City of Prescott

Request for Bids

Supply and/or Delivery of Aggregate Materials

Standard Specifications and Contract Documents

BID OPENING: February 12, 2015 at 2:00 PM
City of Prescott
Council Chambers
201 S. Cortez Street
Prescott, Arizona

PREPARED BY: City of Prescott Public Works
433 N. Virginia St.
Prescott, Arizona

Due Date: February 12, 2015

Notice Inviting Bids

Supply and/or Delivery of Aggregate Materials

Sealed bids will be received at the office of the City Clerk, City of Prescott, 201 South Cortez Street, Prescott, AZ, 86301, until 2:00 P.M., Thursday, February 12, 2015, for Supply and/or Delivery of Aggregate Materials. Any bid received after 2:00 pm on the above stated date and time 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. The bid documents are available at the office of the Public Works Director, City of Prescott, 433 N. Virginia Street, Prescott, AZ, 86301, (928) 777-1130. The outside of the bid envelope shall be marked: "Supply and/or Delivery of Aggregate Materials" and shall indicate the Company name and address of the bidder, the closing date and time, and shall be addressed to the Public Works Director, C/O City Clerk's Office, City of Prescott, 201 South Cortez Street, Prescott, AZ, 86301.

Erika Laster, Contract Specialist
PUBLISHED: Courier TC February 1 & 8, 2015

City of Prescott
Public Works Department
433 N. Virginia Street
Prescott, AZ 86301

Bid
Supply and/or Delivery Aggregate Materials
Contract

The City of Prescott is soliciting bids for Supply and/or Delivery of Aggregate Materials. Sealed bids [one (1) original and three (3) copies] will be opened on Thursday, February 12, 2015 at the time and place indicated in Section 2.2.

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1.0 Solicitation Specifications

1.1 **General** - It is the intent of the City of Prescott to request bids for the purchase of Supply and/or Delivery Aggregate Materials for various purposes throughout several City Departments. The City has an ongoing need for the items listed. Material will be ordered on an "as needed" basis. Quantities listed are a sample for the purpose of evaluation. The City of Prescott's annual requirements are estimated to be $125,000.00. Actual quantities ordered may vary. Refer to Form A, Price List for Specifications and List of Items.

1.2 **Term** - This Contract shall be for a period of two (2) years and shall commence on the date that all parties have signed the same. The parties may, by mutual consent, extend this contract under the same terms and conditions herein, for one (1) additional one (1) year terms with cost adjustment of no greater than 3% based on the preceding twelve (12) month CPI. The contract shall commence on the date the contract is executed.

1.3 **Award** - This contract will be awarded to the responsible bidder(s) whose bid conforms to the invitation and whose bid is the most advantageous to the City concerning price, conformity to the specifications and other factors. The City may, at its discretion, award multiple contracts if determined to be in the best interest of the City. The Prescott City Council reserved the right to reject any or all bids, to waive formalities, and to accept the bid(s) deemed to be in the best interest of the City of Prescott. Past performance on City projects or other public projects will be evaluated in awarding contracts, and the City may decide to award to a contractor who is not the low bidder. Each bidder must include delivery and a corresponding delivery charge on Form B (Price Sheet) for each material type that the bidder offers. The primary delivery location for aggregate will be to the City facilities located along Sundog Ranch Road; however, occasional deliveries will be required to specific job sites within the Prescott City limits. The delivery location for slurry and concrete will always be to specific job sites within the Prescott City limits.

1.4 **Determination of Suppliers** - Evaluation to determine which supplier will be used for a particular project will be based on but not limited to:

A. Price of material

B. Proximity between plant and job site

C. Size(s) of truck(s) to be used

D. Availability of material and loading service at site

E. Past Performance

F. Availability of supplier to deliver materials

1.5 **Measurement** - Aggregate will be measured by ton, unless otherwise noted. The aggregate material shall be weighed on approved scales furnished by the bidder or on certified public scales at the bidder's expense.

If, at the Engineer's option, water is added to the aggregate prior to weighing, the weight of material to be paid for will be determined by deducting from the total weight of the material the difference in weight between the average in-place moisture content of the material in the stockpile or at the source prior to any pre-wetting and the average moisture content of the material at the time of wetting.

