



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

#27

2. Council Meeting Date:

September 20, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: August 24, 2007

THROUGH: CITY MANAGER

4. Requesting Department: Court

5. SUBJECT: Award a two-year contract with three one-year renewal options to Arizona Crash Course, Arizona Chapter National Safety Council and Arizona Traffic Schools, LLC.

6. RECOMMENDATION: Recommend awarding a two-year contract with three one-year renewal options to Arizona Crash Course, Arizona Chapter National Safety Council and Arizona Traffic Schools, LLC.

7. HISTORICAL BACKGROUND/DISCUSSION: Pursuant to A.R.S. 28-492, the Court shall select one or more providers of defensive driving classes. Chandler Municipal Court is recommending that a defensive driving contract be awarded to three (3) defensive driving schools due to the expansion of photo enforcement in the City of Chandler. With the installation of "speed on green" at up to twelve (12) intersections, an increase in the number of complaints processed is expected resulting in an increase in the number of individuals attending a defensive driving program.

8. EVALUATION PROCESS: The City issued a Request for Proposals for Defensive Driving/Traffic School services. The following vendors responded: Arizona Crash Course; Arizona Chapter National Safety Council; Arizona Traffic Schools; and LLC, Traffic 101.

The selection process was conducted in accordance with established City policies and procedures. The evaluation committee included the following:

Glenda Shackelford, Procurement Officer; Carla Boatner, Court Administrator; Faye Meyer, Deputy Court Administrator.

The evaluation committee recommends award to the above vendors due to their experience, qualifications, and understanding of defensive driving/traffic school requirements.

9. FINANCIAL IMPLICATIONS: The fees are paid by the defendants.

10. PROPOSED MOTION: Move to approve a two-year contract with three one-year renewal options to Arizona Crash Course, Arizona Chapter National Safety Council and Arizona Traffic Schools, LLC.

APPROVALS

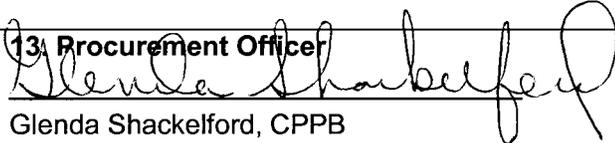
11. Requesting Department


Carla Boatner, Court Administrator

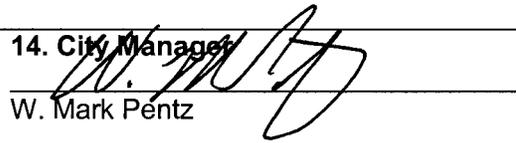
12. Department Head


Michael Traynor, Presiding City Magistrate

13. Procurement Officer


Glenda Shackelford, CPPB

14. City Manager


W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT
DEFENSIVE DRIVING / TRAFFIC SCHOOL SERVICES
CONTRACT NO.: MG8-785-2489**

THIS AGREEMENT is made and entered into this 1st day of October, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Arizona Chapter National Safety Council**, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

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

1. CONTRACT ADMINISTRATOR:

- 1.1. Contract Administrator.** CONTRACTOR shall act under the authority and approval of the City Magistrate / designee (Contract Administrator), to provide the services required by this Agreement.
 - 1.2. Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
 - 1.3. Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
 - 1.4. Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.
- 2. SCOPE OF WORK:** CONTRACTOR shall provide defensive driving/traffic school services as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.
- 2.1. 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.
 - 2.2. Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
 - 2.3. 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 CITY.
 - 2.4. Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- 3.1. Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to 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.
- 3.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
- 4. PRICE:** Costs for defendant's to attend traffic school is set by the presiding magistrate and defendant pays directly to the contractor.
- 4.1. Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2. Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the City.
- 4.3. Payment.** Refer to section 2.2.5 of technical specifications, exhibit A.
- 4.4. IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.5. Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
- 5. TERM:**
- 5.1.** The term of the Contract is two (2) year (s), commencing on the **October 1, 2007** and terminating on September 30, 2009, unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to three (3) additional terms of one year each.
- 5.2. Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the 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.
- 6 CITY'S CONTRACTUAL REMEDIES:**
- 6.1 Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract

Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

- 6.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 6.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 6.4 Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 6.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 6.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.
- 7. TERMINATION:**
- 7.1 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 for 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.
- 7.2 Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.
- 7.3 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 the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 7.4 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 CONTRACTOR or a

representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The 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 CONTRACTOR.

- 7.5 Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that 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 SUBCONTRACTOR 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 CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 7.6 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.
- 7.7 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. 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.
- 9. ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
- 10. Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
- 10.1. Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
- 10.2. CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.

- 10.3. Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.4. Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
- A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
- B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration

Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.

- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

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. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.

- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc.,

policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000

for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement 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 the CITY		In the case of the CONTRACTOR	
Contract Administrator:	<u>City Magistrate/designee</u>	Firm Name:	<u>Arizona Chapter National Safety Council</u>
Contact:	<u>Carla Boatner</u>	Contact:	<u>Pamela K. Najera</u>
Mailing Address:	<u>PO Box 4008 MS 302</u>	Address:	<u>1606 W. Indian School Road</u>
Physical Address:	<u>200 E. Chicago Street</u>	City, State, Zip	<u>Phoenix, AZ 85015</u>
City, State, Zip	<u>Chandler, AZ 85244-4008</u>	Phone:	<u>602-277-2338</u>
Phone:	<u>480-782-4741</u>	FAX:	<u></u>
FAX:	<u>480-782-4752</u>		<u></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. **CONFLICT OF INTEREST:**

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the 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 the CITY.

- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

- 14.3. **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.

15. **GENERAL TERMS:**

- 15.1. **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.

- 15.2. **Entire Agreement.** This Agreement, including Exhibits A and B 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 Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.5. **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 the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any 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 such changes.
- 15.6. **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.
- 15.7. **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.
- 15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of 20

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

Approved as to form:

City Attorney *J*

FOR THE CONTRACTOR

By: *[Signature]*
Signature

ATTEST: If Corporation

SEAL *[Signature]*
Secretary



Cathy J Smid

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

1. **REQUIREMENTS:**

The CONTRACTOR must be in full compliance with the Arizona Supreme Court Defensive Driving Program requirements and must be certified by the Arizona Supreme Court as an approved Defensive Driving Program Provider and remain certified throughout the Contract time period.

The CONTRACTOR may offer the option of an Arizona Supreme Court certified on-line or web class program. The CONTRACTOR will need to demonstrate ease of use for students, verification of attendance, consistent curriculum as offered through normal classroom attendance, and an authentication process for ensuring student identification.

The Chandler Municipal Court may allow defendants to attend other than CONTRACTOR's classes when the Court determines it appropriate. Commencing January 1, 2009, an eligible individual who elects to attend a Defensive Driving School may attend any Supreme Court certified Defensive Driving School that complies with the court automation and reporting requirements.

The CONTRACTOR's services shall include:

- 1.1 **Curriculum:** Class lesson plans and instruction will be consistent with the Supreme Court Defensive Driving Program certified curriculum, and shall also be in compliance with the Americans with Disabilities Act (ADA) as indicated by the requirements of the Arizona Supreme Court. An instructor's manual containing class lesson plans must be provided for each instructor and the class lesson plans will be updated as necessary to reflect changes in the law and modifications of accepted driving techniques and driving conditions in the City of Chandler.

The curriculum and class lesson plans will comply with all current State and City standards for defensive driving classes and will be updated, as needed, to reflect any changes. All changes in the curriculum must be approved in writing by the Arizona Supreme Court Defensive Driving Program and the Chandler Municipal Court prior to implementation.

- 1.2 **Instructors:** The CONTRACTOR shall utilize only instructors certified by the Arizona Supreme Court to conduct defensive driving school classes. Defensive Driving Program classes may not be taught by any person with a conflict of interest as defined in Section IIE of the "Certification Criteria for Defensive Driving Schools", except that in addition to the requirements of that section, law enforcement officers who have the authority to cite for civil traffic moving violations are also prohibited from teaching or presenting defensive driving classes to violators referred under any contract resulting from this RFP.

All instructors shall comply with all aspects of the Arizona Supreme Court certification criteria. The Chandler Municipal Court reserves the right to complete background checks on any instructors.

The CONTRACTOR shall ensure that each instructor has in his/her possession at each class, a copy of the current Instructor's Manual, the State of Arizona Vehicle Code and their Identification Card.

- 1.3 **Classes:** CONTRACTOR shall make classes available at a sufficient variety of times to meet the needs of the students with different schedules. CONTRACTOR shall develop a schedule to offer classes during weekdays, weekday evenings, and on weekends. CONTRACTOR shall submit to the Court Administrator by the 15th of each month, a schedule of classes offered in Maricopa County for the following month, which contains the class dates, time, location and instructor. All

classes conducted in addition to classes on the schedule, must be reported to Court Administration on the Monthly Program Report.

