Invitation for Bids (IFB)
2016-025
Tires: Heavy Duty and Retread
Including Services

Specifications

and

Contract Documents

BID OPENING: **Thursday, December 31, 2015 at 2:00 PM**
City of Prescott
City Clerk's Office
201 S. Cortez Street
Prescott, Arizona 86303

This Solicitation and any issued addenda are available on the City of Prescott website at http://www.cityofprescott.net/business/bids/

SCHEDULE OF EVENTS

Solicitation Advertisement
December 6 and 13, 2015

Solicitation Release
Monday, December 7, 2015

Non-Mandatory Pre-Bid meeting
Thursday, December 17, 2015 at 10:00 am
Fleet Services
432 N. Virginia
Prescott, AZ 86301

Final Date for Questions
Questions will not be accepted after Wednesday, December 23, 2015, at 10:00 am

Bid Opening
Thursday, December 31, 2015 at 2:00 pm
City of Prescott
City Clerk's Office
Council Chambers
201 S. Cortez Street
Prescott, AZ 86303

TABLE OF CONTENTS

SCHEDULE OF EVENTS 2
INTRODUCTION 3
SECTION 1: SPECIFICATIONS/SCOPE OF WORK 3
SECTION 2: SOLICITATION PROCESS REQUIREMENTS 5
SECTION 3: GENERAL TERMS AND CONDITIONS 7
SECTION 4: STANDARD BID INFORMATION 12
SECTION 5: INSTRUCTIONS FOR SUBMITTAL FORMS: 13
Form A – Solicitation Response Cover Sheet 14
Form B – Price Sheet 15
Form C – Bid Certification 16
Form D – Non-Collusion Certificate 17
Form E – Certificate of Ownership 18
Form F – Bidder Qualifications, Representations and Warranties 19
Form G – Bidder Optional Information 21
SUPPLIER AGREEMENT 20

INTRODUCTION

The City of Prescott Fleet Services Division is seeking qualified suppliers to provide and deliver heavy duty tires (new and retread) as well as related services for the City's fleet. The Fleet Services Division is responsible for the overall maintenance and supervision of the City's fleet of approximately 550 vehicles and support equipment. Do we intend to award to one or many?

The successful supplier must demonstrate that they have sufficient capabilities and available resources to meet tire product and service requirements of this solicitation. The supplier will also provide all labor, equipment, tools, and materials necessary to perform tire repair and retreading services on existing tires used by the City's fleet. The successful supplier will provide tire services at the City's fleet maintenance facility, Sundog Transfer Station, and various other City facilities on an as-needed basis.

Prompt delivery of tires and service related issues are essential to the City's ability to provide uninterrupted service to the public.

SECTION 1: SPECIFICATIONS/SCOPE OF WORK

Heavy Duty Tires (New)

Annual estimated purchase quantities of heavy duty tires are per the following:

Size	Estimated Quantity
315/80R22.5	300
11R22.5	100

Retread Services

Tires to be retread or repaired will be tubeless radial ply casings used on heavy duty trucks. All tires scheduled to be retread will utilize the Pre-Cure Method.

Listed below are the retread tire sizes, tread type, minimum acceptable tread depth and estimated quantities required. The average estimated run-out mile numbers will be used to evaluate the offered product's price per mile.

- Initial tread depth will be at least 32/32" and 220 mm minimum width on the . 11R22.5 tire and a 260 mm minimum width on the 315/80R22.5 tires.
- Tread design will be an open shoulder on/off road construction/waste design.
- Contractor(s) will provide estimated run-out mile numbers.

Minimum Retread Requirements

1. Material supplied to City of Prescott shall be rated as Commercial and/or Industrial Grade. Contractors shall bid their nationally known, first line, premium quality products designed to replace the performance and life of the original tread. Tread rubber shall contain no reclaimed rubber (defined as components from scrapped tires, which are ground up for use as "filler").

