

Plymouth County Commissioners
Contract for Providing Ford Motor Co.
Public Vehicles and Equipment
Awarded on Bid PCC 2023 to 2026 to MHQ, Inc.

RFP Released July 25, 2022
Contract October 1, 2022

Memorandum of Agreement dated as of this 1st day of October 2022 between the **Plymouth County Commissioners** and **MHQ, Inc.**, 401 Elm Street, Marlborough, MA 01752 which shall be considered the commencement date for the agreement between the parties.

Article 1 Description of Contract and Parties

The Plymouth County Commissioners (hereinafter “Plymouth County Commissioners” or the “County”) and various political subdivisions listed on the attached Cooperative Bid List, with any amendments attached thereto, (hereinafter referred to, each individually, as the “Buyer”), and as authorized by Massachusetts General Laws, Chapter 7, Section 22B, and Chapter 30B, awarded a Vehicle Bid to MHQ, Inc. (hereinafter “Contractor”). This Contract is for the then current model year Motor Vehicles and Trucks manufactured by Ford Motor Co. This Contract also provides for equipment, options, and accessories available for purchase by the Buyers under the prices stated in the Contractor’s Response to the Plymouth County Commissioners’ Invitation for Bids (hereinafter “Response”), subject to any increase as described by this Contract.

Article 2 Contract Term

2.1 Term. The Term of this Contract shall be for the initial term starting the date of this contract and ending October 31, 2023, with the possibility of four (4), one (1) year contract extensions subject to the sole discretion and option of the Plymouth County Commissioners. The Plymouth County Commissioners shall inform the Contractor in writing within thirty (30) calendar days of its intent to extend the Contract.

2.2 Termination. This Contract shall terminate on October 31, 2023, unless extended pursuant to Article 2.1 above, or unless terminated under the following conditions detailed in this Article and in this Contract.

2.3 Without Cause. The Plymouth County Commissioners reserve the right to cancel this Contract, without cause, at any other time with at least thirty (30) calendar days written notice to the Contractor.

2.4 For Cause. If, in the opinion of the Plymouth County Commissioners, the Contractor fails to fulfill its obligations under the Contract, the Plymouth County Commissioners may terminate the Contract by giving thirty (30) calendar days written notice to the Contractor at any time. The Contract shall be terminated immediately in the event of fraud or program abuse.

2.5 Emergency. The Plymouth County Commissioners may terminate or suspend the Contract for up to sixty (60) calendar days by providing written notice to the Contractor stating the Plymouth County Commissioners’ action if the Plymouth County Commissioners determine that immediate action is necessary to protect the County, Buyers, State or Federal funds or property, or to protect persons from injury. Such termination or suspension shall be effective upon receipt by the Contractor of notice of either suspension or termination. In the case of a suspension under this Article, the notice of suspension shall be accompanied by instructions from the Plymouth County Commissioners specifying requisite action(s) by the Contractor to remove

the suspension, a proposed timetable for meeting those requirements and a description by the Plymouth County Commissioners of allowable activities and costs, if any, during the suspension period. Failure by the Contractor to remedy the stated deficiencies according to the timetable prescribed by the Plymouth County Commissioners shall be cause for immediate termination.

2.6 Plymouth County Commissioners' Remedies Upon Termination for Cause or Emergencies. Notwithstanding the terms contained in this section, in the event of termination, the Contractor shall not be relieved of liability to the Plymouth County Commissioners for injury or damages sustained by the Plymouth County Commissioners by virtue of any breach by the Contractor of the Contract. In the event of termination pursuant to this section, the Plymouth County Commissioners may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the Plymouth County Commissioners from the Contractor is determined. In addition to and notwithstanding the above, the Contractor covenants and agrees that, in the event of termination of the Contract, the Contractor shall pay to the Plymouth County Commissioners as damages: (a) such sum as, at the time of termination, the Plymouth County Commissioners reasonably determines that it shall require to compensate a subsequent Contractor to complete the delivery of service; and (b) the sum reasonably determined by the Plymouth County Commissioners for all the direct and indirect costs resulting from the delay in the delivery of services upon the Contractor's default. The Contractor further covenants and agrees with the Plymouth County Commissioners that the Contractor shall pay all the Plymouth County Commissioners' costs and expenses (including attorney's fees) incurred or paid in obtaining and enforcing any court order favorable to the Plymouth County Commissioners for any obligation of the Contractor under the Contract.