It is the intent of the Engineer to compensate the bidder on the basis of the delivered quantity and the respective unit bid price. Quantities of delivered material will be determined by the collected weight tickets at the source or the selected delivery location.

ALL RATES AND CHARGES SHOWN SHALL BE IN TONNAGE RATHER THAN CUBIC YARDS.

1.6 **Payment** - The accepted quantities of aggregate, measured as provided above, will be paid for at the contract unit price per ton or cubic yard. This price shall be full compensation for furnishing all materials, labor, equipment, water, etc., necessary to develop the material.

1.7 **Rejection of Materials** - Material(s) will be sampled for compliance, as deemed necessary by the City. Any material not meeting the specifications of this contract will be rejected.

1.8 **Quality Assurance** - The Contractor/Vendor is responsible for all laboratory tests and certifications to assure that the aggregate material is in conformance to the requirements set forth in this advertisement. Representative samples of the aggregate cover material, taken under the direct supervision of the Engineer, laboratory test results and certificates of compliance shall all be submitted to the Engineer. The Engineer may reject delivered aggregate base material if, in his opinion, the delivered material differs significantly from the representative sample.

2.0 Solicitation Process Requirements

2.1 Communications with the City

All communications regarding this solicitation must be directed in writing to the Public Works Department. Unless authorized by the Public Works Director, no other City official or employee is empowered to speak for the City with respect to this solicitation. Bidders are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Bidders are cautioned against contacting any City official or employee other than the City Contact for this solicitation. Failure to observe this requirement may be grounds for rejection of Bidder's bid. The City's buyer for this solicitation is:

Erika Laster, Contracts Specialist
City of Prescott
Public Works Department
Fax: 928-771-5929
E-mail: Erika.laster@prescott-az.gov

2.2 Schedule

2.2.1. Solicitation Advertisement

February 1 & February 8, 2015

2.2.2. Bids Due [one (1) original and three (3) copies]

February 12, 2015 before 2:00 pm
City of Prescott City Clerk's Office
201 South Cortez Street
Prescott, AZ 86301

2.2.5. Bid Opening

Thursday, February 12, 2015 at 2:00 p.m.
City of Prescott City Clerk's Office
Council Chambers
201 South Cortez Street
Prescott, AZ 86301

2.3 Pre-Bid Meeting

NONE

2.4 Addenda

Changes to this solicitation will be made only by addenda issued by the CITY'S Contact. It is the bidder's responsibility to check for any addenda prior to submitting a bid. All addenda issued by the City shall become a part of the specifications of this solicitation, and will be made part of the resulting agreement.

2.5 Proprietary Material

A Bidder shall clearly mark any proprietary information contained in its bid with the words "proprietary information." Bidder shall not mark any Solicitation Form as proprietary. Marking all or nearly *all of a* bid as proprietary may result in rejection of the bid. Bidders should be aware that the City is required by law to make its records available for public inspection. The Bidder, by submission of materials marked

proprietary, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Bidder in the event that the City must legally disclose these materials.

2.6 Multiple Bids

A Bidder may submit multiple bids for any solicitation however, each bid must be submitted separately (in its own complete package) from the others.

2.7 Delivery of Bids

Sealed bids [one (1) original and three (3) copies] must be received at the Public Works Department no later than the date and time listed in Section 2.2. The bids will be opened and read publicly in the Conference Room at that time.

If the bid is delivered by the U.S. Postal Service, the bid should be addressed to:

Public Works Director
C/O the City Clerk's Office
201 South Cortez Street
Prescott, AZ 86301

Bidder shall enclose bid [one (1) original and three (3) copies] in a sealed envelope. The envelope should identify the Bidder's name, mailing address, Title, and the time and date of opening. The City shall not consider late bids, telegraphic (fax) or telephone bids. Bidder is solely responsible for ensuring that bids are delivered on time. Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the deadline for receipt of bids. Bids received after the deadline will be returned unopened. A Bidder may submit multiple bids for any solicitation however, each bid must be submitted separately (in its own complete package) from the others.