2. Tires approved for recapping are:
    - Continental HSU2

- Bridgestone
- Goodyear
- General Tire
- Michelin
- B F Goodrich

3. The approved recapping technology is the Pre-Cure Method.

4. The successful bidder(s) (please pick one - successful bidder, contractor, vendor, qualified supplier – they have all been used up to this point and I think it's confusing) agrees to pick up casings from users'(explain who the user is please-let's discuss) site two times every month, spaced within approximately equal time intervals as agreed upon by the vendor and end user (is this a user? If so pick one – either user or end user). During such pickup the contractor will also deliver all newly retreaded tires intended for that respective user to the company doing the installation (if different from the recapper). All charges for pickup and delivery shall be included within the bid price. The City may give written notice to contractor that it requires less frequent service than stated above and contractor may provide such user service on the allowable less-frequent schedule. A receipt shall be provided to the end user for each casing at the time of pick-up, which shall identify the casing and the date of pick-up. The City expects the delivery schedule to be firm and fully expects compliance with the stated delivery schedule. Failure of the contractor to meet delivery schedules may be cause for removal from the contract.

5. If there is a shortage of casings in the delivered retreads, the contractor shall either (a) provide the user (user?) with replacement casings of value equal to the missing casing(s) at no charge, or (b) reimburse the user (user? Not sure that is correct) the full market value of the missing casing(s). Such full market value shall be determined by a publication of national or regional circulation and acceptance. (can this be more specific?)

6. Retread/recap system and products proposed shall be in accordance with **Tire Retread and Repair Information Bureau (TRIB)** retreading standards.

7. If casings are purchased from Supplier, the casing will have a manufacturer's warranty protecting against defects that occur during the life and retread life of the casing.

8. Supplier shall have the ability to warehouse the City's recap casings and recap tires. The City shall compensate the Supplier upon completion of installation of the recap onto the City's trucks with proof and verification of quantities and types installed by Supplier. The Supplier shall be responsible for the security and maintenance of an accurate inventory of the recap tires until they are installed on a City truck.

9. Supplier shall notify the City in writing of casings deemed not suitable for recapping. The Supplier shall be responsible for legal disposal of unsuitable casings.

10. Suppliers shall state a price for recaps with and without casing exchange. Repair costs for recapping shall also be provided.

11. The City reserves the right to add new tire sizes to the recap program at any time during this contract.

12. Supplier agrees to use the same rubber compound throughout the life of the contract. Prior approval by the City is required for all material substitutions. Fix font size – this is smaller

13. Selected contractor shall have an organization predominantly and regularly engaged in the performance of the majority of work prescribed in this bid.

14. All work performed and material used shall meet the minimum requirements of all applicable Federal and State regulations and local ordinances.

15. The final inspection shall be in accordance with the provision for "Final Inspection" in "Industry Recommended Practices for Tire Retreading & Tire Repairing." Specifically, the final inspection will include

at least a visual examination of the tire while mounted on a spreader under adequate lighting, and the inside and outside of the tire shall be checked. The visual inspection shall be in complete compliance with the final inspection requirements in the above publication. Are we including "Industry Recommended Practices for Tire Retreading & Tire Repairing" document with bid?

16. All retread tires shall be warranted to be free from defects in workmanship and materials and to give satisfactory service under normal operating conditions for the life of the tread. Should the retread fail while in service and the cause is determined to be faulty workmanship and/or materials, the tire shall be returned to the contractor and be adjusted on the following scale:

Tread life Remaining	Percentage of Credit to Agency
100-80%	100%
79-60%	75%
59-40%	50%
39-20%	25%
19-0%	0%

For retreads provided under this contract, IF THE FAILURE RATE EXCEEDS 1/2 of 1% (0.5%), the contract with that contractor for that type of retread may be immediately terminated.

A failure is defined as any event, EXCEPT for road hazards, normal wear and tear, improper inflation, wheel misalignment, vehicle damage, improper mounting by other than contractor, or damage caused by abuse, neglect, collision, vandalism, fire, or chemical corrosion, which results in the tire no longer able to perform in its intended and proper use. Failure rate is defined as the percentage of failed retreads up to that time, when compared against the total number of retreads delivered for that type of retread, by that contractorup to that time.

Service Requirements

1. Tire installation, rotation, mounting and balancing, pressure checks, repairs and replacements are to be performed on Saturday. Alternate schedules must be mutually agreed upon in advance.