2.7 Obligation in the Event of Termination. Upon termination of the Contract, all documents, finished or unfinished, data, studies and reports prepared by the Contractor pursuant to the Contract shall become the property of the Plymouth County Commissioners and copies shall be delivered to the Plymouth County Commissioners within thirty (30) calendar days of the termination. The Plymouth County Commissioners shall promptly pay the Contractor for all services performed and for all costs and non-retractable commitments reasonably incurred in the performance of the Contract to the effective date of termination, provided the Contractor is not in default of the terms of the Contract and submits to the Plymouth County Commissioners properly completed invoices, with supporting documentation, covering such services no later than forty-five (45) calendar days after the effective date of termination, and that the Contractor make every reasonable effort to minimize or recover costs incurred.

Article 3 Contract Price with Buyers

3.1 Contract Prices. MHQ, Inc., by signing this Contract agrees to all terms and conditions contained in its Response to the Plymouth County Commissioners' Invitation for Cooperative Procurement Specifications: 2023 Model Year Public Service and Municipal Vehicles Manufactured by the Ford Motor Co.. and Associated Equipment – Bid 2023-2026, for which they were awarded the Bid upon the prices stated in their Response for all vehicles, accessories, options, and equipment. The base price for the Ford Motor Co. Vehicle Bid and Award is listed in a copy of MHQ, Inc.'s Response and is attached to this Contract as "Attachment A." The Award for accessories, options, and equipment for these vehicles is

attached as a copy of the Response, and attached to this Contract as “Attachment B.” The Contractor has assumed the risk associated with offering specific pricing for the options, accessories, equipment, and vehicles contain in its Response to the County’s Invitation for Bids and the prices contained therein have been incorporated into this Contract, unless otherwise herein provided.

Prices contained in the Contractor’s Response to the Invitation for Bids are firm for the duration of the Contract and any extension option exercised by the County, except as provided for in this Contract. See 3.7 and 3.8 for exceptions.

3.2 Delivery Charges. The prices listed by the Contractor in their response to the County’s Invitation for Bids included delivery of all items to the Buyer as stated on the Purchase Order. The Contractor shall not charge for packing, crating, shipping, freight, delivery, etc. as these charges are already reflected in the contract prices described in Article 3.1.

3.3 Discounts. Any discounts offered by the Contractor for timely payment will be computed from the date of delivery or the date a correct invoice is presented for payment, whichever is later.

3.4 Taxes. Purchases made by municipalities and government entities are exempt from Federal excise taxes and Massachusetts Sales Taxes.

3.5 Orders. Verbal orders are not binding on a Buyer and deliveries made or work done without a written and signed Purchase Order issued by the Buyer are at the risk of the Contractor. Written Purchase Orders must be issued by each Buyer.

3.6 Quantity. No enforceable obligation exists beyond the amount of available funds for each Buyer. Quantities stated by the County in its Invitation for Bids reflected estimates derived from either information obtained from a limited survey of local municipal departments, or past experience with Contracts of similar nature and scope.

3.7 Contractor’s Right to Elect Price Increase. Should the Plymouth County Commissioners elect to exercise an option to extend this Contract, the Contractor may, at that time, request an increase in the Contract price(s). Price increases will be allowed only in an amount equal to a documented increase in the Contractor’s cost from the manufacturer of the vehicle(s) or equipment, and/or manufacturer supplied options or accessories. Unless otherwise provided, in no event shall any price increase(s) allowed in accordance with this provision exceed 5% per year. If at the time of extension there has been a decrease in price, the lowered price will be offered by the Contractor to all participating Buyers.

3.8 Price Increases. *Government Regulations* - Any increase in cost to the Contractor due to a mandated change in Government regulations may be allowed; the amount of the increase will be determined by the Plymouth County Commissioners.