The CONTRACTOR shall adjust the schedule if it fails to provide sufficient class times to meet student needs or if the CONTRACTOR can document that the number of students requesting appointments during certain time periods does not justify continuing to offer appointments during those time periods.

The CONTRACTOR shall have back-up instructors prepared to teach a class in an emergency and a procedure in place to verify instructor attendance/punctuality.

The CONTRACTOR shall provide sufficient classes in Spanish, conducted by Spanish speaking instructors and all instruction materials including audiovisuals will be in Spanish. Classes shall be provided for the hearing impaired in a manner approved by the Court Administrator.

1.4 Class size: No class shall have more than 50 students registered or more than 50 students in attendance. The average attendance of all classes shall not exceed 45 attendees.

1.5 Fees: The Presiding Judge is responsible for determining the DDP provider fee. Effective January 1, 2007, the Provider(s) Fee shall be \$25.00 per student and is retained by the Provider(s) of the defensive driving program instruction. The Provider(s) will have full responsibility for the collection of the total fee of \$130.00; this includes: \$25.00 per student Provider(s) Fee; \$85.00 per student Chandler Municipal Court "Diversion" Fee; and the required Arizona Supreme Court "State" Fee as defined in ARS 28-3397, which is currently \$20.00 per student. The Provider(s) will have full responsibility for the remittance of the \$85.00 per student Diversion Fee and the \$20.00 per student State Fee. A refund of the Court's diversion fee shall be issued to any student who does not complete a class. The Chandler Municipal Court reserves the right to increase its Diversion fee.

The CONTRACTOR shall be required to input data and provide data in a format and methodology, in a manner set by the Court Administrator, compatible with the Chandler Municipal Court computer system to allow for the transfer of electronic information between the CONTRACTOR and the Chandler Municipal Court.

The CONTRACTOR shall be required to provide a weekly comparison summary report each Monday by 11:00 a.m. The summary report must contain information for the previous week's cases in a manner set by the Court Administrator.

Diversion fees shall be remitted to the Defensive Driving Program Coordinator or his/her designee on a weekly basis. Diversion fees for the previous week must be delivered each Thursday by 11:00 a.m. in a check or other method, as directed by the Court Administrator, payable to the Chandler Municipal Court. The CONTRACTOR must also provide a remittance report detailing Chandler Municipal Court's case number, student's name, date of class, and diversion fee amount. Remittances not received within forty-eight (48) working hours of the date and time due will result in immediate notification to the Arizona Supreme Court.

Failure to remit the Court's Diversion Fee in the prescribed manner can result in decertification, suspension and/or probation as noted in the Arizona Supreme Court Defensive Driving School Certification Criteria. Failure to remit the Court's Diversion Fee in the prescribed manner shall be deemed a material breach of the contract.

Public funds, i.e., the Municipal Court Diversion fee and the Arizona Supreme Court State fee, shall not be used for business operations and are due upon demand. The Chandler Municipal Court reserves the right to increase its Diversion Fee.

The CONTRACTOR shall accept full responsibility for any payment of Students' fees by personal checks and credit cards.

The Chandler Municipal Court will not reimburse the CONTRACTOR for any costs incurred as a result of the Defensive Driving Program.

- 1.6 Business Office:** The CONTRACTOR shall provide a central business location with local telephone accessibility in the State of Arizona. The hours will include a minimum of 8:00 a.m. to 5:00 p.m., Monday through Friday. All program and financial records will be accessible at this central location.
- 1.7 Locations:** The CONTRACTOR must request in writing, prior approval from the Court before conducting any classes in rooms or locations that are not on the current class schedule. Prior approval must be requested a minimum of three weeks before any students are enrolled in classes at the new room or location.

All classrooms and locations will comply with the Americans With Disabilities Act (ADA). Adequate classroom space and parking shall be provided for each student. Lighted parking will be provided for class locations with evening classes. All classrooms and locations will be in compliance with all State, County and City statutes, ordinances, codes and regulations.

- 1.8 Schedules:** When the Court requests a revised class schedule, the CONTRACTOR shall submit a revised schedule thirty (30) days prior to the effective date of the revision.
- 1.9 Screening for Determination of Eligibility:** Each student enrolled will be pre-screened for eligibility a minimum of two (2) times prior to attending the class. The student will be screened during registration and when a class roster is pulled.

During the initial contact with the student, the CONTRACTOR will request the student's name, date of birth, address, driver's license number and jurisdiction of the ticket. The violation code will be checked to determine if it is DDP eligible based on information from the Arizona Supreme Court and the Chandler Municipal Court. The CONTRACTOR will use the Defensive Driving Tracking Database to verify whether or not an individual has previously attended a DDP course in the State of Arizona within two years from their last violation date for complaint dismissal.

- 1.10 Registration/Enrollment:** The CONTRACTOR will ensure control of class attendance by checking the class roster or student registration form and all students' driver's licenses or other valid forms of identification each class day. The CONTRACTOR will require each student to sign an affidavit of eligibility. The instructor will sign the completed class roster to verify the accuracy of the information on it.

The CONTRACTOR shall provide a certificate of completion to each student completing the DDP course. The certificate will include the name of the student, date of the class, instructor signature and complaint number of the violation for which DDP was attended.

The primary provider(s) shall provide and pay for bond cards to be distributed to individuals receiving traffic violation citations. The cards must contain information concerning the offender's options in court and information concerning the defensive driving diversion option, including registration information, and the bond cards shall be replaced (updated) with any changes in total fees that may occur. The Chandler Municipal Court has the right and discretion to approve the information contained, and the final form of the bond card. A sample card shall be submitted to the Chandler Municipal Court for inspection prior to printing, and the CONTRACTOR shall provide cards at the times and in the quantities specified by the Court.

1.11 Assistance to Prospective Students and Students: The CONTRACTOR shall assist all individuals interested in enrolling in a class. This includes, but is not limited to, assistance to determine eligibility, information related to convenient class times and locations, other options explained on the class schedule, attendance verification and response to complaints related to any of the CONTRACTOR's services. In addition, the CONTRACTOR shall ensure that the necessary interpretations for enrollment, class instruction and class materials are provided.

1.12 Class Completion Documentation: Within forty-eight (48) hours after the completion of the class, the CONTRACTOR will submit a DDP completion class roster via an electronic interface in a Court-approved format. The report must be sent no later than 1:00 p.m. daily. The CONTRACTOR will ensure that all names of students are reported exactly as they appear on the student's citation unless the name on the student's driver's license is in any way different from the name on the citation, in which case the name on the driver's license will be noted on the completion data. The completion notices must include the following information: Chandler Municipal Court's case number, student's name, date of birth, complaint number, date of class completion, class location, drivers license number, court date, violation code and violation date. Within three business days, the CONTRACTOR will record the completion of each student in the Arizona Supreme Court Defensive Driving Program database.

1.13 Continuances: Upon request from an eligible violator, the CONTRACTOR will grant a one-time continuance for a period of exactly two weeks. Violators are eligible for one continuance if they meet all of the DDP eligibility criteria and request the continuance prior to their arraignment court date. The CONTRACTOR shall encourage all violators to attend a class prior to their first arraignment court date.

Continuances must be set for a Chandler Municipal Court working day. The CONTRACTOR will submit a complete list of continuances via an electronic interface in a Court-approved format. The report must be sent no later than 1:00 p.m. daily. The continuance list must contain the following information: Chandler Municipal Court's case number, student's name, date of birth, complaint number, new court date, drivers license number, old court date, violation code and violation date. The CONTRACTOR shall provide a document to the defendant that notes the new arraignment court date.

1.14 Out-of-State Classes: The Chandler Municipal Court will accept out-of-state attendance only if the class is arranged through the Court's primary Provider schools.

The CONTRACTOR is required to arrange for out-of-state classes upon request by verifying eligibility and directing the eligible Student to a program in his/her home state. The Arizona Supreme Court will provide each certified school with an out-of-state Defensive Driving Program directory.

The CONTRACTOR shall send a registration form to the Student that must be completed and returned with the class completion certificate and program fees. The out-of-state program will complete the section on the registration form certifying that the class meets time and curriculum requirements. The Student will also sign and return a notarized affidavit attesting to his/her eligibility.

1.15 Out-of-State Fees: The Student will submit the Arizona Supreme Court fee, the Court Diversion Fee and the CONTRACTOR's Administrative Fee. The CONTRACTOR's Administrative fee shall be provided in the proposal.

