

## NOTICE INVITING BIDS

PROJECT: Goldwater Lake Park – Day Use Expansion  
DESCRIPTION: This project generally consists of an expansion to Goldwater Lake Park to include a new well and water system, roadway, parking, utilities, group pavilions, restrooms, and a playground.  
BID OPENING: Thursday, August 15, 2013, 2:00 PM  
**MANDATORY** PRE-BID MEETING: Thursday, August 1, 2013, 10:00 AM

**Securing and reviewing plans and specifications prior to pre-bid meeting highly recommended.**

BID SECURITY REQUIRED: Certified check, cashier's check or bid bond in the amount of not less than 10% (TEN PERCENT) of the bid.

Sealed bids will be received at the Office of the City Clerk, addressed to the attention of the City Clerk, City of Prescott, 201 S. Cortez Street, Prescott, AZ 86303, before 2:00 pm on August 15, 2013 for furnishing all plant, materials, and labor and performing work for construction of the Goldwater Lake Park – Day Use Expansion Project.

The outside of the bid envelope shall indicate the name and address of the bidder, and shall be marked: "Bid: Goldwater Lake Park – Day Use Expansion Project." All bids will be opened and read aloud at 2:00 pm on Thursday, August 15, 2013, Prescott City Hall – Council Chambers, 201 South Cortez Street, Prescott, AZ 86303.

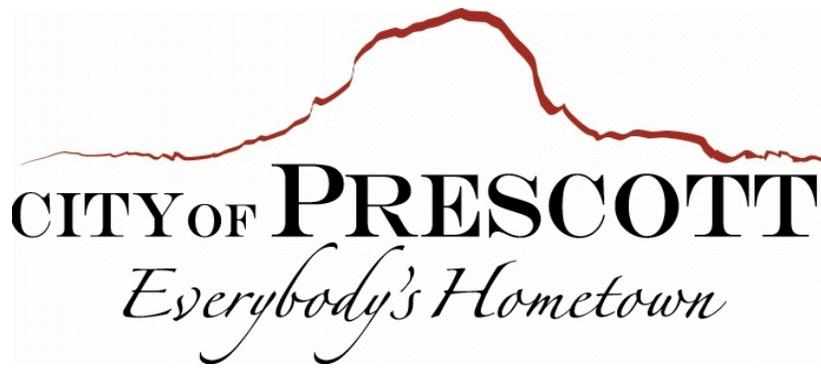
Any bid received at or after 2:00 pm on the above stated date will be returned unopened. The City of Prescott reserves the right to accept or reject any or all bids, and/or some or all of the alternates bid, and waive any informality deemed in the best interest of the City and to reject the bids of any persons who have been delinquent or unfaithful to any contract with the City of Prescott.

Copies of the Notice Inviting Bids, plans and contract documents, specifications, and necessary information are available for public inspection at the Parks and Recreation Office, Grace Sparkes Activity Center (Old Armory), 824 E. Gurley Street, Prescott, AZ 86301, (928) 777-1122.

Those interested in having individual sets of the Contract Documents may obtain them upon payment of \$75.00 per set, which cost is refundable upon return of the Plans and Contract Documents in good order within 30 days of bid closing. A non-refundable check for \$10.00 will be required for mailing.

---

Eric Smith, Special Projects Administrator  
PUBLISHED: 2TC July 21 & 28, 2013



## **Goldwater Lake Park – Day Use Expansion Construction Project**

### **Project Specifications and Contract Documents**

**DESCRIPTION:** This project generally consists of an expansion to Goldwater Lake Park to include a new well and water system, roadway, parking, utilities, group pavilions, restrooms, and a playground.

**SPONSOR:** CITY OF PRESCOTT, ARIZONA

**BID OPENING:** August 15, 2013 2:00 PM  
Prescott City Council Chambers  
201 S. Cortez Street, Prescott, Arizona 86303

**PREPARED BY:** Eric Smith  
Parks and Recreation Department  
July 15, 2013

## Table of Contents – City Specifications

<b>SPECIAL NOTICE</b> .....	<b>6</b>
<b>NOTICE INVITING BIDS</b> .....	<b>1</b>
<b>INFORMATION FOR BIDDERS</b> .....	<b>7</b>
<b>BIDDING SCHEDULE</b> .....	<b>8</b>
<b>SUBCONTRACTORS LIST BID FORM</b> .....	<b>10</b>
<b>INSTRUCTIONS FOR PREPARING PROPOSAL</b> .....	<b>11</b>
<b>PROPOSAL</b> .....	<b>12</b>
<b>BIDDERS AFFIDAVIT</b> .....	<b>14</b>
<b>INSURANCE REQUIREMENTS</b> .....	<b>15</b>
<b>CONSTRUCTION CONTRACT</b> .....	<b>18</b>
<b>CONTRACTOR’S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS</b> .....	<b>22</b>
<b>AND CERTIFICATION OF COMPLETION OF WARRANTIES</b> .....	<b>22</b>
<b>GENERAL CONDITIONS</b> .....	<b>23</b>
<b>COMMENCEMENT, PROSECUTION AND PROGRESS</b> .....	<b>24</b>
PRECONSTRUCTION CONFERENCE .....	24
COMMENCEMENT .....	24
PUBLIC NOTICE .....	24
SUBCONTRACTORS .....	25
CONTRACTOR’S REPRESENTATIVE AND EMERGENCIES .....	25
CONTRACTOR AND SUBCONTRACTOR RECORDS .....	25
ADDENDA, REVISIONS AND SUPPLEMENTARY DRAWINGS .....	26
ERROR AND OMISSIONS .....	26
CHARACTER OF WORKMEN .....	26
SUSPENSION OF WORK .....	26
DELAYS AND EXTENSION OF TIME .....	27
TERMINATION FOR BREACH OF CONTRACT .....	27
METHODS AND EQUIPMENT .....	27
DATE OF ACTUAL COMPLETION .....	27
FINAL ACCEPTANCE .....	27
SAFETY, HEALTH AND SANITATION PROVISIONS .....	28
TRAFFIC CONTROL .....	28
WATER .....	28
PROTECTION OF WORK .....	28
CLEANUP AND DUST CONTROL .....	28
GUARANTEE OF WORK .....	28
CONTINGENCIES .....	29
NOTICE AND SERVICE THEREOF .....	29
PROJECT MEETINGS .....	29
CONSTRUCTION SCHEDULE .....	29
ACCIDENT PREVENTION .....	30
CONSTRUCTION FACILITIES .....	30
TEMPORARY FACILITIES .....	30

WARNING DEVICES AND BARRICADES .....	30
HAZARDS IN PUBLIC RIGHT-OF-WAY .....	30
HAZARDS IN PROTECTED AREAS.....	30
PROTECTION OF EXISTING ITEMS .....	30
PROJECT SECURITY.....	31
FIRE EXTINGUISHER .....	31
OFF-SITE ROADS .....	31
NOISE ABATEMENT.....	31
DRAINAGE CONTROL.....	31
PROJECT CLOSE-OUT .....	31
WASTE DISPOSAL, GRADING AND MATERIAL STORAGE .....	31
PROJECT RECORD DOCUMENTS .....	32
<b>CONTROL OF WORK.....</b>	<b>32</b>
ABBREVIATIONS.....	32
AUTHORITY AND DUTIES OF INSPECTOR.....	32
INSPECTION .....	33
AUTHORITY OF THE ENGINEER .....	33
PLANS .....	33
CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS .....	33
COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS.....	33
ORDER OF WORK .....	34
CONSTRUCTION STAKES, LINES AND GRADES .....	34
REMOVAL OF UNACCEPTABLE AND/OR UNAUTHORIZED WORK .....	34
MAINTENANCE DURING CONSTRUCTION .....	34
COOPERATION BETWEEN CONTRACTORS .....	34
COORDINATION OF WORK .....	34
LINES AND GRADES. ....	34
<b>MATERIALS AND WORKMANSHIP .....</b>	<b>34</b>
GENERAL .....	34
SUBSTITUTION OF MATERIAL OR EQUIPMENT .....	35
FABRICATED MATERIALS AND SHOP DRAWINGS .....	35
MATERIALS FURNISHED BY THE CITY .....	35
STORAGE AND HANDLING OF MATERIALS .....	35
REJECTED MATERIALS.....	35
UTILITIES.....	35
DRIVEWAYS AND WALKS.....	35
ROADS AND FENCES .....	36
TREES AND SHRUBBERY.....	36
IRRIGATION DITCHES AND STRUCTURES .....	36
SUBMITTALS.....	36
MATERIALS AND EQUIPMENT SCHEDULES .....	36
QUALITY CONTROL.....	36
SAMPLES AND TESTS .....	37
<b>LEGAL RELATIONS AND RESPONSIBILITY .....</b>	<b>37</b>
LAWS TO BE OBSERVED.....	37
ALIEN LABOR.....	37
CONTRACTOR IMMIGRATION WARRANTY .....	37
COMPLIANCE WITH FEDERAL AND STATE LAWS.....	37
EMPLOYMENT PROVISIONS .....	38
INDEPENDENT CONTRACTOR STATUS.....	38
NONDISCRIMINATION .....	38
AMERICANS WITH DISABILITIES ACT .....	39
PERMITS, TAXES AND LICENSES.....	39
PATENTED DEVICES, MATERIALS AND PROCESSES .....	39
SURVEY LAND MONUMENTS.....	39

PROTECTION OF PERSON AND PROPERTY .....	39
PROTECTION OF ANTIQUITIES .....	39
PERSONAL LIABILITY OF PUBLIC OFFICIALS .....	39
NON-RESPONSIBILITY OF THE CITY .....	39
NO WAIVER OF LEGAL RIGHTS.....	39
PROPERTY RIGHTS IN MATERIAL.....	40
<b>PAYMENT TO CONTRACTORS .....</b>	<b>40</b>
GENERAL .....	40
PARTIAL PAYMENT .....	40
PAYMENT .....	40
PAYMENT OF ITEMS IN PROPOSAL.....	41
CHANGES IN THE WORK .....	41
FORCE ACCOUNT .....	41
EXTRA WORK .....	42
CONTRACT AMENDMENT.....	42
CLAIMS FOR EXTRA WORK .....	43
PARTIAL ACCEPTANCE OF WORK .....	43
NOTIFICATION OF CHANGED CONDITIONS, FORMAL PROTEST AND DISPUTE RESOLUTION .....	44
PUBLICITY RELEASES.....	44
<b>SCOPE OF WORK.....</b>	<b>44</b>
<b>TECHNICAL SPECIFICATIONS .....</b>	<b>45</b>

## **SPECIAL NOTICE**

BIDS WILL BE RETURNED UNOPENED IF NOT SUBMITTED PROPERLY SEALED AND PRIOR TO THE TIME SET FORTH IN THE NOTICE INVITING BIDS. ADDENDA SHALL BE ATTACHED INSIDE THE FRONT COVER OF THIS BOOKLET.

