RESOLUTION - ACTION REQUESTED 2015-68

MEETING: February 10, 2015

TO: The Board of Supervisors

FROM: Doug Wilson, Interim Public Works Director

RE: Approve Award of Agreement for Auction Services

RECOMMENDATION AND JUSTIFICATION:
Authorize Mariposa County Public Works to award and enter into a three-year agreement with Brasher's Auto Auctions for the disposal of excess/obsolete vehicles and equipment, and Authorize the Board of Supervisors Chair to Sign the Agreement.

As vehicles and equipment are replaced each year per Board approval, the replaced vehicles and equipment are sold to recover any remaining value. The funds collected from the auction proceeds are placed back into the appropriate replacement fund. If the vehicle was grant funded the proceeds are allocated per the grant guidelines.

The County received three proposals which were reviewed by staff. Staff concurred that Brasher's Auto Auctions is the lowest most responsible bidder.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On November 25, 2014, Resolution #2014-605 authorized Fleet Services to solicit Requests for Proposals for auction services for excess/obsolete vehicles and equipment.

On September 19, 2006, Resolution #2006-434 approved the previous contract for auction services.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
A negative action will leave the County without services of an auctioneer to dispose of excess/obsolete vehicles and equipment.

FINANCIAL IMPACT:
None

ATTACHMENTS:
Brasher's Auto Auctions Professional Services Agreement (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson, Interim CAO 2/3/2015

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 11 day of February, 2015 between:

COUNTY: Mariposa County Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONTRACTOR: Brasher’s Auto Auctions
P. O. Box 73000
6233 Blacktop Road
Rio Linda, CA 95673

ARTICLE 1. TERM OF AGREEMENT

1.01 Agreement Term: This Agreement shall become effective on March 1, 2015, and shall terminate on February 28, 2018 unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

2.02 Contractor Qualifications: Contractor represents that it has the necessary competence, experience and qualifications for the services to be performed.

2.03 Agreement Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to perform the services as described on Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her

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designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

3.02 **Method of Performing Services:** Contractor will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 **Employment of Assistants:** Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services. Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

**ARTICLE 4. COMPENSATION**

4.01 **Compensation:** In consideration for the services to be performed by Contractor, County will receive funds for vehicles and equipment sold by Contractor as shown on Exhibit “A” attached hereto.

**ARTICLE 5. OBLIGATIONS OF CONTRACTOR**

5.01 **Tools and Instrumentalities:** Contractor will supply all tools and instrumentalities, required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.02 **Indemnification:** Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney’s fees and other legal expenses, to the extent caused by the negligent performance of services by Contractor or Contractor’s assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 **General Liability and Automobile Insurance:** During the term of this Agreement Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by
Contractor and its sub-contractors, and that no other insurance effected by County or the
named insureds will be called on to cover a loss covered hereunder. The General Liability
insurance shall be provided by an ISO Commercial General Liability policy, with edition
dates of 1985, 1988, or 1990. The County will be named as an additional insured using
ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in
other form satisfactory to County.

5.04 Professional Liability Coverage: Contractor shall provide proof of professional liability
coverage satisfactory to County prior to commencing work under the Agreement.

5.05 Certificate of Insurance: Contractor shall complete and file with the County prior to
engaging in any operation or activity set forth in this Agreement, certificates of insurance
evidencing coverage as set forth in paragraphs 5.02, 5.03 and 5.04 above and which shall
provide that no cancellation or expiration by the insurance company will be made during
the term of this Agreement, without thirty (30) days written notice to County prior to the
effective date of such cancellation.

5.06 Workers’ Compensation: During the term of this Agreement Contractor agrees to
provide workers’ compensation insurance for Contractor’s employees and agents and
agrees to hold harmless and indemnify County for any and all claims arising out of any
injury, disability, or death of any of Contractor’s employees or agents.

5.07 Public Employees Retirement System (CalPERS): In the event that Contractor or any
employee, agent, or subcontractor of Contractor providing services under this Agreement
is determined by a court of competent jurisdiction or the Public Employees Retirement
System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the
County, Contractor shall indemnify, defend, and hold harmless County for the payment of
any employee and/or employer contributions for CalPERS benefits on behalf of
Contractor or its employees, agents, or subcontractors, as well as for the payment of any
penalties and interest on such contributions, which would otherwise be the responsibility
of County.