1.16 Out-of-State Reporting: The CONTRACTOR shall add the out-of-state completion record to the Defensive Driving Tracking System, report the completion with a special code to identify it as "out-of-state," and disburse the fees just as it does for local Students.

- 1.17 **Out-of-State Continuances:** To allow time for receipt and processing of out-of-state completions, the CONTRACTOR will extend the Court date for six weeks, instead of the normal two weeks for in-state attendance.
- 1.18 **Evaluations:** The CONTRACTOR shall comply with all requests to participate in the evaluation of the Defensive Driving Program. This may include the completion of class evaluation forms developed by the Arizona Supreme Court or Chandler Municipal Court, the use of pre-tests and post-tests developed by the Arizona Supreme Court or Chandler Municipal Court, and requests for program data.
- 1.19 **Program Reports and Notifications:** In a manner directed by the Court Administrator, the following program reports shall be submitted to the Court Administrator:
- a. By the fifteenth day of each month, a report (for the prior month) indicating:
 1. List of students who completed the previous month;
 2. List of students who registered the previous month and did not complete or have a future class date.
 3. Total fees remitted to Chandler Municipal Court.
 - b. Within five working days after an ineligible defendant completed a class, a report shall be sent to the Court Administrator on all documented pre-screening and if known, along with the reason the student was allowed entrance into the class.
 - c. When requested by the Court Administrator, copies of students' and instructor's evaluations of the class.
 - d. A written summary documenting ADA compliance by January 1st of each year.
 - e. The CONTRACTOR may be required to submit additional reports as requested by the Chandler Municipal Court.

When the following situations occur, the CONTRACTOR shall notify or facilitate immediate verbal notification:

- a. An individual or student complaint implies a harm, misinformation, or mistreatment of some nature. The CONTRACTOR will provide the individual or student with the name and telephone number of the Court Administrator. The CONTRACTOR shall provide a written explanation to the Court and/or complainant, as necessary.
- b. The CONTRACTOR determines that an individual is ineligible to attend class, but the individual believes s/he is eligible. The CONTRACTOR will provide the individual with the name and phone number of the Chandler Municipal Court Defensive Driving Program Coordinator and will contact the Court to provide the pre-screening information.
- c. The CONTRACTOR is notified by a student that his/her driver's license has been improperly suspended after completion of a class. The CONTRACTOR will direct the student to the Chandler Municipal Court Defensive Driving Program Coordinator and will contact the Court to provide the student's class attendance information.

The CONTRACTOR shall give immediate notice to the Court Administrator of (1) any change in the CONTRACTOR's management personnel performing the services provided pursuant to the RFP; (2) any occurrence or conditions that interfere with the full performance of the contract entered into as a result of the RFP requirements; and (3) any occurrence that results in, or could result in, injury or damages to persons receiving services or providing services pursuant to this RFP.

1.20 Maintenance and Accessibility of Records: The CONTRACTOR will maintain program records and reports in accordance with the contract entered into as a result of this RFP. All such records shall be maintained at an office within the boundaries of the State of Arizona. All student records shall be the property of the Chandler Municipal Court. If the contract is terminated or expires, all student records shall be sent to the Court on demand.

The CONTRACTOR's bookkeeping shall be kept in accordance with Generally Accepted Accounting Principles (GAAP). Accurate accounting is required for all financial reporting. The CONTRACTOR will retain all books, records and other relevant documents for five years after the Contract expiration or termination, or until the Court has audited same, whichever occurs first.

The CONTRACTOR's financial and programmatic records relating to the Contract will be subject to inspection by Chandler Municipal Court employees or qualified person(s) during normal business hours.

All student records shall be the property of the Chandler Municipal Court. If the contract is terminated or expires, all student records shall be sent to the Court Administrator.

1.21 Monitoring: Monitoring shall include review of Program and CONTRACTOR records, fiscal review, operations review, attendance at CONTRACTOR's meetings, class monitoring, telephone monitoring, contacts with students, and auditing review by the Chandler Municipal Court or the Arizona Supreme Court. Information gathered during monitoring or evaluating shall become the property of the Chandler Municipal Court and may be forwarded to the Arizona Supreme Court.

1.22 Audit: Within ninety days following the City's fiscal year end, which is June 30th of each year, the CONTRACTOR shall provide Court Administration with an independent Certified Public Accountant's evaluation of internal controls related to funds paid the City. This examination will be a full scope audit (not a review) of the accuracy of funds paid and a study and evaluation of internal controls related to funds paid the City and conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). The CONTRACTOR agrees to grant permission to the City Auditors to review all work papers retained by the CONTRACTOR's independent accountant.

The CONTRACTOR may also be subject to financial audits by the City.

EXHIBIT B

GENERAL PROPOSAL INSTRUCTION AND CONDITIONS OF RESULTING AGREEMENT

DEFINITIONS

Certain terminology and abbreviations appearing in this Request for Proposal are identified below:

CONTRACTOR - Synonymous with Proposer and Provider. Refers to the individual or business which offers a written response to this RFP.

City - For the purpose of this RFP, City is synonymous with Chandler Municipal Court.

Contract - Contract of Agreement resulting from this Request for Proposal.

Court - For the purpose of this RFP, Court is synonymous with Chandler Municipal Court.

DDP - Defensive Driving Program. A program created by A.R.S. 28-492 that permits the diversion and dismissal of a civil traffic moving violation if certain eligibility criterion are met. Also, the staff under the supervision of the Director of the Administrative Office of the Courts, Arizona Supreme Court, that provides administration and supervision of the program throughout the state.

Defensive Driving Program Coordinator - A member of the ~~City of~~ Chandler Municipal Court staff designated to serve as coordinator of the Defensive Driving Program.

Instructor - A person who is certified by the Supreme Court Defensive Driving Program to conduct DDP courses for a Supreme Court-certified Defensive Driving School.

Previous Week – For the purpose of this RFP, Previous Week consist of Saturday through Friday.

Proposer - Synonymous with CONTRACTOR and Provider. Refers to the individual or business which offers a written response to this RFP.

Proposers' Conference: An open meeting held prior to the date when bids are due during which interested parties may ask questions about the RFP and RFP process, and/or the Court's specifications or requirements.

Proposer Meetings: Meetings held during the bid evaluation for clarification of bid terms, to ensure understanding of RFP requirements and/or proposals, to discuss revisions to proposal terms to arrive at best and final offers, and to conduct formal presentations if the court requires.

Primary Provider: A certified defensive driving school selected by a court to provide traffic safety diversion class services to the court, in general, excluding other defensive driving schools from providing diversion classes the court's defendants.

Provider - Synonymous with CONTRACTOR and Provider. Refers to the individual or business which offers a written response to this RFP.

RFP - Request for Proposal.

Student - An individual or alleged violator who has enrolled in or has attended a DDP class.

EXHIBIT C

AFFIDAVIT OF ELIGIBILITY

Recommended* language for the Affidavit of Eligibility:

I affirm that I am eligible to attend a defensive driving course for citation dismissal. I understand my eligibility means that:

I have never attended an Arizona defensive driving school for traffic citation dismissal **OR** it has been more than 24 months from the date of the last citation on which I attended an Arizona defensive driving school for traffic citation dismissal.

My traffic violation did not result in a death or serious injury.

I am not currently registered to attend another defensive driving course within Arizona.

I understand that if I am found ineligible to attend a defensive driving course for citation dismissal, my citation may not be dismissed by the court and all fees paid to attend this course may not be refunded.

If I am found ineligible I will resolve my citation with the court of jurisdiction.

X _____
Student's Signature

_____/_____/_____
Date

* The above language is suggested, not required.

**CITY OF CHANDLER SERVICES AGREEMENT
DEFENSIVE DRIVING / TRAFFIC SCHOOL SERVICES
CONTRACT NO.: MG8-785-2489**

THIS AGREEMENT is made and entered into this 1st day of October, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Arizona Crash Course in Traffic Safety**, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

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

1. CONTRACT ADMINISTRATOR:

1.1. Contract Administrator. CONTRACTOR shall act under the authority and approval of the City Magistrate / designee (Contract Administrator), to provide the services required by this Agreement.

1.2. Key Staff. This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

1.3. Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

1.4. Subcontracts. CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide defensive driving/traffic school services as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

2.1. 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.

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

2.3. 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 CITY.

