



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

**1. Agenda Item Number:**

23

**2. Council Meeting Date:**  
October 23, 2014

**TO: MAYOR & COUNCIL**

**3. Date Prepared:** September 18, 2014

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Fire, Health and Medical

**5. SUBJECT:** Agreement No. FD5-071-3422 for the purchase of Patrol Vehicles

**6. RECOMMENDATION:** Staff recommends City Council approve award of Agreement FD5-071-3422 for the purchase of Patrol Vehicles to PFVT Motors in an amount of \$125,933.08 and to Midway Chevrolet in an amount of \$634,335.42 for a total amount of \$760,268.50.

**7. HISTORICAL BACKGROUND/DISCUSSION:** During the FY 13/14 budget process the Police Department submitted vehicles to be considered for replacement in FY 14/15. The City's Fleet Advisory Committee (FAC) evaluates all vehicle replacement requests with regards to mileage, years of service, reliability, repair history and forecasted ability to meet service requirements. The FAC recommends replacing 26 vehicles used by Police Field Operations. All 26 of the old vehicles being replaced are Chevrolet Tahoes and Ford Crown Victorias. The recommended new replacements are 6 Chevrolet Caprice Police Patrol Vehicles, 15 Tahoe Police Patrol Vehicles and 3 Ford Police Interceptor Utilities. Two (2) Ford Fusions are recommended for staff officer service.

**8. EVALUATION PROCESS:** On August 4, 2014 Staff issued Invitation For Bid FD5-071-3422 for the purchase of Patrol Vehicles. The bid was advertised, all registered vendors were notified and staff reviewed the bid list to make sure Chandler vendors were notified. The City received three bids for Ford vehicles and three bids for Chevrolet vehicles. Staff is recommending award to PFVT for Ford Vehicles and Midway Chevrolet for Chevrolet vehicles. Bids are summarized below.

**Ford Vehicles**

Berge Ford	PFVT	Freedom Ford
\$129,423.52	\$125,933.08	\$128,125.16

**Chevrolet Vehicles**

Sands Chevrolet	Midway Chevrolet	Thorobred Chevrolet*
\$665,093.99	\$634,335.42	\$660,409.54

\*The evaluation of bids included a \$9,187.91 Local Business Consideration.

**9. FINANCIAL IMPLICATIONS:** Funds for the purchase of the requested vehicles are available in the following account:

Cost: \$760,268.50

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>Amount:</u>
404.2030.6310.0000	Vehicle Replacement Fund	Police - Field Operations	\$760,268.50

**10. PROPOSED MOTION:** Approve Agreement No. FD5-071-3422 for the purchase of Patrol Vehicles to PFVT Motors in an amount of \$125,933.08 and to Midway Chevrolet in an amount of \$634,335.42 for a total amount of \$760,268.50.

**APPROVALS**

**11. Requesting Department**

  
James Johnson, Fleet Manager

**12. Department Head**

  
Jeff Clark, Fire Chief

**13. Procurement Officer**

  
Mike Mandt, CPPB

**14. City Manager**

  
Rich Dlugas

CITY OF CHANDLER PURCHASE CONTRACT  
PATROL VEHICLES  
AGREEMENT NO.: FD5-071-3422

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and PFVT Motors, Inc. an Arizona Corporation, 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 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 City Procurement Card.

**1.5. Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B

**2.1. Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable federal state and local 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. Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.12. Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. 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.
- 2.14. 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.
- 2.15. 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.
- 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 equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 36 month/36,000 miles, Basic and 60months/60,000 miles powertrain 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. The warranty term will begin when the vehicle is placed in service.
- 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 of vehicle with shall be made within 120 calendar days after receipt of a Contract Purchase Order (ARO).
  - 4.4. Liquidated Damages**
    - A. The dates for delivery of vehicles are critical to the City of Chandler. The delivery time specified in section 4.3 will be the expected delivery time and will be used in enforcing liquidated damages
    - B. The contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at

such rate as will insure full completion thereof within the time specified. It is expressly understood and agreed by, and between the Contractor and the City that the time for completion of the work described herein is a reasonable time for completion of the same, taking into consideration the average and usual industrial conditions prevailing and, nature of the work or site.