2.8 Cost of Bids

The City shall not be liable for any costs incurred by Bidder in the preparation and submittal of a bid(s) in response to the **solicitation or in the participation of any part of the procurement process.**

2.9 Errors in Bids

Bidder is responsible for all errors or omission in their bids, and any such errors or omission will not serve to diminish their obligations to the City.

2.10 Withdrawal of Bids

A bid may be withdrawn by written request of the Bidder prior to the bid due date and time listed in Section 2.2. No bid may be withdrawn for a period of 60 calendar days after the bid due date and time.

2.11 Changes in Bids

Prior to the bid due date and time listed in Section 2.2, a Bidder may make changes to its bid provided the change is initialed and dated by the Bidder. Corrections and/or modifications received after the closing time specified will not be accepted.

2.12 Rejection of Bids

The City reserves the right to reject any and all bids and to waive any immaterial defects and irregularities in bids.

2.13 Disposition of Bids

All materials submitted in response to the solicitation, including samples, shall become the property of the City upon delivery to the City.

2.12 Incorporation of Solicitation and Response in Agreement

This solicitation, including all attachments and addenda, and all promises, warranties, commitments and representations in the successful bid shall be binding and shall become obligations of the agreement.

2.13 Protests

Any protest of a notice that a bid is non-responsive must be filed by 5:00 p.m. on the third business day after such notification. All such protests shall be in writing, contain a complete statement of the grounds for protest, and is filed with the Public Works Director, 433 N. Virginia St, Prescott, AZ 86301. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the Apparent Successful Bidder(s). The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other bidder.

2.14 Bid Submittal

Bid [one (1) original and three (3) copies] must be sealed and the envelope must clearly indicate the information as described in Section 2.9. Bidder must fully complete and submit the following documents:

2.14.1 Bid Form A - Bidder Response

2.14.2 Bid Form B - Price Sheet

2.14.3 Bid Form C - Bid Certification

2.14.4 Bid Form D - Non-Collusion Certificate

2.14.5 Bid Form E – Certificate of Ownership

2.14.6 Bid Form F – Bidder Qualifications, Representations and Warranties

3.0 General Contract Terms and Conditions

3.1. **Entire Agreement**: This contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Contractor. The City's NIB/RFB, all addenda to the NIB/RFB, and the Contractor's response to the NIB/RFB are explicitly included in this contract. Where there is any conflict among or between any of these documents, the controlling document shall be the first listed in the following sequence: the most recently issued Contract amendment; the Contract; the most recently issued addendum to the City's NIB/RFB; the City's NIB/RFB; and the Contractor's response to the NIB/RFB.

3.2. **Term:** This Contract shall be for a period of two (2) years and shall commence on the date that all parties have signed the same. The parties may, by mutual consent, extend this contract under the same terms and conditions herein, for one (1) additional one (1) year terms with cost adjustment of no greater than 3% based on the preceding twelve (12) month CPI. The contract shall commence on the date the contract is executed.

3.3. **Title:** Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.

3.4. **Schedule:** The Contractor shall deliver the items or render the services as stated in the Contract. At the City's option, the Contractor's failure to timely deliver or perform may require expedited shipping at the Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at the Contractor's expense. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City of such difficulty and the length of the anticipated delay.

3.5. **Payment:** Invoices will be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery of all goods ordered, the completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. No payment shall be due prior to the City's receipt and acceptance of the items identified in the invoice therefore.

3.6. **Unlawful Overcharges:** The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.

3.7. **Price Warranty**: The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.

3.8. **Warranties**: The Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.

3.9. **Equal Employment Opportunity**: During the term of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification.

3.10. **Discrimination in Contracting:** The Contractor shall not create barriers to open and fair opportunities for subcontractors and suppliers in obtaining or competing for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

3.11. **Record-Keeping:** The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Contract, relevant records and information necessary to document the Contractor's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.

3.12. **Publicity**: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.

3.13. **Proprietary and Confidential Information**: The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions. City staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials by law.