2.4. Compliance With Applicable Laws. CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to 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.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
4. **PRICE:** Costs for defendant's to attend traffic school is set by the presiding magistrate and defendant pays directly to the contractor.
- 4.1. **Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the City.
- 4.3. **Payment.** Refer to section 2.2.5 of technical specifications, exhibit A.
- 4.4. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.5. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
5. **TERM:**
 - 5.1. The term of the Contract is two (2) year (s), commencing on the October 1, 2007 and terminating on September 30, 2009, unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to three (3) additional terms of one year each.
 - 5.2. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the 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.
- 6 **CITY'S CONTRACTUAL REMEDIES:**
 - 6.1 **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract

Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

- 6.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 6.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 6.4 Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 6.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 6.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

7. TERMINATION:

- 7.1 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 for 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.
- 7.2 Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.
- 7.3 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 the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 7.4 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 CONTRACTOR or a

representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The 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 CONTRACTOR.

- 7.5 Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that 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 SUBCONTRACTOR 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 CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 7.6 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.
- 7.7 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. 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.
- 9. ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
- 10. Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
- 10.1. Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
- 10.2. CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.

- 10.3. Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.4. Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
- A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
- B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration

Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.

- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

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. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.

- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc.,

policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000

for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement 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 the CITY		In the case of the CONTRACTOR	
Contract Administrator:	<u>City Magistrate/designee</u>	Firm Name:	<u>Arizona Crash Course</u>
Contact:	<u>Carla Boatner</u>	Contact:	<u>Larry W. Clapick</u>
Mailing Address:	<u>PO Box 4008 MS 302</u>	Address:	<u>955 West Chandler Blvd. #9</u>
Physical Address:	<u>200 E. Chicago Street</u>	City, State, Zip	<u>Chandler, AZ 85225</u>
City, State, Zip	<u>Chandler, AZ 85244-4008</u>	Phone:	<u>480-857-4740</u>
Phone:	<u>480-782-4741</u>	FAX:	<u>480-857-4739</u>
FAX:	<u>480-782-4752</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. **CONFLICT OF INTEREST:**

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the 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 the CITY.
- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **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.

15. **GENERAL TERMS:**

- 15.1. **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.

- 15.2. **Entire Agreement.** This Agreement, including Exhibits A and B 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 Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.5. **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 the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any 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 such changes.
- 15.6. **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.
- 15.7. **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.
- 15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 24TH day of August 20 07 .

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: Jerry W. Clapnet
Signature

ATTEST:

ATTEST: If Corporation

SEAL

City Clerk

Natalie S. Clapnick
Secretary

Approved as to form:

City Attorney jc

EXHIBIT A TECHNICAL SPECIFICATIONS

1. **REQUIREMENTS:**

The CONTRACTOR must be in full compliance with the Arizona Supreme Court Defensive Driving Program requirements and must be certified by the Arizona Supreme Court as an approved Defensive Driving Program Provider and remain certified throughout the Contract time period.

The CONTRACTOR may offer the option of an Arizona Supreme Court certified on-line or web class program. The CONTRACTOR will need to demonstrate ease of use for students, verification of attendance, consistent curriculum as offered through normal classroom attendance, and an authentication process for ensuring student identification.

The Chandler Municipal Court may allow defendants to attend other than CONTRACTOR's classes when the Court determines it appropriate. Commencing January 1, 2009, an eligible individual who elects to attend a Defensive Driving School may attend any Supreme Court certified Defensive Driving School that complies with the court automation and reporting requirements.

The CONTRACTOR's services shall include:

- 1.1 **Curriculum:** Class lesson plans and instruction will be consistent with the Supreme Court Defensive Driving Program certified curriculum, and shall also be in compliance with the Americans with Disabilities Act (ADA) as indicated by the requirements of the Arizona Supreme Court. An instructor's manual containing class lesson plans must be provided for each instructor and the class lesson plans will be updated as necessary to reflect changes in the law and modifications of accepted driving techniques and driving conditions in the City of Chandler.

The curriculum and class lesson plans will comply with all current State and City standards for defensive driving classes and will be updated, as needed, to reflect any changes. All changes in the curriculum must be approved in writing by the Arizona Supreme Court Defensive Driving Program and the Chandler Municipal Court prior to implementation.

- 1.2 **Instructors:** The CONTRACTOR shall utilize only instructors certified by the Arizona Supreme Court to conduct defensive driving school classes. Defensive Driving Program classes may not be taught by any person with a conflict of interest as defined in Section IIE of the "Certification Criteria for Defensive Driving Schools", except that in addition to the requirements of that section, law enforcement officers who have the authority to cite for civil traffic moving violations are also prohibited from teaching or presenting defensive driving classes to violators referred under any contract resulting from this RFP.

All instructors shall comply with all aspects of the Arizona Supreme Court certification criteria. The Chandler Municipal Court reserves the right to complete background checks on any instructors.

The CONTRACTOR shall ensure that each instructor has in his/her possession at each class, a copy of the current Instructor's Manual, the State of Arizona Vehicle Code and their Identification Card.

- 1.3 **Classes:** CONTRACTOR shall make classes available at a sufficient variety of times to meet the needs of the students with different schedules. CONTRACTOR shall develop a schedule to offer classes during weekdays, weekday evenings, and on weekends. CONTRACTOR shall submit to the Court Administrator by the 15th of each month, a schedule of classes offered in Maricopa County for the following month, which contains the class dates, time, location and instructor. All

classes conducted in addition to classes on the schedule, must be reported to Court Administration on the Monthly Program Report.

The CONTRACTOR shall adjust the schedule if it fails to provide sufficient class times to meet student needs or if the CONTRACTOR can document that the number of students requesting appointments during certain time periods does not justify continuing to offer appointments during those time periods.

The CONTRACTOR shall have back-up instructors prepared to teach a class in an emergency and a procedure in place to verify instructor attendance/punctuality.

The CONTRACTOR shall provide sufficient classes in Spanish, conducted by Spanish speaking instructors and all instruction materials including audiovisuals will be in Spanish. Classes shall be provided for the hearing impaired in a manner approved by the Court Administrator.

1.4 Class size: No class shall have more than 50 students registered or more than 50 students in attendance. The average attendance of all classes shall not exceed 45 attendees.

1.5 Fees: The Presiding Judge is responsible for determining the DDP provider fee. Effective January 1, 2007, the Provider(s) Fee shall be \$25.00 per student and is retained by the Provider(s) of the defensive driving program instruction. The Provider(s) will have full responsibility for the collection of the total fee of \$130.00; this includes: \$25.00 per student Provider(s) Fee; \$85.00 per student Chandler Municipal Court "Diversion" Fee; and the required Arizona Supreme Court "State" Fee as defined in ARS 28-3397, which is currently \$20.00 per student. The Provider(s) will have full responsibility for the remittance of the \$85.00 per student Diversion Fee and the \$20.00 per student State Fee. A refund of the Court's diversion fee shall be issued to any student who does not complete a class. The Chandler Municipal Court reserves the right to increase its Diversion fee.

The CONTRACTOR shall be required to input data and provide data in a format and methodology, in a manner set by the Court Administrator, compatible with the Chandler Municipal Court computer system to allow for the transfer of electronic information between the CONTRACTOR and the Chandler Municipal Court.

The CONTRACTOR shall be required to provide a weekly comparison summary report each Monday by 11:00 a.m. The summary report must contain information for the previous week's cases in a manner set by the Court Administrator.

Diversion fees shall be remitted to the Defensive Driving Program Coordinator or his/her designee on a weekly basis. Diversion fees for the previous week must be delivered each Thursday by 11:00 a.m. in a check or other method, as directed by the Court Administrator, payable to the Chandler Municipal Court. The CONTRACTOR must also provide a remittance report detailing Chandler Municipal Court's case number, student's name, date of class, and diversion fee amount. Remittances not received within forty-eight (48) working hours of the date and time due will result in immediate notification to the Arizona Supreme Court.

Failure to remit the Court's Diversion Fee in the prescribed manner can result in decertification, suspension and/or probation as noted in the Arizona Supreme Court Defensive Driving School Certification Criteria. Failure to remit the Court's Diversion Fee in the prescribed manner shall be deemed a material breach of the contract.

Public funds, i.e., the Municipal Court Diversion fee and the Arizona Supreme Court State fee, shall not be used for business operations and are due upon demand. The Chandler Municipal Court reserves the right to increase its Diversion Fee.

The CONTRACTOR shall accept full responsibility for any payment of Students' fees by personal checks and credit cards.

The Chandler Municipal Court will not reimburse the CONTRACTOR for any costs incurred as a result of the Defensive Driving Program.

- 1.6 Business Office:** The CONTRACTOR shall provide a central business location with local telephone accessibility in the State of Arizona. The hours will include a minimum of 8:00 a.m. to 5:00 p.m., Monday through Friday. All program and financial records will be accessible at this central location.
- 1.7 Locations:** The CONTRACTOR must request in writing, prior approval from the Court before conducting any classes in rooms or locations that are not on the current class schedule. Prior approval must be requested a minimum of three weeks before any students are enrolled in classes at the new room or location.