Escalation for Steel Mill Products – Items listed which contain 90% steel, as determined by the Plymouth County Commissioners, may be subject to a price escalation.

Adjustment in the prices will be made based on the Producer Price Index (PPI) for Commodities for Metals and Metal Products/Steel Mill Products (Series ID WPU1017) published by the U.S. Department of Labor's Bureau of Labor Statistics. Publication occurs monthly in the ***PPI Detailed Report*** and can also be found at <http://www.bls.gov/ppi>. The Index is not seasonally adjusted.

Adjustments will be applied on a quarterly basis during the term of the awarded contract and any extensions and use the latest final PPI data published. Price adjustment calculations shall be made on the 26th day of the month following the last month of the preceding quarter. Example: Price adjustments for a contract beginning September (1st Quarter – September, October, November) will be made on the 26th of December.

The Price adjustment will be based on a simple percentage method. The base contract price for each applicable item will be changed by the same percentage as that calculated for the PPI based on the index at the time of adjustment divided by the index at the time the base price was set at the start of the contract (i.e. price as bid).

Example:

Index at the time of calculation	115.5
Divided by Index at Time Base Price was Set	110.0
Equals	1.05
Base price should be increase by 5%	
Base Price	\$1,000
Multiplied by	1.05
Equals Adjusted Price	\$1,050

Due to historically unusual supply chain shortages and price fluctuations, Vendors are allowed to petition the Plymouth County Commissioners for price changes in vehicles, accessories, and equipment as market forces dictate. These price changes must be supported by documentation from the manufacturers and or suppliers and be presented to the Commissioners. Plymouth County Commissioners do not guarantee that price adjustments will be approved but will be investigated on a case by case basis.

3.9 Payment of Purchase. The Buyer shall pay the Contractor for purchases in the amount of One Hundred (100%) percent following delivery and acceptance of the vehicle. Acceptance by the Buyer will be indicated by the Buyer's signature on the delivery receipt that the vehicle arrived in good condition with all options, equipment, and accessories ordered. Payment shall be due forty-five (45) days after the receipt of an Invoice.

3.10 Invoices. Contractor shall prepare a separate Invoice for each Buyer purchasing items under this Contract. Monthly sales reports shall be submitted by the Contractor to the County reflecting gross monthly sales.

3.11 Most Favorable Customer. Contractor warrants and represents that the prices, warranties, conditions, benefits and terms set forth in its Response are, and will continue to be for the duration of this Contract, at least equal to or more favorable than the prices, warranties, conditions, benefits and terms charged or offered by the Contractor to other purchasers for the same or substantially like products with like features and in quantities as described in this

Contract. A violation of this Article will obligate the Contractor to issue rebates. The rebates will be the amount of the difference between the price contained in the Contractor's Response and the subsequently offered lower price to each entity that purchased the relevant item under this Contract.

Article 4 Payment to the Plymouth County Commissioners

The Contractor shall pay to the County a "Transaction Fee" of 0.75% (3/4 of one percent) of the aggregate delivered price of all items purchased including all vehicles, options, accessories, upgrades, off contract equipment and up-fitted equipment, not including trade in reductions in price. The County may lower the Transaction Fee at any time and will not increase the Transaction Fee at any time during the term of this Contract or any extension of this Contract. Contractor shall reflect any Transaction Fee reduction as a discount on the quote provided to the Buyer. Transaction Fees shall be paid monthly to the County and shall be delivered to the County by the 15th of the following month of sales.

Article 5 Warranty

5.1 Warranty. Contractor guarantees that each item purchased under this Contract shall perform in conformance with the manufacturer's published or proposed specifications, whichever is applicable. Contractor further agrees to replace the same, at no cost to the Buyer for labor or materials, if said items fail to meet said specifications within one (1) year after installation. If, after three (3) service calls for the same fault, the item cannot be returned to full operation, then the item will be replaced by the Contractor at no cost to the Buyer.

5.2 Replacement Parts. The Contractor or its designated Maintenance Contractor agrees to maintain a stock of replacement parts for each accessory item purchased under this Contract, and to replace such part or parts as may be required for a period consistent with the warranty of the equipment. At a minimum, the Contractor shall guarantee availability of replacement parts for three (3) years.