- C. The time limits for Completion, delivery of the vehicles as stated herein is of the essence of this Contract.
- D. CITY and CONTRACTOR recognize that time is of the essence of this Contract and that CITY will suffer financial loss if the vehicles are not completed and within the times specified herein, plus any extensions thereof allowed in accordance with the Contract Documents. CITY and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the vehicles are not completed and delivered on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY fifty dollars and no cents (**\$50.00**) per vehicle for each calendar day that expires after the time specified in Section 4.3 until the vehicles are complete and delivered to CITY.
- (1) City, may deduct any such monies due or to become due to the Contractor for failure to complete, deliver and test the vehicles on time.
  - (2) If the contract is not terminated, the Contractor shall continue performance and be liable to the City of Chandler for the liquidated damages until the vehicles are delivered in operational condition and/or services performed.
- E. In the event the City exercises its rights of termination, the Contractor shall be liable to the City for any excess costs, and in addition, for liquidated damages until such time the City may reasonably obtain delivery or performance of similar vehicles.
- F. Where applicable, and at the sole discretion of the City, the City reserves the right to accept (for stated periods of time) approved loaner materials as a temporary substitution for payment of liquidated damages by a contracted vendor found to be in default for delivery of specified, ordered products.
- G. It should be noted that the date for acceptance includes complete delivery, training, optimization of the vehicles, for each phase explicitly including all optional equipment and services, and all corrections of defects uncovered during testing, any additional test or re-tests that may be required and delivery of documentation and training.
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed one hundred twenty five thousand nine hundred and thirty three dollars and eight cents (\$125,933.08) 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 B, 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.
- 5.7. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** This contract is for a single purchase of the items listed in Exhibit A. The City may purchase additional units if mutually agreeable to both parties.
7. **USE OF THIS CONTRACT:**
- 7.1. 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.
- 7.2. **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.
- 7.3. **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](http://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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

## **8. CITY'S CONTRACTUAL REMEDIES:**

- 8.1. 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.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. 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.
- 8.4. 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.

## **9. TERMINATION:**

- 9.1 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.
- 9.2 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.

- 9.3. 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.
- 9.4. 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.
- 9.5. 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.
- 9.6. 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.
- 9.7. 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.
- 9.8. 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.
- 9.9. 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.
- 10. 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.
- 11. DISPUTE RESOLUTION:**
- 11.1 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

**11.2 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.

**11.4 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.

**12. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.

**13. 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	In the case of the CONTRACTOR
Department: <u>Fire</u>	Firm Name: <u>PFVT Motors</u>
Contact: <u>Jim Johnson</u>	Contact: <u>Chad welsh</u>
Mailing Address: <u>PO BOX 4008 MS 801</u>	Address: <u>9130 West Bell Road</u>
Physical Address: <u>975 East Armstrong Way</u>	City, State, Zip: <u>Peoria, AZ 85382</u>
City, State, Zip: <u>Chandler, AZ 85225</u>	Phone: <u>623-261-0570</u>
Phone: <u>480-782-2132</u>	<u>cwelsh@peoriaford.com</u>

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.

**14. GENERAL TERMS:**

**14.1. Entire Agreement:** This Contract, including all Exhibits 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.

**14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

**14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.

- 14.4. 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.
- 14.5. Conflict of Interest:**
- 14.5.1 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.
- 14.5.2 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).
- 14.5.3 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.
- 14.6. 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.
- 14.7. 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.
- 14.8. 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.
- 14.9. Award of Contract Contingent on Sale and Delivery of Bonds.** As the sole source for payment of the amounts due under the Contract, CITY will sell bonds and deposit the bond funds in a special fund to be used thereafter to pay progress payments and incidental expenses. To guard against the possibility that CITY will be unable to sell or deliver the bonds for any reason, the award of the Contract and the performance by CITY of its obligations under the Contract is conditioned upon the actual sale and delivery of CITY'S bonds in an amount which is sufficient to produce the amount required to meet the payments due under the Contract. CITY reserves the right to rescind the award of the Contract and terminate the Contract, if executed, without incurring expenses or liability for such termination or rescission if it is unable to provide funding through the sale of its bonds for any reasons. Notwithstanding an award of the Contract, CONTRACTOR should not incur any expense pursuant to this Contract until such time as CONTRACTOR has received notice from CITY that bond funds are held by CITY in an amount sufficient to pay the amounts due under the Contract.