3.14. **Indemnification of City against Liability**: To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City of Prescott, its employees, officers, agents, representatives, directors, and officials from and against all claims, damages, losses, expenses (including but not limited to attorney fees, court costs, and costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents or any tier of subcontractors in the performance of this Contract; Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to or impairment, whether or not recovered under Workmen's Compensation law, destruction or property including loss of use resulting there from, or arising out of the failure of the Contractor or those acting under Contractor to conform to any statutes, ordinance, regulation, law or court decree. It is the intent and agreed to by the parties to this contract that the City of Prescott shall, in all instances, be indemnified against all liability, losses and damages of any nature whatever resulting from injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the performance of this contract, whether the liability, loss or damage is caused by, or alleged to be caused in whole or in part by the negligence or fault of the Contractor or of its officers, agents or employees, or subcontractors.

3.15. **Insurance:** 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.

VERIFICATION OF COVERAGE: At the time of signing the contract and prior to beginning work, 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 Public Works Department, 433 N. Virginia 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.

A. 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:

- 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 City of Prescott shall be named as an additional insured with respect to liability arising out the activities performed by, or on behalf of the Contractor including Completed Operations", using form CG2011 (10/01 and CG 2037 (10/01), or equivalent.

B. 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.

C. The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in his name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount.

D. 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.

E. Worker's compensation insurance –
Statutory
Employers Liability
Each Accident - $1,000,000
Disease – each employee - $1,000,000
Disease – policy limit - $1,000,000

a. Policy shall contain a waiver of subrogation against the City of Prescott.

b. This requirement shall not apply when a Contractor or Subcontractor is exempt under A.R.S. section 23-901, and when such Contractor or Subcontractor executes the appropriate sole proprietor waiver form.

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.

3.16. **Compliance with Law:** The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Arizona; the Charter, Municipal Code, and ordinances of The City of Prescott; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

3.17. **Licenses and Similar Authorizations**: The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

3.18. **Taxes:** The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

3.19. **Tax ID Number.** Bidder must provide its Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided in the Bid Section. A City of Prescott Sales Tax Number, if applicable, must also be supplied.

3.20. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

3.21. **Adjustments:** At any time, the City may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

3.22. **Amendments:** Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document signed by or for both parties.

3.23. **Price Adjustment:** If the Contractor wishes to increase its prices for a contract extension, the contractor shall provide written notice to the City not less than sixty (60) days prior to the expiration of the original term of the contract (or any extension hereof). The City will consider a fully documented request for price increases. The requested increase shall be based upon a cost increase to Contractor that is directly correlated to the price of the product concerned. City shall determine whether the requested price increase or an alternate option, is in the best interest of City. If a price increase is agreed upon a written Contract Amendment shall be approved and executed by the Parties.

3.24. **Acceptance by City:** City reserves the right to accept or reject the request for a price increase. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

3.25. **Price Reduction:** Contractor shall offer City a price reduction for its products concurrent with a published price reduction made to other customers.

3.26. **Estimated Quantities:** Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by City. City reserves the right to increase or decrease the quantities actually required. The City does not guarantee and maximum or minimum amounts of purchase.

3.27. **Assignment:** Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Contract for the benefit of creditors upon 21 days advance written notice to the City.

3.28. **Binding Effect:** The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

3.29. **Waiver:** The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

3.30. **Applicable Law:** This Contract shall be construed under the laws of the State of Arizona. The venue for any action relating to this Contract shall be in the Superior Court for Yavapai County, State of Arizona.

3.31. **Remedies Cumulative:** Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

3.32. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

3.33. **Gratuities:** The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Contractor or any agent thereof to any City official, officer or employee.

3.34. **Termination:**

3.34.1. **For Cause:** Either party may terminate this Contract in the event the other fails to perform its obligations as described herein, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.

3.34.2. **For Reasons Beyond Reasonable Control of a Party:** Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

3.34.3. **For Public Convenience:** The City may terminate this Contract in whole or in part whenever the City determines that such termination is in its best interest (including but not limited to for lack of continuing appropriations). In such a case the Contractor shall be paid for all items accepted by the City.

3.34.4. **Notice:** Notice of termination shall be given by the party terminating this Agreement to the other not less than ten (10) working days prior to the effective date of termination.