2. Acceptable repairs for radial ply casing include nail hole, spot, reinforcement, section and bead area repair.

3. Service requirements will be at various City facilities based on need.

4. Emergency service will be on an as needed basis.

SECTION 2: Solicitation Process Requirements

2.1 **Communications with the City:**

All communications regarding this solicitation must be in writing via e-mail or fax to the Contract Specialist. Unless authorized, 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 Contract Specialist for this solicitation. Failure to observe this requirement may be grounds for rejection of Bidder's bid. The City's Contract Specialist for this solicitation is:

Pam Risaliti, C.P.M., CPPB
Contract Specialist
City of Prescott
Field and Facilities Services Department
Phone: 928-777-1659

E-mail: pam.risaliti@prescott-az.gov

2.2 **Proprietary Material:**

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 form nor will the City assume any liability to the Bidder in the event that the City must legally disclose these materials.

2.3 **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.

Bidders may also bid on all or a portion of the bid.

2.4 **Delivery of Bids:**

Sealed bids (one (1) original and two (2) copies) must be received at the office of the City Clerk no later than the date and time listed the Schedule of Events. The bids will be opened and read publicly in the Council Chambers at that time.

The bid should be addressed to:
City Clerk's Office
City of Prescott
201 S. Cortez Street
Prescott, AZ 86303

Bidder shall enclose bid (one (1) original and two (2) copies) in a sealed envelope. The envelope should be clearly marked "IFB# 2016-025, Tires and Service". The envelope should identify the Bidder's name, mailing address, and the time and date of opening. The City shall not consider late bids, e-mailed 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 not be considered and returned unopened.

2.5 **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 acquisition process.

2.6 **Errors in Bids:**

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

2.7 **Withdrawal of Bids:**

A bid may be withdrawn by written request of the Bidder prior to the bid due date and time listed in Schedule of Events. No bid may be withdrawn for a period of 120 calendar days after the bid due date and time.

2.8 **Changes in Bids:**

Prior to the bid due date and time listed in the Schedule of Events, 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.

2.9 **Rejection of Bids:**

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

2.10 **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.

2.11 **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.

2.12 **Protests:**
Any protest or notice that a bid is non-responsive must be filed by 4:00 p.m. up to fourteen (14) days after award notification. All such protests shall be in writing, contain a complete statement of the grounds for protest, and be filed with the Contract Specialist via e-mail. 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.

2.13 **Bid Submittal: Numbering below if off…2.15?**
Bid (one (1) original and two (2) copies) must be sealed, and the envelope must clearly indicate the information as described in Section 2.4. Bidder must fully complete and submit the following documents:

2.15.1 Bid Form A - Solicitation Response Cover Sheet
2.15.2 Bid Form B - Price Sheet
2.15.3 Bid Form C - Bid Certification
2.15.4 Bid Form D - Non-Collusion Certificate
2.15.5 Bid Form E - Certificate of Ownership
2.15.6 Bid Form F - Bidder Qualifications, Representations and Warranties
2.15.7 Bid Form G - Bidder Optional Information

SECTION 3: GENERAL TERMS AND CONDITIONS

3.1. **Entire Agreement:**
This Contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Supplier. The City's Specifications, all addenda to the Specifications and the Supplier's response to the Specifications 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 Specifications; the Supplier's response to the Specifications.

3.2 **Term:**
The initial term of the contract shall be for a period of three (3) years. The contract may be extended for two (2) additional one (1) year periods up to a total of five (5) years, with the mutual consent of the City of Prescott and Supplier. The City may administratively extend the Contract pursuant to this paragraph without additional City Council approval. Price changes for succeeding years shall be adjusted in accordance with the Consumer Price Index (CPI) for All Urban Consumers, not to exceed upwards or downwards of three (3) percent. Can we do a two year extension?

3.3 **Freight:**
Prices include freight prepaid and allowed. The Supplier assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.

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

3.5 **Overages:**
Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Supplier's expense.

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

3.7 **Payment:**
Invoices will be paid according to early payment discount terms, or if no early payment discount is offered, within 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.

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

3.9 **Price Warranty:**
The Supplier 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 Supplier 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.

3.10 **Date Warranty:**
Supplier warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Supplier by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Supplier shall send, at Supplier's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Supplier shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

3.11 **Equal Employment Opportunity:**
During the term of this Contract, the Supplier agrees as follows: The Supplier 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. The Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following:

employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

3.12 **Diversity:**
The City encourages the Supplier to employ a workforce reflective of the region's diversity.

3.13 **Discrimination in Contracting:**
The Supplier 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 Supplier 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.

