

BRIAN A. HATCH PLLC
ATTORNEY AT LAW

Add # 30
MAY 24 2007

May 24, 2007

**Sent via Electronic Mail
and by Hand Delivery**

Mayor and City Council
City of Chandler
55 N. Arizona Pl., Suite 301
Chandler, AZ 85225

RECEIVED

MAY 24 2007

CITY OF CHANDLER
CITY CLERK

Re: Request for Continuance of May 24, 2007 Agenda Item No. 30 – Extension for One Year to Cactus Towing for Police Towing Service – Contract #PD6-968-2247

Dear Mayor and Council:

I represent Auto Citi Towing in connection with its unsuccessful bid for the award of the above referenced contract, and in connection with the awarding of the above referenced contract to ACT Towing, L.L.C. d/b/a Cactus Towing on August 10, 2006. We respectfully request that a continuance of Agenda Item No. 30 be granted until the City Council Meeting scheduled for June 28, 2007. We believe that there are a number of serious issues to present that are important to your consideration of the contract renewal/extension. Those issues are briefly discussed below.

Unfortunately, I am unavailable to appear and present comments or items because I must attend my daughter's high school graduation ceremony scheduled for this evening. Similarly, the owner of Auto Citi Towing, Troy Myers, is unable to appear tonight because of a prior business and family commitment in California. Because the renewal date of the contract is September 1, 2007, the continuance as requested would cause no prejudicial delay.

The issues to be addressed include generally the background and identity of company actually undertaking the police tow contract and the history of overcharges and other questionable practices by such company or companies. In August 2006, the tow contract was granted to ACT Towing, LLC d/b/a Cactus Towing. Now as part of the extension, ACT has informed Chandler that it will not be doing business as Cactus Towing, but rather as All City Towing. ACT informed Chandler that it acquired the assets of Diversified Towing, Inc. last year. It is unclear, however what business and assets of Diversified were transferred to ACT. For example, public records maintained by the Arizona Corporation Commission show that the trade name "Cactus Towing" is still owned by Diversified Towing, Inc. ACT Towing, LLC was formed in June of 2004, while All City Towing, Inc. was incorporated in May of 1992. "All City Towing" is not a trade name designation but rather is a separate company from ACT Towing, LLC. So the issue presented is who is actually to perform services under the proposed extension.

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The historical pattern of overcharges and other questionable practices by these companies is a serious concern that merits closer inspection by the city. The city has had to deal with such concerns a number of times with the current contractor. For example, Cactus Towing had previously contracted with the city to charge a \$5.00 per day storage fee, but in the latter part of 2005 began to charge \$15.00 per day without disclosing such to the city or seeking a contract amendment. At the commencement of the current contract, ACT/Cactus was, in a significant number of cases, charging citizens double the contract rate for the towing fee and was including miscellaneous charges not allowed under the contract. Indeed, in the first month of the contract, September 2006, it appears that such overcharges or unauthorized charges occurred in at least 77 cases out of just over 400 tows – that is nearly 20% of the total tows.

The investigation of Cactus Towing and some of its principals by the Maricopa County Sheriff's Office for similar alleged acts is continuing. And most recently, a civil action was filed against various parties including Diversified Towing, Inc. and All City Towing, Inc. alleging the charging of unreasonable, unnecessary and unsubstantiated fees. The action was filed on May 11, 2007 by Infinity Insurance Company and was reported in the local news last week.

In order to allow for the full presentation and consideration of these and similar issues, we request that today's Agenda Item No. 30 be continued until the City Council Meeting on June 28, 2007.

Thank you for your consideration.