BIDS SHALL BE ENCLOSED IN SEALED ENVELOPES, ADDRESSED TO THE CITY OF PRESCOTT AND MARKED ON THE OUTSIDE LOWER RIGHT-HAND CORNER INDICATING:

1. The Bidder's name;
2. The Project Title;
3. The Time and Date bids are to be received;
4. Acknowledgment of Addenda received.

## **INFORMATION FOR BIDDERS**

**PROPOSAL.** All standard specifications and details referenced unless otherwise noted shall conform to all the City of Prescott Department of Public Works Standard Specifications and Detail Drawings, most current revision, and to the most current edition of the Uniform Standard Specifications and Details for Public Works Construction by the Maricopa Association of Governments, Arizona, including revisions thereto.

**BIDDING REQUIREMENTS AND CONDITIONS.** MAG Specifications, Sections 102.1 through 102.13, including: Bids shall be delivered to the office of the City Clerk, City of Prescott, Arizona, before the day and hour set for the submittal of bids in the Notice Inviting Bids as published. Bids shall be enclosed in a sealed envelope bearing the title of the work and the name of the bidder. It is the SOLE responsibility of the bidder to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

**IRREGULAR PROPOSALS.** MAG Specifications Section 102.7, including: (f) if the bid is mathematically unbalanced, and (g) if the bid is materially unbalanced.

**CONFIRMATION OF BID.** At any time after the opening of the bids the Parks and Recreation Director may require any bidder on the project to confirm such bid in writing prior to contract award. The following certification language shall be submitted by separate letter on company letterhead when requested by the Parks and Recreation Director:

I, the undersigned hereby certify the prices bid for the Goldwater Lake Park – Day Use Expansion Project have been reviewed and I hereby confirm work can be completed in accordance with the requirements of the contract documents, plans and specifications in the total bid amount of \$ \_\_\_\_\_ as stated in the Bidding Schedule.

**SUBCONTRACTORS LIST BID FORM.** The Subcontractors List Bid Form must be completed, attached and submitted along with the Bidding Schedule.

**BID SECURITY.** A bid bond in the amount of 10% of the bid shall be required at the time the bid or proposal is submitted, in accordance with ARS Section 34-201(A)(3).

**WITHDRAWAL OF BID.** Any bidder may withdraw his bid, either personally, telegraphic, or by written request, at any time prior to the scheduled closing time for receipt of bids.

**INTERPRETATION OF PLANS AND DOCUMENTS.** MAG Specifications, Section 102.4, including: If any person contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, specifications, or other proposed Contract Documents, or finds discrepancies in or omissions from the Plans or Specifications, he shall submit to the City of Prescott Special Projects Administrator a written request for an interpretation or correction thereof no later than five working days before bid or proposal opening. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the proposed documents will be made or delivered to each person receiving a set of such documents. Interested bidders may call or visit the office of the City of Prescott Special Projects Administrator with any questions up to 5:00 PM on the last Thursday prior to the bid opening date. The City of Prescott will no longer address or interpret any general questions or comments after 5:00 PM on the last Thursday prior to the bid opening date. Comments or questions received after the above referenced time will not be given consideration by the Department. Should any issue be determined significant to the project by the Special Projects Administrator, appropriate action will be taken.

**AWARD AND EXECUTION OF CONTRACT.** MAG Specifications, Section 103.1 through 103.8, Award of Contract, first paragraph, 103.1, to be revised as follows:

The Contract will be awarded to the lowest qualified bidder complying with these instructions and with the Notice Inviting Bid. The City, however, reserves the right to accept or reject any or all bids if it deems it best for the public good, and to waive any informality in the bids received. The award, if made, will be within sixty (60) calendar days after the opening of bids.

**ASSIGNMENT OF CONTRACT.** No partial or full assignment by the Contractor of any contract to be entered into hereunder, or any part thereof, or of funds to be received there under by the Contractor, will be recognized by the City unless such assignment has had prior written approval of the City and the surety has been given due notice of such assignment in writing and has been given due notice of such assignment in writing and has consented thereto in writing.

**PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER.** The successful bidder may obtain six (6) sets of Plans and Specifications for this project at no extra cost. If he desires more than the six (6) sets, he may purchase additional sets of Plans and Specifications from the Special Projects Administrator at the cost set forth in the Notice Inviting Bids.

**NON-PERFORMANCE OF WORK TASKS BY THE CONTRACTOR.** If the Contractor fails, neglects, or refuses to perform work tasks necessary for the completion of the total job; replace defective work; to repair or resurface, in a manner that is acceptable to the City, public rights-of-way disturbed by his work which are a nuisance, hazard, impedes or endangers vehicular traffic and the public; the City may serve written notice upon the Contractor of its intention to have the work performed by others. Unless, within 3 calendar days after the service of such notice, the Contractor has made such arrangement & scheduled the accomplishment of said work tasks to the satisfaction of the City, the City will proceed to have the work accomplished by others or by itself & deduct the costs thereof from amounts due to the Contractor.

**INDEMNIFICATION OF CITY AGAINST LIABILITY.** The Contractor shall defend, indemnify and hold harmless the City of Prescott, its departments, 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 the 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 Worker's Compensation Law or arising out of failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intentions of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts of Indemnitee, be indemnified by Contractor from and against any and all claims. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City of Prescott, its departments, officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City of Prescott.

**DEFINITIONS.** According to MAG Specifications, Section 101.2, including:

- A. **AWARD:** The formal action of the governing body in accepting a proposal.
- B. **BID SECURITY:** Refers to the certified check, cashier's check, or surety bond, which is required to be submitted with the proposal to insure execution of the contract and the furnishing of the required bonds.
- C. **CITY:** City of Prescott
- D. **CITY'S REPRESENTATIVE:** The authorized representative of the City, which may be an individual or a firm, or his assistants assigned to the project work, the project site, or any part thereof during the performance of the work by the Contractor and until final acceptance.
- E. **PARKS AND RECREATION DIRECTOR:** The City of Prescott Parks and Recreation Director or his designee, representative or assistants.
- F. **DESIGN ENGINEER:** The firm or person and his properly authorized assistants, designated by the City to prepare Plans and Specifications for the work.
- G. **NOTICE TO BIDDERS:** Refers to the standard forms inviting proposals or bids.
- H. **MATERIALLY UNBALANCED BID:** A bid that generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the City.
- I. **MATHEMATICALLY UNBALANCED BID:** A bid containing lump sum or unit bid prices that do not reflect reasonably anticipated actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

**ADDENDA.** MAG Specifications, Sections 102.1 through 102.13, including: Any Addenda issued during the time of bidding, forming a part of the documents issued to the bidder for the preparation of his bid, shall be covered in the bid and shall be made a part of the contract.



**City of Prescott – Parks and Recreation Department**

**SUBCONTRACTORS LIST BID FORM**

\*\* Project

	<b>Company Name and License Number</b>	<b>Mailing Address</b>	<b>Phone Number</b>	<b>Bid Item(s)</b>	<b>Total Sub-contract Amount</b>
1					\$
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
	<b>Total Sub-Contract Amount</b>				\$

## **INSTRUCTIONS FOR PREPARING PROPOSAL**

Payment for all work performed under this Contract shall be based on the units as shown in the Bidding Schedule. Payment of the bid items as stated in the Contractor's proposal for the completed work, shall be compensation in full for the furnishing of all overhead, labor, materials, devices, equipment and appurtenances included in the work as are necessary to complete the total work under this Contract in a good, neat, and satisfactory manner as indicated on the Plans, as described in the Specifications, and as otherwise implied or required to fulfill the objective of the work. It is the intent of the contract that maximum payment shall not exceed the agreed unit price without duly authorized contract amendments. Each item, fixture, piece of equipment, work, etc., as indicated on the Plans, or specified anywhere in these Documents shall be completed with all necessary connections and appurtenances for the satisfactory use and operation of said item, and the total system or systems.

Any and all patents, license fees, insurance premiums, etc., for the right to use equipment or processes included in this Contract shall be included in the total bid price.

Cost of testing, and other incidental operations, profit and overhead cost, including the cost of supervision, temporary field offices, move-in, move-out, insurance, taxes, equipment not a permanent part of the job, and other incidental items, shall be included in the total bid price.

The "Total Amount of Bid" must be filled out by the bidder. In case of any discrepancy between the price in figures and price in written words, as written or corrected, the price in written words shall be presumed to be correct unless obviously in error, and shall be considered as the Contractor's correct and intended bid.

Bids shall not contain any recapitulations of the work to be done. Alternative proposals will not be considered unless called for. If anyone is in doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents, or finds discrepancies in or omissions from the Plans or Specifications, he must submit to the Engineer a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery.

Any interpretation or correction of the Contract documents will be made only by an Addendum duly issued by the City and a copy of such Addendum will be mailed, faxed, or delivered to each person receiving a set of such Documents. The City will not be responsible for any other explanations or interpretations of the Documents.

If the Proposal is made by an individual, it shall be signed and his full name and address shall be given. If it is made by a partnership, it shall be signed with the partnership name and by a general partner of the firm who shall also sign his own name, and the name and address of each partner shall be given; and, if it is made by a corporation, the name of the corporation shall be signed by its duly authorized officer of officers.

The Subcontractors List Bid Form must be completed, attached and submitted along with the Bidding Schedule.

## PROPOSAL

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Proposal of \_\_\_\_\_  
(Name)

Corporation organized and existing under the laws of the State of Arizona; a partnership consisting of \_\_\_\_\_ or an individual trading as \_\_\_\_\_

TO THE HONORABLE MAYOR AND COUNCIL  
CITY OF PRESCOTT  
PRESCOTT, ARIZONA

Ladies and Gentlemen:

The Undersigned hereby proposes and agrees to furnish any and all required labor, material, construction equipment, transportation, and services for completion of the Goldwater Lake Park – Day Use Expansion Project, in strict conformity with the plans and specifications, at the total bid price of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The Undersigned hereby declares that he has visited the site and has carefully examined the Contract Documents relating to the work covered by the above bid or bids.

The Bid Security (Certified Check, Cashier's Check, or Bid Bond) attached, payable to the City of Prescott in the sum of not less than ten percent (10%) of the total bid price bid for the complete project, to insure that the undersigned, if his bid is accepted, shall enter into contract and give the bonds and certificates of insurance required. In the event that the contract and bonds and certificates of insurance required are not furnished to the City within the time required, then and in that event the City may retain from the bid bond an amount, not to exceed the amount of the bid bond, representing the difference between the amount specified in the proposal or bid, and such larger amount that the City in good faith contracts with another party to perform the work covered by the proposal or bid.

The project shall be completed within NINETY (90) calendar days after the starting date set forth in the NOTICE TO PROCEED.

The undersigned hereby declares, as bidder, that the only persons or parties interested in this PROPOSAL as principals are those named herein; that no elected official or employee of the City is in any manner interested directly or indirectly in this PROPOSAL or in the profits to be derived from the Contract proposed to be taken, other than as permitted by law; that this bid is made without any connection with any other person or persons making a separate bid for the same purpose; that the bid is in all respects fair and without collusion or fraud; that he has read the NOTICE INVITING BIDS and the INFORMATION FOR BIDDERS hereto attached, and as more fully described in the attached contract and specifications, and agrees to furnish the items and perform the work called for in accordance with the provisions of said form of Contract and the Specifications and to deliver the same within the time stipulated herein, and that he will accept in full payment therefore the total bid price named in this Proposal.