3.35. **Major Emergencies or Disasters**: The following provision shall be in effect only during major emergencies or disasters. The City is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the City is contracting with the Contractor under the following terms and conditions: Contractor shall provide to the City, upon the City's request, such goods and/or services at such time as the City determines. In the event the Contractor is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Contractor, the Contractor shall make such delivery as soon as practicable. If the Contractor is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Contractor shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Contractor is unable to provide such goods and/or services as requested by the City, the Contractor may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Contractor has obtained prior approval from the City for such substitution. The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall provide the City with appropriate documentation of the additional costs. The Contractor acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Contractor, in support of public good purposes, shall consider the City as a customer of first priority and shall make its best effort to provide to the City the requested goods and/or services in a timely manner. For purposes of this Contract, a "major emergency" or "disaster" shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, and loss of any utility service, fire, terrorist activity or any combination of the above.

3.36. **Contractor Immigration Warranty**

The Contractor understands and acknowledges the applicability to it of the Americans 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 Subcontractor's 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 its Subcontractors to ensure compliance with the Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification 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 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 a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

4.0 Standard Bid Information

4.1. **Default by Bidder**: In case of default by the bidder, the City of Prescott may procure the items or service from other sources and may deduct from any monies due or that may thereafter become due to the bidder the difference between the price named in the contract or purchase order and the actual cost thereof to the City of Prescott. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Public Works Director.

4.2. **Litigation**: 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. Neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract or any other state or federal statute.

4.3. **Cooperative Use of Contract**: This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

4.4. **Brand Names**: Brand names are only used for reference to indicate character or quality desired unless otherwise indicated.

5.0 Instructions for Submittal Forms

5.1. Form A - Solicitation Response Cover Sheet: Bidder shall complete, sign, and submit Form A as the first page of the bid package

5.2. Form B – Price Sheet: Bidder shall certify that its bid will be valid for 90 days after submission. Bidder may be asked to extend this certification. Bidder shall complete, sign, and submit Form B.

5.3. Form C - Bid Certification: Bidder shall complete, sign, and submit Form C

5.4. Form D - Non-Collusion Certificate: Bidder shall complete, sign, and submit Form D.

5.5. Form E - Certificate of Ownership: Bidder shall complete, sign, and submit Form F completely and accurately stating the names and addresses of all persons, firms, corporations, partnerships or other associations having any direct or indirect financial interest in the Bidder's business and the nature and extent of each such interest.

5.6. Form F - Bidder Qualifications, Representations and Warranties

5.6.1 The City shall consider awarding agreements only to responsible Bidders. Responsible Bidders are those that have, in the sole judgment of the City, the financial ability, character, reputation, resources, skills, capability, reliability, and business integrity necessary to perform the requirements of the agreement. In determination of responsibility, the City may consider all information available to the City, whether specifically provided by the Bidder in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Bidder. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Bidder with the City or with other agencies, references provided by the Bidder to the City, information provided by the Bidder as part of the solicitation responses, and information not specifically provided by the Bidder but is otherwise available to the City and has merit in consideration of responsibility, in the opinion of the City. The evaluation of responsibility shall be determined by the City and shall be in the sole opinion of the City. Such evaluation by the City shall be final and not subject to appeal. Furthermore, no agreement will be awarded to a Bidder if any owner of such Bidder has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Bidder has unsatisfied tax or judgment liens.

5.6.2 Bidder shall provide two (2) references, a sub-contractors list (if applicable) and certify there are no unsatisfied tax liens or judgments on record. Bidder shall complete, sign and submit Form F.

6.0 Draft Contract

CITY OF PRESCOTT
Everybody's Hometown

DRAFT

CONTRACT

Supply & Delivery of Aggregate Materials

THIS AGREEMENT, made and entered into this _____ day of _____ 2015, by and between **COMPANY NAME of **CITY NAME, **STATE NAME, hereinafter known as the 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 known as the CITY.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

ARTICLE I - SCOPE OF WORK
The CONTRACTOR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required for the delivery to the City, as requested by the CITY, in a good and workmanlike and substantial manner, and to the satisfaction of the CITY through its agents and under the direction and supervision of the Engineer or his properly authorized agents.

