

FRANKLIN COUNTY

TO: BOARD OF FRANKLIN COUNTY COMMISSIONERS	Reviewed:
FROM: Lisa J. Johnson	Ext. 3485
DEPARTMENT: Administration	
DATE: September 17, 2008	No.

ITEM: Permission to Declare the Former County Mail Machine as Surplus Property and to List the County Mail Machine for Auction on Purple Wave.

Background:

The County has recently purchased a new mail machine to process the County mail. As a result, the County has no use for the former mail machine. It is requested that this piece of equipment be deemed surplus property and for permission to place the item for auction on Purple Wave. The County has been successful in auctioning items on this site in the past and has done so at no cost to the County.

Recommended Action:

Declare the mail machine to be surplus property and authorize the execution of the Auction Agreement with Purple Wave.

Attachments:

Auction Agreement.



**Purple Wave, Inc.
Auction Agreement**

SELLER INFORMATION:

PW Customer No.:

Name:

Co-Seller Name (if any):

Street:

City, State ZIP:

Email address:

Phone:

Cell phone:

Franklin County
1428 S. Main Suite 2
Ottawa, KS 66067
ljohnson@mail.franklincks
785-229-3485 org

AUCTION DETAILS:

Auction Date:

Auction Time:

Auction Location (internet-only if blank):

PW Salesman:

PW Receiving Employee:

SELLER COMMISSION: 0 % (minimum commission of \$ _____ total or \$ _____ per ICN applies)

SELLER'S MARKETING EXPENSES (none if blank): \$ _____

MARKETING EXPENSES ADVANCED BY SELLER (none if blank): \$ _____

ADDITIONAL EXPENSES PAID BY SELLER (none if blank):

Pre-Auction cleanup and preparation: \$ _____
 Post-Auction cleanup & load out: \$ _____
 Listing fee per item: \$ _____ | Mileage per mile: \$ _____
 Other _____: \$ _____
 Other _____: \$ _____
 Other _____: \$ _____

SETTLEMENT INSTRUCTIONS (to pay proceeds to someone other than Seller, provide information here):

Payee #1	Payee #2
Payee Name: _____	Payee Name: _____
Street: _____	Street: _____
City, State, ZIP: _____	City, State, ZIP: _____
Phone: _____	Phone: _____
Email: _____	Email: _____
This Payee should receive (choose one):	This Payee should receive (choose one):
a) \$ _____ flat amt. if less than total proceeds	a) \$ _____ flat amt. if less than total proceeds
b) % _____ net proceeds from all Property	b) % _____ net proceeds from all Property
c) % _____ net proceeds from ICN # _____	c) % _____ net proceeds from ICN # _____
d) All net proceeds from ICN# _____	d) All net proceeds from ICN# _____
e) \$ _____ proceeds from ICN # _____	e) \$ _____ proceeds from ICN # _____
Wire instructions (extra fees; see paragraph 11):	Wire instructions (extra fees; see paragraph 11):
Bank Name & ABA Routing No.: _____	Bank Name & ABA Routing No.: _____
Account Name & No.: _____	Account Name & No.: _____

AGREEMENT TO SELL AT AUCTION. The seller noted above ("Seller") grants Purple Wave, Inc. ("Auctioneer") the exclusive right to sell, as Seller's agent, the Property (defined below) at public auction, and Auctioneer agrees to auction the Property, all subject to the terms and conditions set forth in this auction agreement ("Agreement").

COVENANT NOT TO BID. SELLER AGREES NEITHER SELLER NOR ANY AGENT OF SELLER WILL BID ON THE PROPERTY. AUCTIONEER WILL CANCEL THIS AGREEMENT AND PERMANENTLY CEASE DOING BUSINESS WITH SELLER IF THIS COVENANT IS VIOLATED.