**14.10. 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.

**14.11. Performance Bond**

Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance in such form and context as determined by CITY from a surety approved by CITY. Said bond shall be in a sum no less than one hundred (100%) of the Contract price.

CITY has the option to forfeit said bond if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

The Performance Bond will be reviewed annually and any increases in the contract amount will require bond to be increased and reissued.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_ day of \_\_\_\_\_, 2014.

FOR THE CITY OF CHANDLER

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

FOR THE CONTRACTOR

By: W-T Mall  
Signature

ATTEST: If Corporation

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_  
City Clerk

SEAL

**EXHIBIT A  
GENERAL REQUIREMENTS  
FD5-091-3422**

Contractor will be required to deliver vehicle to upfitter  
Contractor and up-fitter will be required to attend a pre-build conference.  
All cars shall be detailed prior to delivery.  
All cars must have PDI performed and PDI checklist included with delivery  
All vehicles must be delivered with a minimum 1/4 tank of fuel  
All vehicles must be delivered with MSO.

**EXHIBIT B  
PRICING AND SPECIFICATIONS**

Line Item	Description	Asst Chiefs	Unit Price	Extended Price
1	Ford Fusions S	2	\$ 17,259.34	\$ 34,518.68
2	Remote Keyless Entry w 2 additional Remotes and keys (total of 6 per vehicle) provide cost per vehicle	2	\$ 374.00	\$ 748.00
	<b>Total Vehicle</b>			\$ 35,266.68
	<b>Tire Tax</b>	2	\$ 5.00	\$ 10.00
	<b>Sales Tax%_____</b>			\$ 2,856.60
	<b>Grand total Vehicle</b>			\$ 38,133.28

Order Cut Off

TBD

Line Item	Description	LT's	Unit Price	Extended Price
1	Ford Police Interceptor Utility 3.7 ALWD, **	3	\$ 25,665.01	\$ 76,995.03
2	Left Hand Spot Light Unity LED 6"	3	\$ 345.00	\$ 1,035.00
3	Remote Keyless Entry w 2 additional Remotes and keys (total of 6 per vehicle) provide cost per vehicle	3	\$ 204.00	\$ 612.00
4	21B - Rear view camera	3	\$ 213.00	\$ 639.00
5	86P - Headlamp Housing	3	\$ 110.00	\$ 330.00
	Added by addendum 17A - Rear AirOk	3	\$ 532.00	\$ 1,596.00
	<b>Total Vehicle</b>			\$ 81,207.03
	<b>Tire Tax</b>	3	\$ 5.00	\$ 15.00
	<b>Sales Tax%_____</b>			\$ 6,577.77
	<b>Grand total Vehicle</b>			\$ 87,799.80

Order Cut Off

TBD

CITY OF CHANDLER PURCHASE CONTRACT  
PATROL VEHICLES  
AGREEMENT NO.: FD5-071-3422

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Midway Chevrolet Company, an Arizona Corporation, 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 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 or a City Procurement Card.

**1.5. Ordering Process.** Upon award of a contract by the City, any designated department may procure the specific product, equipment or material awarded by the issuance of a Contract Purchase Order to the appropriate CONTRACTOR. Each Contract Purchase Order must cite the correct Chandler contract number.

**2. GOODS AND MERCHANDISE TO BE PROVIDED:** CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit B, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B

**2.1. Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable federal state and local 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. Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 
- 2.12. Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.13. 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.
- 2.14. 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.
- 2.15. 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.
- 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 equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 36 month/36,000 miles full warranty and 60months/60,000 miles powertrain 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. The warranty term will begin when the vehicle is placed in service.
- 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 of vehicle with shall be made within 120 calendar days after receipt of a Contract Purchase Order (ARO).
  - 4.4. Liquidated Damages**
    - A. The dates for delivery of vehicles are critical to the City of Chandler. The delivery time specified in section 4.3 will be the expected delivery time and will be used in enforcing liquidated damages
    - B. The contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate as will insure full completion thereof within the time specified. It is expressly understood and

agreed by, and between the Contractor and the City that the time for completion of the work described herein is a reasonable time for completion of the same, taking into consideration the average and usual industrial conditions prevailing and, nature of the work or site.