ARTICLE II - CONTRACT DOCUMENTS
Exhibit "A" (the City's Invitation for Bids) and Exhibit "B" (the Contractor's Bid) are by this reference made a part of this Contract to the same extent as if set forth herein in full.

ARTICLE III - CONTRACT TERM
This Contract shall be for a period of two (2) years and shall commence on the date that all parties have signed the same. The parties may, by mutual consent, extend this contract under the same terms and conditions herein, for one (1) additional one (1) year terms with cost adjustment of no greater than 3% based on the preceding twelve (12) month CPI. The contract shall commence on the date the contract is executed.

CONTRACTOR shall have on hand sufficient quantities of material to meet the needs of the City; provided, however, that there are no guarantees by the City as to the minimum or maximum amount of material which may be purchased by the City during the term of this Agreement.

ARTICLE IV - COMPENSATION
A. For and in consideration of the faithful performance of the work herein embraced as set forth herein, the CITY agrees to pay the said CONTRACTOR as set forth in the attached bid Document, Form A not to exceed **_____dollars and _____ cents ($00.00).

B. Payment shall be made by the City within thirty (30) days after the City receiving an itemized billing from the CONTRACTOR.

ARTICLE V - CONFLICT OF INTEREST
Pursuant to A.R.S. Section 38-511, the CITY 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 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 foregoing event, the CITY further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the CITY from any other party to the Contract, arising as a result of the Contract.

ARTICLE VI - CANCELLATION
Notwithstanding the foregoing, this Agreement may be terminated by the City upon ten (10) days written notice, with or without cause. It may also be terminated by the City in the event that funding for the City's payments hereunder is dependent on grants or other commitments of funds from another governmental agency and those funds are terminated or substantially reduced for any reason. If this Agreement is terminated, the Contractor shall be paid for services performed to the date of Contractor's receipt of such termination notice.

ARTICLE VII - CHOICE OF LAW
This agreement shall be governed by and construed and interpreted in accordance with the laws of Arizona without reference to principles of conflict of laws.

ARTICLE VIII - VENUE AND JURISDICTION
The Parties agree that the venue of any legal action to enforce this contract or arising out of the contract shall be Yavapai County, Arizona, and that the U.S. District Courts or State Courts of Arizona shall have jurisdiction of any such matter, according to applicable law, and the parties waive any other jurisdiction.

ARTICLE IX - 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 the Compensation Section of the Contract. 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 Contract. As an independent contractor, the CONTRACTOR further agrees 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 X - NONDISCRIMINATION
The CONTRACTOR, with regard to the work performed by it after award and during its performance of the Contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of contractors, 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, and Executive Order 99-4 as amended.

ARTICLE XI - CONTRACTOR IMMIGRATION WARRANTY
The Contractor understands and acknowledges the applicability to it of the Americans 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 Subcontractor's 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 its Subcontractors to ensure compliance with the Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification 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 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 a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

ARTICLE XII - 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.

Under the Provisions of A.R.S. 41-4401, Contractor hereby warrants to the city that the Contractor and each of its 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 eh Contractor Immigration Warranty. Consultant 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 subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Consultant 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 a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

ARTICLE XIII - DOCUMENT CONTROL

In the event of a discrepancy between this Agreement and the Bid Documents, this Agreement shall control over the Bid Documents.

ARTICLE XIV – INSURANCE REQUIREMENTS

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.

VERIFICATION OF COVERAGE: At the time of signing the contract and prior to beginning work, 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 Public Works Department, 433 N. Virginia 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.

A. 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:

- 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 City of Prescott shall be named as an additional insured with respect to liability arising out the activities performed by, or on behalf of the Contractor including Completed Operations", using form CG2011 (10/01 and CG 2037 (10/01), or equivalent.

B. Such policy shall not exclude coverage for the following:

5. 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.

6. 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.

7. Injury to or destruction of any property arising out of blasting or explosion.

8. 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.

C. The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in his name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount.

D. 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.

E. Worker's compensation insurance –

Statutory

Employers Liability

Each Accident - $1,000,000

Disease – each employee - $1,000,000

Disease – policy limit - $1,000,000

c. Policy shall contain a waiver of subrogation against the City of Prescott.
d. This requirement shall not apply when a Contractor or Subcontractor is exempt under A.R.S. section 23-901, and when such Contractor or Subcontractor executes the appropriate sole proprietor waiver form.