Wherefore, the parties execute this Agreement effective the last date written below:

SELLER:	AUCTIONEER - PURPLE WAVE, INC.:
By Signature & Title : _____	By Signature & Title : _____
Name Printed: <u>Karen S. Farrell</u> Date: _____	Name Printed: _____ Date: _____

1. COMMISSION AND BUYER'S PREMIUM. As partial compensation for Auctioneer's services, Seller agrees to pay Auctioneer a Seller Commission stated on page 1 of this Agreement applied against the high bid(s) received for the Property at the Auction. Seller agrees Auctioneer may also collect from each winning bidder a standard buyer's premium of 10% of the high bid(s) for the Property as additional compensation for Auctioneer's services.

2. ABSOLUTE/WITHOUT RESERVE SALE. Seller acknowledges the Property will be sold "absolute" and "without reserve," and that the highest bid accepted by Auctioneer at the Auction is the price Seller will accept for the Property, subject to settlement adjustments allowed by and commissions set forth in this Agreement. Seller acknowledges that, pursuant to applicable law, once Auctioneer has commenced the Auction, the Property must and will be sold for the highest bid received at the Auction. For purposes of this paragraph, an Internet-only auction commences as soon as the Property is available for bidding on Auctioneer's website.

3. INTERNET-ONLY OR LIVE AUCTION. If the Auction Location on page 1 of this Agreement is blank or indicates "IO," Seller acknowledges that the Auction will be an "Internet-only" auction conducted through Auctioneer's online marketing platform, www.purplewave.com, and that no live auction event will occur.

4. DEFINITION OF "PROPERTY." Most items comprising the "Property" for purposes of this Agreement will be identified on the attached Exhibit 1 at the time this Agreement is executed; however, in some instances Seller may not prepare or provide a completed Exhibit 1 with the Agreement, and in some instances Seller will add items to the Auction after this Agreement is executed. For purposes of this Agreement, the term "Property" is therefore defined as all items Seller delivers to Buyer for purposes of the Auction. All Seller items posted by Auctioneer on its website, www.purplewave.com, are also included in the term "Property" regardless of whether those items are ever included on Exhibit 1 or any similar written list.

5. SELLER'S OBLIGATION TO REVIEW WEB LISTINGS. Under all circumstances, it is Seller's responsibility to review Auctioneer's website, www.purplewave.com, within 48 hours after an item included in the Property is posted there to confirm it is posted as expected and properly labelled and described. Seller shall immediately report any discrepancies to Auctioneer.

6. AUCTIONEER'S DISCRETION REGARDING AUCTION DATE AND TIME. Seller acknowledges the Auction Date noted on page 1 of this Agreement is a targeted date. Auctioneer may, if deemed necessary in Auctioneer's sole judgment, move the Auction Date by up to three (3) weeks without consulting Seller. Auctioneer may move the Auction Time noted on page 1 of this Agreement to any other time of day without consulting Seller.

7. ENCUMBRANCES. Seller represents and warrants that the Property is free from all liens and encumbrances of any kind except as expressly noted on the following Encumbrances Disclosure, which is expressly made a part of this Agreement.

8. SELLER'S AUTHORITY. Seller represents and warrants that Seller is fully vested with power to sell and convey the Property free and clear of any liens or encumbrances without consent or approval of any third party and without condition or contingency except as expressly noted otherwise in this Agreement. To the extent a Co-Seller is listed on page 1 of this Agreement, Seller covenants and warrants that Seller is authorized to execute this Agreement on behalf of the Co-Seller and that this Agreement shall be equally enforceable and binding upon the Co-Seller as it is upon Seller.

9. STATUS OF TITLE; INVESTIGATION OF TITLE. With respect to Property subject to titling and registration laws, Seller warrants that sale of the Property can be completed under such laws without consent from any third party. Seller shall deliver to Auctioneer sufficient evidence, in Auctioneer's discretion, that Seller owns title to the Property and that all certificates of title for the Property are in proper order and form to allow for efficient transfer of the title. Seller acknowledges and agrees that Auctioneer may refuse to market the Property or post it on Auctioneer's website until Auctioneer has received evidence of Seller's title, has reviewed all title, lien and encumbrance issues and has satisfied itself that an efficient transfer of title can occur between Seller and the winning bidder. Seller grants Auctioneer unlimited authority to confirm Seller's title and authority to convey the Property, to investigate liens and encumbrances against the Property and to obtain lien payoff information from lienholders.

