AMENDMENT NO. 1
LINKING AGREEMENT
(CITY OF GLENDALE, Contract No. C23-0934)

This Amendment No. 1 ("Amendment") to the Linking Agreement ("Agreement") is made this _____ day of _____, 2024, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Larry H. Miller Toyota, a Utah foreign limited liability company, authorized to do business in Arizona ("Contractor").

RECITALS

A. City and Larry H. Miller Toyota ("Contractor") previously entered into Linking Agreement, Contract No. C23-0934, dated September 12, 2023 ("Agreement"); and

B. City and Contractor wish to modify and amend the Agreement subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

1. **Recitals.** The recitals set forth above are not merely recitals but form an integral part of this Amendment.

2. **Term.** The term of the Agreement is unchanged.

3. **Scope of Work.** The Scope of Work is being amended to allow for the purchase of new vehicles, on an as-needed basis, per the established vehicle replacement schedule, policy, and funding, as well as new growth and supplemental vehicles, as authorized by the City Manager.

4. **Compensation.** The original compensation amount of $166,000 is increased by $500,000, for a maximum of $666,000 over the entire term of the Agreement (initial term plus any renewals).

5. **Insurance Certificate**. Current certificate will expire on March 1, 2024 and a new certificate applying to the extended term must be provided prior to this date to Materials Management and the Contract Administrator.

6. **Non-discrimination.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

7. **No Boycott of Israel**. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the

Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

8. **Uyghur Forced Labor Prevention Act (UFLPA).** Contractor certifies that it does not currently, and during the term of this Agreement, will not use:

   (a) the forced labor of ethnic Uyghurs in the People's Republic of China;

   (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and

   (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

9. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

10. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

[Signatures on the following page.]

CITY OF GLENDALE, an Arizona municipal corporation

Kevin R. Phelps, City Manager

ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

Larry H. Miller Toyota,
a Utah foreign limited liabiltiy company

By: Rick Zamora
Its: Fleet Manager

AMENDMENT NO. 1
LINKING AGREEMENT
(CITY OF GLENDALE, Contract No. C23-0934)

EXHIBIT A
STATE OF ARIZONA - ADOT
CONTRACT NO. CTR059318
NEW VEHICLE PURCHASES

DocuSign Envelope ID: 7AE6D603-F496-4243-9920-A7948B4C771C

ADOT
Procurement

OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

Larry H Miller Toyota Offeror (Company) Name	Signature of Person Authorized to Sign Offer
8633 West Bell Road Address	Rick Zamora 1/18/22 Printed Name Date
Peoria, Arizona 85382 City State Zip	Fleet Manager Title
rzamora@Lhmauto.com Email Address	(623) 876-3493 Phone Number
Company Email Address	(623) 876-3494 Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR059318 **including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.**

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 17th **day of** March **20**22

DocuSigned by:

Procurement Officer , 3/10/2022
Awarded Date

AMENDMENT NO. 1
LINKING AGREEMENT
(CITY OF GLENDALE, Contract No. C23-0934)

EXHIBIT B
Scope of Work

PROJECT

The Scope of Work is being amended to allow for the purchase of new vehicles, on as-needed basis, per the established vehicle replacement schedule, policy, and funding, as well as new growth and supplemental vehicles, as authorized by the City Manager.

ADOT
Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1655 W. Jackson Street
Phoenix, AZ 85007
602.712.7211

Contract Amendment Summary

CONTRACTOR: Larry H. Miller Toyota	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicle Purchases	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment Two (2) to mutually extend this contract from March 17, 2023 through March 16, 2024, unless terminated, canceled or extended as otherwise provided in the contract.

2. All other terms, conditions and provisions of this contract remain unchanged.

ADOT
Procurement

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson St., Ste. A
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM004157

DESCRIPTION: New Vehicle Purchases

QUESTIONS: Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (https://app.az.gov/) using the Discussion Forum tab.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Thomas Kornell
Procurement Officer
Phone: 602-712-8520
Email: Tkornell@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2534 and A.A.C. R2-7-C301 et seq., Competitive Sealed Proposals.

"An Equal Opportunity Agency"

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.