All classrooms and locations will comply with the Americans With Disabilities Act (ADA). Adequate classroom space and parking shall be provided for each student. Lighted parking will be provided for class locations with evening classes. All classrooms and locations will be in compliance with all State, County and City statutes, ordinances, codes and regulations.

- 1.8 Schedules:** When the Court requests a revised class schedule, the CONTRACTOR shall submit a revised schedule thirty (30) days prior to the effective date of the revision.
- 1.9 Screening for Determination of Eligibility:** Each student enrolled will be pre-screened for eligibility a minimum of two (2) times prior to attending the class. The student will be screened during registration and when a class roster is pulled.

During the initial contact with the student, the CONTRACTOR will request the student's name, date of birth, address, driver's license number and jurisdiction of the ticket. The violation code will be checked to determine if it is DDP eligible based on information from the Arizona Supreme Court and the Chandler Municipal Court. The CONTRACTOR will use the Defensive Driving Tracking Database to verify whether or not an individual has previously attended a DDP course in the State of Arizona within two years from their last violation date for complaint dismissal.

- 1.10 Registration/Enrollment:** The CONTRACTOR will ensure control of class attendance by checking the class roster or student registration form and all students' driver's licenses or other valid forms of identification each class day. The CONTRACTOR will require each student to sign an affidavit of eligibility. The instructor will sign the completed class roster to verify the accuracy of the information on it.

The CONTRACTOR shall provide a certificate of completion to each student completing the DDP course. The certificate will include the name of the student, date of the class, instructor signature and complaint number of the violation for which DDP was attended.

The primary provider(s) shall provide and pay for bond cards to be distributed to individuals receiving traffic violation citations. The cards must contain information concerning the offender's options in court and information concerning the defensive driving diversion option, including registration information, and the bond cards shall be replaced (updated) with any changes in total fees that may occur. The Chandler Municipal Court has the right and discretion to approve the information contained, and the final form of the bond card. A sample card shall be submitted to the Chandler Municipal Court for inspection prior to printing, and the CONTRACTOR shall provide cards at the times and in the quantities specified by the Court.

1.11 Assistance to Prospective Students and Students: The CONTRACTOR shall assist all individuals interested in enrolling in a class. This includes, but is not limited to, assistance to determine eligibility, information related to convenient class times and locations, other options explained on the class schedule, attendance verification and response to complaints related to any of the CONTRACTOR's services. In addition, the CONTRACTOR shall ensure that the necessary interpretations for enrollment, class instruction and class materials are provided.

1.12 Class Completion Documentation: Within forty-eight (48) hours after the completion of the class, the CONTRACTOR will submit a DDP completion class roster via an electronic interface in a Court-approved format. The report must be sent no later than 1:00 p.m. daily. The CONTRACTOR will ensure that all names of students are reported exactly as they appear on the student's citation unless the name on the student's driver's license is in any way different from the name on the citation, in which case the name on the driver's license will be noted on the completion data. The completion notices must include the following information: Chandler Municipal Court's case number, student's name, date of birth, complaint number, date of class completion, class location, drivers license number, court date, violation code and violation date. Within three business days, the CONTRACTOR will record the completion of each student in the Arizona Supreme Court Defensive Driving Program database.

1.13 Continuances: Upon request from an eligible violator, the CONTRACTOR will grant a one-time continuance for a period of exactly two weeks. Violators are eligible for one continuance if they meet all of the DDP eligibility criteria and request the continuance prior to their arraignment court date. The CONTRACTOR shall encourage all violators to attend a class prior to their first arraignment court date.

Continuances must be set for a Chandler Municipal Court working day. The CONTRACTOR will submit a complete list of continuances via an electronic interface in a Court-approved format. The report must be sent no later than 1:00 p.m. daily. The continuance list must contain the following information: Chandler Municipal Court's case number, student's name, date of birth, complaint number, new court date, drivers license number, old court date, violation code and violation date. The CONTRACTOR shall provide a document to the defendant that notes the new arraignment court date.

1.14 Out-of-State Classes: The Chandler Municipal Court will accept out-of-state attendance only if the class is arranged through the Court's primary Provider schools.

The CONTRACTOR is required to arrange for out-of-state classes upon request by verifying eligibility and directing the eligible Student to a program in his/her home state. The Arizona Supreme Court will provide each certified school with an out-of-state Defensive Driving Program directory.

The CONTRACTOR shall send a registration form to the Student that must be completed and returned with the class completion certificate and program fees. The out-of-state program will complete the section on the registration form certifying that the class meets time and curriculum requirements. The Student will also sign and return a notarized affidavit attesting to his/her eligibility.

1.15 Out-of-State Fees: The Student will submit the Arizona Supreme Court fee, the Court Diversion Fee and the CONTRACTOR's Administrative Fee. The CONTRACTOR's Administrative fee shall be provided in the proposal.

1.16 Out-of-State Reporting: The CONTRACTOR shall add the out-of-state completion record to the Defensive Driving Tracking System, report the completion with a special code to identify it as "out-of-state," and disburse the fees just as it does for local Students.

- 1.17 Out-of-State Continuances:** To allow time for receipt and processing of out-of-state completions, the CONTRACTOR will extend the Court date for six weeks, instead of the normal two weeks for in-state attendance.
- 1.18 Evaluations:** The CONTRACTOR shall comply with all requests to participate in the evaluation of the Defensive Driving Program. This may include the completion of class evaluation forms developed by the Arizona Supreme Court or Chandler Municipal Court, the use of pre-tests and post-tests developed by the Arizona Supreme Court or Chandler Municipal Court, and requests for program data.
- 1.19 Program Reports and Notifications:** In a manner directed by the Court Administrator, the following program reports shall be submitted to the Court Administrator:
- a. By the fifteenth day of each month, a report (for the prior month) indicating:
 1. List of students who completed the previous month;
 2. List of students who registered the previous month and did not complete or have a future class date.
 3. Total fees remitted to Chandler Municipal Court.
 - b. Within five working days after an ineligible defendant completed a class, a report shall be sent to the Court Administrator on all documented pre-screening and if known, along with the reason the student was allowed entrance into the class.
 - c. When requested by the Court Administrator, copies of students' and instructor's evaluations of the class.
 - d. A written summary documenting ADA compliance by January 1st of each year.
 - e. The CONTRACTOR may be required to submit additional reports as requested by the Chandler Municipal Court.

When the following situations occur, the CONTRACTOR shall notify or facilitate immediate verbal notification:

- a. An individual or student complaint implies a harm, misinformation, or mistreatment of some nature. The CONTRACTOR will provide the individual or student with the name and telephone number of the Court Administrator. The CONTRACTOR shall provide a written explanation to the Court and/or complainant, as necessary.
- b. The CONTRACTOR determines that an individual is ineligible to attend class, but the individual believes s/he is eligible. The CONTRACTOR will provide the individual with the name and phone number of the Chandler Municipal Court Defensive Driving Program Coordinator and will contact the Court to provide the pre-screening information.
- c. The CONTRACTOR is notified by a student that his/her driver's license has been improperly suspended after completion of a class. The CONTRACTOR will direct the student to the Chandler Municipal Court Defensive Driving Program Coordinator and will contact the Court to provide the student's class attendance information.

The CONTRACTOR shall give immediate notice to the Court Administrator of (1) any change in the CONTRACTOR's management personnel performing the services provided pursuant to the RFP; (2) any occurrence or conditions that interfere with the full performance of the contract entered into as a result of the RFP requirements; and (3) any occurrence that results in, or could result in, injury or damages to persons receiving services or providing services pursuant to this RFP.

1.20 Maintenance and Accessibility of Records: The CONTRACTOR will maintain program records and reports in accordance with the contract entered into as a result of this RFP. All such records shall be maintained at an office within the boundaries of the State of Arizona. All student records shall be the property of the Chandler Municipal Court. If the contract is terminated or expires, all student records shall be sent to the Court on demand.

The CONTRACTOR's bookkeeping shall be kept in accordance with Generally Accepted Accounting Principles (GAAP). Accurate accounting is required for all financial reporting. The CONTRACTOR will retain all books, records and other relevant documents for five years after the Contract expiration or termination, or until the Court has audited same, whichever occurs first.

The CONTRACTOR's financial and programmatic records relating to the Contract will be subject to inspection by Chandler Municipal Court employees or qualified person(s) during normal business hours.

All student records shall be the property of the Chandler Municipal Court. If the contract is terminated or expires, all student records shall be sent to the Court Administrator.

