



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

16

2. Council Meeting Date:
May 10, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: April 23, 2012

THROUGH: CITY MANAGER

4. Requesting Department: Fire Department

5. SUBJECT: Invitation For Bid (IFB) FA2-071-3105 for the purchase of vehicles from Sands Chevrolet in an amount of \$658,954.89 and Midway Chevrolet Nissan Isuzu Truck in an amount of \$20,949.53 for a total amount of \$679,904.04.

6. RECOMMENDATION: Recommend award of Invitation For Bid (IFB) FA2-071-3105 for the purchase of vehicles from Sands Chevrolet in an amount of \$658,954.89 and Midway Chevrolet Nissan Isuzu Truck in an amount of \$20,949.53 for a total amount of \$679,904.04.

7. HISTORICAL BACKGROUND/DISCUSSION: The requested vehicles have been recommended for replacement by the Fleet Advisory Committee. The committee reviews mileage, years of service, reliability, repair history and forecasted ability to meet service requirements.

The requested vehicles to be replaced include a compact SUV for the Municipal Utilities Department, a 15 passenger van for the Fire Department, 10 Police equipped SUVs for the Police Department, and 6 Police equipped sedans for the Police Department

8. EVALUATION PROCESS: Historically the City has used the State contract to purchase vehicles. At the direction of Council, staff issued an IFB for all vehicles recommended for replacement by the Fleet Advisory Committee. Vehicles rejected for reasons such as failure to meet specification and missed order cutoff dates were approved by Council on April 26, 2012, for purchase through the State contract. This request is for the remaining vehicles on the City's IFB.

The Bid was advertised and all registered bidders were notified. Additionally, all auto dealers in Chandler were contacted for the requested vehicles and provided a copy of the bid and instructions to register as a supplier. Four bids were received, none of which were Chandler auto dealers. Staff is recommending award to the low responsive responsible bidders.

9. FINANCIAL IMPLICATIONS:

Fund Source	Fund Name	Vehicle Description	Fund Amount
	*Vehicle Replacement Fund, MUD		
404.3050.6310.0000	Admin	1 - Compact SUV	\$20,949.53
404.2210.6310.0000	Vehicle Replacement Fund, Fire Admin	1 - 15 Passenger Van	\$33,184.40
404.2030.6310.0000	Vehicle Replacement Fund, Police Fld Op	10 - Police Equipped SUVs	\$395,670.69
404.2030.6310.0000	Vehicle Replacement Fund, Police Fld Op	6 - Police Equipped Sedans	\$230,099.42
		Total	\$679,904.04

*requires contingency transfer

10. PROPOSED MOTION: Move to approve award of Invitation For Bid (IFB) FA2-071-3105 for the purchase of vehicles from Sands Chevrolet in an amount of \$658,954.89 and Midway Chevrolet Nissan Isuzu Truck in an amount of \$20,949.53 for a total amount of \$679,904.04 and authorize contingency transfer of \$20,950 from Vehicle Replacement Fund, Non Departmental, Contingency Account to the Vehicle Replacement Fund, Municipal Utilities Administration, Vehicle account.

APPROVALS

11. Requesting Department


James Johnson, Fleet Manager

12. Department Head


Jeff Clark, Fire Chief

13. Procurement Officer


Mike Mandt

14. City Manager


Rich Dlugas

CITY OF CHANDLER PURCHASE CONTRACT
NAME OF AGREEMENT Vehicles
AGREEMENT NO.:FA2-071-3105

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Sands Motor Company, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Fleet Services Manager/designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit A, all as more specifically set forth in the Specifications and details included therein.

2.1. Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. Non-Discrimination. The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3. Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

2.4. Licenses: CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

- 2.5. Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 2.10. Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.12. Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.13. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.14. New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.15. Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 3. WARRANTIES:**
- 3.1. Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2. Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

- 3.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 3.2.2. Fit for the intended purposes for which the materials are used;
- 3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 3.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.
- 3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.5. **Warranty (Equipment).** All vehicles supplied under this Contract shall be fully guaranteed by CONTRACTOR for the time and miles specified in Exhibit A. All add on equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.
4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification
 - 4.1. **Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 4.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
 - 4.3. **Delivery.** Delivery shall be made within one hundred and twenty (120) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed six hundred and fifty eight thousand nine hundred and fifty four dollars and 89/100 Dollars (\$658,954.89) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit A, attached hereto and made a part hereof by reference.

