

**Subject: RES # 645 – Approval of Agreement for Auction Services With Ehli Industrial LLC**

**Dept. Origin:** Police Department  
**Prepared by:** Jennifer Robertson, City Attorney  
**For Agenda of:** January 17, 2017  
**Exhibits:** **Resolution #645 and Agreement**

**Proposed Council Action:**

Authorize Mayor to execute contract and Future renewals.

Initial & Date  
**Concurred by Mayor:** \_\_\_\_\_  
**Approved/form by City Atty:** JSR 1/12/17  
**Approved by \_\_\_\_\_ Director:** \_\_\_\_\_  
**Approved by Department Head:** \_\_\_\_\_

**INFORMATION / BACKGROUND**

From time to time the City finds it has unneeded property, such as police vehicles which are being replaced. One method for disposing of surplus property that is allowed under Washington law is to send the property to public auction. Ehli Industrial, LLC is a public auction house that is located in Tacoma and can dispose of surplus City property. The standard Auction Agreement needs to signed prior to the City utilizing these services.

**FISCAL CONSIDERATION**

The cost for these services would generally come out of the sales proceeds.

**RECOMMENDATION / MOTION**

Authorize the Mayor to execute the Auction Contract.

**MOTION:** I move to authorize the Mayor to sign the Auction Contract with Ehli Industrial, LLC in substantially the form attached and to sign any additional renewals for substantially similar terms that are within the amount budgeted is the City’s adopted budget.

**RESOLUTION NO. 645**

**A RESOLUTION OF THE CITY OF RUSTON,  
WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN  
AGREEMENT FOR AUCTION SERVICES TO AUCTION  
SURPLUS CITY PROPERTY WITH EHLI INDUSTRIAL,  
LLC.**

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WHEREAS, from time to time the City finds it has unneeded property, such as police vehicles which are being replaced; and

WHEREAS, one method for disposing of surplus property that is allowed under Washington law is to send the property to public auction; and

WHEREAS, Ehli Industrial, LLC is a public auction house that is located in Tacoma and can dispose of surplus City property; and

WHEREAS, the standard Auction Agreement needs to signed prior to the City utilizing these services; and

WHEREAS, the cost for these services would generally come out of the sales proceeds; and

WHEREAS, the City Council finds it in the best interest of the City to execute this Agreement; **NOW, THEREFORE**

**THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY RESOLVES AS  
FOLLOWS:**

**Section 1. Authorization to Execute and Renew Agreement.** The City Council hereby authorizes the Mayor to sign the attached Auction Contract as described therein and to sign any future renewals of the same, provided that the terms remain substantially the same and the amount is in the City's adopted budget.

RESOLVED this 17<sup>th</sup> day of January, 2017.

\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Judy Grams, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
RESOLUTION NO.: 645

## AUCTION CONTRACT

THIS CONTRACT is made as of the last date of signature below by and between City of Ruston ("Seller") and Ehli Industrial, LLC ("Auctioneer"). This agreement is valid for three years unless terminated by either party as provided below. In consideration of their mutual promises and covenants herein, Auctioneer will serve as Seller's agent to sell at auction the property (the "Property") described as follows:

Surplus Vehicles, Equipment and Personal Property belonging to the City of Ruston which Seller specifically requests Auctioneer to auction for the City during the term of this Agreement. This Agreement is nonexclusive and nothing in this Agreement requires Seller to use Auctioneer's services for the sale of any specific vehicle, equipment or property. Seller may, at Seller's discretion, use the services of other auctioneers or other methods to sell its surplus vehicles, equipment, and property during the term of this Agreement.

1. Date, Time, Location, Property. Check one:

(a)  The auctions will be an online only auction conducted on the website [www.cyberauctions.com](http://www.cyberauctions.com). The property will be sold in the Auctioneers Monthly Consignment Auctions on an as needed basis as the Seller directs.

(b)  The auction will be a live auction event held on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m. Auctioneer will have full access to the Property beginning \_\_\_\_\_, 20\_\_\_\_. The auction will be conducted at:

Auctioneer's place of business located at 9415 Pacific Avenue, Tacoma, WA 98444.

Sellers site located at \_\_\_\_\_.

2. Auctioneer's Covenants and Warranty. Auctioneer warrants that it is licensed to conduct auctions in the State of Washington doing business as Ehli Auctions, under auction company license #2309 and motor vehicle license #8854. Auctioneer covenants that it will prepare and conduct the auction in good faith, and do all other things herein agreed.