The bidder shall be an A-General Engineering contractor properly licensed at the time of bidding to perform construction in connection with fixed works, including streets, roads, power and utilities plants, dams, hydroelectric plants, sewage and waste disposal plants, bridges, tunnels, and overpasses and shall also be licensed to perform work within residential and commercial property lines, or shall be properly licensed to sub-contract residential or commercial work, as may be required in the Scope of Work.

Any bid submitted without the proper contracting license to perform the required work shall be considered non-responsive and rejected.

The bidder further agrees that, upon receipt of written notice of the acceptance of this PROPOSAL, he will execute the Contract in accordance with the PROPOSAL as accepted and furnish the required bonds TEN (10) days from the date of mailing of said notice of award to him at his address as given below, or within such additional time as may be allowed by the City; and that upon his failure or refusal to do so within said time, then the certified or cashier's check or bid bond accompanying this bid shall be cashed or enforced and the money payable pursuant thereto shall be forfeited to and become the property of the City as liquidated damages for such failure or refusal; provided that if said bidder shall execute the Contract and furnish the required bonds within the aforesaid time, his certified or cashier's check, if furnished, shall be returned to him within three (3) days thereafter, and the bid bond, if furnished, shall become void.

Bidder understands and agrees that the City reserves the right to reject any or all bids and to waive any informality in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

Bidder acknowledges receipt of the following Addenda: \_\_\_\_\_

The undersigned is the holder of Arizona State Contractor's License No. and Classification: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Bidder

Corporate Seal

By: \_\_\_\_\_

Title: \_\_\_\_\_

Bidders Address, Telephone and Fax Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names and addresses of all members of the firm or names and titles of all officers of the corporation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BIDDERS AFFIDAVIT**

**Goldwater Lake Park – Day Use Expansion Project**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

\_\_\_\_\_, being first duly sworn, deposes and says:

That he/she is \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Bidder)

who submits herewith to the City of Prescott, Arizona, a proposal:

That all statements of fact in such proposal are true;

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the City of Prescott, Arizona, or of any bidder or anyone else interested in the proposed contract; and further,

That prior to the public opening and reading of proposal, said bidder:

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of his proposal price, or of that of anyone else;
4. Did not, directly or indirectly, submit his proposed price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, bid depository or to any member or agent thereof, or to any individual or group of individuals, except the City of Prescott, Arizona, or to any person or persons who have a partnership or other financial interests with said bidder in his business.

By: \_\_\_\_\_

SUBSCRIBED AND SWORN to before me by \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expires

## INSURANCE REQUIREMENTS

### INSURANCE

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

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**NOTICE OF CANCELLATION:** With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

**ACCEPTIBILITY OF INSURERS:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

### **VERIFICATION OF COVERAGE:**

A. Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in Paragraph 3 of the "Contractor's Affidavit Regarding Settlement of Claims and Certification of Completion of Warranties". Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Special Projects Administrator, Parks and Recreation Department, 824 E. Gurley Street, Prescott, AZ 86301. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

B. MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

C. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000

The policy shall be endorsed to include the following additional insured language:

“The Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker’s Compensation and Employer’s Liability

Workers’ Compensation	Statutory
Employer’s Liability	
Each Accident -	\$1,000,000
Disease – each employee -	\$1,000,000
Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.

2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

- D. Such policy shall not exclude coverage for the following:
1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
  2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.
  3. Injury to or destruction of any property arising out of blasting or explosion.
  4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.
- E. The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).
- F. The Contractor shall secure "all risk"-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

NOTICE TO PROCEED. The Contractor or subcontractor shall not work on any part of the project or incur any expenses or obligations until a Notice to Proceed has been issued by the City. The Notice to Proceed will be sent to the Contractor by first class mail or delivered to him in person.

ASSIGNMENT OF PAYMENTS. MAG Specifications, Section 109.3, including assignment of contract clause included in the "Information for Bidders" in this set of specifications.

## CONSTRUCTION CONTRACT

### Goldwater Lake Park – Day Use Expansion Project

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Arizona, hereinafter designated "Contractor", and the City of Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated "City".

WITNESSETH: That the said Contractor, for and in consideration of the sum to be paid him by the said City, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for himself, his heir, executors, administrators, successors and assigns as follows:

**ARTICLE I - SCOPE OF WORK:** The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required to perform all work for the construction of the project described as City of Prescott: Goldwater Lake Park – Day Use Expansion Project and install the material therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City through its Engineers and under the direction and supervision of the Parks and Recreation Director, or his properly authorized agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by the Engineers for the City, and with such written modifications of the same and other documents that may be made by the City through the Parks and Recreation Director or his properly authorized agents, as provided herein.

**ARTICLE II - CONTRACT DOCUMENTS:** The Notice Inviting Bids, Plans, Standards Specifications and Details, Special Conditions, Addenda, if any, Proposal and Insurance Requirements as accepted by the Mayor and Council per Council Minutes of \_\_\_\_\_, 2013, Performance Bond, Payment Bond, Bid Bond, Certificate of Insurance and Contract Amendments, if any, are by this reference made a part of this Contract to the same extent as if set forth herein in full.

**ARTICLE III - TIME OF COMPLETION:** The Contractor hereby agrees to commence work on or before the tenth (10th) day after written notice to do so, and to fully complete the same within Sixty (60) calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the General Conditions.

**ARTICLE IV - COMPENSATION:** Contractor shall be paid, pursuant to the provisions as set forth in the Contract documents, the total sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), plus any approved contract amendments, for the full and satisfactory completion of all work as set forth in the Project Specifications and Contract Documents. Retention shall be in accordance with Arizona Revised Statutes Section 34-221.

**ARTICLE V - CONFLICT OF INTEREST:** Pursuant to ARS Section 38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.

**ARTICLE VI - AMBIGUITY:** This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

**ARTICLE VII - NONDISCRIMINATION:** The Contractor, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

**ARTICLE VIII - INDEPENDENT CONTRACTOR STATUS:** It is expressly agreed and understood by and between the parties that the Contractor is being retained by the City as an independent contractor, and as such the Contractor shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled other than that compensation as set forth in Article IV - Compensation above. As an independent contractor, the Contractor further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Contractor further agrees that he will conduct himself in a manner consistent with such status, and that he will neither hold himself out nor claim to be an officer or employee of the City by reason thereof, and that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

**ARTICLE IX - CITY FEES:** Prior to final payment to the Contractor, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Contractor, and shall apply to those moneys to the appropriate account. Contractor shall provide to the City any information necessary to determine the total amount(s) due.

**ARTICLE X - LIQUIDATED DAMAGES:** All time limits stated in the contract documents are of the essence and should the Contractor fail to complete the work required to be done on or before the time of completion as set forth in these contract documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of \$280.00 per day for each and every day's delay in completion and acceptance of the work required to be done by the Contractor subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the Owner and Contractor agree to fix said sum of \$280.00 per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete the work required to be done by the Contractor on or before the time of completion and acceptance and, in the case of such breach, the Owner shall deduct said amount from the amount due the Contractor under the contract. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor or the surety on the bonds shall pay the difference due the Owner.

#### **ARTICLE XI – OTHER WORK IN PROJECT AREA**

The City of Prescott, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The Contractor herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The Contractor's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question and answer session in the pre-bid process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the contractor, its agents, employees or any of the contractor's subcontractors. In the event that the contractor encounters delay or disruption in the project schedule due to factors not wholly the fault of the contractor or within the contractors control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of this Contract and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

#### **ARTICLE XII - BONDS**

A. On or before the execution of the contract, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to ARS Section 34-222, conditioned upon the faithful performance of this

contract in accordance with the plans, specifications and conditions herein. Such bond shall be solely for the protection of the City of Prescott. A copy of this bond shall be filed with the Prescott City Clerk.

- B. Contractor shall also obtain a payment bond, pursuant to the provisions of ARS Section 34-222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.
- C. All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an "A" rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

### **ARTICLE XIII - MISCELLANEOUS**

- A. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.
- B. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01 (A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
- C. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

Parks and Recreation Director  
City of Prescott  
824 E. Gurley Street  
Prescott, AZ 86301

- D. This Agreement shall be construed under the laws of the State of Arizona.
- E. This Agreement represents the entire and integrated Agreement between the City and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- F. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- G. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.
- H. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over Exhibit "A".
- I. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this

provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

- J. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

ATTEST:

\_\_\_\_\_  
Witness, if Contractor is an Individual

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

City of Prescott, a municipal corporation

\_\_\_\_\_  
Marlin D. Kuykendall, Mayor

Attest:

Approved as to Form:

\_\_\_\_\_  
Lynn Mulhall, City Clerk

\_\_\_\_\_  
Jon M. Paladini, City Attorney



# **GENERAL CONDITIONS**

## COMMENCEMENT, PROSECUTION AND PROGRESS

### PRECONSTRUCTION CONFERENCE

Within 15 days of the date of the Notice of Award, the Contractor is required to attend a Pre-construction Conference. The City will contact the Contractor to schedule a specific date, time and location for the Pre-construction Conference. The purpose of the meeting is to outline specific construction items and procedures and to address items, which require special attention on the part of the Contractor. The Contractor may also present proposed variations in procedures, which the Contractor believes may be of benefit to the project, reduce cost, or will reduce inconvenience to the public. Communication and coordination issues will be also addressed during the Pre-construction Conference. The Contractor will be required to provide five sets of the following information at the Pre-construction Conference:

- A. Names and emergency telephone number of key personnel involved in the project.
- B. A copy of each subcontractor's contract or purchase order agreement for each and every item of work under subcontract on the project.
- C. The Construction Schedule as defined elsewhere in the General Conditions.
- D. A payment schedule showing the estimated dollar volume of work for each calendar month during the life of the project.
- E. The Traffic Control and access management plan providing for continuous access to residents and businesses affected by the project.
- F. The Contractor's Company Safety Plan.
- G. The Contractor's Quality Control Plan.
- H. An itemized list of shop drawings, materials, mix designs, equipment submittals and a schedule indicating the dates each of these items will be transmitted to the Special Projects Administrator for review.

Each of the above items is subject to review and approval by the Special Projects Administrator.

### COMMENCEMENT

The Contractor shall commence work on or before the tenth (10th) calendar day after receiving the Notice to Proceed, and shall complete all work under the Contract within the period of time specified in the Special Conditions. The City reserves the right to issue Notice to Proceed at any time between zero (0) and sixty (60) days after contract award. Notice to Proceed will be issued not later than sixty (60) calendar days after the Contract has been awarded unless otherwise agreed upon in writing, or as may be specified in the Special Conditions. In addition, Contractor shall not commence work until all required documents, bonds, plans and schedules have been received and approved by the City. These submittals will not affect the issuance of Notice to Proceed by the City.