- 5.1. Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 5.4. Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. Taxes:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 5.6. IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 6. TERM:** This contract is for a specific purchase identified in Exhibit A. The City may purchase additional units under this contract if agreed between the City and Contractor.
- 6.1. USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
- 6.2. Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 6.3. Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 7. CITY'S CONTRACTUAL REMEDIES:**

- 7.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 7.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 7.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 7.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

- 8.2. Termination for Cause:** City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

- 8.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies

available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

- 8.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 8.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 8.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 9. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 10. DISPUTE RESOLUTION:**
- 10.1. Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and

evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

- 10.2. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3. Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4. Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.
- 12. NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY

Department:	Fleet Services
Contact:	James Johnson
Mailing Address:	PO Box 4008 MS 801
Physical Address:	151 E Boston St
City, State, Zip	Chandler AZ 85225
Phone:	480-782-2132
FAX:	

In the case of the CONTRACTOR

Firm Name:	Sands Motor Company
Contact:	Chad Welsh
Address:	5418 NW Grand Ave
City, State, Zip	Glendale AZ 85301
Phone:	623-261-0570
FAX:	623-934-9720

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

13. GENERAL TERMS:

- 13.1. Entire Agreement:** This Contract, including Exhibit A attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 13.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 13.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 13.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 13.5. Conflict of Interest:**
- 13.5.1. No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.
- 13.5.2. Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 13.5.3. No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 13.6. Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 13.7. No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 13.8. Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

13.9. Ownership. All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2012.

FOR THE CITY OF CHANDLER

Mayor

Approved as to form:

City Attorney *pk*

ATTEST:

City Clerk

FOR THE CONTRACTOR

By: *[Signature]*

Signature

ATTEST: If Corporation

Secretary

SEAL

Exhibit A – Technical Specifications and Pricing
Vehicles
FA2-071-3105

Line Item	Description	Quantity	Unit Price per Vehicle	Extended Price
1	Revision 1 White 2013 Chevrolet Tahoe PPV	10	Inc	
2	Preferred Equipment Group 1FL	10	Inc	
4	Left Hand Spot Light Unity LED 6"	10	Inc	
5	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 4per vehicle) provide cost per vehicle	10	Inc	
	Total Vehicle	10	\$ 26,804.91	\$ 268,049.10
	Upfitting			
1	Tint all windows (percent tint TBD)	10	inc	
2	Setina 10BSC-RP Coated poly partition	9	\$ 577.00	\$ 5,193.00
3	Setina rear partition BODYGUARD #12-VS	9	\$ 273.00	\$ 2,457.00
4	Setina Steel window Barrier Rear side passenger	9	\$ 141.00	\$ 1,269.00
5	Federal Signal Smart Siren control head/module	10	\$ 632.00	\$ 6,320.00
6	Sound off 56" EPX3000 APEX LED lightbar	10	\$ 1,265.00	\$ 12,650.00
7	Setina Total formed panel door protection rear passenger	9	\$ 110.00	\$ 990.00
8	Dock: Havis: DS-PAN-112-2 including power supply LPS-104 and Charge Guard CG-x	10	\$ 793.00	\$ 7,930.00
9	C-HDM-102 2012 Tahoe Base C-HDM-401 Side Mount Support Arm C-MD-102 Swing Arm Slide Out, Tilt/Swivel C-HDM-202 8.5" Telescoping Pole	10	\$ 373.00	\$ 3,730.00
10	Antennas Plus: AP-NAV-C	10	\$ 328.00	\$ 3,280.00
11	Console Havis C-2410 including floor plate CTMW-gmc-2 28" (Added)	10	\$ 303.00	\$ 3,030.00
12	Sound off ETSS100H Siren Speaker and universal bail bracket	10	\$ 147.00	\$ 1,470.00
13	Setina push bar model PB-450_L	10	\$ 387.00	\$ 3,870.00
14	Soundoff 4 Corner LED lights, ELUC2S010J (Headlights and Taillights)	10	\$ 242.00	\$ 2,420.00
15	Sound off EPL8000RD Mounted facing rear top of window	10	\$ 403.00	\$ 4,030.00