1.21 Monitoring: Monitoring shall include review of Program and CONTRACTOR records, fiscal review, operations review, attendance at CONTRACTOR's meetings, class monitoring, telephone monitoring, contacts with students, and auditing review by the Chandler Municipal Court or the Arizona Supreme Court. Information gathered during monitoring or evaluating shall become the property of the Chandler Municipal Court and may be forwarded to the Arizona Supreme Court.

1.22 Audit: Within ninety days following the City's fiscal year end, which is June 30th of each year, the CONTRACTOR shall provide Court Administration with an independent Certified Public Accountant's evaluation of internal controls related to funds paid the City. This examination will be a full scope audit (not a review) of the accuracy of funds paid and a study and evaluation of internal controls related to funds paid the City and conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). The CONTRACTOR agrees to grant permission to the City Auditors to review all work papers retained by the CONTRACTOR's independent accountant.

The CONTRACTOR may also be subject to financial audits by the City.

EXHIBIT B

GENERAL PROPOSAL INSTRUCTION AND CONDITIONS OF RESULTING AGREEMENT

DEFINITIONS

Certain terminology and abbreviations appearing in this Request for Proposal are identified below:

CONTRACTOR - Synonymous with Proposer and Provider. Refers to the individual or business which offers a written response to this RFP.

City - For the purpose of this RFP, City is synonymous with Chandler Municipal Court.

Contract - Contract of Agreement resulting from this Request for Proposal.

Court - For the purpose of this RFP, Court is synonymous with Chandler Municipal Court.

DDP - Defensive Driving Program. A program created by A.R.S. 28-492 that permits the diversion and dismissal of a civil traffic moving violation if certain eligibility criterion are met. Also, the staff under the supervision of the Director of the Administrative Office of the Courts, Arizona Supreme Court, that provides administration and supervision of the program throughout the state.

Defensive Driving Program Coordinator - A member of the City of Chandler Municipal Court staff designated to serve as coordinator of the Defensive Driving Program.

Instructor - A person who is certified by the Supreme Court Defensive Driving Program to conduct DDP courses for a Supreme Court-certified Defensive Driving School.

Previous Week – For the purpose of this RFP, Previous Week consist of Saturday through Friday.

Proposer - Synonymous with CONTRACTOR and Provider. Refers to the individual or business which offers a written response to this RFP.

Proposers' Conference: An open meeting held prior to the date when bids are due during which interested parties may ask questions about the RFP and RFP process, and/or the Court's specifications or requirements.

Proposer Meetings: Meetings held during the bid evaluation for clarification of bid terms, to ensure understanding of RFP requirements and/or proposals, to discuss revisions to proposal terms to arrive at best and final offers, and to conduct formal presentations if the court requires.

Primary Provider: A certified defensive driving school selected by a court to provide traffic safety diversion class services to the court, in general, excluding other defensive driving schools from providing diversion classes the court's defendants.

Provider - Synonymous with CONTRACTOR and Provider. Refers to the individual or business which offers a written response to this RFP.

RFP - Request for Proposal.

Student - An individual or alleged violator who has enrolled in or has attended a DDP class.

EXHIBIT C

AFFIDAVIT OF ELIGIBILITY

Recommended* language for the Affidavit of Eligibility:

I affirm that I am eligible to attend a defensive driving course for citation dismissal. I understand my eligibility means that:

I have never attended an Arizona defensive driving school for traffic citation dismissal **OR** it has been more than 24 months from the date of the last citation on which I attended an Arizona defensive driving school for traffic citation dismissal.

My traffic violation did not result in a death or serious injury.

I am not currently registered to attend another defensive driving course within Arizona.

I understand that if I am found ineligible to attend a defensive driving course for citation dismissal, my citation may not be dismissed by the court and all fees paid to attend this course may not be refunded.

If I am found ineligible I will resolve my citation with the court of jurisdiction.

X _____
Student's Signature

_____/_____/_____
Date

* The above language is suggested, not required.

**CITY OF CHANDLER SERVICES AGREEMENT
DEFENSIVE DRIVING / TRAFFIC SCHOOL SERVICES
CONTRACT NO.: MG8-785-2489**

THIS AGREEMENT is made and entered into this 1st day of October, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and **Arizona Traffic Schools, LLC**, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

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

1. CONTRACT ADMINISTRATOR:

1.1. Contract Administrator. CONTRACTOR shall act under the authority and approval of the City Magistrate / designee (Contract Administrator), to provide the services required by this Agreement.

1.2. Key Staff. This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

1.3. Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

1.4. Subcontracts. CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide defensive driving/traffic school services as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

2.1. 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.

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

2.3. 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 CITY.

2.4. Compliance With Applicable Laws. CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to 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.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
4. **PRICE:** Costs for defendant's to attend traffic school is set by the presiding magistrate and defendant pays directly to the contractor.
- 4.1. **Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to the City.
- 4.3. **Payment.** Refer to section 2.2.5 of technical specifications, exhibit A.
- 4.4. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.5. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
5. **TERM:**
 - 5.1. The term of the Contract is two (2) year (s), commencing on the October 1, 2007 and terminating on September 30, 2009, unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to three (3) additional terms of one year each.
 - 5.2. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the 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.
- 6 **CITY'S CONTRACTUAL REMEDIES:**
 - 6.1 **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract

Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

- 6.2 Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 6.3** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 6.4 Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 6.5 Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 6.6 Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.
- 7. TERMINATION:**
- 7.1 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 for 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.
- 7.2 Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.
- 7.3 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 the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 7.4 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 CONTRACTOR or a

representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The 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 CONTRACTOR.

- 7.5 Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that 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 SUBCONTRACTOR 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 CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 7.6 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.
- 7.7 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. 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.
- 9. ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
- 10. Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
- 10.1. Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
- 10.2. CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.

- 10.3. Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.4. Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
- A. Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
- B. Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration

Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.

- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

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. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.

- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc.,

policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000

for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement 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 the CITY		In the case of the CONTRACTOR	
Contract Administrator:	<u>City Magistrate/designee</u>	Firm Name:	<u>Arizona Traffic Schools, LLC</u>
Contact:	<u>Carla Boatner</u>	Contact:	<u>David A. Worley</u>
Mailing Address:	<u>PO Box 4008 MS 302</u>	Address:	<u>3160 N. Az Ave, Suite #106</u>
Physical Address:	<u>200 E. Chicago Street</u>	City, State, Zip	<u>Chandler, AZ 85225</u>
City, State, Zip	<u>Chandler, AZ 85244-4008</u>	Phone:	<u>480-899-9834</u>
Phone:	<u>480-782-4741</u>	FAX:	<u>480-857-4050</u>
FAX:	<u>480-782-4752</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. **CONFLICT OF INTEREST:**

14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the 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 the CITY.

14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. **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.

15. **GENERAL TERMS:**

15.1. **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.

- 15.2. **Entire Agreement.** This Agreement, including Exhibits A and B 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 Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.4. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.5. **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 the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any 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 such changes.
- 15.6. **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.
- 15.7. **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.
- 15.8. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of 20 .

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: *Dee A. W...*
Signature

ATTEST:

ATTEST: If Corporation

City Clerk

SEAL

Robert A. Summ...
Secretary

Approved as to form:

City Attorney *[Signature]*

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

1. REQUIREMENTS:

The CONTRACTOR must be in full compliance with the Arizona Supreme Court Defensive Driving Program requirements and must be certified by the Arizona Supreme Court as an approved Defensive Driving Program Provider and remain certified throughout the Contract time period.

The CONTRACTOR may offer the option of an Arizona Supreme Court certified on-line or web class program. The CONTRACTOR will need to demonstrate ease of use for students, verification of attendance, consistent curriculum as offered through normal classroom attendance, and an authentication process for ensuring student identification.

The Chandler Municipal Court may allow defendants to attend other than CONTRACTOR's classes when the Court determines it appropriate. Commencing January 1, 2009, an eligible individual who elects to attend a Defensive Driving School may attend any Supreme Court certified Defensive Driving School that complies with the court automation and reporting requirements.

The CONTRACTOR's services shall include:

- 1.1 Curriculum:** Class lesson plans and instruction will be consistent with the Supreme Court Defensive Driving Program certified curriculum, and shall also be in compliance with the Americans with Disabilities Act (ADA) as indicated by the requirements of the Arizona Supreme Court. An instructor's manual containing class lesson plans must be provided for each instructor and the class lesson plans will be updated as necessary to reflect changes in the law and modifications of accepted driving techniques and driving conditions in the City of Chandler.

The curriculum and class lesson plans will comply with all current State and City standards for defensive driving classes and will be updated, as needed, to reflect any changes. All changes in the curriculum must be approved in writing by the Arizona Supreme Court Defensive Driving Program and the Chandler Municipal Court prior to implementation.

