

Office Use Only

MASTER CONTRACT NUMBER:

C2023-0213

## PURCHASE OF COMMODITIES CONTRACT

**THIS AGREEMENT** made and entered into this date \_\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Broadway Ford Truck Sales, Inc.** ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (Scope of Work); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

**1. Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **Ford F-550, from a date beginning on the execution date of this contract to a date ending December 31, 2023.**

**2. Quantities to be Purchased and Purchase Price.**

- a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
- b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
- c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Seventy-Six Thousand Three Hundred Dollars And Zero Cents (\$76,300.00), all of which is dependent upon budget appropriations.**

**3. Delivery and Shipment.**

- a. The Seller is responsible for the costs of shipment.
- b. Time is of the essence with respect to each shipment.
- c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
- d. Deliveries are to be made to: **625 Stockstill Lane, Branson, Missouri 65616.**

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**4. Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.

**5. Inspection and Acceptance.**

- a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
- b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
- c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.

**6. Warranty.**

- a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
- b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
- c. Any implied warranties are not altered by this written contract.
- d. Additional terms: N/A.

**7. Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.

**8. Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

**9. Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any time for the City's convenience (without cause) or for cause if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of the City. In the event of such termination for cause, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby (except that Seller will not be liable for such excess costs occasioned thereby in instances where this agreement is terminated by the City without cause or for City's convenience).
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.
- 17. Liability and Indemnity.** The parties mutually agree to the following:

A. In no event shall the City be liable to the Seller for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

B. The Seller shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Seller arising out of or in any way connected with this contract. Seller further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Seller.

C. The Seller shall indemnify and hold the city harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

**18. Bonds and Insurance.** The Seller must have and maintain, at the Seller's expense, adequate liability insurance and bonds (if applicable) to satisfy statutory bonding requirements, of section 537.610.2 and 537.610.5 of the Missouri Revised Statutes to protect the City and the general public against any loss, damage and/or expense related to the Seller's performance under this contract. The insurance coverage shall include, but need not be limited to, the following coverage's in the amounts specified. Such insurance must indemnify the City to the fullest extent possible under the laws of the State of Missouri.

A. General Liability Insurance with a company authorized to do business in the State of Missouri with limits of liability not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence for personal injuries (including death) and property damage, and One Million Dollars (\$1,000,000.00) aggregate.

B. Auto Dealer Liability Insurance with a company authorized to do business in the State of Missouri having limits of liability not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence for personal injuries (including death).

C. Workers' Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than One Million Dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Seller(s) and Sub-Provider(s).

D. The Seller will require all Sub-Providers to provide and maintain like insurance as set forth above unless the Seller's policies extend to claims made against or growing out of operations of the Sub- Provider.

E. Written evidence of the required insurance coverage must be submitted before or upon award of the contract. Such policy(ies) shall name the City of Branson as additionally insured. Failure to maintain required insurance coverage shall be

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considered a breach of this contract.

F. Seller understands and agrees that the insurance required under the terms of the contract in no way precludes the Seller from carrying such other insurance as may be deemed necessary by the Seller for the operation of the Seller's business or for the benefit of the Seller's employees.

G. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Seller shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 through 537.650 of the Missouri Revised Statutes, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available to the City, its Board of Aldermen, salaried officers or employees, nor constitute waiver of any available defense. The Seller shall cause all policies of insurance related to the contract to be endorsed in accord to this subparagraph.

H. If this is a multi-year contract then the Seller shall further require the upper limits of coverage of such policies to be adjusted on an annual basis to be at least equal to the limits of liability set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes as amended from time to time.

I. Insurance Certificates. It is the sole responsibility of the Seller to provide the City with the most up-to-date insurance certificates and to keep them current throughout the term of the contract and for any renewal periods. Any failure to maintain insurance coverage shall not relieve any contractual responsibility, obligation or liability under the contract documents. Insurance Certificates must be faxed or mailed to the address provided.

**19. Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

☐ \_\_\_\_ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

**20. Severability.** If any term or provision of this agreement is held invalid or unenforceable, the remainder of this agreement will be considered valid and enforceable to the fullest extent permitted by law.

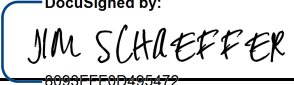
**21. Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

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**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the day and year herein stated.

**SELLER:**

By:  10/12/2023  
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(Signature) Date

**CITY OF BRANSON, MISSOURI**

Larry D. Milton                       
Mayor Date

**ATTEST:**

Hillary Briand                       
City Clerk Date

**APPROVED AS TO FORM:**

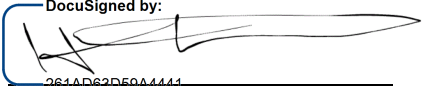
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City Attorney Date

Exhibit A

Broadway Truck Centers  
812 E Taylor Ave  
St Louis, MO 63147

## **SCOPE OF WORK**

Purpose: The Seller, Broadway Truck Centers agrees to provide a 2022 Ford F-550 DRW using MOBays cooperative contract #CC240138002.

### **General Requirements:**

Ford F-550 DRW including 11ft Reading Service Body

Exhibit B

**PRICING PAGE**

2022 Ford F-550 DRW including 11ft Reading Service Body	\$76,300.00
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