3. Seller's Covenants and Warranties. Seller covenants that it will do all things herein agreed and warrants to Auctioneer that:

(a) it has full authority to sell the property and will make available all necessary documents of title within three (3) days prior to the day of auction;

(b) it and the Property are in full compliance with all requirements of the State of Washington, United States Code, and all other applicable rules of law and regulations, whether local, state, or federal, to permit the sale of the Property; and

(c) The Property is not subject to any lien, security interest, dispute of title, or other encumbrance, unless disclosed in a written notice attached to this Contract giving all details.

4. Auctioneer's Discretion; No Guaranty. Auctioneer may organize the Property into separate lots for sale and use discretion to do what is deemed appropriate to effect an advantageous sale. Auctioneer may decline to sell any item of the Property it deems unsuitable for sale. Auctioneer makes no guaranty of any outcome or result from the auction whether it is live or online. If a bidder refuses to pay for an auctioned item prior to removal of the item from the auction site, Auctioneer may, at its option, return the item in question to Seller (in which case Auctioneer shall not be required to make any payment to Seller) or re-auction such item within a reasonable time after the auction specified herein.

5. Seller's Choice & Lot Prices. Seller understands the auction can be conducted *with reserve* (i.e., minimum acceptable lot prices pre-set by Seller), or *without reserve* (i.e., each lot sells to highest bidder regardless of price). Seller has chosen to sell the Property without reserve, with the exception of the items listed on Addendum A, if any.

6. Warranty of Condition. The Property will be sold “as is, where is” with no warranties, either expressed or implied, except as provided herein or by law.
7. Auctioneer’s Additional Authority. Seller is hereby engaging Auctioneer as the agent of Seller for purposes related to the auction. Auctioneer shall have authority to execute bills of sale to buyers at the auction, and to receive, demand, and collect sale proceeds.
8. Marketing, Labor & Other Expenses. Auctioneer may market the Property as it deems advisable. Auctioneer shall be solely responsible for any costs associated with such marketing. Seller’s name may be used in any marketing to promote the auction. Auctioneer may charge Seller for work required and costs incurred to prepare the Property for auction as directed by and approved by the Seller. If Auctioneer advances any amount to pay such expenses of preparation, Seller will fully reimburse Auctioneer within 30 days of the advance or at the conclusion of the auction, whichever is sooner.
9. Auctioneer’s Commission; Buyer’s Premium. The final price of a lot will be the last competitive bid, even though the auctioneer or cyberauctions.com accepted proxy bids that are higher than the last competitive bid. Seller will pay Auctioneer a selling commission of 10% of the first \$2,000.00 for titled vehicles, trucks and trailers and 25% of the gross amount for any personal property sold exclusive of sales tax and buyer’s premium. Auctioneer is entitled to charge and keep as an additional commission a 15% buyer’s premium that Auctioneer will add to the amount of the highest bid for each lot sold and collect from the respective buyers. The selling commission and buyer’s premium will also apply to the sale of any Property made by Auctioneer, before or after the auction.
10. Withdrawn Property; Property Sold by Seller. Seller agrees not to sell or in any manner dispose of any of the Property that Seller requests to be auctioned by Auctioneer prior to auction. If any of the Property is withdrawn from the auction for any reason, Seller will immediately pay Auctioneer a Withdrawal Commission in an amount equal to the selling commission Auctioneer would have received had the property sold at auction for its auction value as agreed to by Seller and Auctioneer. Further, Auctioneer may deduct any commission, reimbursable expenses, and indemnification due on any such item from the proceeds of other items of the Property that are sold at auction.
11. Postponement or Cancellation. If the auction is postponed or cancelled for any reason not caused by Auctioneer including, but not limited to, the commencement of legal action or court order, Seller will (a) pay Auctioneer a reasonable sum to advertise and otherwise give public notice of the cancellation, (b) reimburse Auctioneer for all out of pocket expenses incurred in connection with the auction, and (c) pay Auctioneer for all labor expended on the auction by Auctioneer at the rate of \$85 per hour so expended.
12. Buyer Payments; Accounting and Settlement. Auctioneer may accept payment from buyers in the form of cash, major charge cards typically accepted by Auctioneer, certified funds with proper identification, and wire transfer. Auctioneer will have no responsibility for collection of any payment that is not good or completed for any reason. Auctioneer will deposit all payments received in its bank’s trust account until settlement. Auctioneer will provide Seller with a written accounting of all funds received and disbursed. Auctioneer will disburse the net proceeds due to Seller after deducting and keeping its selling commission, buyer’s premium, all costs chargeable to Seller, Withdrawal Commission and any Cancellation Commission. Auctioneer may deduct such sums as necessary to pay every creditor of Seller necessary to satisfy liens or other encumbrances against the Property sold. The clerking sheets or other evidence documenting the Property sold will be available for Seller’s inspection. Auctioneer will account and make disbursement to Seller within seven days after completion of the auction.
13. Risk of Loss and Insurance. Auctioneer will not be responsible or liable for any loss or damage to the Property regardless of cause including, but not limited to, negligence, fire, theft, vandalism, act of God, or other casualty, damage, or destruction. The risk of loss will remain exclusively on Seller until delivery of the Property to the respective buyers when the risk of loss shall pass to the buyers. Auctioneer will not insure the property against loss, however, Auctioneer will store the property in a manner that is reasonably expected to keep the property safe and which is consistent with industry standards.
14. Hold Harmless and Indemnification. The parties agree that a party at fault will hold the other harmless from and indemnify the other against any claim, action or suit, cost, damage, deficiency, expense, loss, or liability of