16	Sound off ECVDMLTAL00 Dome Light, mounted in driver's compartment	10	\$ 28.00	\$ 280.00
17	Sound off ECVDMLTAL00 Dome Light mounted in cargo compartment	10	\$ 28.00	\$ 280.00
18	Sound off ETULT12W Utility Light inside rear lift gate SWITCHED	10	\$ 35.00	\$ 350.00
19	Headlight/taillight flashers	10	\$ 80.00	\$ 800.00
20	Radio antennas (2) with rain cap (2). Use crimp connectors.	20	\$ 30.00	\$ 600.00
21	Microphone extension cable kit for Smart Siren	10	inc	
22	Rear storage box BB-TLO Tahoe	10	\$ 1,195.00	\$ 11,950.00
23	Lojack installation, (One unit only)	1	nc	
24	PTS installation (3 units)	3	\$ 130.00	\$ 390.00
25	Secure Idle	10	\$ 115.00	\$ 1,150.00
26	Flashlight cradle for Streamlight SL20XP	10	\$ 15.50	\$ 155.00
27	200 watt inverter w a/c outlet drivers compartment	10	\$ 34.00	\$ 340.00
28	Flashlight cradle for Stinger	10	\$ 21.00	\$ 210.00
29	Setina Blac Rac weapon system for AR-15, with weapon position on passenger side, keyed lock. Keys are to be mailed separately Chandler PD, Attn. Tom Lovejoy, 250 E. Chicago. Chandler AZ, 85225	10	\$ 433.00	\$ 4,330.00
30	Supplies required for installation including Power Tamer #5201, circuit breaker MRCD 150, 200 amp Relay and (SXL or GXL wiring)	10	\$ 336.00	\$ 3,360.00
31	Labor to install all above except radio as noted including radio pre wire	10	\$ 850.00	\$ 8,500.00
32	Equipment to be mounted behind front driver and passenger seat on front side of partition wall. (Siren control boxes and remote radio.)	10	inc	
33	Passenger Side Air Bag Cut Off Switch A01-USGM2	10	\$ 196.00	\$ 1,960.00
	Total Up fitting	10	\$ 9,500.50	\$ 93,294.00
	Total Vehicle and Up fitting	10		\$ 361,343.10
	Tax	10		\$ 34,327.59
	Grand Total Vehicle Up fitting and Tax	10		\$ 395,670.69

Line Item	Description	Quantity	Unit Price per Vehicle	Extended Price
1	REVISION 2 2013 White Chevrolet Caprice preferred package 9C1,1SB, 1EW19 4dr sdn	6	inc	
2	Left Hand Spot Light Unity LED 6"	6	inc	
3	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 4per vehicle) provide cost per vehicle	6	inc	
	Total Vehicle including \$876 charge for 2013 Model Year	6	\$ 27,207.30	\$ 163,243.80
	Upfitting			
1	Tint all windows (percent tint TBD)	6	inc	
2	Setina 10SC-RP Coated poly partition including lower section	6	\$ 549.00	\$ 3,294.00
3	Setina Steel window Barrier Rear side passenger	6	\$ 139.00	\$ 834.00
4	Sound off ETSS100H Siren Speaker and universal bail bracket	6	\$ 147.00	\$ 882.00
5	Federal Signal Smart Siren control head/module	6	\$ 632.00	\$ 3,792.00
6	Sound off 50" EPX3000 APEX LED lightbar	6	\$ 1,155.00	\$ 6,930.00
7	Code 3 SML-Caprice light installed in front corner panel air dam (2)	6	\$ 375.00	\$ 2,250.00
8	Setina Total door protection rear passenger	6	\$ 158.00	\$ 948.00
9	C-VS-1400LP-CAPR-1 Havis Console	6	\$ 195.00	\$ 1,170.00
10	C-CUP2-E-C Dual Cup Holder	6	\$ 22.00	\$ 132.00
11	C-LP-3 Faceplate with 3 Cig. Plug Outlets	6	\$ 26.00	\$ 156.00
12	C-ARM-101 Arm Rest	6	\$ 41.00	\$ 246.00
13	C-MD-102 Swing Arm with motion adapter	6	\$ 187.00	\$ 1,122.00
14	C-HDM-207 Heavy Duty Telescoping pole 3.5" to 4.75	6	\$ 43.00	\$ 258.00
15	Dock: Havis: DS-PAN-112-2 including external power supply LPS-104 and charge guard CG-X	6	\$ 793.00	\$ 4,758.00
16	Antennas Plus: AP-NAV-C	6	\$ 328.00	\$ 1,968.00
17	D&R Electronics 932-0018A driver w/two cooling fans and vent	6	\$ 175.00	\$ 1,050.00
18	Sound-off EPL8000RD rear deck lights	6	\$ 527.00	\$ 3,162.00
19	Sound off ECVDMLTAL00 Dome Light, mounted in driver's compartment	6	\$ 28.00	\$ 168.00
20	Sound off ETLKCO6Ux Trunk light Switched	6	\$ 130.00	\$ 780.00
21	Headlight/taillight flashers	6	\$ 80.00	\$ 480.00