- C. The time limits for Completion, delivery of the vehicles as stated herein is of the essence of this Contract.
- D. CITY and CONTRACTOR recognize that time is of the essence of this Contract and that CITY will suffer financial loss if the vehicles are not completed and within the times specified herein, plus any extensions thereof allowed in accordance with the Contract Documents. CITY and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the vehicles are not completed and delivered on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY fifty dollars and no cents (**\$50.00**) per vehicle for each calendar day that expires after the time specified in Section 4.3 until the vehicles are complete and delivered to CITY.
- (1) City may deduct any such monies due or to become due to the Contractor for failure to complete, deliver and test the vehicles on time.
  - (2) If the contract is not terminated, the Contractor shall continue performance and be liable to the City of Chandler for the liquidated damages until the vehicles are delivered in operational condition and/or services performed.
- E. In the event the City exercises its rights of termination, the Contractor shall be liable to the City for any excess costs, and in addition, for liquidated damages until such time the City may reasonably obtain delivery or performance of similar vehicles.
- F. Where applicable, and at the sole discretion of the City, the City reserves the right to accept (for stated periods of time) approved loaner materials as a temporary substitution for payment of liquidated damages by a contracted vendor found to be in default for delivery of specified, ordered products.
- G. It should be noted that the date for acceptance includes complete delivery, training, optimization of the vehicles, for each phase explicitly including all optional equipment and services, and all corrections of defects uncovered during testing, any additional test or re-tests that may be required and delivery of documentation and training.
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed six hundred and thirty four thousand three hundred and thirty five dollars and forty two cents (\$634,335.42) 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 B, 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.
- 5.7. **Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.
6. **TERM:** This contract is for a single purchase of the items listed in Exhibit A. The City may purchase additional units if mutually agreeable to both parties.
7. **USE OF THIS CONTRACT:**
- 7.1. 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.
- 7.2. **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.
- 7.3. **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](http://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.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

## 8. CITY'S CONTRACTUAL REMEDIES:

- 8.1. **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.
- 8.2. **Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. **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.
- 8.4. **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.

## 9. TERMINATION:

- 9.1 **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.

- 9.2 **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.

- 9.3. **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.

- 9.4. 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.
- 9.5. 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.
- 9.6. 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.
- 9.7. 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.
- 9.8. 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.
- 9.9. 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.
- 10. 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.
- 11. DISPUTE RESOLUTION:**
- 11.1 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.2 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.

- 11.4 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.
- 12. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.
- 13. 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.

<p>In the case of CITY          Department: Fire</p> <p>Contact: <u>Jim Johnson</u></p> <p>Mailing Address: <u>PO BOX 4008 MS 801</u></p> <p>Physical Address: <u>975 East Armstrong Way</u></p> <p>City, State, Zip: <u>Chandler, AZ 85225</u></p> <p>Phone: <u>480-782-2132</u></p>	<p>In the case of the CONTRACTOR</p> <p>Firm Name: <u>Midway Chevrolet Company</u></p> <p>Contact: <u>Gregg Ball</u></p> <p>Address: <u>2323 West bell Road</u></p> <p>City, State, Zip: <u>Phoenix, AZ 85023</u></p> <p>Phone: <u>602-760-3352</u>  <u>gball@vtaig.com</u></p>
---	---

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.

**14. GENERAL TERMS:**

- 14.1. Entire Agreement:** This Contract, including all Exhibits 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.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. 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.