3.14 **Record-Keeping:**
The Supplier 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 Supplier's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Supplier shall also maintain all written quotes, bids, estimates, or proposals submitted to the Supplier 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 Supplier shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.

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

3.16 **Proprietary and Confidential Information:**
The Supplier 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 Supplier, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Supplier in the event that the City must disclose these materials by law.

3.17 **Indemnification:**
Required pursuant to Supplier Agreement Language. What does this mean?

3.18 **Insurance:**
Required pursuant to Supplier Agreement Language.

3.19 **Compliance with Law:**
The Supplier, 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.

3.20 **Licenses and Similar Authorizations:**
The Supplier, 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.

3.21 **Taxes:**
The Supplier 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 Supplier's interest in this Contract.

3.22 **Americans with Disabilities Act:**
The Supplier 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 Supplier is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Supplier 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.

3.23 **Adjustments:**
The City's Fleet Manager at any time may make reasonable changes in the place of delivery, replacement or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Supplier may accommodate without substantial additional expense to the City.

3.24 **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. Unless Supplier is otherwise notified, the City Manager shall be the City's authorized agent.

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

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

3.27 **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.

3.28 **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.

3.29 **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.

3.30 **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.

3.31 **Gratuities:**
The City may, by written notice to the Supplier, terminate Supplier'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 Supplier or any agent thereof to any City official, officer or employee.

3.32 **Termination:**

3.32.1 **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, not to exceed a thirty day cure period, after notice of breach has been provided to such other party.

3.32.2 **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.

3.32.3 **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 Supplier shall be paid for all items accepted by the City.

3.32.4 **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.

3.32.5 **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 Supplier under the following terms and conditions: Supplier 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 Supplier is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Supplier, the Supplier shall make such delivery as soon as practicable. If the Supplier is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Supplier shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Supplier is unable to provide such goods and/or services as requested by the City, the Supplier may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Supplier has obtained prior approval from the City for such substitution. The Supplier 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 Supplier incurring unavoidable additional costs and causes the Supplier to increase prices in order to obtain a fair rate of return, the Supplier shall provide the City with appropriate documentation of the additional costs. The Supplier acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Supplier, 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.

3.32.6 **Award:**
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, disbarment or judgment liens.

SECTION 4: 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 Fleet Manager.

4.2 **Cash Discounts:**
In connection with any cash discount specified on this bid, time will be computed from the date of complete delivery of the supplies, equipment or services as specified or from the date correct invoices are received in the City Finance Office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

4.3 **Warranty:**
Manufacturer's warranties shall remain in effect. All equipment purchased shall be purchased from one (1) Supplier. That one Supplier shall be fully responsible for all warranty performance relating to any part or component of the purchased equipment. The Supplier's responsibility shall include all warranty involving sub-contractors. The Supplier shall supply a warranty on all parts and workmanship from the initial delivery date. The Supplier shall guarantee further that the equipment to be supplied complies with all applicable regulations.

4.5 **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 another other state or federal statute, court rule, or common law.

4.6 **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 Supplier. 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.

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

4.8 **Proposal:**
All standard specifications and details referenced unless otherwise noted shall conform to all the City of Prescott 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.

4.9 **Bidding Requirements and Conditions:**

Bidder must be able to meet all governmental regulatory agency requirements including the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration and the National Occupational Safety and Health departments.

SECTION 5: 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 120 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 E 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 Bidder shall complete and submit Solicitation Form F. Bidder shall provide additional information as required.

5.6.2 Bidder shall provide three (3) 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.

5.7 Form G - Bidder Optional Information: Form G is for informational purposes only, is not required to be answered or submitted, and responses will not be taken into consideration in bid evaluation, or in agreement award or administration. Bidder may complete, sign, and submit Form G.

Form A – Solicitation Response Cover Sheet

City of Prescott
Solicitation Response

Description: Tires and Service

Please note all that apply:

☐ Addenda Number(s) Received (if any)

☐ Original Forms A through G plus two (2) photocopies

Business Name: _____

Business Address: _____

_____

E-Mail: _____

Business Phone: (_____) _____

Business Fax: (_____) _____

Business Contact: _____

Supplier Comments: _____

_____

_____

_____

_____

Dated this _____ day of _____ 2015.