Article 6 Delivery

6.1 Delivery to Buyers. Vehicles shall be delivered to individual Buyers completely equipped and marked in accordance with Buyer's specifications, prepped, cleaned, waxed and ready to place into service. A Buyer will provide the Contractor with written instructions as part of the Purchase Order including Specifications, delivery locations and times of delivery, if other than normal business hours. The Contractor shall adhere to reasonable Buyer Specifications for delivery.

6.2 Time. Contractor shall complete all deliveries of vehicles ordered by a Buyer no later than sixty (60) days after the receipt of a written and signed Purchase Order. This delivery date may be extended with written approval of the Buyer.

6.3 Failure of Timely Delivery. Contractor will be excused from the requirement of Article 6.2 above only to the extent that it may document that failure to comply is solely due to the

manufacturer's schedule for production of the vehicle(s) ordered. In such event, the Contractor must be able to document that an order has been placed with and accepted by the manufacturer and a date for the production of the vehicle(s) has been scheduled. Contractor shall provide to the Buyer a firm date in writing by which it intends to complete delivery. Failure to complete delivery by the date provided in writing will be subject to the provisions of Article 6.5 below.

6.4 Stock. In no event shall Contractor be excused from the requirements of Article 6.2 due to failure to have the required stock on hand as specified in Article 11.10, Police Patrol Vehicle Availability.

6.5 Remedies for Improper Delivery. Should Contractor fail to accomplish delivery in accordance with the provisions of this requirement, the Buyer at its sole discretion shall have the following options:

- (a) Revoke the Purchase Order and procure the required vehicle(s) through an alternate source; or
- (b) Agree to continue waiting for the ordered vehicle(s). If the Buyer selects this option, the Contractor shall deduct Five Hundred (\$500.) Dollars from the invoice price of each vehicle which has been delayed for the first five infractions during the annual contract and then Seven Hundred and Fifty (\$750.) Dollars from the invoice price of each vehicle for all following infractions.

If the Contractor can document that the delivery of a purchased vehicle to the buyer is caused by unusual market conditions as documented by the Manufacturer, then the Vendor will not be subject to any penalties as noted for the delay. If a purchaser decides to not honor the purchase agreement due to delays in delivery, then the Buyer can be subject to a 2% restocking fee to the Vendor.

6.6 Risk of Loss. The risk of loss, damage or destruction of any equipment resulting from any cause shall be borne by the Contractor until such time as said equipment has been delivered to and accepted by the Buyer.

6.7 Location. Contractor agrees to pick up and deliver vehicles to be serviced which were purchased pursuant to this contract and located within seventy (70) miles (as the crow flies) of the Boston city limits, within twenty-four (24) hours of a request by the Buyer.

Article 7 Insurance and Indemnification

7.1 Insurance. The Contractor, in addition to any insurance required by State or Local law, shall maintain in force during the term of this Contract and any extension of this Contract the following insurance issued by an Insurance Company licensed to do business in the Commonwealth of Massachusetts:

- (a) Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering against personal injury and property damage in the amount of \$250,000 per person and \$1,000,000 per

occurrence for personal injury, including death, and \$500,000 per occurrence for property damage; and

- (b) An Insurance Certificate giving evidence of said insurance must be supplied to the County upon execution of this Contract.

7.2 Indemnification. Contractor shall indemnify and save harmless the County, the members of this cooperative purchasing endeavor, and all persons acting for or on behalf of any of them from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any suit is held to constitute infringement, the Contractor, within a reasonable time, will at its expense, and as the County and/or the members of this collective purchasing group may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment or apparatus and refund the amounts paid therefore.

The Contractor shall be liable, and agrees to be liable for, and shall indemnify, defend and hold the County and the Plymouth County Commissioners harmless from all liability, claims, suits, judgments, expenses or damages including court costs and attorney's fees arising out of the intentional acts, negligence or omissions by the Contractor or any subcontractor utilized by the Contractor, in the course of the operations of the Contract.