10. TITLE TRANSFER; RESOLUTION OF TITLE ISSUES. Auctioneer will provide its standard "paid" invoice to winning bidders upon receipt of payment. Seller shall be ultimately responsible for completion and delivery, within five (5) business days after the Auction, of any additional documentation required by Seller, by the winning bidder, or by law to properly transfer title to the Property from Seller to the winning bidder(s). Seller shall also be ultimately responsible for ensuring all liens and encumbrances against the Property are released or arrangements for their release made and provided to Auctioneer prior to the Auction. Should Auctioneer be required to assist in preparation of additional documentation, in facilitation of lien and encumbrance resolution, or in addressing title transfer issues, Auctioneer reserves the right to charge Seller an additional administrative fee for providing such assistance.

11. SETTLEMENT WITH SELLER. Auctioneer will settle the Auction with Seller not more than 20 business days after the Auction occurs. Settlement will be paid by one check to the Seller at the name and address noted in the Seller Information section on page 1 of this Agreement unless different or additional instructions are given in the Settlement Instructions section on page 1 or in supplemental written instructions to Auctioneer. If more than two (2) settlement distributions are made under instruction from Seller, an administrative charge of \$15.00 will apply for each additional distribution. Settlements will be paid by wire transfer if requested for an additional administrative charge of \$20.00 per wire. Settlements will be overnight mailed, express mailed or couriered if requested for an additional administrative charge of \$10.00 plus the actual cost of the overnight, express or courier service. Until settlement

distribution is made, Seller acknowledges and agrees that Auctioneer may hold any marketing expenses advanced by Seller and auction proceeds in an interest bearing account maintained by Auctioneer. Seller waives any claim to interest earned and agrees that Auctioneer may retain any such interest.

12. NO GUARANTEES BY AUCTIONEER. Seller agrees that neither Auctioneer nor any of its salesmen, agents, officers, directors, employees or affiliates has made any guarantees or representations regarding the level of bidder interest the Property may attract, number of bids or ultimate bid price that may be received.

13. COVENANT NOT TO BID. Seller agrees neither Seller nor any agent of Seller will bid on the Property. **AUCTIONEER WILL CANCEL THIS AGREEMENT AND PERMANENTLY CEASE DOING BUSINESS WITH SELLER IF THIS COVENANT IS VIOLATED.**

14. COVENANT NOT TO REMOVE PROPERTY FROM AUCTION. Seller will not sell, remove or withdraw any portion of the Property from the Auction except with prior written consent by Auctioneer. Should Seller cancel the Auction or withdraw any portion of the Property from the Auction, Seller will reimburse Auctioneer the full Buyer's Premium and Seller Commission from Seller noted on page 1 of this Agreement for that Property, as established by an independent appraisal, the cost of which will be paid by Seller, plus all expenses for advertising, advertising retractions, promotion, out of pocket expenditures, and Auction execution expenses accrued as of the date of cancellation or withdrawal by Seller.

15. ADDING OTHER PROPERTY TO THE AUCTION. Seller agrees that Auctioneer may include property of others in the Auction and conduct combined marketing of Seller's Property and others' property.

16. MARKETING AND MARKETING EXPENSES. Auctioneer will use its professional judgment to market the Property in a reasonable and cost-effective manner under the circumstances. Auctioneer will utilize its standard marketing package, as updated from time to time, to market the Property **unless** Seller and Auctioneer design a specialized marketing plan ("Marketing Plan"). Seller will pay the amount of Seller's marketing expenses noted on page 1 of this Agreement, if any, and has advanced marketing expenses as noted on page 1 of this Agreement, if any ("Advanced Marketing Funds"). Seller authorizes Auctioneer to utilize Advanced Marketing Funds to pay Property marketing expenses as they are incurred or, if Auctioneer prefers, at the time of settlement with Seller. Seller authorizes Auctioneer to conduct marketing in excess of the Marketing Plan; however, Seller will be obligated to pay the expense of that excess marketing only if Seller agrees to share in excess expenses by executing an amended Marketing Plan. Seller's agreed share of marketing expenses, less any marketing expenses advanced by Seller, will be charged against Seller's settlement proceeds at closing and retained by Auctioneer. Seller agrees that all marketing of the Auction may include the words "absolute auction," "auction without reserve," or similar phrases.