ADOT
Procurement

TABLE OF CONTENTS

SECTION	PAGE
Notice	1
Table of Contents	2
Scope of Work	3
Special Terms and Conditions	7
Uniform Terms and Conditions	19
Federal Provisions	29

EXHIBITS

1 - Title VI/Non-Discrimination Assurances Appendix A	73
2 - Title VI/Non-Discrimination Assurances Appendix E	74
3- Usage Report Exhibit 3	75
4- On-site Manufacturer inspection Compliance Certification Exhibit 4	76
5- Pre-Award Audit and Certification Exhibit 5	77
6- Purchaser's Pre-Award Requirements Certification Exhibit 6	78
7- Post-Award Certification and Requirements Exhibit 7	79
8- Purchaser's Post-Award Requirements Certification Exhibit 8	81

1. Statement of Need

1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Vehicle Purchase.

2. Introduction and Background

2.1 The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.

2.2 Background: The State and its Eligible Agencies currently spend an estimated twenty-one million dollars in the purchase of new vehicles annually.

2.3 The following are the Three Categories covered in this Scope of Work:

- **Category One: Phase One (1) Vehicle Purchases**
- **Category Two: Phase Two (2) Vehicle Purchases**
- **Category Three: FTA Funded Vehicles**

3 General Requirements

3.1 Vehicles shall be new and supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature (or website). Optional equipment necessary to meet the minimum requirements shall be included.

3.2 All vehicles ordered through Phase 1 (off the line) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the vendor before delivery and ready in all respects for use. For the initial contract period; vehicles shall be new model year 2022 or greater.

3.3 Vehicles ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.

3.4 All vehicles shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.

3.5 For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.

3.6 Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Offer Response Form.

3.7 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.

3.8 All vehicles shall be delivered with four (4) entrance tools and a full tank(s) of fuel, less delivery fuel.

3.9 The following documents shall be provided upon delivery of the vehicle(s):

3.9.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
3.9.2 Warranty Document
3.9.3 Manufacturers unaltered invoice
3.9.4 Delayed warranty / in service start request form (if requested by ordering entity)
3.9.5 Level 1 Inspection if applicable, completed before delivery

3.10 For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If **confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency** has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

4 Specific Requirements

4.1 The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.

4.2 As new model year vehicles become available, vendor shall submit pricing at either the same rate as the previous model, or submit a request for an increase or decrease based only on the **manufacturer's increase or decrease.** Documentation must be submitted to the Procurement Officer within 30 days of the effective date of change. New model year vehicles cannot be offered without approval from the Procurement Officer.

4.3 The following fuel types are allowable under this contract are to include but are not limited too.

4.3.1 Flexible Fuel Vehicles (FFV) also called Ethanol or E85
4.3.2 Diesel

4.3.3 Gasoline
4.3.4 Compressed Natural Gas (CNG): CNG systems must be O.E.M. or O.E.M. approved
4.3.5 Hybrid-Electric Vehicles (HEV)
4.3.6 Plug-in Hybrid Electric Vehicles (PHEV)
4.3.7 Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)
4.3.8 Fuel Cell Vehicles (FCV)

4.4 Vehicle Up-fit / Modifications

4.4.1 The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency.

4.4.2 The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review before any work commences.

4.5 Minimum Vehicle Requirements: All prices shall include the following equipment:

4.5.1 All standard factory equipment
4.5.2 Automatic transmission [maximum towing/payload capacity shall be provided upon request)
4.5.3 Bluetooth capabilities
4.5.4 AM/FM radio
4.5.5 Cruise Control
4.5.6 Power Door Locks/Power Windows
4.5.7 Power Mirrors when available
4.5.8 Four (4) entrance tools (in any combination allowed; keyless entry remotes, integrated or smart keys, standard cut keys) per vehicle.
a. Type of keys to be provided shall be indicated on quote.
4.5.9 Air conditioning
a. Rear air conditioning on all vehicles, when available
4.5.10 Cloth seats
4.5.11 Rear view mirrors including on driver and passenger doors
a. FOR TRUCKS: Rear view mirrors on driver front and passenger front doors, largest available without upgrading vehicle options package.
b. Back up Camera
4.5.12 Spare tire
a. Full size standard steel wheel with matching Original Equipment Manufacturer spare tire identical to standard equipment with the trim level of the delivered vehicle.
b. If full spare is not available due to space or manufacturer standards, an alternative shall be provided and noted on quote provided.
4.5.13 Floor Mats

a. O.E.M. floor mat sets installed in all seating rows where the vehicle comes with carpeted floors.

b. Fixed driver floor mat

4.5.14 Arizona legal tinted glass

4.5.15 Minimum of 2 USB charging Ports

4.6 Specific Requirements for Trucks (when available)

4.6.1 Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.