22	Radio antennas (2) with rain cap (2). Use crimp connectors.	6		\$ 30.00	\$ 180.00
23	Microphone extension cable kit for Smart Siren	6		inc	
24	PTS installation (3 units) including new coax	6		\$ 130.00	\$ 780.00
25	Secure Idle	6		\$ 115.00	\$ 690.00
26	200 watt inverter w a/c outlet drivers compartment	6		\$ 34.00	\$ 204.00
27	Flashlight cradle for Streamlight SL20XP	6		\$ 15.50	\$ 93.00
28	Flashlight cradle for Stinger	6		\$ 21.00	\$ 126.00
29	Setina Blac Rac weapon system for AR-15, with weapon position on passenger side, keyed lock. Keys are to be mailed separately Chandler PD, Attn. Tom Lovejoy, 250 E. Chicago. Chandler AZ, 85225	6		\$ 433.00	\$ 2,598.00
30	Supplies required for installation including Power Tamer #5201, circuit breaker MRCD 150, 200 amp Relay and (SXL or GXL wiring)	6		\$ 336.00	\$ 2,016.00
31	Passanger Side Air Bag Cut Off Switch A01-USGM2	6		\$ 196.00	\$ 1,176.00
	Labor to install all above except radio as noted	6		\$ 775.00	\$ 4,650.00
	Total Up fitting	6		\$ 7,815.50	\$ 46,893.00
	Total Vehicle and Up fitting	6			\$ 210,136.80
	Tax	6			\$ 19,963.00
	Grand Total Vehicle Up fitting and Tax	6			\$ 230,099.80

Line Item	Description	Quantity	Unit Price per Vehicle
1	Revision 1 15 Passenger Van, Color Red.	1	Inc.
2	Sliding side door	1	Inc.
3	Low tire pressure indicator	1	Inc.
4	Four wheel ABS brake system	1	Inc.
5	Electronic Stability Control	1	Inc.
6	Automatic transmission	1	Inc.
7	Cloth front driver and passenger Seats. Vinyl bench seats.	1	Inc.
8	Power windows	1	Inc.
9	Power door locks, with speed sensing auto lock	1	Inc.
10	Tilt steering wheel	1	Inc.
11	Power adjustable mirrors, driver and passenger side	1	Inc.
12	Air conditioning, multiple unit highest available as a vehicle manufactured option (no roof mount condensers)	1	Inc.
13	4 keys with key fobs if equipped	1	Inc.
14	Window tint, darkest legal approved	1	Inc.
15	Carpet delete	1	Inc.
16	Warranty Bumper to bumper 3 years 36,000 miles Drive train 5 years 60,000 miles	1	Inc.
17	Must include all standard equipment. List other options included that are not specified	1	Inc.
	Total vehicle price with options	1	\$ 27,442.39
	Up-fitting Including Components parts and labor)		
1	Power step to asst passenger's entering/exiting the sliding side door. Must deploy when door is opened and retract when shut.	1	\$ 1,095.00
2	High idle switch to provide efficient A/C when parked for long periods of time	1	\$ 395.00
3	Post mounted 6" LED spot light. Unity part number 204016-0002 or equal	1	\$ 455.00

4	LED Warning lights /w dash mount control switch two front two rear Tomar RECT-37LLWS-AA or equal	1	\$	918.00
	Total Up fitting	1	\$	2,863.00
	Total Vehicle and Up-fitting	1	\$	30,305.39
	Tax	1	\$	2,879.01
	Grand Total Vehicle and Up Fitting	1	\$	33,184.40

CITY OF CHANDLER PURCHASE CONTRACT
NAME OF AGREEMENT Vehicles
AGREEMENT NO.:FA2-071-3105

THIS AGREEMENT is made and entered into this 23rd day of April, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Midway Chevrolet Nissan Isuzu Truck, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Fleet Services Manager/designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit A, all as more specifically set forth in the Specifications and details included therein.

