verifier License; and Auction/Auctioneer Surety Bond. Obtain all necessary licenses and permits and conduct the auction sale at a secure and safe site that is acceptable to the Purchasing Agent.
- On the day of the auction, be responsible for the condition of all items to be sold. Condition of vehicles will equivalent to the condition as presented upon receipt of property from the County, and any other matters pertaining to the condition of sale items.
- The transfer of County property into the possession of the Contractor in preparation for an auction event shall be cooperative between the Contractor, the Procurement and Contracts Division, the Auditor's Office, the Treasurer's Office, and the various County agencies; however, the final determination of the responsible party for the physical transportation and movement of property to the auction site shall be made by the Purchasing Agent.
- Be responsible for loss or damage to property due to fire, theft, or malicious damage during and after transport of said property to auction site. Immediately report to the County Purchasing Agent all County property damaged or stolen.
- Conduct the auction sale to the best of their ability. It is understood by the parties hereto, that the Contractor does not guarantee a sale and the Contractor is not responsible in the event the buyer and the seller fail to live up to their agreement, or in the event of non-delivery of the property by the seller to the buyer.
- Comply with all applicable Federal, State, Local laws, ordinances, and regulations. Be responsible for securing their own auctioneer's license for the purpose of carrying out the terms of this contract, from the appropriate City, County or State agency or department.
- Be responsible for, and incur and pay all costs associated or in any way connected with, the administration and conduct of the auction event. El Dorado County shall not be responsible for any other costs incurred in conjunction with the auction other than those as specified in the agreement.
- Contractor may be required by the County to prep, or detail, County property for the sale in an effort to exact the highest price possible at the time of sale. In carrying-out the duties of preparing or detailing County property, the Contractor shall not cannibalize, remove, detach or otherwise dismantle any parts, components or accessories associated with, or related to, the County property.
- Sale of property may be made only to the highest responsible bidder.
- At the discretion of the County, items not sold at auction shall be re-auctioned, disposed of by Contractor, or returned to County, at no cost to County.
- Items not sold, and disposed of by Contractor shall be reported to the County Purchasing Agent. The report shall detail items disposed of, method of disposal, and date of disposal.

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All surplus items picked up from the County will be listed on a "Acknowledgement Form" provided by County. All merchandise will be transported from various County sites to Contractor's facility via Contractor's own transportation fleet, or contracted vehicle/heavy equipment hauler if needed, at Contractor's expense. Contractor shall conduct auctions at its off-site location for the sale of County surplus property on a bi-monthly basis. As required by California State Law, Contractor shall collect and pay all sales tax.

For vehicles and property having title work, the Contractor shall complete the "Report of Sale" documentation located on the California State title certificate and return to the El Dorado County Procurement and Contracts Division within ten (10) calendar days from the date of sale, along with a copy of the payment and reporting made to the El Dorado County Purchasing Agent of all auction proceeds.

The County reserves the absolute right to require reserves or minimum bid amount(s) on specific property or situations and such property shall be so identified by a list, or correspondence, provided by the El Dorado County Procurement and Contracts Division to the Auctioneer. The County shall closely scrutinize prices received for items sold.

On occasion, the County may require a combined sealed bid and live auction sale in which sealed bids are initially solicited by the County which are then opened and read aloud at the live auction and the Contractor shall conduct the live auction. In a combination auction, the sale shall be awarded to the greater of either: a) the highest sealed bid if no other bids are tendered at the live auction; or b) the highest live bidder if the bid made is greater than the sealed bid. All bids that are at values below the minimum bid value set by the County Board of Supervisors, for the item of personal property being auctioned, shall be rejected.

The sale of property having a minimum bid requirement shall be subject to the dictates of the market, but no sale shall occur where a price is bid that is less than the minimum bid amount set by the County. If there are no buyers present at the auction event who bid to purchase the said item of property at, or above, said minimum bid amount, then the Contractor shall publicly withdraw said County property from the sale and report and obtain Purchasing Agent's approval to re-auction, dispose of, or return to the County unsold. In the event that the Contractor, through error or otherwise, consummates the sale of County property for a value that is less than the minimum bid amount of said property established by the County, then the Contractor shall be financially liable for payment to the County of the total dollar difference between the set minimum bid amount, and the actual sale price that was consummated by the Contractor. In such an event, the Contractor shall be responsible for remitting said difference to the County Purchasing Agent, along with the total proceeds of the auction event, within ten (10) calendar days following the date of the auction.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire December 31, 2010.