17. PROPERTY CONDITION AND WARRANTIES. Unless expressly noted otherwise and agreed by Auctioneer on Exhibit 1, the Property will be auctioned "as is, where is" and as Condition Score "3" property. Seller acknowledges reviewing and understanding Auctioneer's condition scores as defined at <http://www.purplewaveauction.com/buy/cscore.php>. Seller further acknowledges its obligation to complete and submit to Auctioneer all applicable condition disclosure forms for the Property available at <http://www.purplewaveauction.com/sell/forms.php>, within five (5) days after signing this Agreement. **Seller acknowledges that Auctioneer will not begin photographing or marketing the Property or post the Property on Auctioneer's website until all applicable condition disclosure forms are completed and provided to Auctioneer.**

18. AUCTIONEER'S RIGHT TO CANCEL. Auctioneer shall have the right at any time to cancel this Agreement if, in Auctioneer's sole judgment, Seller fails to adequately cooperate with Auctioneer's efforts to market the Property or conduct the Auction, the condition of the Property has materially changed or been insufficiently or inaccurately described by Seller, encumbrances or other questions of title become overly complex and/or their satisfactory resolution becomes doubtful, or marketing the Property or conducting the Auction becomes detrimental to Auctioneer's business or image. If Auctioneer cancels this Agreement, return of unconsumed Advanced Marketing Funds shall be Seller's only recourse.

19. LOTTING AND LISTING DISCRETION; BOXLAND; UNMARKETABLE AND LEFT-OVER PROPERTY. Property lotting and listing is based on value and size of items. Auctioneer shall have sole discretion to judge which items will be lotted and listed individually and which will be lotted and listed with other items. Not all items will be individually listed on Auctioneer's website and some items may be sold in boxland, as a choice with other sellers' property unless Seller provides other directions to Auctioneer at the time the items are delivered to Auctioneer. For general consignment live auctions, the final, updated auction inventory will be posted to Auctioneer's website the night before the auction, and some items included in the Property may not be listed until that time. Prior to the Auction, Auctioneer shall have full discretion to dispose of items that Auctioneer deems unmarketable unless Seller provides other directions at the time the items are originally delivered to Auctioneer. After the Auction, Auctioneer shall have full discretion to dispose of items that do not bring the minimum bid required by Auctioneer ("No-Sale Items"), unless Seller provides other directions at the time the items are originally delivered to Auctioneer. Auctioneer reserves the right to collect the minimum Seller Commission from Seller noted on page 1 of this Agreement for each No-Sale Item.

20. CASUALTY COVERAGE AND INDEMNITY. Seller acknowledges it is Seller's duty to maintain property casualty insurance for the Property until such time as possession is transferred to the winning bidder. Seller agrees to hold harmless Auctioneer and all of its salesmen, affiliates, employees, agents, officers and directors from and against

any claims related to loss, breakage, theft, fire, or any other occurrence affecting the Property which is beyond the control of the Auctioneer.

21. SELLER'S BREACH AND LIQUIDATED DAMAGES. Should Seller breach this Agreement, the parties agree that the actual damage caused to Auctioneer will be impossible to determine and, therefore, the parties stipulate that Auctioneer shall be entitled to liquidated damages in an amount equal to the Seller Commission and Buyer's Premium which Auctioneer would have received had the Property actually been sold at the Auction, said amount to be based on an independent appraisal of the Property's value, the cost of which is to be paid by Seller, plus those expenses actually incurred by Auctioneer through the date of Seller's breach. The parties agree that such total amount of liquidated damages is reasonable.