Article 8 Vehicle Catalog

8.1 Vehicle Catalog. Within forty-five (45) days of execution of this Contract and any extension issued under this Contract, the Contractor shall produce and distribute a catalog for distribution to all members of the County's Collective Bid, which shall have the approval of the Plymouth County Commissioners prior to printing and distribution. The catalog shall describe all vehicles under the Contract and shall include base vehicle price and description and pricing for all options, equipment, and accessories as awarded in the Contractor's Response. If any contract extensions are executed, the Contractor is required to notify all members of this Collective Bid within fifteen (15) days of its notification by the Plymouth County Commissioners.

8.2 Review. At least a two (2) week lead time must be given to the Plymouth County Commissioners to review and approve the proposed catalog prior to printing and distribution. Advertising will be limited in the catalog to those items and options that were included in the County's Invitation for Bids and this resulting Contract. All items listed in the catalog must be taken directly from this Contract and the County's Invitation for Bids.

Article 9 Applicable Laws.

9.1 Compliance. The Contractor shall comply with all applicable Federal, State, and Local laws and regulations. The Contractor shall promptly comply with all applicable laws, rules, regulations, ordinances, orders or requirements of any governmental authority relating to the delivery of the service described in the Contract. Unless otherwise provided by law, the

Contractor shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the Contractor's failure to comply with the provisions of this section and shall indemnify the Plymouth County Commissioners against any liability incurred as a result of a violation of this section.

9.2 Familiarity with Requirements. MHQ, Inc. by signing this Contract attests that it is thoroughly familiar with their Response and this Contract and how those requirements relate to Plymouth County and the Participants in the Cooperative Bid 2023-2026. Ignorance of these requirements will not relieve MHQ, Inc. from any obligations or liabilities under the Contract.

9.3 Collusion. Contractor has executed a Non-Collusion Certificate with its Response to the County's Invitation for Bids. By signing the Non-Collusion Certificate, the Contractor declared that its Response was formulated without collusion with any person, representative, agent or party submitting a competing Response.

9.4 Tax Compliance. Contractor has executed a Tax Compliance Certificate with its Response to the County's Invitation for Bids. By signing the Tax Compliance Certificate, the Contractor declared the fact that all Massachusetts Tax Obligations have been met by the Contractor.

9.5 Choice of Law. The Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor and agents thereof agree to bring any State or Federal legal proceeding arising from the Contract, in which the Plymouth County Commissioners are a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever pending, in which the other is a party.

Article 10 Assignment and Sub-Contracting

10.1 Assignment. The Contractor shall not assign in whole or in part or otherwise transfer any interest in the Contract without the prior written consent of the Plymouth County Commissioners; provided, however, that present and prospective claims for money due and owing to the Contractor may be assigned to a bank, trust company or financial institution insured by the Federal Deposit Insurance Corporation (FDIC) without such consent so long as notice of such assignment is promptly furnished to the Plymouth County Commissioners. Any complete or partial assignment of the Contractor's interest in the Contract shall require the assignee, at the discretion of Plymouth County Commissioners, to supply such further information as the Plymouth County Commissioners deems necessary. Any such assignment, in whole or in part, shall also be expressly made subject to all defenses, set-offs or counter-claims which would have been available to the Plymouth County Commissioners against the Contractor in the absence of such assignment.

10.2 Sub-Contracting. None of the services to be provided by the Contractor pursuant to the Contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the Plymouth County Commissioners. No subcontract or delegation shall relieve or

discharge the Contractor from any obligation or liability under the Contract except as specifically set forth in the instrument of approval. All subcontracts shall be in writing and shall contain provisions that are functionally identical to and consistent with the provisions of this Contract. The Plymouth County Commissioners shall have the right to obtain a copy of any subcontract upon request.

Article 11 Miscellaneous

11.1 Manuals. Contractor shall provide a Service Manual, or web link, to the Plymouth County Commissioners for all models of vehicles. Said Service Manuals are due to the County within fourteen (14) days of the execution of this Contract and any extension of this Contract.