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.

ARTICLE XV - INDEMNIFICATION
To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City of Prescott, its employees, officers, agents, representatives, directors, and officials from and against all claims, damages, losses, expenses (including but not limited to attorney fees, court costs, and costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents or any tier of subcontractors in the performance of this Contract; Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to or impairment, whether or not recovered under Workmen's Compensation law, destruction or property including loss of use resulting there from, or arising out of the failure of the Contractor or those acting under Contractor to conform to any statutes, ordinance, regulation, law or court decree. It is the intent and agreed to by the parties to this contract that the City of Prescott shall, in all instances, be indemnified against all liability, losses and damages of any nature whatever resulting from injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the performance of this contract, whether the liability, loss or damage is caused by, or alleged to be caused in whole or in part by the negligence or fault of the Contractor or of its officers, agents or employees, or subcontractors.

ARTICLE XVI - 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.

(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's 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.

ARTICLE XVI - AMBIGUITY
This Contract 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 Contract is not to be construed against either party.

DATED THIS _____ DAY OF _____ 2015.

CONTRACTOR

By: _____

Name: _____

Title: _____

CITY OF PRESCOTT

_____
Marlin D. Kuykendall, Mayor

ATTEST:

_____
Dana DeLong, City Clerk

APPROVED AS TO FORM:

_____
Jon Paladini, City Attorney

Form A – Solicitation Response Cover Sheet

City of Prescott
Solicitation Response

Description: Supply & Delivery of Aggregate Materials

Please note all that apply:

☐ Total Price.....(See Bid Pricing Sheet for individual Prices)

☐ Short load Price 0-15 ton (if any) ..... _____

☐ Addenda Number(s) Received (if any) ..... _____

☐ Original Forms A through F plus three (3) photocopy

Business Name: _____

Business Address: _____

_____

Business Phone: (_____) _____

Business Contact: _____

Contractor Comments: _____

_____

_____

_____

_____

Form B - Price Sheet

Bid the following materials based on your firms abilty to supply and deliver. It is not necessary to bid all items - the City will select materials based on best price and availability as needed.

Material	Description	Estimated Quantity	Price Per Ton FOB your yard you load our truck	Total	Delivery Charge 15 to 100 tons to City site	Delivery Charge 100+ Tons to City site	Bidder Comments If your Material differs from the descriptions listed please note here.
MAG 702 Spec	Select Material Type A	1050					
MAG 702 Spec	Select Material Type B	0					
MAG 702 Spec	Aggregate Base	40					
Non-Spec ABC Select Material 1.5 inch minus	Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	20					
Non-Spec ABC Select Material 1.25 inch minus	Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	20					
Lime Treated Non-Spec ABC	.5% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					
Lime Treated Non-Spec ABC	1% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					
Lime Treated Non-Spec ABC	2% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					
Lime Treated Non-Spec ABC	3% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					
Lime Treated Non-Spec ABC	4% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					

Material	Description	Estimated Quantity	Price Per Ton FOB your yard you load our truck	Total	Delivery Charge 15 to 100 tons to City site	Delivery Charge 100+ Tons to City site	Bidder Comments If your Material differs from the descriptions listed please note here.
Lime Treated Non-Spec ABC	5% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					
Lime Treated Non-Spec ABC	6% added lime. Bidder to supply material characteristics with bid (e.g., gradation, swell factor, plasticity)	0					
Pea Gravel	3/8 to 3/16 washed	145					
Bedding Material	3/8 minus with less than 2% organic material, less than 1.5% Swell Factor	225					
Decomposed Granite	3/8 minus	0					Color:
Decomposed Granite	3/4 minus	0					Color:
Sand	Washed sand # 4 to 200 sieve. Show various sand and list characteristics to include masonry, concrete and plaster sand to be included with bid.	20					
Rock	Leach Rock, 1 to 3 inch with 30% minimum voids when placed	390					
Decorative Rock	Your Product - describe sizes and color to be included with bid	0					
USGA Sand		0					
Sack Slurry MAG Spec 728	1-sack	390					
Sack Slurry MAG Spec 728	2-sack	20					
3000PSI Concrete with Air	MAG 725 - Class A Provide mix design	1097.5					
3000PSI Concrete without Air	Concrete - Provide Mix design	287.5					
Cold Mix	Temp Patch Material	185					
Rip-Rap MAG 703	3inch	350					
Rip-Rap MAG 703	4-8inch	350					
Rip-Rap MAG 703	8-12inch	350					
Asphalt Concrete	Mag Spec 710 3/4"	8700					
Asphalt Concrete	Mag Spec 710 1/2"	2500					
Multiple contracts will be awarded to insure availability of Hot mix Asphalt							