4.6.2 Skid plate package and anti-slip differential for four-wheel drive vehicles

4.6.3 Front tow hooks

5 Contractor's Responsibilities

Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered only if requested by the Eligible Agency.

6 Department's Responsibilities

The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes §41-2632.

4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor.

6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. DELIVERY

Contract prices shown for each vehicle include delivery cost within a sixty (60) mile radius of Phoenix.

For the purpose of this contract, the address used for mapping the radius within Phoenix will be as follows:

Equipment services shop/ADOT
2225 S 22nd Ave, Phoenix, AZ 85009

Delivery costs for each county outside of the Phoenix area shall be indicated on Offer Response form.

This will be an added cost to the contract price.

Deliveries shall be completed In accordance with the requirements of the contract.
Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

9. INVOICING and PAYMENT

Contractor shall submit all billing notices or invoices to the Eligible Agency or Co-Op Buyer at the address Indicated on the applicable Order document.

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Applicable payment terms
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased

- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes (as a separate invoice line item)
- Applicable Shipping/Freight Charges etc. (as a separate invoice line item) Materials only.
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

11. PRICING

1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.

a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.
b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 CONTRACTOR'S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Documents, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

3 PRICING-ALL-INCLUSIVE: Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

4 LARGE VOLUME DISCOUNT PRICING: An Eligible Agency may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible Agency for large volume purchases.

5 A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be

clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State. All pricing should reflect the minimum percentage of MSRP.

13. SAFETY STANDARDS

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.

2 At a minimum all equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of thirty-six (36) months from the date vehicle is placed in service.

3 This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot.

4 Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the state agency or political subdivision.

5 The written warranty shall be included with the delivered vehicles to the Eligible Agency. The warranty terms shall be stated on Attachment 3-A, where indicated. Failure to provide this general information may result in the offer being rejected.

6 Hybrid / Electric Vehicle Warranty: Hybrid-related components including catalytic convertor, electronic control unit, onboard emissions diagnostic device, high voltage battery, transmission, DC/DC convertor for hybrid vehicles shall be covered for 8 years/100,000 miles, battery for electric vehicles shall be 8/years/100,000 miles and bidder shall indicate limitation of warranty due to voltage and amps. The warranty terms shall be stated where indicated on Attachment 3-A. Failure to provide this general information may result in the bid being rejected.

15. CURRENT PRODUCTS

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

16. PRODUCT DISCONTINUANCE

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

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

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

3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.

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

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

17. CONTRACT ADMINISTRATION

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

18. NOTICES

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called **"Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested,** or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

A. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
1739 W. Jackson Street, MD 100P
Phoenix, Arizona 85007-3276

B. **If intended for the Contractor, to the address as identified in the Contractor's electronic vendor** profile. Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE REQUIREMENTS

21.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

21.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way

warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3 Minimum Scope and Limits of Insurance Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1 Commercial General Liability (CGL) – Occurrence Form
The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 10 calendar days of notification of contract award by the Procurement Officer.

Policy shall include bodily injury, property damage, and broad form

contractual liability coverage.

- **General Aggregate $2,000,000**
- **Products – Completed Operations Aggregate $1,000,000**
- **Personal and Advertising Injury $1,000,000**
- **Damage to Rented Premises $50,000**
- **Each Occurrence $1,000,000**

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- **Combined Single Limit (CSL) $1,000,000**

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving

automobiles owned, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.3 Workers' Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
o Each Accident	$1,000,000
o Disease – Each Employee	$1,000,000
o Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

21.4 Additional Insurance Requirements The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

21.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

21.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

21.5 Notice of Cancellation Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

21.6 Acceptability of Insurers Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of

not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

21.7 Verification of Coverage Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

21.8 Subcontractors Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

21.9 Approval and Modifications the Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

21.10 Exceptions In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. USAGE REPORT

The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

23. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

24. LICENSES, PERMITS, CERTIFICATIONS

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

25. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

Contractor shall sell to Co-Op Buyers at the same price, and with the same lead times and other terms and conditions under which it sells to Eligible Agencies. With the sole exception of any legitimate additional costs for extraordinary shipping, or delivery requirements, if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

26. POST AWARD MEETING

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona

Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

2.4. Relationship of Parties. 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.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. 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.

2.7. 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.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, 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. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, 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 State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the

State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if

applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. 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 procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State 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 Procurement Officer 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 State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State 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 State 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.