- 1.2 Instructors:** The CONTRACTOR shall utilize only instructors certified by the Arizona Supreme Court to conduct defensive driving school classes. Defensive Driving Program classes may not be taught by any person with a conflict of interest as defined in Section IIE of the "Certification Criteria for Defensive Driving Schools", except that in addition to the requirements of that section, law enforcement officers who have the authority to cite for civil traffic moving violations are also prohibited from teaching or presenting defensive driving classes to violators referred under any contract resulting from this RFP.

All instructors shall comply with all aspects of the Arizona Supreme Court certification criteria. The Chandler Municipal Court reserves the right to complete background checks on any instructors.

The CONTRACTOR shall ensure that each instructor has in his/her possession at each class, a copy of the current Instructor's Manual, the State of Arizona Vehicle Code and their Identification Card.

- 1.3 Classes:** CONTRACTOR shall make classes available at a sufficient variety of times to meet the needs of the students with different schedules. CONTRACTOR shall develop a schedule to offer classes during weekdays, weekday evenings, and on weekends. CONTRACTOR shall submit to the Court Administrator by the 15th of each month, a schedule of classes offered in Maricopa County for the following month, which contains the class dates, time, location and instructor. All

classes conducted in addition to classes on the schedule, must be reported to Court Administration on the Monthly Program Report.

The CONTRACTOR shall adjust the schedule if it fails to provide sufficient class times to meet student needs or if the CONTRACTOR can document that the number of students requesting appointments during certain time periods does not justify continuing to offer appointments during those time periods.

The CONTRACTOR shall have back-up instructors prepared to teach a class in an emergency and a procedure in place to verify instructor attendance/punctuality.

The CONTRACTOR shall provide sufficient classes in Spanish, conducted by Spanish speaking instructors and all instruction materials including audiovisuals will be in Spanish. Classes shall be provided for the hearing impaired in a manner approved by the Court Administrator.

1.4 Class size: No class shall have more than 50 students registered or more than 50 students in attendance. The average attendance of all classes shall not exceed 45 attendees.

1.5 Fees: The Presiding Judge is responsible for determining the DDP provider fee. Effective January 1, 2007, the Provider(s) Fee shall be \$25.00 per student and is retained by the Provider(s) of the defensive driving program instruction. The Provider(s) will have full responsibility for the collection of the total fee of \$130.00; this includes: \$25.00 per student Provider(s) Fee; \$85.00 per student Chandler Municipal Court "Diversion" Fee; and the required Arizona Supreme Court "State" Fee as defined in ARS 28-3397, which is currently \$20.00 per student. The Provider(s) will have full responsibility for the remittance of the \$85.00 per student Diversion Fee and the \$20.00 per student State Fee. A refund of the Court's diversion fee shall be issued to any student who does not complete a class. The Chandler Municipal Court reserves the right to increase its Diversion fee.

The CONTRACTOR shall be required to input data and provide data in a format and methodology, in a manner set by the Court Administrator, compatible with the Chandler Municipal Court computer system to allow for the transfer of electronic information between the CONTRACTOR and the Chandler Municipal Court.

The CONTRACTOR shall be required to provide a weekly comparison summary report each Monday by 11:00 a.m. The summary report must contain information for the previous week's cases in a manner set by the Court Administrator.

Diversion fees shall be remitted to the Defensive Driving Program Coordinator or his/her designee on a weekly basis. Diversion fees for the previous week must be delivered each Thursday by 11:00 a.m. in a check or other method, as directed by the Court Administrator, payable to the Chandler Municipal Court. The CONTRACTOR must also provide a remittance report detailing Chandler Municipal Court's case number, student's name, date of class, and diversion fee amount. Remittances not received within forty-eight (48) working hours of the date and time due will result in immediate notification to the Arizona Supreme Court.

Failure to remit the Court's Diversion Fee in the prescribed manner can result in decertification, suspension and/or probation as noted in the Arizona Supreme Court Defensive Driving School Certification Criteria. Failure to remit the Court's Diversion Fee in the prescribed manner shall be deemed a material breach of the contract.

Public funds, i.e., the Municipal Court Diversion fee and the Arizona Supreme Court State fee, shall not be used for business operations and are due upon demand. The Chandler Municipal Court reserves the right to increase its Diversion Fee.

The CONTRACTOR shall accept full responsibility for any payment of Students' fees by personal checks and credit cards.

The Chandler Municipal Court will not reimburse the CONTRACTOR for any costs incurred as a result of the Defensive Driving Program.

1.6 Business Office: The CONTRACTOR shall provide a central business location with local telephone accessibility in the State of Arizona. The hours will include a minimum of 8:00 a.m. to 5:00 p.m., Monday through Friday. All program and financial records will be accessible at this central location.

1.7 Locations: The CONTRACTOR must request in writing, prior approval from the Court before conducting any classes in rooms or locations that are not on the current class schedule. Prior approval must be requested a minimum of three weeks before any students are enrolled in classes at the new room or location.

All classrooms and locations will comply with the Americans With Disabilities Act (ADA). Adequate classroom space and parking shall be provided for each student. Lighted parking will be provided for class locations with evening classes. All classrooms and locations will be in compliance with all State, County and City statutes, ordinances, codes and regulations.

1.8 Schedules: When the Court requests a revised class schedule, the CONTRACTOR shall submit a revised schedule thirty (30) days prior to the effective date of the revision.

1.9 Screening for Determination of Eligibility: Each student enrolled will be pre-screened for eligibility a minimum of two (2) times prior to attending the class. The student will be screened during registration and when a class roster is pulled.

During the initial contact with the student, the CONTRACTOR will request the student's name, date of birth, address, driver's license number and jurisdiction of the ticket. The violation code will be checked to determine if it is DDP eligible based on information from the Arizona Supreme Court and the Chandler Municipal Court. The CONTRACTOR will use the Defensive Driving Tracking Database to verify whether or not an individual has previously attended a DDP course in the State of Arizona within two years from their last violation date for complaint dismissal.

1.10 Registration/Enrollment: The CONTRACTOR will ensure control of class attendance by checking the class roster or student registration form and all students' driver's licenses or other valid forms of identification each class day. The CONTRACTOR will require each student to sign an affidavit of eligibility. The instructor will sign the completed class roster to verify the accuracy of the information on it.

The CONTRACTOR shall provide a certificate of completion to each student completing the DDP course. The certificate will include the name of the student, date of the class, instructor signature and complaint number of the violation for which DDP was attended.

The primary provider(s) shall provide and pay for bond cards to be distributed to individuals receiving traffic violation citations. The cards must contain information concerning the offender's options in court and information concerning the defensive driving diversion option, including registration information, and the bond cards shall be replaced (updated) with any changes in total fees that may occur. The Chandler Municipal Court has the right and discretion to approve the information contained, and the final form of the bond card. A sample card shall be submitted to the Chandler Municipal Court for inspection prior to printing, and the CONTRACTOR shall provide cards at the times and in the quantities specified by the Court.

1.11 Assistance to Prospective Students and Students: The CONTRACTOR shall assist all individuals interested in enrolling in a class. This includes, but is not limited to, assistance to determine eligibility, information related to convenient class times and locations, other options explained on the class schedule, attendance verification and response to complaints related to any of the CONTRACTOR's services. In addition, the CONTRACTOR shall ensure that the necessary interpretations for enrollment, class instruction and class materials are provided.

1.12 Class Completion Documentation: Within forty-eight (48) hours after the completion of the class, the CONTRACTOR will submit a DDP completion class roster via an electronic interface in a Court-approved format. The report must be sent no later than 1:00 p.m. daily. The CONTRACTOR will ensure that all names of students are reported exactly as they appear on the student's citation unless the name on the student's driver's license is in any way different from the name on the citation, in which case the name on the driver's license will be noted on the completion data. The completion notices must include the following information: Chandler Municipal Court's case number, student's name, date of birth, complaint number, date of class completion, class location, drivers license number, court date, violation code and violation date. Within three business days, the CONTRACTOR will record the completion of each student in the Arizona Supreme Court Defensive Driving Program database.

1.13 Continuances: Upon request from an eligible violator, the CONTRACTOR will grant a one-time continuance for a period of exactly two weeks. Violators are eligible for one continuance if they meet all of the DDP eligibility criteria and request the continuance prior to their arraignment court date. The CONTRACTOR shall encourage all violators to attend a class prior to their first arraignment court date.

Continuances must be set for a Chandler Municipal Court working day. The CONTRACTOR will submit a complete list of continuances via an electronic interface in a Court-approved format. The report must be sent no later than 1:00 p.m. daily. The continuance list must contain the following information: Chandler Municipal Court's case number, student's name, date of birth, complaint number, new court date, drivers license number, old court date, violation code and violation date. The CONTRACTOR shall provide a document to the defendant that notes the new arraignment court date.