**14.5. Conflict of Interest:**

**14.5.1 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.

**14.5.2 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).

**14.5.3 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.

**14.6. 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.

**14.7. 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.

**14.8. 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.

**14.9. Award of Contract Contingent on Sale and Delivery of Bonds.** As the sole source for payment of the amounts due under the Contract, CITY will sell bonds and deposit the bond funds in a special fund to be used thereafter to pay progress payments and incidental expenses. To guard against the possibility that CITY will be unable to sell or deliver the bonds for any reason, the award of the Contract and the performance by CITY of its obligations under the Contract is conditioned upon the actual sale and delivery of CITY'S bonds in an amount which is sufficient to produce the amount required to meet the payments due under the Contract. CITY reserves the right to rescind the award of the Contract and terminate the Contract, if executed, without incurring expenses or liability for such termination or rescission if it is unable to provide funding through the sale of its bonds for any reasons. Notwithstanding an award of the Contract, CONTRACTOR should not incur any expense pursuant to this Contract until such time as CONTRACTOR has received notice from CITY that bond funds are held by CITY in an amount sufficient to pay the amounts due under the Contract.

**14.10. 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.

**14.11. Performance Bond**

Within fifteen (15) days from the time a Contract is awarded, CONTRACTOR shall furnish fully executed Performance in such form and context as determined by CITY from a surety approved by CITY. Said bond shall be in a sum no less than one hundred (100%) of the Contract price.

CITY has the option to forfeit said bond if the Contract is terminated by the default of CONTRACTOR or if CITY determines that CONTRACTOR is unable or unwilling to complete the work as specified in the Contract Documents.

If the Contract schedule is not adhered to, and CITY determines that the work is unlikely to be completed within a reasonable time after the original target date, then CITY may terminate the Contract and collect the Performance Bond.

The Performance Bond will be reviewed annually and any increases in the contract amount will require bond to be increased and reissued.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_ day of \_\_\_\_\_, 2014.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

\_\_\_\_\_  
Mayor

By: Gregg Ball  
Signature

Approved As To Form:

ATTEST: If Corporation

\_\_\_\_\_  
City Attorney *[Signature]*

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_  
City Clerk

SEAL

**EXHIBIT A  
GENERAL REQUIREMENTS  
FD5-091-3422**

Contractor will be required to deliver vehicle to upfitter  
Contractor and up-fitter will be required to attend a pre-build conference.  
All cars shall be detailed prior to delivery.  
All cars must have PDI performed and PDI checklist included with delivery  
All vehicles must be delivered with a minimum 1/4 tank of fuel  
All vehicles must be delivered with MSO.

**EXHIBIT B  
PRICING AND SPECIFICATIONS**

Line Item	Description	PD Patrol	Unit Price	Extended Price
1	Chevrolet Caprice PPV Patrol - 9C1 **	6	\$ 23,517.51	\$ 141,105.06
2	Left Hand Spot Light Unity LED 6"	6	\$ 391.00	\$ 2,346.00
3	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 6 per vehicle) provide cost per vehicle	6	\$ 400.00	\$ 2,400.00
4	L77 - 6.0 V8 SFI	6	inc	
5	B42 - Mat Trunk	6	\$ 120.00	\$ 720.00
6	HCQ - Rear Sear Vinyl, includes 6A3 Heavy Duty Vinyl Floor Covering	6	\$ 93.50	\$ 561.00
7	SG8 - Full Size Spare	6	\$ 144.50	\$ 867.00
8	6N6 - Rear Door Locks and Handles Inop	6	inc	
9	6N5 - Rear Door Window Switches Inop	6	inc	
10	7X8 - Spotlamp Provision Driver	6	inc	
	<b>Total Vehicle</b>			\$ 147,999.06
	<b>Tire Tax</b>	6	\$ 5.00	\$ 30.00
	<b>Sales Tax%_____</b>			\$ 12,283.92
	<b>Grand total Vehicle</b>			\$ 160,312.98