11.2 Inspection. Representatives of the Plymouth County Commissioners may inspect vehicles delivered under this Contract at random to ascertain compliance with the terms of this Contract.

11.3 Independent Party. Contractor declares itself to be at all times acting and performing as an independent party, and nothing in this Contract is intended to constitute a partnership or joint venture between the Contractor and the County.

11.4 Conflict of Interest. No officer or employee of the Plymouth County Commissioners shall participate in any decision relating to this Contract which affects his/her financial or personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested. None of the service to be provided by the Contractor shall be used for any partisan, political activity or to further the election or defeat of any candidate for public office.

11.5 Intellectual Property Rights. The Contractor shall at all times obtain the prior written approval of the Plymouth County Commissioners before it, any of its agents, employees or subcontractors, either during or after termination of the Contract, make any statement bearing on the work performed or data collected under the Contract to the press or issues any material for publication through any medium of communications.

11.6 Notice. Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when given in person to either party or deposited in the U.S. Mail, postage prepaid and addressed to the persons and addresses indicated on the signature page in the Contract.

11.7 Severability. If any provision of the Contract is declared or found to be illegal, unenforceable or void, both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

11.8 Price Quote Form and Reporting. Contractor will utilize a "price quote form for public service vehicles." Prior to the 15th of the following month, Vendors must deliver to Plymouth County a scanned copy of a signed (by the customer) detailed purchase order (price quote) for each vehicle that is ordered by an entity under this Bid showing the price of each

vehicle and all additional items ordered such as options, accessories and added equipment along with individual pricing for each item. Monthly sales reports shall be submitted by the Vendor to the County of Plymouth reflecting gross monthly sales as set forth above along with the remittance of any applicable Transaction Fees which may be due. Transaction Fees for the previous month must be paid by the 15th day of the following month. Monthly sales reports will be emailed monthly to Plymouth County, prior to the 15th of the following month, on an Excel spreadsheet to include vehicle order date, date vehicle arrives on Vendor premises, delivery date to Buyer, vehicle make, VIN, and total sale cost of vehicle.

11.9 Installation of Accessories and Options. All radios, sirens, prisoner cages and lights removed from vehicles to be reinstalled in new vehicles or installation of new radios, sirens, prisoner cages, lights or other non-manufacturer supplied options and accessories will be performed by a qualified installer. The Contractor will be responsible for ensuring that this work is done in a professional and acceptable manner. Contractor will be responsible for these costs. Contractor will be responsible for the conduct of its subcontractors and agents for installation of accessories and options.

11.10 Police Patrol Vehicle Availability. Contractor shall maintain a ready stock of forty-five (45) police patrol vehicles of which there will be twenty-five (25) marked and twenty (20) unmarked police patrol vehicles as replacements for departments that will have lost vehicles due to accident or other events. This requirement is reduced by seventy-five (75%) percent for the last two (2) months of this Contract or the Contract extension. The required vehicle stock must be on hand and available within sixty (60) days of the execution of this Contract. The Contractor will be excused from this requirement only to the extent it may document that failure to comply is solely due to the manufacturer's schedule for production of the vehicle(s) ordered. In such event, Contractor must be able to document that an order has been placed with and accepted by the manufacturer and a date for the production of the vehicle(s) has been scheduled. Should Contractor fail to comply with the requirements of this Section, the purchase price of the marked and unmarked patrol vehicles shall be reduced by Five Hundred (\$500.00) Dollars each for the life of this Contract and any extension granted under this Contract.

Continued to signature page

Plymouth County Commissioners Contract for Public Service Vehicles & Equipment Bid PCC #23 to 26

IN WITNESS WHEREOF, the parties have executed this Contract separately, on the dates indicated by their respective signatures.

MHQ, Inc.

401 Elm Street, Marlborough, MA 01752

by: 

Print Name and Title: Cathy Parker, VP Sales & Marketing

Date: 10/05/2022

PLYMOUTH COUNTY COMMISSIONERS

44 Obery Street, Plymouth, MA 02360

by: 

Francis Basler, County Administrator

As authorized by the Plymouth County Commissioners by vote on September 16, 2022

Date: October 1, 2022