1.14 Out-of-State Classes: The Chandler Municipal Court will accept out-of-state attendance only if the class is arranged through the Court's primary Provider schools.

The CONTRACTOR is required to arrange for out-of-state classes upon request by verifying eligibility and directing the eligible Student to a program in his/her home state. The Arizona Supreme Court will provide each certified school with an out-of-state Defensive Driving Program directory.

The CONTRACTOR shall send a registration form to the Student that must be completed and returned with the class completion certificate and program fees. The out-of-state program will complete the section on the registration form certifying that the class meets time and curriculum requirements. The Student will also sign and return a notarized affidavit attesting to his/her eligibility.

1.15 Out-of-State Fees: The Student will submit the Arizona Supreme Court fee, the Court Diversion Fee and the CONTRACTOR's Administrative Fee. The CONTRACTOR's Administrative fee shall be provided in the proposal.

1.16 Out-of-State Reporting: The CONTRACTOR shall add the out-of-state completion record to the Defensive Driving Tracking System, report the completion with a special code to identify it as "out-of-state," and disburse the fees just as it does for local Students.

- 1.17 Out-of-State Continuances:** To allow time for receipt and processing of out-of-state completions, the CONTRACTOR will extend the Court date for six weeks, instead of the normal two weeks for in-state attendance.
- 1.18 Evaluations:** The CONTRACTOR shall comply with all requests to participate in the evaluation of the Defensive Driving Program. This may include the completion of class evaluation forms developed by the Arizona Supreme Court or Chandler Municipal Court, the use of pre-tests and post-tests developed by the Arizona Supreme Court or Chandler Municipal Court, and requests for program data.
- 1.19 Program Reports and Notifications:** In a manner directed by the Court Administrator, the following program reports shall be submitted to the Court Administrator:
- a. By the fifteenth day of each month, a report (for the prior month) indicating:
 1. List of students who completed the previous month;
 2. List of students who registered the previous month and did not complete or have a future class date.
 3. Total fees remitted to Chandler Municipal Court.
 - b. Within five working days after an ineligible defendant completed a class, a report shall be sent to the Court Administrator on all documented pre-screening and if known, along with the reason the student was allowed entrance into the class.
 - c. When requested by the Court Administrator, copies of students' and instructor's evaluations of the class.
 - d. A written summary documenting ADA compliance by January 1st of each year.
 - e. The CONTRACTOR may be required to submit additional reports as requested by the Chandler Municipal Court.

When the following situations occur, the CONTRACTOR shall notify or facilitate immediate verbal notification:

- a. An individual or student complaint implies a harm, misinformation, or mistreatment of some nature. The CONTRACTOR will provide the individual or student with the name and telephone number of the Court Administrator. The CONTRACTOR shall provide a written explanation to the Court and/or complainant, as necessary.
- b. The CONTRACTOR determines that an individual is ineligible to attend class, but the individual believes s/he is eligible. The CONTRACTOR will provide the individual with the name and phone number of the Chandler Municipal Court Defensive Driving Program Coordinator and will contact the Court to provide the pre-screening information.
- c. The CONTRACTOR is notified by a student that his/her driver's license has been improperly suspended after completion of a class. The CONTRACTOR will direct the student to the Chandler Municipal Court Defensive Driving Program Coordinator and will contact the Court to provide the student's class attendance information.

The CONTRACTOR shall give immediate notice to the Court Administrator of (1) any change in the CONTRACTOR's management personnel performing the services provided pursuant to the RFP; (2) any occurrence or conditions that interfere with the full performance of the contract entered into as a result of the RFP requirements; and (3) any occurrence that results in, or could result in, injury or damages to persons receiving services or providing services pursuant to this RFP.

1.20 Maintenance and Accessibility of Records: The CONTRACTOR will maintain program records and reports in accordance with the contract entered into as a result of this RFP. All such records shall be maintained at an office within the boundaries of the State of Arizona. All student records shall be the property of the Chandler Municipal Court. If the contract is terminated or expires, all student records shall be sent to the Court on demand.

The CONTRACTOR's bookkeeping shall be kept in accordance with Generally Accepted Accounting Principles (GAAP). Accurate accounting is required for all financial reporting. The CONTRACTOR will retain all books, records and other relevant documents for five years after the Contract expiration or termination, or until the Court has audited same, whichever occurs first.

The CONTRACTOR's financial and programmatic records relating to the Contract will be subject to inspection by Chandler Municipal Court employees or qualified person(s) during normal business hours.

All student records shall be the property of the Chandler Municipal Court. If the contract is terminated or expires, all student records shall be sent to the Court Administrator.

1.21 Monitoring: Monitoring shall include review of Program and CONTRACTOR records, fiscal review, operations review, attendance at CONTRACTOR's meetings, class monitoring, telephone monitoring, contacts with students, and auditing review by the Chandler Municipal Court or the Arizona Supreme Court. Information gathered during monitoring or evaluating shall become the property of the Chandler Municipal Court and may be forwarded to the Arizona Supreme Court.

1.22 Audit: Within ninety days following the City's fiscal year end, which is June 30th of each year, the CONTRACTOR shall provide Court Administration with an independent Certified Public Accountant's evaluation of internal controls related to funds paid the City. This examination will be a full scope audit (not a review) of the accuracy of funds paid and a study and evaluation of internal controls related to funds paid the City and conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). The CONTRACTOR agrees to grant permission to the City Auditors to review all work papers retained by the CONTRACTOR's independent accountant.

The CONTRACTOR may also be subject to financial audits by the City.

EXHIBIT B

GENERAL PROPOSAL INSTRUCTION AND CONDITIONS OF RESULTING AGREEMENT

DEFINITIONS

Certain terminology and abbreviations appearing in this Request for Proposal are identified below:

CONTRACTOR - Synonymous with Proposer and Provider. Refers to the individual or business which offers a written response to this RFP.

City - For the purpose of this RFP, City is synonymous with Chandler Municipal Court.

Contract - Contract of Agreement resulting from this Request for Proposal.

Court - For the purpose of this RFP, Court is synonymous with Chandler Municipal Court.

DDP - Defensive Driving Program. A program created by A.R.S. 28-492 that permits the diversion and dismissal of a civil traffic moving violation if certain eligibility criterion are met. Also, the staff under the supervision of the Director of the Administrative Office of the Courts, Arizona Supreme Court, that provides administration and supervision of the program throughout the state.

Defensive Driving Program Coordinator - A member of the ~~City~~ of Chandler Municipal Court staff designated to serve as coordinator of the Defensive Driving Program.

Instructor - A person who is certified by the Supreme Court Defensive Driving Program to conduct DDP courses for a Supreme Court-certified Defensive Driving School.

Previous Week – For the purpose of this RFP, Previous Week consist of Saturday through Friday.

Proposer - Synonymous with CONTRACTOR and Provider. Refers to the individual or business which offers a written response to this RFP.

Proposers' Conference: An open meeting held prior to the date when bids are due during which interested parties may ask questions about the RFP and RFP process, and/or the Court's specifications or requirements.

Proposer Meetings: Meetings held during the bid evaluation for clarification of bid terms, to ensure understanding of RFP requirements and/or proposals, to discuss revisions to proposal terms to arrive at best and final offers, and to conduct formal presentations if the court requires.

Primary Provider: A certified defensive driving school selected by a court to provide traffic safety diversion class services to the court, in general, excluding other defensive driving schools from providing diversion classes the court's defendants.

Provider - Synonymous with CONTRACTOR and Provider. Refers to the individual or business which offers a written response to this RFP.

RFP - Request for Proposal.

Student - An individual or alleged violator who has enrolled in or has attended a DDP class.

EXHIBIT C

AFFIDAVIT OF ELIGIBILITY

Recommended* language for the Affidavit of Eligibility:

I affirm that I am eligible to attend a defensive driving course for citation dismissal. I understand my eligibility means that:

I have never attended an Arizona defensive driving school for traffic citation dismissal **OR** it has been more than 24 months from the date of the last citation on which I attended an Arizona defensive driving school for traffic citation dismissal.

My traffic violation did not result in a death or serious injury.

I am not currently registered to attend another defensive driving course within Arizona.

I understand that if I am found ineligible to attend a defensive driving course for citation dismissal, my citation may not be dismissed by the court and all fees paid to attend this course may not be refunded.

If I am found ineligible I will resolve my citation with the court of jurisdiction.

X _____
Student's Signature

_____/_____/_____
Date

* The above language is suggested, not required.