22. INDEMNIFICATION. Seller agrees, for Seller and all of Seller's agents, representatives, successors, assigns and affiliated entities, to waive, release, indemnify, defend and hold harmless Purple Wave, Inc., and its employees, governing body, officers, owners, affiliates, subsidiaries, directors, agents, and representatives from and against any and all claims, losses, administrative complaints or actions, damages, liabilities, fees, costs of defense, and expenses, including reasonable attorneys' fees and expenses, related to, arising from, or associated in any manner with the marketing, selling, transferring, transporting, shipping, operating or owning the Property or conducting the Auction, regardless of whether such claims are made by Seller or any bidder, buyer, or third party (collectively "Claims"). Should any Claims arise, Seller agrees to advance the costs of defense and expenses, including reasonable attorneys' fees and expenses, to Auctioneer as they are incurred.

23. AUTHORITY TO EXECUTE AGREEMENT. In the event Seller is not a natural person, Seller and the person signing this Agreement for Seller jointly and severally warrant that (i) the Seller is duly organized and in good standing with the state in which it is organized to do business, (ii) said signatory is authorized to execute this Agreement on behalf of Seller, (iii) said signatory's signature on this Agreement binds Seller to this Agreement, and (iv) Auctioneer may pursue all remedies under this Agreement against the Seller, Seller's signatory, or both.

24. COUNTERPARTS AND FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES. The Parties agree that this Agreement may be executed in duplicate and in counterparts but that all counterpart signatures shall constitute one original. The Parties further agree that if exchange of original ink signatures is not initially feasible for execution of this Agreement, then facsimile signatures and scanned/emailed signatures on this Agreement shall be as sufficient as original ink signatures. In the event facsimile signatures or scanned/emailed signatures are utilized, the Parties will exchange their original ink signatures on this Agreement, in duplicate, within five (5) business days.

25. CHOICE OF LAW AND VENUE. This Agreement shall be governed by Kansas law, without regard to its law pertaining to conflict of laws, and any dispute arising out of formation, interpretation, application or enforcement of this Agreement shall be adjudicated in the District Court of Riley County, Kansas. The Parties consent to that venue and to that court's personal jurisdiction.

26. RIGHTS TO INFORMATION; POSTING RESULTS. Except information available through the public domain, all information received, gathered or generated by Auctioneer with respect to the Property, including but not limited to Property descriptions and photos, website and website user metrics, and bidder identity and activity logs, shall be and remain Auctioneer's property, and Auctioneer shall have unfettered use of such information for any legal purpose. Seller acknowledges and agrees that Auctioneer may post the results of the Auction, including realized bid prices and bid history, on Auctioneer's website.

27. COMPLETE AGREEMENT. This Agreement contains the whole agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all previous understandings and agreements between the parties relating to this transaction. Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of any other party or any other person whatsoever before the execution of this Agreement. Each party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause shall limit or exclude any liability for willful misconduct or fraud.

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AUCTION PLANNING

PURPLE WAVE
CUSTOMER NO.

THIS FORM IS COMPLETED BY THE SELLER.

Auction date _____ Auction time _____

Auction location _____

Live at seller's location Live at Purple Wave Auction Internet only

CONTACT INFORMATION

Seller contact for title, contract & marketing issues:

Publish as contact info?

Name Lisa Johnson

Email ljohnson@mail.franklincoks.org

Telephone 785-229-3485

Mobile phone _____

Fax 785-229-3449

How do you prefer to receive invoices and additional information? Fax Email

Seller contact for property inspections and pick up Same

Name _____

Email _____

Telephone _____

Mobile phone _____

Fax _____

AUCTION DETAILS

Property location address 305 S. main Street, Ottawa KS 66067

Inspection times and locations Schedule w/ seller

Pickup times and locations Schedule w/ seller

Local advertising suggestions _____

LOADOUT DETAILS

Personnel available? Y N

Loading dock available? Y N

Forklift available? Y N

Vehicle start assistance? Y N

INTERNAL USE

Salesperson/Lead Contact _____

Commission Rate _____