ARTICLE III

Compensation for Services: For services provided herein, Contractor shall receive a commission rate based in accordance with Exhibit "A", marked "Pricing Sheet for El Dorado County", incorporated herein and made by reference a part hereof. Contractor shall pay County the proceeds from auction, which shall be calculated as the gross amount of selling price of lot sold, less Contractor commission. Contractor will remit net proceeds and provide a written report to the County within ten (10) business days of close of auction. Remittance of proceeds to the County after the tenth (10th) business day following the auction event shall be considered late and the County, at the sole discretion of the County Purchasing Agent, may assess the Auctioneer for a late penalty that will be calculated by applying 6% annual rate (APR) to the total sum due for each day that the payment of net auction proceeds is considered late. The written report must include the sale price of each item, listed by lot/item number; identify the buyer of each item, (may use a buyer registration number, and provide bidder's list) and any optional service fees deducted for proceeds for the item.

ARTICLE IV

Audit: Contractor shall maintain complete financial records for a minimum of three (3) calendar years after the termination of this Agreement that clearly reflect the costs of services for which compensation is received under this Agreement. Any apportionment of costs shall be made in accordance with generally accepted accounting principles and shall evidence proper audit trails reflecting the true cost of services. All such records shall be available for inspection by the County, through its authorized representatives, at reasonable times during normal business hours. In addition, Contractor agrees to extend to the County Contract Administrator or his/her designee the right to review and investigate record and program procedures.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. . In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise

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ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
PROCUREMENT AND CONTRACTS
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: BONNIE H. RICH, PURCHASING AGENT

Or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

ROGER ERNST AND ASSOCIATES, INC.
P.O. BOX 3251 (MAILING)
824 KIERNAN AVENUE (PHYSICAL)
MODESTO, CA 95353-3251
Attn: TOBY HOUSTON, GENERAL MANAGER

Or to such other location as the Contractor directs.

ARTICLE XII

Indemnity: The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

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ARTICLE XIII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance or Public Liability of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Surety Insurance, Fidelity Insurance, or a Fidelity Bond, in the minimum amount of \$50,000.00 with a "Loss Payee Rider" naming El Dorado County as "Loss Payee". Upon request, and acceptance by the County Purchasing Agent, the Auctioneer shall be required to periodically furnish evidence to the Purchasing Agent of the required Fidelity Bond for each subsequent auction event.
- D. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- E. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes hereof, Professional Liability is not required.
- F. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- G. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- H. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- I. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- J. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- K. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- L. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- M. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- N. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- O. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- P. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

ARTICLE XIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XV

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XVI

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XIX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Bonnie H. Rich, Purchasing Agent, or successor.

ARTICLE XX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: _____ Dated: _____
Bonnie H. Rich, Purchasing Agent
Chief Administrative Office

Requesting Department Head Concurrence:

By: _____ Dated: _____
Laura S. Gill
Chief Administrative Officer

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Chair
Board of Supervisors
"County"

ATTEST:
Cindy Keck
Clerk of the Board of Supervisors

By: _____ Date: _____
Deputy Clerk

-- CONTRACTOR --

Dated: _____
Roger Ernst & Associates, Inc.
A California Corporation

By: _____
Roger D. Ernst, President
"Contractor"

By: _____ Date: _____
Corporate Secretary

Exhibit "A"
Pricing Sheet for El Dorado County

Commission:

- | | | |
|----|---|----|
| A. | Light/Medium Vehicles | 2% |
| B. | Heavy Duty Vehicles, Construction Equipment,
and Commercial Vehicles & Equipment | 2% |
| C. | Other Miscellaneous Property
(Including but not limited to Sheriff's Property, office furniture, etc.) | 2% |

Should the County desire a guaranteed rate of return on surplus personal property, County and Contractor shall negotiate rate of return prior to the sale of surplus personal property.

Contractor shall furnish the transportation of all property at not cost to the County. The following "optional" services for rolling stock shall be provided at no additional cost to the County:

- Outer Wash and Interior Vacuum
- Detail Interior
- Detail Exterior
- Detail Complete to Include Steam Clean Engine

Contractor will smog all vehicles prior to sale in accordance with State mandated regulations for vehicles. County agrees that Contractor may deduct a fee not to exceed \$50.00 per vehicle and shall deduct such costs from the proceeds of sale per vehicle.

Contractor will electronically transfer vehicle registration through the California DMV. County agrees that Contractor may deduct a fee not to exceed \$8.00 and shall deduct such costs from the proceeds of sale per vehicle.