**NOTE: SINCE ACCESS TO THE EXPANSION AREA AND WORKSITE IS THROUGH A PUBLIC PARK WITH CHILDREN, SAFETY IS OF HIGHEST IMPORTANCE.**

### PUBLIC NOTICE

- A. Contractor shall issue written notification to those residents affected by the Goldwater Lake Park – Day Use Expansion Project. This notification shall contain at a minimum: (1) Type of Work; (2) Contractor; (3) Contractor's Phone Number and Point of Contact; (4) Duration of Project; (5) Date project commences; (6) Description of project site; (7) Contractor's after-hours Point of Contact and phone number.
- B. The Contractor is required to post public notification signs at all entrances to the project specifying the following information: (1) Project Name/Description (2) Construction Calendar (3) Contractor Name/Phone Number Day & Night (4) City of Prescott – Parks & Recreation – (928) 777-1590.
- C. The sign size and legend shall be appropriate for the intended purpose and be easily read. All signs shall be posted prior to commencement of any work on the project. Signs will be removed by the contractor upon final acceptance of the project. No direct payment shall be made for said signs, cost of such shall be considered incidental to the contract.

## **SUBCONTRACTORS**

MAG Specifications, Section 108.2, including the following:

- A. All subcontractors and purchase orders for equipment shall state and establish guaranteed delivery dates, at such times as determined by the Contractor, which will allow the Contractor to complete the project within the Contract time.
- B. The Contractor shall perform more than forty percent (40%) of the work (by total contract amount) involved in this project with his own forces. Total subcontracted amounts shall be limited to less than sixty percent (60%) of the total contract amount. For purposes of this requirement, materials purchased directly from suppliers and installed by the Contractor's own forces shall be included in the Contractor's total and materials installed by subcontractors, regardless of who originally purchased them, will be included in the Subcontractors totals.
- C. The Contractor shall furnish the form list of subcontractors with his bid including the estimated amount of each subcontract. Additionally, a duplicate copy of each subcontract, including lower tier subcontracts, shall be delivered to the Special Projects Administrator upon award of the project and prior to the issuance of the Notice to Proceed.

## **CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES**

MAG Specifications, Section 105.5, including: Plans and specifications to successful bidder clause in the "Information for Bidders" in this set of specifications.

## **CONTRACTOR AND SUBCONTRACTOR RECORDS**

- A. The Contractor shall keep at the work site a copy of the Contract Documents and shall at all times give the Parks and Recreation Director access thereto.
- B. The Notice Inviting Bids, Information for Bidders, Special Conditions, Specifications, Plans, and all supplementary documents are intended to be complete and complementary and to prescribe a complete work. If any omissions are made of information necessary to carry out the full intent and meaning of the contract documents, the Contractor shall immediately call the matter to the attention of the Special Projects Administrator for furnishing of detailed instructions. In case of discrepancies, the Specifications shall govern over the plans. Figured dimensions shall govern over scaled dimensions.
- C. Any drawings or plans listed anywhere in the Specifications or Addenda thereto shall be regarded as a part thereof and of the Contract. Anything mentioned in these Specifications and not indicated on the plans, or anything indicated on the plans and not mentioned in these Specifications, shall be in the same force and effect as if indicated or mentioned in both.
- D. The Contractor, subcontractors and all suppliers shall keep and maintain all books, papers, records, files, accounts, reports, bid documents with back-up data, including electronic data, and all other material relating to the contract and project for three years following completion and acceptance of the work. All records shall be accurately maintained in accordance with generally accepted accounting principles and practices uniformly and consistently applied in a format that will permit audit. The Parks and Recreation Director or his authorized representative(s) shall have access at all reasonable times to all applicable records of the Contractor and the records of the Contractor's subcontractors.

The Contractor and Subcontractors shall preserve all such materials for a period of three years after all payments to the Contractor or subcontractors, or until the final resolution of all claims made by the Contractor or subcontractor on this contract, whichever is later. The Contractor and subcontractors shall make all of the above materials available to the Parks and Recreation Director for auditing, inspection and copying and shall produce such materials upon written request at the office of the Parks and Recreation Director located 824 E. Gurley Street, Prescott Arizona.

The Contractor shall insert the above requirement in each subcontract, purchase order, lease agreement, or other document under which goods or services are provided for the performance of this contract and shall also include in all subcontracts a clause requiring subcontractors to include the above requirement in any lower-tier subcontract, purchase order, lease agreement or document under which goods or services are provided for the performance of this contract.

## **ADDENDA, REVISIONS AND SUPPLEMENTARY DRAWINGS**

- A. The work shall conform to such other drawings relating thereto as may be furnished by the City prior to the opening of proposals, and to such drawings in the explanation of details or minor modifications as may be furnished from time to time during construction, including such minor modifications as the Parks and Recreation Director may consider necessary during the prosecution of the work.
- B. Scaled dimensions shall not be used in the construction of the work.

## **ERROR AND OMISSIONS**

The written dimensions, calculations and quantities on the plans are presumed to be correct, but the Contractor shall be required to check carefully all dimensions, calculations and quantities before beginning work. If any errors or omissions are discovered, the Parks and Recreation Director shall be so advised in writing and will make the proper corrections. If the Contractor claims that any such errors or omissions should change the cost of any Pay Item or the construction as identified in the plans, the Contractor shall also submit to the Parks and Recreation Director a written proposed Contract Amendment. Any such adjustments made by the Contractor that are claimed to change the cost of any Pay Item or the construction as identified in the plans, without prior review and acceptance of a proposed Contract Amendment, shall be at the Contractor's own risk. The settlement of any complications or disputed expenses arising from a Contractor's adjustment shall be borne by the Contractor at his own expense.

## **CHARACTER OF WORKMEN**

MAG Specifications, Section 108.6.

## **SUSPENSION OF WORK**

- A. The Parks and Recreation Director shall have the authority to suspend the work wholly or in part, for such period as he may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as he may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provisions of the Contract. The Contractor shall immediately comply with the written order of the Parks and Recreation Director to suspend work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as reviewed and accepted in writing by the Parks and Recreation Director.
- B. In case of suspension of work for any cause whatsoever, the Contractor shall be responsible for all materials and shall properly store them if necessary and shall provide suitable drainage and erect temporary structures where necessary.
- C. If the performance of all or any portion of the work is suspended or delayed by the Parks and Recreation Director in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the Parks and Recreation Director, in writing, a request for an adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- D. Upon receipt, the Parks and Recreation Director will evaluate the contractor's request. If the Parks and Recreation Director agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Parks and Recreation Director will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the Parks and Recreation Director determination whether or not an adjustment of the contract is warranted. In the event an adjustment of the contract is warranted a contract amendment shall be executed by both parties evidencing mutual agreement to same.
- E. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time limits prescribed.
- F. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

## **DELAYS AND EXTENSION OF TIME**

MAG Specifications, Section 108.7, including:

- A. It is the Contractors responsibility to establish construction methods and a construction schedule, which will facilitate the completion of work required by this Contract within the contract period and with full consideration for the season during which the work is scheduled. Judgment as to hazardous conditions shall be made by the Parks and Recreation Director.
- B. To receive consideration for an extension of time, a request must be made in writing to the Parks and Recreation Director stating the reason for said request, and such request must be received by the Parks and Recreation Director as soon as reasonable practicable when the contractor has knowledge or should have known of the delay causing event, condition or circumstances, but in no event later than immediately following the end of the delay-causing condition. The extension of time allowed shall be as determined by the Parks and Recreation Director and approved by the City. In setting the Contract time, it has been assumed that up to five (5) working days may be lost as a result of weather conditions which will slow down the normal progress of work; therefore no extensions in contract time will be allowed for the first five (5) working days lost due to bad weather conditions. An extension of time may be granted by the City after the expiration of the time originally fixed in the Contract or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration.
- C. Any extension of time shall not release the sureties upon any bond required under the Contract. Extensions of time in and of themselves will not be a basis for a request of additional compensation by the Contractor.
- D. Any delays in this project, or extensions of time which may be granted, shall not entitle the Contractor to any additional compensation or monies whatsoever, including but not limited to compensation for loss of anticipated profits, extended overhead, unabsorbed home office overhead, or any other payments, unless expressly agreed to by the City in a duly executed and approved contract amendment.

## **PAYMENT FOR DELAY**

MAG 109.8 except as modified hereafter:

109.8.2, (B) Any compensation paid to the Contractor shall be in accordance with the General Conditions, Payment to Contractors, section of this Contract.

109.8.3 Extension of Contract Time: For any such delays, the contract time will be adjusted in accordance with the General Conditions, Delays and Extension of Time, section of this Contract.

## **TERMINATION FOR BREACH OF CONTRACT**

MAG Specifications, Sections 108.10 and 108.11, including: The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the City.

## **METHODS AND EQUIPMENT**

MAG Specifications, Section 108.6, including: The methods and equipment adopted by the Contractor shall be such as will secure a satisfactory quality of work and will enable the Contractor to complete the work in the time agreed upon. The selection and use of these methods and equipment is the responsibility of the Contractor.

## **DATE OF ACTUAL COMPLETION**

The date upon which the project will be considered as complete shall be that date upon which the work is accepted by the City.

## **FINAL ACCEPTANCE**

MAG Specifications, Section 105.15 (B), including:

- A. After all work under the Contract has been completed, as determined by the Parks and Recreation Director, the Parks and Recreation Director will recommend in writing to the City that final acceptance of the entire work under this Contract be made as of the date of the Parks and Recreation Director final inspection. The City will make final acceptance promptly after receiving the Parks and Recreation Director recommendation.
- B. Partial Acceptance may be given upon substantial completion of the work at the sole discretion of the Parks and Recreation Director in accordance MAG 105.15 and the paragraph entitled PARTIAL ACCEPTANCE OF WORK in these General Conditions.

- C. For the purpose of this section, Substantial Completion shall mean that stage in the progress of the Work where the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use with only minor work items or cleanup items remaining to be accomplished. Partial Acceptance shall not be given for incomplete major work items nor minor work items affecting public health and safety.
- D. Contract Time accounting and/or Assessment of Liquidated Damages shall be suspended on the date of Partial Acceptance and the Contractor shall complete all remaining work items necessary for Final Acceptance within 30 calendar days of the date of Partial Acceptance. The City shall withhold release of retention until all items under the contract have been completed and Final Acceptance has been issued.

## **SAFETY, HEALTH AND SANITATION PROVISIONS**

MAG Specifications, Section 107.5, including:

- A. The Contractor shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the project. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the project, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.
- B. On all projects, with respect to sanitation facilities, for which Federal funds are allocated, the Contractor shall cooperate with and follow directions of representatives of the Public Health Service and the State. State and County public health service representatives shall have access to the work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection.

## **TRAFFIC CONTROL**

Traffic control is the responsibility of the Contractor and shall be in accordance with MAG Specifications, Section 401. The Contractor shall submit to the City of Prescott, for approval, a traffic control plan for all activities connected with the proposed work.