5.08 State and Federal Taxes: As Contractor is not County's employee; Contractor is
responsible for paying all required state and federal taxes. In particular:

a) County will not withhold FICA (Social Security) from Contractor's payments;
b) County will not make state or federal unemployment insurance contributions on
behalf of Contractor;
c) County will not withhold state or federal income tax from payment to Contractor;
d) County will not make disability insurance contributions on behalf of Contractor;
e) County will not obtain workers’ compensation insurance on behalf of Contractor.

5.09 Records: It is understood and agreed that all plans, studies, specifications, and data
magnetically or otherwise recorded on computer or computer diskettes, records, files,
reports, etc., in possession of the Contractor relating to the matters covered by this
Agreement shall be the property of the County, and Contractor hereby agrees to deliver
the same to the County upon request. It is understood and agreed that the documents and
other materials including but not limited to those set forth hereinabove, prepared pursuant
to this Agreement are prepared specifically for the County and are not necessarily suitable
for any future or other use. Contractor shall maintain such records for a minimum of
three (3) years or as otherwise required by law.

5.10 Contractor’s Books and Records: Contractor shall maintain any and all ledgers, books of
account, invoices, vouchers, canceled checks, and other records or documents evidencing

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or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.11 **Assignability of Agreement:** It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

**ARTICLE 6. OBLIGATIONS OF COUNTY**

6.01 **Cooperation of County:** County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

6.02 **Assignment:** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Contractor.

**ARTICLE 7. TERMINATION OF AGREEMENT**

7.01 **Termination Occurrence of Stated Events:** This Agreement shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 **Termination by County for Default of Contractor:** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.

7.03 **Termination for Convenience of County:** County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said 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 phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 **Termination of Funding:** The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.
ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the County as provided herein or as otherwise required by law.

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

8.04 Attorney’s Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

8.05 Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person.

8.06 Waiver: In the event that either County or Contractor shall at any time or times 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 any other covenant, condition or obligation.

8.07 Governing Law: This Agreement and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Mariposa.
Executed at Mariposa, California, on the date and year first above written.

COUNTY:

Merlin Jones, Chairman
Mariposa County Board of Supervisors

Date: 2-24-15

CONTRACTOR:

(Signature)

Date: 2/15/11

APPROVED AS TO FORM:

STEVEN W. DAHLEM
County Counsel

Date: 2-19-15

ATTEST:

Rene' LaRoche
Clerk of the Board

Date: 2-24-15

Revised 5/06/13
DOUG WILSON
Interim Director

To: Brasher's Auto Auctions
6233 Blacktop Road
PO Box 73000
Rio Linda, Ca 95673

Attn: Mario Ceniceros
Re: Request for Proposals for Auctioneer Services
Date: December 9, 2014

Mariposa County Department of Public Works Fleet Services Division is requesting proposals for auctioneer services for vehicles and heavy equipment. Vehicles and heavy equipment may be in running order, not running order, wrecked, burned, or otherwise damaged. The proposal must include the following items:

- DMV Paperwork Processing Fee
- Minimum of $1,000,000 insurance
- Pick-up of vehicles and equipment
- Smog check and certification
- Safety inspection
- Advertising
- Any & all additional charges (please explain)

- Commission
- TOTAL FEES CHARGED TO COUNTY

Vehicles and equipment should be sold and funds received by the County within 60 days of pick-up. If vehicles and equipment do not sell within this time-frame, the County must be provided with an explanation and expected date of sale.

Please return this form with the charges for the above items and any other applicable charges to Mariposa County Department of Public Works
Attention: Fleet Superintendent
4639 Ben Hur Road
Mariposa, CA 95338

The deadline for submitting proposals is 2:00 p.m. on Friday, January 9, 2015. Any questions should be directed to Joe Halencak at (209) 966-2285 or by e-mail to fleet@mariposacounty.org.

Thank you for your interest.

Joe Halencak, Fleet Superintendent