Best Regards,



Brian Hatch

Cc: Auto Citi Towing



PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number:

30

2. Council Meeting Date: May 24, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: April 10, 2007

THROUGH: CITY MANAGER

4. Requesting Department: Police

5. SUBJECT: CONTRACT #PD6-968-2247, Amendment Number 1, extension for one year thru August 31, 2008, to Cactus Towing for Police towing service, and assignment of the contract to ACT Towing LLC dba All City Towing

6. RECOMMENDATION: Approval of CONTRACT #PD6-968-2247, Amendment Number 1, extension for one year thru August 31, 2008, to Cactus Towing for Police towing service, and assignment of the contract to ACT Towing LLC dba All City Towing

7. HISTORICAL BACKGROUND/DISCUSSION: In December of 1995 the City began utilizing a contract for towing service. Contract towing service has proven to be a successful alternative to the previous rotation program. Some of the benefits provided by contract service include lower cost to the citizens, fewer customer complaints, and a streamlined workload for the Police Department. The Police Department utilizes the contract for vehicle towing, storage and impounding services including removal of wrecked vehicles, vehicles abandoned on city streets, vehicles left unattended in a traffic way, vehicles towed for evidentiary purposes, vehicles impounded, and vehicles towed due to an arrested driver.

8. EVALUATION PROCESS: On August 10, 2006, City Council awarded contract PD6-968-2247 for Police Towing Service to Cactus Towing. The contract was awarded for a one-year period through August 31, 2007, and contained provisions to extend up to four additional one-year periods. The contractor has agreed to extend one year with no price increases. Staff is satisfied with the service provided and recommends extending the contract.

Cactus Towing has informed staff that the name "Cactus Towing" will be replaced with "All City Towing".

9. FINANCIAL IMPLICATIONS: The vehicle owner will be responsible for payment of all fees with the exception of vehicles towed for evidentiary purposes. The City will pay costs associated with vehicles towed for evidentiary purposes.

10. PROPOSED MOTION: Move to approve CONTRACT #PD6-968-2247, Amendment Number 1, extension for one year thru August 1, 2008, to Cactus Towing for Police towing service, and assignment of the contract to ACT Towing LLC dba All City Towing

APPROVALS

11. Requesting Department

Matthew Christensen

Police Commander

12. Department Head

Sherry Kiyler

Police Chief

13. Buyer/Contract Admin.

Mike Mandt

Procurement Officer

14. City Manager

W. Mark Pentz

City Manager

AMENDMENT NUMBER 1,
TO AGREEMENT PD6-968-2247 BETWEEN THE CITY OF CHANDLER AND ACT
TOWING LLC DBA CACTUS TOWING.
FOR POLICE TOWING

This Amendment #1 to that certain Agreement Between the City Of Chandler (CITY) and ACT Towing LLC dba Cactus Towing (Contractor) for police towing dated August 10, 2006, is entered into this 19 day of April, 2007.

WHEREAS, the contract expires August 31, 2007;

WHEREAS, the contract has provisions to extend up to four additional terms of one year each

WHEREAS, the parties agree to extend the contract for one year

WHEREAS, the contractor has requested the contract be assigned to ACT Towing LLC dba All City Towing.

NOW THEREFORE, the parties agree as follows:

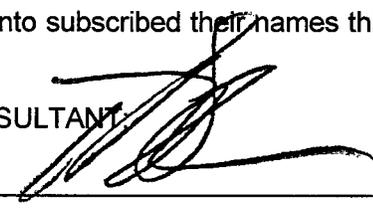
1. Section 7, Term, is hereby amended to extend the contract one year beginning September 1, 2007 terminating on August 31, 2008
2. Section 17.3 Assignment, the contract is hereby assigned from ACT Towing LLC dba Cactus Towing to ACT Towing LLC dba All City Towing.
3. All other terms and conditions of the above referenced Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 2007.

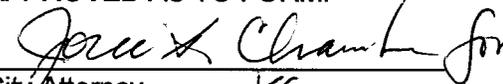
CITY OF CHANDLER:

By: _____
City Manager/designee

CONSULTANT:

By: 
Title: _____

APPROVED AS TO FORM:



City Attorney *JC*

ATTEST: (If corporation)

ATTEST:

City Clerk

Secretary

WITNESS: (If individual or
Partnership)

[SEAL]