**NOTE: SINCE ACCESS TO THE EXPANSION AREA AND WORKSITE IS THROUGH A PUBLIC PARK WITH CHILDREN, SAFETY IS OF HIGHEST IMPORTANCE.**

## **WATER**

- A. The Contractor shall supply adequate, pure cool-drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet the "Standards for Public Water Supplies" specified in the State Health Department Code.
- B. It shall be the responsibility of the Contractor to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed project, all temporary connections and piping installed by the Contractor shall be removed. **Since park public water is currently hauled into the park, water is unavailable for construction purposes.**
- C. The Contractor shall apply for a fire hydrant meter for all construction water used if the Contractor desires to obtain water from the City of Prescott distribution system at any point. All contractors requesting construction water from the City must submit a Construction Water Meter Application to the Water Distribution Department. A \$1,000 deposit will be required for hydrant meters. If construction water use occurs during the months of May through September the Contractor shall also include a dust abatement program. The Contractor will be responsible for all costs associated with obtaining and delivering construction water.

## **PROTECTION OF WORK**

MAG Specifications, Section 107.10.

## **CLEANUP AND DUST CONTROL**

MAG Specifications, Sections 104.1.3 and 104.1.4, including: Salvage material shall be stored at areas designated by the Special Projects Administrator.

## **GUARANTEE OF WORK**

MAG Specifications, Section 108.8, shall apply, but modify: Guarantee period is two (2) years. During the two year (2 year) guarantee period, should the Contractor fail to remedy defective material and/or workmanship, or to make

replacements within five (5) calendar days after written notice by the City, it is agreed that the City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor.

## **CONTINGENCIES**

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the work, from the action of the elements, or from any act or omission on the part of the Contractor or any person or agent employed by him shall be borne by the Contractor.

## **NOTICE AND SERVICE THEREOF**

Any notice to the Contractor from the City relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed when said Notice is posted, by first class mail, to the said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the work.

## **PROJECT MEETINGS**

- A. It shall be the responsibility of the Contractor to conduct bi-weekly meetings to be attended by representatives of Subcontractors, utilities, Special Projects Administrator, and other interested parties for the purpose of keeping the project on schedule and to provide for necessary coordination of the work of the various parties. The Contractor shall take minutes at each meeting for distribution to all attendees the following week. The minutes shall be of sufficient detail to accurately recount the meeting discussion, including but not limited to progress, work schedule, submittals and certifications, utilities, construction issues, contract changes, safety and traffic control, action items, resolved and unresolved issues.
- B. Additionally the Contractor shall furnish the Special Projects Administrator with written weekly project status reports at the beginning of each weekly project meeting. The report shall cover the work of the preceding work week and shall include the following for each week.
  - 1. A comprehensive list of the Contractor's men and equipment performing the work on the jobsite.
  - 2. A comprehensive list of Contractor's subcontractors' men and equipment, if any, performing the work on the jobsite.
  - 3. A brief description of the work performed by the Contractor and Contractor's subcontractors, if any.
  - 4. The estimated percentage of each portion of the work performed for the period together with the total percentage of each portion of the work performed to the date of the report.
  - 5. A detailed summary of each work stoppage, if any, occasioned by the City of Prescott, other contractors, or other designated reasons, which were beyond the contractor's control.
  - 6. Comments or exceptions to prior weekly meeting minutes shall be addressed at each subsequent construction meeting.

## **CONSTRUCTION SCHEDULE**

Per MAG Specifications, Section 108.4 and Section 108.5, including:

- A. The Construction schedule shall indicate the time of starting and completing each major phase of the project and such intermediate phases as will serve for well-defined control points. The schedule shall be of sufficient detail to define the Critical Path for project completion. It shall also indicate the scheduled receipt of major items of equipment and the items of equipment installation dates of which is critical to the scheduled progress of the project. Two week look-ahead schedules will be provided by the contractor at each weekly construction meeting. The comprehensive project schedule shall be updated and submitted monthly. Such updates shall include and accurately reflect additional work, changes in the work, delays to individual items of work and reasons therefore along with the extent of delay and any other items affecting the progress of the project.
- B. Failure by the contractor to provide the weekly/monthly updates will result in the City withholding an amount equal to 5% of the monthly pay estimate relative to the billing period in which the schedule updates are to be provided. Said 5% withholding will be retained by the City until the required schedule updates are submitted by the Contractor, reviewed by the City and found to be current. When the schedule updates are determined to be in conformance with the provisions herein the 5% retainer will be released with the next monthly payment.

- C. The construction schedule shall serve as an index of progress prosecution as contemplated by the Contractor. In the event the actual construction progress varies substantially from the scheduled progress, the Special Projects Administrator will require and the Contractor shall be required, within ten (10) calendar days written notice, to provide a revised construction schedule, giving in detail the particular changes in production as estimated by the Contractor to complete the work within the specified Contract Time. Time is of the essence in this regard.

## **ACCIDENT PREVENTION**

MAG Specifications, Section 107.5 and 107.6 including:

- A. Machinery, equipment and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, and the requirements of the Occupational Safety and Health Administration.
- B. First aid facilities and information posters conforming at least to the minimum requirements of the Occupational Safety and Health Administration shall be provided in a readily accessible location or locations.
- C. The Contractor shall make all reports as are, or may be, required by the Engineer or any authority having jurisdiction, and permit all safety inspections of the work being performed under this Contract. Before proceeding with any construction work, the Contractor shall take all the necessary action to comply with all provisions for safety and accident prevention. In the event the Contractor fails to comply with said safety provisions or directions of the Parks and Recreation Director, the Parks and Recreation Director without prejudice to any other rights of the City, may issue an order stopping all or any part of the work.
- D. Thereafter, a start order for resumption of the work may be issued at the discretion of the Parks and Recreation Director when in his opinion the defection from safety requirements has been corrected. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

## **CONSTRUCTION FACILITIES**

All construction hoists, elevators, scaffolds, stages, shoring, and similar temporary facilities shall be of ample size and capacity to adequately support and/or move the loads to which they will be subjected. All railings, enclosures, safety devices, and controls required by law or for adequate protection of life and property shall be provided.

## **TEMPORARY FACILITIES**

The Contractor shall provide all temporary facilities and utilities required for prosecution of the work; protection of employees and the public; protection of the work from damage by fire, weather or vandalism; and such other facilities as may be specified or required by any legally applicable law, ordinance, rule, or regulation.

**NOTE: A CONSTRUCTION YARD AND STAGING AREA SEPARATE FROM THE EXISTING PARK, SUCH AS NEAR FUTURE HOST SITE, IS STRONGLY PREFERRED.**

## **WARNING DEVICES AND BARRICADES**

Per MAG Specifications, Section 107.7.

## **HAZARDS IN PUBLIC RIGHT-OF-WAY**

Per MAG Specifications, Section 107.7.

## **HAZARDS IN PROTECTED AREAS**

Excavations on project sites from which the public is to be excluded shall be marked or guarded in a manner appropriate for the hazard.

## **PROTECTION OF EXISTING ITEMS**

The Contractor shall protect all existing structures, trees, shrubs, and other items on the project site that are to be preserved, by substantial barricades or other devices commensurate with the hazard, from injury or destruction by vehicles, equipment, workmen, or other agents.

## **PROJECT SECURITY**

The Contractor shall make adequate provision, subject to the approval of the Special Projects Administrator, to protect the project and Contractor's facilities from fire, theft, and vandalism, and the public from unnecessary exposure to injury.

**NOTE: A CONSTRUCTION YARD AND STAGING AREA SEPARATE FROM THE EXISTING PARK, SUCH AS NEAR FUTURE HOST SITE, IS STRONGLY PREFERRED. NO NIGHT-TIME SECURITY CURRENTLY EXISTS AT THE PARK, HOWEVER, THE MAIN ENTRANCE GATE IS LOCKED EACH NIGHT.**

## **FIRE EXTINGUISHER**

At least one (1) fire extinguisher, rated at least 2A, shall be provided on the job site.

## **OFF-SITE ROADS**

Except as otherwise shown or specified, off-site access roads shall be adequately maintained, graded-earth roads. Such roads shall be built only in the public right-of-way or easements obtained by the City. If the Contractor elects to build along some other alignment, he shall obtain, without additional cost to the City, necessary rights-of-way or easements.

## **NOISE ABATEMENT**

In inhabited areas, particularly residential, operations shall be performed in a manner to minimize unnecessary noise generation.

## **DRAINAGE CONTROL**

In excavation, fill, and grading operations, care shall be taken to disturb the pre-existing drainage pattern as little as possible. **Particular care shall be taken not to direct drainage water with possible pollution and sedimentation into Goldwater Lake itself. Water quality and protection of the fisheries is a high priority.**

## **PROJECT CLOSE-OUT**

It is the intent of these Specifications and Contract Documents that the Contractor shall deliver a complete and operable facility capable of performing its intended functions and ready for use. The City shall withhold Final Payment and release of retention until ALL of the following items have been completed:

- A. Completion of all work, including punch-list items and Final Acceptance of the work by the City.
- B. Submittal by Contractor of final pay estimate, which shall show the amount of work performed according to the Contract and approved by the City.
- C. Submittal by the Contractor of all Project Record Documents, including As-Built drawings, operation and maintenance manuals, and other records as referenced herein.
- D. Submittal by Contractor of CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS & CERTIFICATION OF COMPLETION & WARRANTIES.
- E. Closeout of any and all permits issued to the Contractor by the City or any other agency for the work included in the project.
- F. Submittal by Contractor of EPA SWPPP Notice of Termination (if applicable).

## **WASTE DISPOSAL, GRADING AND MATERIAL STORAGE**

- A. The Contractor shall provide for the disposal of all surplus materials, waste products, debris, etc., and shall make necessary arrangements for such disposal. The Contractor shall obtain written permission from property owners(s) prior to disposing of any surplus materials, waste products, debris, etc., on private property, and shall also obtain the approval of the Parks and Recreation Director prior to such disposal.
- B. The Parks and Recreation Director will not approve the filling of ditches, washes, drainage ways, etc., which may in his opinion create water control problems.
- C. The Parks and Recreation Director will not approve disposal operations, which will, in his opinion, create unsightly and/or unsanitary nuisances.