Form C – Bid Certification

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

C.1 That he/she has read The City of Prescott's solicitation documents, its appendices and attachments, and the following Addenda, and to the best of his/her knowledge, has complied with the mandatory requirements stated therein.

Addendum	Issue Date
_____	_____
_____	_____

C.2 That he/she has had opportunity to ask questions regarding the solicitation, and that such questions having been asked, have been answered by the City.

C.3 That the Bidder's bid consists of the following:

1. Form A – Solicitation Response Cover Sheet
2. Form B - Price Sheet
3. Form C – Bid Certification
4. Form D – Non-Collusion Certificate
5. Form E – Certificate of Ownership
6. Form F – Bidder Qualifications, Representations and Warranties; Bidder to provide attachment: Attachment – Subcontractor's List

C.4 That the Bidder's bid is valid for 90 days.

Dated this _____ day of _____ 2015.

_____ _____

Signature Title

Form D – Non-Collusion Certificate

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in the preparation and submission of a bid to The City of Prescott for consideration in the award of this solicitation.

Dated this _____ day of _____ 2015.

_____ _____

Signature Title

Form E – Certificate of Ownership

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, are the only person, firms, corporations, partnerships, or other associations having any direct or indirect financial interest in the Bidder's business as legal or equitable owner, creditor (except current bills for operating expenses), or holder of any security or other evidence of indebtedness.

Dated this _____ day of _____ 2015.

_____ _____

Signature Title

Form F – Bidder Qualifications, Representations and Warranties

Bidder Name:_____

the undersigned Bidder hereby certifies as follows:

F1 Taxes and Liens - Bidder has no unsatisfied tax or judgment lien on record.

F2 Subcontractors – Bidder submits as Attachment 4 to this Bid Form A a list of all subcontractors it will use in performing the requirements of the agreement resulting from this solicitation. A subcontractor is any separate legal entity used to perform requirements of the proposed agreement. The list shall include the firm's name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted. Bidder shall also attach a copy of the letter from the subcontractor stating its commitment to perform the services(s) subcontracted.

F3 References – The City will enter into an agreement only with a Bidder(s) having a reputation of satisfactory performance. The Bidder's ability to provide timely service; knowledgeable, conscientious, and courteous staff; reasonable care and skill; invoicing consistent with contract pricing, etc., are important to the City. Bidder provides information for two clients, other than the City of Prescott, that presently contract with Bidder for similar goods or services:

Reference #1
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Reference #2
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Note: The bid evaluators may contact the customer references, as well as any other customers or customer employees including The City of Prescott. A Bidder with unsatisfactory references may have its bid rejected.

F4 Bidder's Examination - Bidder has made its own examination, investigation and research regarding the requirements of the solicitation including but not limited to the work to be done, services to be performed, any conditions affecting the work and services, the type and quantity of labor, equipment and facilities necessary to perform. Bidder fully understands the character of the work and services, the manner in which payment is to be made, the terms and conditions of the draft agreement (see Appendix C), and the solicitation. Bidder acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that it will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Bidder hereby proposes to furnish all materials, equipment, and facilities and to perform all labor which may be required to do the work within the time required and upon the terms and conditions provided in the draft agreement and the solicitation, and at the prices as

Dated this _____ day of _____ 2015.

_____ _____
Signature Title

City of Prescott Public Works Department

Subcontractors List Bid Form

Supply & Delivery of Aggregate Materials

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