Line Item	Description	PD Patrol	Unit Price	Extended Price
1	2015 Chevrolet Tahoe PPV Unmarked. Champagne Silver Metallic GWT, **	1	\$ 28,131.00	\$ 28,131.00
2	Preferred Equipment Group 1FL	1	Inc	
3	Left Hand Spot Light Unity LED 6"	1	\$ 510.00	\$ 510.00
4	Back up camera			
5	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 6 per vehicle) provide cost per vehicle	1	\$ 63.75	\$ 63.75
6	1LR - Brake System, City	1	?	\$ -
7	6J7 - Flasher System Headlamps and Tail Lamps	1	\$ 420.75	\$ 420.75
8	9G8 - Delete Daytime Running Lamps and Automatic Headlamps	1		
9	Wheel Covers	1	\$ 40.00	\$ 40.00
	<b>Total Vehicle</b>			\$ 29,165.50
	<b>Tire Tax</b>	1	\$ 5.00	\$ 5.00
	<b>Sales Tax%_____</b>			\$ 2,420.74
	<b>Grand total Vehicle</b>			\$ 31,591.24

Line Item	Description	PD Patrol Sgt	Unit Price	Extended Price
1	Chevrolet Tahoe PPV Patrol Sgt. Color White **	4	\$ 28,131.00	\$ 112,524.00
2	Preferred Equipment Group 1FL	4		
3	left Hand Spot Light Unity LED 6"	4	\$ 510.00	\$ 2,040.00
4	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 6 per vehicle) provide cost per vehicle	4	\$ 63.75	\$ 255.00
5	Rear A/C	4		
6	1LR City Brakes	4		
7	9G8 Delete Auto Headlamps and Running Lights	4		
8	6J7 Headlight/Taillight flashers	4	\$ 420.75	\$ 1,683.00
9	5T5 Cloth Front Seats	4	?	
10	B58 Floor Mat pkg.	4	no	
11	Back Up Camera	4		
12	Deactivate Door Locks	4	\$ 50.15	\$ 200.60
	<b>Total Vehicle</b>			\$ 116,702.60
	<b>Tire Tax</b>	4	\$ 5.00	\$ 20.00
	<b>Sales Tax%__</b>			\$ 9,686.32
	<b>Grand total Vehicle</b>			\$ 126,408.92

Line Item	Description	PD Patrol	Unit Price	Extended Price
1	Chevrolet Tahoe PPV Patrol. Color White **	8	\$ 28,131.00	\$ 225,048.00
2	Preferred Equipment Group 1FL	8		
3	Left Hand Spot Light Unity LED 6"	8	\$ 510.00	\$ 4,080.00
4	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 6 per vehicle) provide cost per vehicle	8	\$ 63.75	\$ 510.00
5	Rear A/C	8		
6	1LR City Brakes	8		
7	9G8 Delete Auto Headlamps and Running Lights	8		
8	6J7 Headlight/Taillight flashers	8	\$ 420.75	\$ 3,366.00
9	5T5 Cloth Front Seats	8		
10	Back Up Camera	8		
11	Deactivate Power Door Locks	8	\$ 50.15	\$ 401.20
	Total Vehicle			\$ 233,405.20
	Tire Tax	8	\$ 5.00	\$ 40.00
	Sales Tax%			\$ 19,372.63
	<b>Grand total Vehicle</b>			<b>\$ 252,817.83</b>

Line Item	Description	PD Patrol K9	Unit Price	Extended Price
1	Chevrolet Tahoe PPV Patrol K9 Color White **	2	\$ 28,131.00	\$ 56,262.00
2	Preferred Equipment Group 1FL	2		
3	Left Hand Spot Light Unity LED 6"	2	\$ 510.00	\$ 1,020.00
4	Remote Keyless Entry w 2 additional Remotes AMF and keys (total of 6 per vehicle) provide cost per vehicle	2	\$ 63.75	\$ 127.50
5	Rear A/C	2		
6	1LR City Brakes	2		
7	9G8 Delete Auto Headlamps and Running Lights	2		
8	6J7 Headlight/Taillight flashers	2	\$ 420.75	\$ 841.50
9	5T5 Cloth Front Seats	2		
10	B58 Floor Mat pkg.	2	No	
11	Back up Camera	2		
12	Deactivate Power Door Locks	2	\$ 50.15	\$ 100.30
	Total Vehicle			\$ 58,351.30
	Tire Tax	2	\$ 5.00	\$ 10.00
	Sales Tax%			\$ 4,843.16
	Grand total Vehicle			\$ 63,204.46