- D. The Contractor shall maintain the disposal site(s) in a reasonable condition of appearance and safety during the construction period as required by the Parks and Recreation Director. Prior to final acceptance of the project, the Contractor shall have completed the leveling and cleanup of the disposal site(s) to the satisfaction of the Parks and Recreation Director.
- E. The Contractor shall obtain a grading permit or any other permit required by the City, Yavapai County or any other county, or State or federal rules, regulations, laws, ordinances, or any other regulatory authority for all construction operations of the Project, including but not limited to the following:
  - 1. Areas disturbed by the Contractor, including staging areas, borrow areas, waste areas, or material storage areas, located within the City limits that are subject to -any requirements of the City Code or City Land Development Code, including but not limited to Section 6.7 – Site Disturbance, Grading and Restoration Standards, of the City of Prescott Land Development Code; Section 9.6 – Site Disturbance and Grading Permit, or Chapter 16-2: DRAINAGE REGULATIONS;
  - 2. Areas outside of the City limits that are subject to the requirements of Yavapai County for any activities described in this section, “WASTE DISPOSAL;”
  - 3. The disposal of waste material on private property dependent upon site specific conditions at the waste area(s) and characteristics of the fill in accordance with Paragraph 1. The fees for a permit for this activity shall not be waived; said fees are incidental to the appropriate bid item(s);
  - 4. The staging or material storage area(s) that:
    - a. Are not City owned property on the project, or
    - b. Require clearing or grubbing in excess of 10,000 sf.
 Fees for a permit(s) for this activity shall not be waived; said costs are incidental to the appropriate bid item(s).
  - 5. Site disturbances for infrastructure improvements on City owned property not within the right-of-way for which the disturbance is greater than 50 cubic yards of material or in excess of 10,000 square feet. The associated fees for grading permits for this activity on City owned property shall be waived.

## **PROJECT RECORD DOCUMENTS**

- A. The Contractor shall maintain at the site, available to the City, one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change of Orders, and other modifications in good order and marked to record all changes made during construction. These shall be delivered to the City upon completion of the Project or the earlier termination of the parties' contract.
- B. The contractor shall maintain any and all documentation to substantiate all costs on the project, including but not limited to those items included in “Force Account” computations, computations reflecting the actual cost of work on the project and computations substantiating any claimed increases or additional costs incurred in the project by the contractor, and shall make those records available to the City (or provide copies thereof to the City) within 24 hours of request by the City. The failure of the Contractor to maintain and produce the foregoing documentation will preclude the Contractor from being entitled to any additional payments for any additional work in question.

## **CONTROL OF WORK**

### **ABBREVIATIONS**

MAG Specifications, Section 101.1, including abbreviations as shown on the Plans.

### **AUTHORITY AND DUTIES OF INSPECTOR**

Per MAG Specifications, Section 105.9, including:

- A. An inspector is to be assigned to the project by the City to monitor the project and to keep the Special Projects Administrator informed as to the progress of the work and the manner in which it is being done. Additionally, the inspector will call the Contractor’s attention to any non-conformance with the Plans and Specifications. He will not be authorized to approve or accept any portion of the work or to act as foreman for the Contractor. Inspection will be done on an as needed or on-call basis.

- B. The inspector will exercise such additional authority only as may from time to time be delegated to him by the Parks and Recreation Director.

## **INSPECTION**

MAG Specifications, Section 105.10, including:

Inspection is to be done by the City of Prescott Public Works Department. The Contractor shall furnish the Special Projects Administrator with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the Specifications and Contract. If the Special Projects Administrator requests it, the Contractor at any time before acceptance of the work shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standards required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing and the replacing of the covering or making good of the part removed will be paid for as provided under CHANGES IN THE WORK, but should the work so exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed shall be at the Contractor's expense. Inspection or supervision by the Special Projects Administrator shall not be considered as direct control of the individual workman and his work. The direct control shall be solely the responsibility of the Contractor's foreman and superintendent.

## **AUTHORITY OF THE ENGINEER**

MAG Specifications, Section 105.1 with the following exception: References to "the Engineer" shall mean Special Projects Administrator.

## **PLANS**

- A. The Contract Plans consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the Contract Plans shall be in writing. The Contract Plans shall be supplemented by such working or shop drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working or shop drawing after it has been accepted by the Special Projects Administrator.
- B. The Contractor shall keep a copy of the Plans and Specifications at the job site, and shall at all times give the Special Projects Administrator access thereto. Any drawings or plans listed in the Detailed Specifications shall be regarded as a part thereof and the Special Projects Administrator will furnish from time to time such additional drawings, plans, profiles, and information as he may consider necessary for the Contractor's guidance.
- C. All authorized alterations affecting the requirements and information given on the accepted plans shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by the Special Projects Administrator except by consent of the Special Projects Administrator in writing.

## **CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS**

MAG Specifications, Section 105.3.

## **COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS**

MAG Specifications, Section 105.4, including:

- A. In the event of any doubt or question arising regarding the true meaning of these Specifications, the Special Conditions, or the Plans, reference shall be made to the Special Projects Administrator, whose decision thereon shall be final. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.
- B. In the event of there being a conflict between one contract document and any of the other contract documents the document highest in precedence shall control and supersede the document which is contrary to it. The order of precedence of the contract documents is as follows:
  - 1. Supplemental Agreements, the last in time being the first in precedence.
  - 2. The formal Contract.
  - 3. Notice Inviting Bids.
  - 4. Information for Bidders.

5. Special Provisions.
6. Technical Specifications.
7. Plans.
8. General Conditions.
9. Contractor Proposal.

## **ORDER OF WORK**

- A. When required by the Contract Documents, the Contractor shall follow the sequence of operations as set forth therein.
- B. Full compensation for conforming to such requirements will be considered as included in the prices paid for contract items of work and no additional compensation will be allowed therefore.

## **CONSTRUCTION STAKES, LINES AND GRADES**

MAG Specifications, Section 105.8.

## **REMOVAL OF UNACCEPTABLE AND/OR UNAUTHORIZED WORK**

MAG Specification, Section 105.11.

## **MAINTENANCE DURING CONSTRUCTION**

MAG Specifications, Section 105.12.

## **COOPERATION BETWEEN CONTRACTORS**

The City of Prescott reserves the right at any time to contract for and perform other additional work on or near the work covered by the contract.

When separate contracts are let within the limits of any one project, each contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

The Contractor shall arrange his work and shall place and dispose of the materials being used so as not to interfere with the operation so the other Contractors within the limited of the same project. He shall join his work with that of others in an acceptable manner and shall perform it in proper sequence to that of others.

The City of Prescott will not honor any claim for extra compensation due to delays, extra work, or extension of time caused by any other Contractors working within the limits of the same project.

## **COORDINATION OF WORK**

- A. Prior to starting construction, the Contractor shall submit their construction schedule to the Special Projects Administrator for approval.
- B. It shall be the responsibility of the Contractor to maintain overall coordination of the project. Based on the general contract construction schedule prepared in accordance with these Specifications, the Contractor shall obtain from each of his Subcontractors a similar schedule and shall be responsible for all parties maintaining these schedules or for coordinating changes necessitated by unforeseen difficulties.

## **LINES AND GRADES.**

All work under this Contract shall be built in accordance with the detailed scope of work.

## **MATERIALS AND WORKMANSHIP**

### **GENERAL**

MAG Specifications, Section 106.1, including:

- A. Where equipment, materials, or articles are referred to in the Specifications as "or equal", or "equal to" any particular standard, the Special Projects Administrator shall decide the question of equality.

- B. Wherever any standard published specification is referred to, the latest edition or revision, including all contract amendments, shall be used unless otherwise specified. Materials of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all materials not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.
- C. All work shall be done and completed in a thorough, workmanlike manner notwithstanding any omission from these Specifications or from the Plans; and it shall be the duty of the Contractor to call the Special Projects Administrator attention to apparent errors or omissions and request instructions before proceeding with the work. The Special Projects Administrator may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original Specifications or Plans.

## **SUBSTITUTION OF MATERIAL OR EQUIPMENT**

MAG Specifications, Section 106.4, including: Requests relative to substitutions for materials or equipment specifically designated on the Plans or in the Specifications shall be made in writing, and such requests shall be accompanied by complete data on which the Special Projects Administrator can make determination on the merits of the proposed substitution. The written request shall state how the product proposed for a substitution compares with or differs from the designated product in composition, size, arrangement, performance, etc., and in addition, the request shall be accompanied by documentary evidence of equality in price and delivery or evidence of difference in price and delivery. Data on price shall be in the form of certified quotations from suppliers of both the designated and proposed items. All items accepted for substitution shall be subject to all applicable provisions of the Specifications. Should substitution be allowed under the foregoing provisions, and should the item subsequently prove to be defective or otherwise unsatisfactory for the service for which it was intended, the Contractor, shall without cost to the City, and without obligation on the part of the Special Projects Administrator, replace the item with the material originally specified.

## **FABRICATED MATERIALS AND SHOP DRAWINGS**

Fabricated materials and shop drawings shall be handled as set forth in the Special Conditions.

## **MATERIALS FURNISHED BY THE CITY**

MAG Specifications, Section 106.8.

## **STORAGE AND HANDLING OF MATERIALS**

MAG Specifications, Section 106.5 and 106.6, including: Protection of materials and equipment stored on the site shall be the responsibility of the Contractor. The City reserves the right to direct the Contractor to provide proper means of protection for materials if such is deemed advisable by the Special Projects Administrator; however, the exercise of or failure to exercise this right shall not be deemed to relieve the Contractor of his primary responsibility for protecting the material and equipment. The Contractor shall provide suitable warehouses or other adequate means of protection for such if the materials and equipment require storage and protection. The Contractor shall store and care for the materials and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. The cost of replacing any material or equipment damaged in storage shall be borne by the Contractor, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve the Contractor of his primary responsibility. No motor shall be left uncovered or unprotected.

## **REJECTED MATERIALS**

MAG Specifications, Section 106.7.

## **UTILITIES**

MAG Specifications, Section 107.11.

## **DRIVEWAYS AND WALKS**

Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. Before blocking driveways, the Contractor shall notify the property owner. The Contractor shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to the Contractor's work. If it is necessary to leave an excavation open across

driveways or sidewalks, the Contractor shall provide temporary relief in the form of steel plates over the excavation. Direct access shall be provided at all times to fire engine houses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

## **ROADS AND FENCES**

Streets and roads subjected to interference by the prosecution of this work shall be kept open and maintained by the Contractor until the work is completed.

## **TREES AND SHRUBBERY**

- A. All trees and shrubbery within the right-of-way or easements shall be protected by the Contractor insofar as practicable.
- B. In the event shrubbery or trees must be trimmed, or removed, the Contractor shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by the Contractor and hauled from the job at the Contractor's expense.
- C. All trees, shrubs, hedges, brush, and cut firewood etc. designated on the Plans, or by the Special Projects Administrator for removal, shall be completely removed and disposed of as indicated on the Plans or as specified by the Special Projects Administrator.

## **IRRIGATION DITCHES AND STRUCTURES**

The Contractor shall contact the owners of any ditches, irrigation lines, and appurtenances, which interfere with the work and shall make arrangements for dry- up or scheduling of water deliveries. The Contractor shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

## **SUBMITTALS**

Per MAG Specifications, Section 105.2, including:

- A. In ample time for each to serve its proper purpose and function, the Contractor shall submit to the Special Projects Administrator such schedules, reports, drawings, lists, literature samples, instructions, directions, and guarantees as are specified or reasonable required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.
- B. Shop drawings and data shall be submitted to the Special Projects Administrator in such number of copies as will allow him to retain four (4) copies of each submittal. The submittal shall clearly indicate the specific area of the Specifications or Plans for which the submittal is made. The additional copies received by him will be returned to the Contractor's representative at the job site. The Special Projects Administrator notations of the action, which he has taken, will be noted on one (1) of these returned copies.
- C. The above drawings, lists, prints, samples, and other data shall become a part of the Contract and a copy of the same shall be kept with the job site plans and the fabrications furnished shall be in conformance with the same.