every kind, including attorney's fees and costs, that the other incurs as a result of any act, error, negligence, omission, or wrongdoing attributable to the party at fault, and which arises out of the auction, the breach of any term of this Contract, or the offering or sale of the Property, except as otherwise provided herein.

15. Remedies, Etc. This Contract will be construed and governed solely in accordance with the laws of the State of Washington. The courts of the State of Washington shall have jurisdiction of all matters arising under this Contract notwithstanding that any party may now or hereafter become a resident of another jurisdiction. Venue for any action arising hereunder shall lie in the courts of Pierce County, Washington. In any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party shall recover all court costs and disbursements and its reasonable attorneys' fees. In case of conflicting or uncertain claims (including Seller's and/or Auctioneer's claims) to the auction proceeds, Auctioneer may obtain determination of those claims (including filing of suit for interpleader) for the protection and release of Auctioneer from any further liability for the auction proceeds. In case of interpleader, Auctioneer may deduct all commissions, expenses, and indemnification amounts to which it is entitled under this Contract before the net proceeds are interpleaded.

16. Miscellaneous. The Contract binds and inures to the benefit of the respective parties and their successors and assigns, heirs and personal representatives. If any term of this Contract is invalid, illegal, or unenforceable, in whole or in part, the validity of the other terms hereof shall not be affected thereby in any way. This Contract contains the entire undertaking between the parties and there are no oral or written agreements, inducements, promises, representations, or warranties other than those expressly set forth herein. A modification or waiver of any of the provisions of this Contract will be effective only if made in writing and executed with the same formality as this Contract. The failure of either party to insist upon the strict performance of any of the provisions of this Contract will not be construed as a waiver of any subsequent default of the same or similar nature.

17. Additional Terms. Pick up fees for vehicles is \$40.00 each and moving personal property is \$55.00 an hour per employee needed. Seller may deliver their own vehicles and property. Repairs, Decal Removal, and Detailing, if ordered by the Seller, will be done by third parties and billed to Seller at Auctioneer's cost.

18. Termination. This Agreement may be terminated at any time by Auctioneer or Seller upon the giving of thirty (30) days' written notice to the other party. If this Agreement is terminated by Seller at any time after Seller has requested that Auctioneer auction any property and prior to said auction being completed, Seller may elect to either (a) proceed with the pending auction according to the terms of this Agreement, or (b) withdraw the Property and pay the Auctioneer as provided in Section 10 above.

19. Renewal. This Agreement may be renewed for additional three-year terms upon Written Notice of intent to renew given by the City to the Auctioneer.

SELLER: City of Ruston, WA

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D. Bruce Hopkins, Mayor

Address: 5117 North Winnifred Street  
Ruston, WA 98407

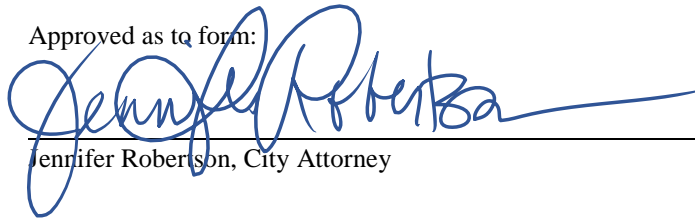
Phone: (253) 377-4799

ATTEST:

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Judy Grams, City Clerk

Approved as to form:



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Jennifer Robertson, City Attorney

AUCTIONEER:  
EHLI INDUSTRIAL, LLC

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Randy Ehli, Managing Member

Address: 9415 Pacific Ave  
Tacoma, WA 98444

Office Phone: (253) 572-0990  
Fax: (253) 238-9681

January 17, 2017