2.1. Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. Non-Discrimination. The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3. Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

2.4. Licenses: CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

- 2.5. Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 2.10. Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.12. Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.13. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.14. New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.15. Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 3. WARRANTIES:**
- 3.1. Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

- 3.2. Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:
- 3.2.1.** Of a quality to pass without objection in the trade under the Contract description;
 - 3.2.2.** Fit for the intended purposes for which the materials are used;
 - 3.2.3.** Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4.** Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5.** Conform to the written promises or affirmations of fact made by CONTRACTOR.
- 3.3. Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.4. Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.5. Warranty (Equipment).** All vehicles supplied under this Contract shall be fully guaranteed by CONTRACTOR for the time and miles specified in Exhibit A. All add on equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one year from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.
- 4. ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification
- 4.1. Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
 - 4.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
 - 4.3. Delivery.** Delivery shall be made within ninety (90) calendar days after receipt of a Contract Purchase Order (ARO).
- 5. PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed twenty thousand nine hundred and forty nine dollars and 53/100 (\$20,949.53) for the completion of all the work and

services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit A, attached hereto and made a part hereof by reference.

- 5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **Taxes:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
6. **TERM:** This contract is for a specific purchase identified in Exhibit A. The City may purchase additional units under this contract if agreed between the City and Contractor.
- 6.1. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
- 6.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 6.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found

at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 7.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 7.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 7.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.
- 8.2. Termination for Cause:** City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;

- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.
- 8.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.
- 8.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 8.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 8.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 10.2. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.
12. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY

Department: Fleet Services
Contact: James Johnson
Mailing Address: PO Box 4008 MS 801
Physical Address: 151 E Boston St
City, State, Zip: Chandler AZ 85225
Phone: 480-782-2132

In the case of the CONTRACTOR

Firm Name: Midway Chevrolet
Contact: Gregg Ball
Address: 2323 West Bell Road
City, State, Zip: Phoenix AZ 85023
Phone: 602-760-3352
FAX: 602-760-3377

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

13. GENERAL TERMS:

- 13.1. Entire Agreement:** This Contract, including Exhibit A attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 13.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 13.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 13.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 13.5. Conflict of Interest:**
- 13.5.1 No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.
- 13.5.2 Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).
- 13.5.3 No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual

business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

- 13.6. **Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 13.7. **No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 13.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.
- 13.9. **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2012.

FOR THE CITY OF CHANDLER

Mayor

Approved as to form:

City Attorney *[Signature]*

ATTEST:

City Clerk

FOR THE CONTRACTOR

By: *[Signature]*

Signature

ATTEST: If Corporation

Secretary

SEAL

Exhibit A – Technical Specifications and Pricing
Vehicles
FA2-071-3105

Line Item	Description	Quantity	Unit Price per Vehicle
1	White Compact 4 door SUV, Ford Escape or equal Chevrolet Captiva	1	\$ 18,427.00
2	Must meet Insurance Institute for Highway Safety Top Safety Pick for 2012 or National Highway Traffic Safety Administration 2011/12 overall five star crash test rating	1	Inc.
4	Low tire pressure indicator	1	Inc.
5	Four wheel ABS brake system	1	Inc.
6	Electronic Stability Control	1	Inc.
7	Automatic transmission	1	Inc.
8	Bucket Seats	1	Inc.
9	Cloth Seats	1	Inc.
10	Folding or split rear seats	1	Inc.
11	Height adjustable front seat belts	1	Inc.
12	Power windows	1	Inc.
13	Power door locks, with speed sensing auto lock	1	Inc.
14	Tilt telescoping steering wheel	1	Inc.
15	Power adjustable mirrors, driver and passenger side	1	Inc.
16	Air conditioning	1	Inc.
17	4 keys with key fobs if equipped	1	Inc.
18	Window tint, darkest legal approved	1	\$ 145.00
19	Floor mats	1	Inc.
20	12 volt power receptacle for driver	1	Inc.
21	Warranty Bumper to bumper 3 years 36,000 miles Drive train 5 years 100,000 miles	1	Inc.
22	Must include all standard equipment. List other options included that are not specified	1	Inc.
	Total Vehicle with Options		\$ 18,572.00
	Up-fitting (parts, components and labor)		
	Light bar, mini, Federal Signal Highlighter, perm mount economy model # 454205-02, with driver's control switch	1	\$ 595.00

	Total Up-fitting		\$ 595.00
	Total Vehicle and Up-fitting		\$ 19,167.00
	Tax		\$ 1,782.53
	Grand Total Vehicle, Up-fitting and Tax	1	\$ 20,949.53