## **MATERIALS AND EQUIPMENT SCHEDULES**

Drawings of minor or incidental fabricated materials and/or equipment may not be required by the Special Projects Administrator. The Contractor shall furnish the Special Projects Administrator tabulated lists of such fabrications, showing the names of the manufacturers and catalog numbers, together with samples of general data as may be required to permit determination by the Special Projects Administrator as to their acceptability for incorporation in the work.

## **QUALITY CONTROL**

- A. All material shall be of the specified quality and equal to the approved samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these Specifications or from the Plans; and it shall be the duty of the Contractor to call the Special Projects Administrator attention to apparent errors or omissions and request instructions before proceeding with the work. The Special Projects Administrator may, by appropriate instructions, correct errors and supply omissions, which instructions shall be as binding upon the Contractor as though contained in the original Specifications or Plans.

- B. Materials which will require testing and inspection at the place of origin shall not be shipped prior to such testing and inspection.

## **SAMPLES AND TESTS**

Per MAG Specifications, Sections 106.2 and 106.3, including:

- A. At the option of the Special Projects Administrator, the source of supply of each of the materials shall be approved by him before the delivery is started and before such material is used in the work. Representative preliminary samples of the character and quality prescribed shall be submitted by the Contractor or producer of all materials to be used in the work for testing or examination as desired by the Special Projects Administrator.
- B. Sieves used in determining the grading of samples of aggregates, select material, and other graded materials, shall conform to ASTM Designation E 11-81.

## **LEGAL RELATIONS AND RESPONSIBILITY**

### **LAWS TO BE OBSERVED**

MAG Specifications, Section 107.1.

### **ALIEN LABOR**

The Contractor shall comply with the Immigration Reform and Control Act of 1996.

### **CONTRACTOR IMMIGRATION WARRANTY**

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

### **COMPLIANCE WITH FEDERAL AND STATE LAWS**

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. §34-302, as amended, "Residence Requirements for Employees".

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration Laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty Shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of the subcontractors to ensure compliance with Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any of the Subcontractors shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by building or transportation facility or improvement to real property.

## **EMPLOYMENT PROVISIONS**

Subject to existing law, and regulations, illegal or undocumented aliens will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all Subcontracts or subordinate agreements issued in support of this contract. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and

274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented aliens.

Under the terms of this agreement, the contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach of this contract.

## **INDEPENDENT CONTRACTOR STATUS.**

It is expressly agreed and understood by and between the parties that the Contractor is being retained by the City as an independent contractor, and as such the Contractor shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled. As an independent contractor, the Contractor further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Contractor further agrees that he will conduct himself in a manner consistent with such status, and that he will neither hold himself out nor claim to be an officer or employee of the City by reason thereof, and that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

## **NONDISCRIMINATION**

The Contractor, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

## **AMERICANS WITH DISABILITIES ACT**

Contractor shall comply with all federal, state and local nondiscrimination statutes in the operation, implementation and delivery of, including state and federal civil rights and disabilities laws. In particular the contractor shall ensure that the City of Prescott's obligations for program, facility and service accessibility in Title II of the Americans with Disabilities Act are complied with in all activities arising under this contract, and shall hold harmless the City for any and all loss, including but not limited to damages, costs or expenses, incurred or arising from any alleged violations of expenses, incurred or arising from any alleged violation of the Americans with Disabilities Act under the auspices of this contract unless resulting from an intentional or actual negligent act of the City and its employees. Failure to comply with the nondiscrimination or accessibility requirements herein shall be construed as nonperformance and may result in termination of funding, civil action or both.

## **PERMITS, TAXES AND LICENSES**

MAG Specifications, Section 107.2, including: Except as otherwise provided in the Specifications, it is the duty of the Contractor to procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work. All applicable permits, licenses and taxes are the responsibility of the Contractor.

## **PATENTED DEVICES, MATERIALS AND PROCESSES**

MAG Specifications, Section 107.3.

## **SURVEY LAND MONUMENTS**

Survey land monuments and property marks shall not be moved or otherwise disturbed by the Contractor until an authorized agent of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction. Any monuments displaced by the Contractor shall be replaced at the Contractors expense.

## **PROTECTION OF PERSON AND PROPERTY**

MAG Specifications, Sections 107.5 through 107.10, including:

The Contractor shall confine all aspects of his operations within the construction limits as identified in the project plans. Should the Contractor contemplate the use of any private property adjacent to the project, beyond the project limits, for materials and equipment storage or to perform any work, he shall first obtain the written permission of the property owner. The Contractor shall provide a copy of the owner's permission to enter the property and for what purpose to the Special Projects Administrator prior to entering the property. The Contractor will be fully and solely responsible for any and all adverse impacts and / or damages caused by his operations on private property and the settlement of all claims pertaining thereto. Upon completion of his operations the Contractor shall obtain a signed release from the property owner pertaining to his activities on the owner's property and provide a copy of that document to the Special Projects Administrator. The failure of the Contractor to comply with these provisions will result in the retention of some portion of Contractor funds, payable under the contract, until such claims are resolved.

## **PROTECTION OF ANTIQUITIES**

MAG Specifications, Section 107.4.

## **PERSONAL LIABILITY OF PUBLIC OFFICIALS**

MAG Specifications, Section 107.13.

## **NON-RESPONSIBILITY OF THE CITY**

Indebtedness incurred for any cause in connection with this work must be paid by the Contractor, and the City is hereby relieved at all times from any indebtedness or claim other than payments under terms of the Contract.

## **NO WAIVER OF LEGAL RIGHTS**

MAG Specifications, Section 107.14.

## **PROPERTY RIGHTS IN MATERIAL**

Nothing in the Contract shall be construed as vesting in the Contractor any right of property in materials used after they have been attached or affixed to the work or the soil and accepted. All such materials shall become the property of the City upon being so attached or affixed and accepted.

## **PAYMENT TO CONTRACTORS**

### **GENERAL**

- A. The basis of payment for construction of this project shall be unit prices for all work actually performed in accordance with the Specifications and Scope of work, and shall include all labor and materials incorporated in the completed work.
- B. Upon final inspection and acceptance of the work, the City will pay the Contractor the amount earned under the Contract, as provided herein.

### **PARTIAL PAYMENT**

- A. Once each month, the City Project Inspector and the Contractor's Superintendent shall meet or as necessary to jointly measure all work items under the contract to determine pay quantities for each pay period. Quantities of work items shall be documented on the respective plan sheets and separately in tabular fashion with Station to Station measurements noted to assure there is no duplication of payment for work performed. Measurements will be for work actually completed. No projections for expected completion of work will be allowed.
- B. Contractor shall submit partial payment requests in a format approved by Special Projects Administrator together with the City of Prescott Pay Request Application and Certification for Payment, subject to approval by the Parks and Recreation Director.
- C. The City will retain ten percent (10%) of the amount of each such estimate to insure full and faithful compliance with the terms of these contract documents. After fifty percent (50%) of the work on this project has been completed, one half (½) of the amount retained shall be paid to the Contractor provided the Contractor is making satisfactory progress on the contract and there is no specific clause or claim requiring a greater amount to be retained. After the contract is fifty percent (50%) completed, only five percent (5%) of the amount of any subsequent progress payments made under the contract shall be retained provided the Contractor is making satisfactory progress on the project, except that if at any time the City determines satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all progress payments made under the contract subsequent to the determination.
- D. The Contractor shall furnish a detailed breakdown showing unit prices and quantities for use in preparing the monthly estimate. No partial payment will be made until this breakdown is presented by the Contractor and has been reviewed and accepted by the Parks and Recreation Director. Green-lined plan sheets shall be submitted with each monthly pay request illustrating the line item quantities constructed for the period. The green-lined plan sheets and pay estimate spreadsheets must reconcile with one another.
- E. No partial payment for job site-delivered material will be made.

### **PAYMENT**

For and in consideration of the faithful performance of the work, the City will pay to the Contractor the amount earned less retention as computed from the actual quantities of work performed under the Contract and to make such payment in the manner and at the time(s) specified, as follows:

- A. After final completion under the Contract, the Contractor shall render to the City a final estimate, which shall show the amount of work performed according to the Contract.
- B. Before the final payment will be made, the Contractor shall satisfy the City by affidavit that all bills for labor and materials incorporated in the work have been paid. See CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS & CERTIFICATION OF COMPLETION & WARRANTIES, page 22. Additionally, the Contractor shall furnish lien waivers for all completed labor and materials consumed during the project.
- C. Final payment constituting the entire unpaid balance of the Contract sum (including all retained moneys) shall be paid by the City to the Contractor within sixty (60) days after completion of the work or filing the Notice of

Completion of the Contract unless a specific written finding by the City of the reasons justifying the delay in payment is provided to the Contractor, and further provided that all work has been completed, the Contract fully performed, and any final certificate has been issued by the City's architect, if any. Prior to the final payment to the Contractor, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Contractor, and shall apply to those moneys to the appropriate account. Contractor shall provide to the City any information necessary to determine the total amount(s) due. The quantities appearing in the Bidding Schedule are approximate only, and are prepared for the comparison of bids. Payment to the Contractor will be made only by actual quantities of work performed and accepted in accordance with the requirements of the Contract. Only the items listed in the Bidding Schedule are pay items. The scheduled quantities of work to be done and materials to be furnished may each be increased, decreased or omitted.

- D. **Final project As-built plans shall verify line item quantities constructed for the project by individual plan sheet.** Contractor shall submit final payment request in a format approved by Parks and Recreation together with the City of Prescott Pay Request Application and Certification for Payment (form provided by Public Works).

## **PAYMENT OF ITEMS IN PROPOSAL**

- A. Only those items listed in the Proposal under Bidding Schedule are pay items.
- B. Compensation for all work necessary for the completion of the project or improvement shall be included by the bidder in the price bid for the items shown in the Proposal.

## **CHANGES IN THE WORK**

- A. The City, without invalidating the Contract, may order extra work, make changes by altering, or delete any portion of the work as specified herein, or as deemed necessary or desirable by the Special Projects Administrator. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra work.
- B. Extra work shall be that work not indicated or detailed on the Plans and not specified. Such work shall be governed by all applicable provisions on the Contract Document.
- C. In giving instructions, the Special Projects Administrator shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Parks and Recreation Director, and no claim for an addition to the total amount of the Contract shall be valid unless so ordered. It is mutually understood that it is inherent in the nature of municipal construction that some changes in the Plans and Specifications may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the Contract to recognize a normal and expected margin of change. The Special Projects Administrator shall have the right to make such changes, from time to time, in the Plans, in the character of the work, and in the termination of the completion of the work in the most satisfactory manner without invalidating the Contract.
- D. Any change ordered by the Parks and Recreation Director which involves installation of work essential to complete the Contract, but for which no basis of payment is provided for herein, said payment therefore shall be subject to agreement prior to said work being performed.
- E. The prices agreed upon and any agreed upon adjustment in Contract time shall be incorporated in the written order issued by the Parks and Recreation Director, which shall be written so as to indicate acceptance on the part of the Contractor as evidenced by his signature. In the event prices cannot be agreed upon, the City reserves the right to terminate the Contract as it applies to the items in questions and make such arrangements as it may deem necessary to complete the work, or it may direct the Contractor to proceed with the items in question to be reimbursed pursuant to the unit prices in the Contractor's bid or on a force account basis as provided hereinafter, at the City's option.