8.2.2. 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 Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the

materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years 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 State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a 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 the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The

Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. 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.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

NOT INCLUDED IN C23-0934-1

(originally included in Linking Agreement C23-0934)

- FEDERAL PROVISIONS
  Pages 29 - 72

- EXHIBITS 1 – 8
  Pages 73 – 81

- Solicitation Amendment Summary:
  Amendments No. 1, 2, and 3

AMENDMENT NO. 1
LINKING AGREEMENT
(CITY OF GLENDALE, Contract No. C23-0934)

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will be paid within 30 days of submission of its invoices to City at the rates indicated in the original agreement C23-0934.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed $666,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

The original compensation is being amended and increased by $500,000 for a new not to exceed of $666,000 over the term of the agreement. The City will utilize the agreement for the purchase of new vehicles, on an as-needed basis, per the established vehicle replacement schedule, policy, and funding, as well as new growth and supplemental vehicles, as authorized by the City Manager.

ADOT
Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1655 W. Jackson Street
Phoenix, AZ 85007
602.712.7211

Contract Amendment Summary

CONTRACTOR: Larry H. Miller Toyota	AMENDMENT NO.: Three (3)
DESCRIPTION: New Vehicle Purchases	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment Three (3) to Update 2023 pricing and delivery fees, unless terminated, canceled or extended as otherwise provided in the contract.

2. All other terms, conditions and provisions of this contract remain unchanged.

DocuSign Envelope ID: 53D8C7B8-FB11-481F-813F-B520F7410860

ADOT Procurement

PROCUREMENT DETERMINATION
PRICE INCREASE

Sections 1 through 3 MUST be completed
Use Attachments as Necessary

1) Name: Tom Kornell DS TK **Title:** Senior Procurement Officer	**Date:** February 27, 2023
Contract Number: CTR059318 **Contract Description: New Vehicles**	**Contractor Name:** Larry H Miller Toyota

2) Line Item Pricing:
See attached spreadsheet.

3) Provide justification:
Procurement IQ reports that Passenger vehicle prices have exhibited high volatility during the last three years due to heavy fluctuations in the supply and price of manufacturing inputs. Larry H Miller Toyota is requesting price increases on all phase one line items and on delivery fees outside of Maricopa County. Changes to dealer incentives have dropped across all models, and the cost of delivery services and fuel increases have risen. Procurement IQ shows pricing continuing to grow annually at 4.7%.

Based on the information provided the price increase is determined to be fair and reasonable. It is in the Department's best interest to approve this price increase request.

To Be Completed by Procurement Authority:

APPROVAL

- [X] Request Authorized Pursuant to A.A.C. R2-7-604A
- [ ] Request Denied
- [ ] Request Returned for Additional Information
- [ ] See Comments

Comments:

Approved by:

Signature:	Title:	Date:
DocuSigned by: Pamela Veal 89C81CE38ABE4BB	Procurement Manager	2/27/2023

Cc: File

DocuSign Envelope ID: 53D8C7B8-FB11-481F-813F-B520F7410860

Agreed to Pricing

Car Model	Original Contract Percentage off MSRP	New LHM Percentage off MSRP
Corolla	8%	4%
Prius	8%	3%
Camry	10%	5%
Venza	6%	4%
Sienna	8%	4%
Rav 4	7%	3%
Highlander	8%	6%
4Runner	8%	6%
Sequoia	10%	8%
Tacoma	6%	3%
Tundra	6%	4%

County	Delivery Fee $	County	Delivery Fee $	County	Delivery Fee $
☐Apache	$500.00	☐ Greenlee	$500.00	☐ Pima	$350.00
☐ Cochise	$500.00	☐ La Paz	$500.00	☐ Pinal	$300.00
☐ Coconino	$400.00	☐ Maricopa	$0.00	☐ Santa Cruz	$500.00
☐ Gila	$300.00	☐ Mohave	$500.00	☐ Yavapai	$350.00
☐ Graham	$350.00	☐ Navajo	$500.00	☐ Yuma	$350.00

ADOT
Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Contract Amendment Summary

CONTRACTOR: Larry H. Miller Toyota	AMENDMENT NO.: One (1)
DESCRIPTION: New Vehicle Purchases	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment One (1) is being created to mutually include an updated 2022 Pricing file to include Phase Two (2) Pricing and add Phase Two (2) Vehicles, unless terminated, canceled or extended as otherwise provided in the contract.

2. All other terms, conditions and provisions of this contract remain unchanged.