## **FORCE ACCOUNT**

The compensation for force account work performed by the Contractor shall be approved by the Special Projects Administrator in the following manner:

- A. **LABOR:** The Contractor shall provide monthly certified payroll reports for all labor and for foremen in direct charge of the specific operations. The Contractor will be compensated as follows:

1. The actual cost of wages paid by him but at rates not to exceed those for comparable labor currently employed on the project as determined by Special Projects Administrator.
  2. The actual cost of social security taxes and unemployment compensation insurance. There will be no payment for Fringe Benefits unless mandated by Federal Law on Federally funded projects.
  3. An amount equal to fifteen percent (15%) of the actual cost of wages and other costs listed above to cover the Contractor's profit and overhead.
  4. In case work is performed by a subcontractor, the said fifteen percent (15%) will be added only once to the actual cost of the work, however, the Contractor may add five percent (5%) to the Subcontractor's price to cover his own overhead and supervision.
- B. **TOOLS AND EQUIPMENT:** For any special or heavy equipment, the use of which has been authorized by the Special Projects Administrator, except for small tools and manual equipment, the Contractor shall be reimbursed his actual cost of rental, not to exceed the latest Schedule of Equipment Rental Rates published by the Arizona Department of Transportation. In the event that any of the equipment to be used is not shown in said schedule, the rental rate for such equipment shall be as agreed upon in writing before the work is started. No percentage shall be added to equipment rental rates. In the event said special or heavy equipment is owned by the Contractor, he shall be compensated only for the actual hours said equipment is required for the work under Force Account on the job site, at a rate not to exceed the latest ADOT. Schedule of Equipment Rental Rates.
- C. **MATERIALS:** For all materials accepted by the Special Projects Administrator and used in the work the Contractor shall be paid the actual cost of such material, including transportation charges, to which cost shall be added a sum equal to fifteen percent (15%) thereof.
- D. **SUPERVISION OVERHEAD and HOME OFFICE OVERHEAD:** No allowance shall be made for general superintendence. The cost of supervision and all overhead is presumed to be included in the fifteen percent (15%) added in accordance with the above.
- E. **RECORDS:** The Contractor's representative and the Special Projects Administrator shall compare the records of the work performed as ordered on a force account basis at the end of each day on which such work is performed. Copies of these records shall be made on suitable forms provide for this purpose and signed by both the Special Projects Administrator and the Contractor's representative. All claims for work done on a force account basis shall be certified and submitted to the Special Projects Administrator by the Contractor, and such statements shall be filed with the Special Projects Administrator not later than the fifth (5th) day of the month following that in which the work was actually performed.
- F. **BONDS AND INSURANCE:** The Contractor shall be paid the actual cost for additional bonding and insurance pertaining to Force Account work when the Contractor can provide evidence of additional payment for premiums on required payment and performance bonds. No duplication of payment for Contractors costs associated with labor costs above will be allowed.
- G. The Special Projects Administrator is in charge of Force Account Work and has the authority to direct which labor and equipment will be used, to suspend operations, and to refuse to pay for any labor or equipment, which he feels is not doing productive work.

## **EXTRA WORK**

New or additional work will be classed as extra work when determined by the Special Projects Administrator that such work is not covered by the Contract.

## **CONTRACT AMENDMENT**

The value of such work or change shall be determined and paid for with a Contract Amendment in one of the following ways according to the Contract Amendment Procedure set down by the City of Prescott, and at the option of the City:

- A. As may be mutually agreed upon by the City and the Contractor.
- B. By unit prices in accordance with the Contractor's bid.
- C. By lump sum based upon the Contractor's estimate and the Special Projects Administrator review and acceptance of the estimate.
- D. By Force Account in accordance with the requirements of that Section.

E. The Contractor shall do such extra work and furnish material and equipment therefore upon receipt of an accepted Contract Amendment or other written order of the Special Projects Administrator. In no case shall work be undertaken without written notice from the Special Projects Administrator to proceed with the work. In absence of such Contract Amendment or other written order of the Special Projects Administrator, the Contractor shall not be entitled to payment for any extra work. All contract amendments must be approved by the Parks and Recreation Director. Contract Amendments over \$10,000.00 must be approved by City Council.

F. In the event that the Contractor and the City cannot agree on the compensation to be paid to the Contractor prior to the issuance of a Contract Amendment, then and in that event the City has the option of terminating the Contract with the Contractor or directing the Contractor to proceed and to receive compensation pursuant to the Force Account provisions herein. In the event that this Contract is terminated by the City pursuant to this subsection, the Contractor shall only be paid for those services performed to date of the City's Notice of Termination, said payment to be based upon the unit prices as set forth in the Contractor's bid. In no event shall the Contractor be entitled to additional compensation for lost profits, mobilization or de-mobilization costs, loss of anticipated profits, extended overhead, unabsorbed home office overhead, or any other payments other than for work actually performed as based upon unit prices. In the event that there are no unit prices pertaining to work in question, then and in that event the Contractor's compensation for early termination pursuant to this subsection shall be based upon Force Account as here-in-before described.

G. It is expressly agreed that in the event of a Contract Amendment, any compensation due the Contractor shall be set forth in the Contract Amendment, and shall be considered full and complete payment (if any) for any and all work related costs, including but not limited to labor, materials, equipment, supervision, field office overhead, extended home office overhead, unabsorbed home office overhead, taxes, bonds, insurance and profits. Additionally, the Contractor shall not be entitled to any additional compensation based upon a Contract Amendment (or the accumulation of contract amendments) unless specifically set forth in that Contract Amendment.

H. In the event that the contractor submits a proposed Contract Amendment, the Parks and Recreation Director shall have ten (10) days after receipt of the Contractor's written proposed Contract Amendment to either accept or agree to the Contract Amendment under the above provisions or deny such proposed Contract Amendment. If necessary to assess the proper purpose and function of a Contractor's proposed Contract Amendment, because of the proposed Contract Amendment's complexity or scope, the Parks and Recreation Director may either accept and agree to the Contract Amendment or deny such proposed Contract Amendment under the above provisions beyond such ten (10) day period and for an additional reasonable period commensurate with the nature of the proposed Contract Amendment. The failure of any party to take any action within the time periods or in the manner specified in the subparagraph shall be deemed a waiver of that party's right to recover for such delay in acting.

## **CLAIMS FOR EXTRA WORK**

If the Contractor claims that any instructions involve extra cost under this Contract, he shall give the Parks and Recreation Director written notice thereof within forty-eight (48) hours after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for under CHANGES IN THE WORK. No such claim shall be valid unless so made.

## **PARTIAL ACCEPTANCE OF WORK**

A. After completion of certain units of work under this Contract, including all testing and other preparation necessary for operation of the unit by the City as herein specified, but prior to final project completion, provisions may be made for partial acceptance in writing by the City for these certain units only. The units to be included for partial acceptance prior to final project completion will be noted at the time of the pre-construction conference in accordance with Contractor's schedule, or by written notice to the Contractor at the earliest possible time.

B. The guarantee period for these units shall commence with the date of final acceptance of the entire project by the City. Full payment for these units will not be made until final acceptance of the total work is made.

C. Acceptance of any portion of the project prior to acceptance of the whole shall not be construed as absolving the Contractor of responsibility for any item of construction or incidental work included in the original Contract.

## **NOTIFICATION OF CHANGED CONDITIONS, FORMAL PROTEST AND DISPUTE RESOLUTION**

MAG 110 as modified herein:

110.2.2(A) and 110.3.2, add the following: “In providing the information required by this section, the Contractor shall provide specific factual detail as to each item and show the methods of calculating each item.”

110.3.1 shall be amended as follows:

Level I shall mean the Special Projects Administrator as appointed by the Parks and Recreation Director

Level II shall mean the Special Projects Administrator as appointed by the Parks and Recreation Director

Level III shall mean the Parks and Recreation Director

In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.

The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01 (A) and (B), or pursuant to any other state or federal statute. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

110.4 The last sentence of the first paragraph shall read: “The arbitration of claims shall be conducted either in Prescott or Phoenix, Arizona as agreed to by the parties, or if the parties cannot agree, to be determined by the arbitrator, taking into consideration the convenience and costs to the parties and their witnesses.”

Delete the last two sentences of the section and replace with: “The decision or award of the arbitrator shall be nonbinding.”

Any resolution of a dispute in accordance with the applicable sections of MAG110 and this Contract which causes the Contract amount to be exceeded by \$10,000.00 or more shall not be final until approved by the City Council.

## **PUBLICITY RELEASES**

The Contractor and their subcontractors and their suppliers, if any, shall not reveal to others through literature, brochures, or other types of publicity releases any information regarding the work or the Contractors activities or participation on the project without prior written approval from the City of Prescott Parks and Recreation Director. Any and all jobsite photographs taken by the Contractor, subcontractor or others must be processed in duplicate form with copies provided to the Parks and Recreation Director. No project photographs shall be released to others without prior written approval of the Parks and Recreation Director.

## **SCOPE OF WORK**

### **INTENT OF PLANS AND SPECIFICATIONS**

- A. The intent of the Specifications and Scope of Work is to prescribe a complete work for the CITY OF PRESCOTT: Goldwater Lake Park – Day Use Expansion Project which the Contractor shall perform in a manner acceptable to the Special Projects Administrator and in full compliance with the terms of the Contract.
- B. Unless otherwise specified in the Special Conditions, the Contractor shall furnish all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all work involved in executing the contract in a satisfactory and workmanlike manner within the specified time.

**PROJECT DESCRIPTION AND LOCATION.** This project generally consists of an expansion to Goldwater Lake Park to include a new well and water system, roadway, parking, utilities, group pavilions, restrooms, and a playground.

## TIME OF COMPLETION

A. The Contractor shall commence the work under this contract on or before the tenth (10th) calendar day after receiving written Notice to Proceed from the Owner. The Contractor shall fully complete all work under this contract within ninety (90) calendar days beginning with the calendar day of receipt of the Notice to Proceed. The Contractor shall at all times during the continuance of the Contract prosecute the work with such work force and equipment as is sufficient to complete the project within the time specified.

B. Project Milestones are estimated to be as follows:

Award of Contract	Week of August 25th
Notice to Proceed	Week of September 1st
Pre-Construction Meeting	Week of September 8th
Expected Completion Date	Approximately late November

All milestones are "earliest" dates for planning purposes only, and shall not represent any contractual commitment whatsoever on the part of the City.

## **TECHNICAL SPECIFICATIONS**