_____
Signature

_____
Title

Form B – Price Sheet

Heavy Duty Tires (new)

Size	Annual Estimated Quantities	Brand/Manufacture	Unit Price (ea.)	Comments
315/80R22.5	300			
11R22.5	100			

Heavy Duty-Retreads

Size	Annual Estimated Quantities	Brand/Manufacture	Unit Price (ea.)	Comments
315/80R22.5	300			
11R22.5	100			

Service-Tires

Type	Rate-Hourly	Rate-Overtime	Comments
Repair			
Rotate			
Tire Pressure Check			
Mount/Balance			
Replacements			

Payment Terms: _____

Dated this _____ day of _____ 2015.

_____
Signature

_____
Title

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
7. Form G – Optional Bidder Information

C.4 That the Bidder's bid is valid for 120 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 Meets Minimum Specifications

	YES	NO
Furnish and install all labor, materials, equipment and services to complete the Specifications and Scope of Work.		

F2 Taxes and Liens - Bidder has no unsatisfied tax, judgment lien or disbarment on record.

F3 Subcontractors – Bidder submits as Attachment 1 to this Bid Form F 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.

F4 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: _____
E-Mail_____

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

Reference #3
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____
E-Mail_____

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.

F5 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, and the solicitation. Bidder acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that is 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 bid.

Dated this _____ day of _____ 2015.

_____ _____

Signature **Title**

Form G – Bidder Optional Information

Bidder Name:_____

Bid Form G is for informational purposes only, is not required to be answered or submitted, and responses will not be taken into consideration in bid evaluation, or in agreement award or administration. Bidder may complete, sign, and submit Bid Form G.

Affirmative Efforts to Utilize WMBEs – The City encourages the utilization of woman-owned and minority-owned businesses and the participation of such businesses in City bidding opportunities. The City requests Bidder to designate whether it is a State certified woman or minority owned business (WMBE), or whether the Bidder desires to self-identify as owned by women or minorities.

WMBE Status:

Certification:
_____ Women's Business Enterprise WMBE Certification No._____
_____ Minority Business Enterprise
_____ Minority and Women's Business Enterprise
_____ Disadvantaged Business Enterprise DBE Certification No._____

Ethnicity:
_____ Asian American _____ Native American
_____ African American _____ White
_____ Hispanic

Gender: _____ Male _____ Female

Self-Identification: If Bidder is not WMBE or DBE Certified, please select one category of ownership that best describes the ownership of Bidder:

Is Bidder at least 51% owned by one or more women? _____ Yes _____ No

Is Bidder at least 51% minority owned? _____ Yes _____ No

Ethnicity:
_____ Asian American _____ Native American
_____ African American _____ White
_____ Hispanic

Gender: _____ Male _____ Female

Supplier Agreement

**

WHEREAS, the City of Prescott (hereinafter referred to as "City") is in need of certain supplies and services; and

WHEREAS, the City has solicited bids in accordance with State and Local Law; and

WHEREAS, ** (hereinafter referred to as "Supplier"), has expertise in ** and is ready, willing and able to provide the necessary supplies and services pursuant to the request for bids.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other 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:

1. That Supplier shall provide the supplies and services to the City in relation to heavy duty new tires, retread tires and tire services as indicated in Exhibit "A" (Invitation for Bids and Scope of Work, and Price Sheet) and as requested by the City of Prescott Field and Facilities Services Director.
2. In addition to those services identified in Paragraph 1 above, the Supplier shall also perform all subordinate tasks not specifically referenced in Paragraph 1, but necessary to the full and effective performance of the tasks specifically referenced.
3. The Supplier shall provide sufficient qualified personnel to perform any and all services as required herein, including but not limited to inspections and preparation of reports, as reasonably requested by representatives of the City.
4. All services identified in Paragraphs 1 and 2 above shall be completed to the satisfaction of the City and shall be performed in compliance with the Specifications/Scope of Work herein.
5. The term of this Agreement shall be _____ to _____.
6. Notwithstanding the foregoing, this Agreement may be terminated by either party upon ten (10) days written notice, with or without cause or upon completion of services. If this Agreement is terminated, the Supplier shall be paid for authorized services satisfactorily performed to the date of the Supplier's receipt of such termination notice.
7. It is agreed by and between the parties that this Agreement incorporates the attached Exhibit "A" (referenced in Paragraph 1, above) thereto as a part of this Agreement, and that the terms thereof shall be binding between the parties.
8. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a Supplier to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any

person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

9. 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:

   Field and Facilities Services Director**
   City of Prescott **
   2800 Sundog Ranch Road**
   Prescott, AZ 86301

10. It is expressly agreed and understood by and between the parties that the Supplier is an independent Supplier, and, as such, Supplier 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 Supplier, Supplier further acknowledges that it 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 Supplier, Supplier further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of the City by reason thereof, and that it 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, worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

11. This Agreement is non-assignable by the Supplier unless by sub-contract, as approved in advance by the City.

12. (A) The City shall pay to Supplier a total sum of **dollars and no cents ($.00) for all services specified in Sections 1 and 2 of this Agreement, as specified in Exhibit "A". Is this applicable?

    (B) The foregoing sum includes payment for any and all services to be rendered Supplier or sub-contractors, which the Supplier may employ for this Contract. It is expressly agreed by and between the parties that the Supplier is solely responsible for any and all payment to such any other Supplier or sub-contactors retained by the Supplier.

    (C) Payment of the total amount provided for under Section 12 (A) shall not relieve Supplier of its obligation to complete the performance of all those services specified. Should the City request in writing additional services beyond that specified the Supplier shall charge and City shall pay Supplier in accordance to the services provided.

    (D) Prior to the final payment to the Supplier, the City shall deduct there from any and all unpaid privilege, license and other taxes, fees and any and all other unpaid monies due the City from the Supplier, and shall apply to those monies to the appropriate accounts. Supplier shall provide to the City any information necessary to determine the total amount(s) due.

    (E) The Supplier shall bill the City monthly for the fee due the Supplier, based upon an hourly rate for work completed for each itemized task pursuant to this Agreement and Exhibit "A" during the billing period. City shall pay such billings within thirty (30) days of the date of their receipt.

13. 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 negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

14. This Agreement shall be construed under the laws of the State of Arizona.

15. All work products of the Supplier for this Project are instruments of service for this Project only and shall remain the property of the City whether the Project is completed or not. All plans, drawings, specifications, data maps, studies and other information, including all copies thereof, furnished by the

City shall remain the property of the City. They are not to be used on other work, and, with the exception of this Agreement, are to be returned to the City on request or at the completion of the work.

16. 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 Supplier further agrees that this provision shall be contained in all sub-contracts related to the project, which is the subject of this Agreement.

17. 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 Agreement, pursuant to A.R.S. Section 12-341.01(A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law. The Supplier further agrees that this provision shall be contained in all sub-contracts related to the project, which is the subject of this Agreement.

18. This Agreement represents the entire and integrated Agreement between the City and the Supplier 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 and the Supplier. 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.

19. 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.

20. The Supplier hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Supplier's negligent acts, errors, or omissions, pursuant to this Agreement, except to the extent said claims, liabilities, expenses or lawsuits arise by the negligent acts or omissions of the City or his/her agents. The Supplier further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Supplier has or may have against the City, its agents or employees, arising out of or in any way connected with the Supplier's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.

21. 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.

22. (A) Changes in Work: 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 Field and Facilities Services Director. 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 made at the time of ordering such change or extra work.

    (B) Extra work shall be that work not indicated or detailed on the Scope of Work and not specified. Such work shall be governed by all applicable provisions on the Contract Document.

    (C) In giving instructions, the Field and Facilities Services Director shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work. No extra work or change shall be made unless in pursuance of a written order by the Field and Facilities Services Director and no claim for an addition to the total amount of the Contract shall be valid unless so ordered.

(D) Payment for any change ordered by the Field and Facilities Services Director which involves work essential to complete the Contract, but for which no basis of payment is provided for herein, shall be subject to agreement prior to said work being performed.

(E) Adjustments to price and/or Contract Time which are agreed upon shall be incorporated in the written order issued by the Field and Facilities Services Director, which shall be written so as to indicate acceptance on the part of the Supplier as evidenced by its 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 question and make such arrangements as it may deem necessary to complete the work, or it may direct the Supplier to proceed with the items in question to be reimbursed pursuant to the unit prices in the Supplier fee proposal.

(F) If the Supplier claims that any instructions involve extra cost under this Contract, it shall give the Field and Facilities Services 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. No such claim shall be valid unless so made. The Supplier shall do such extra work therefore upon receipt of an accepted Contract Amendment or other written order of the Field and Facilities Services Director and in the absence of such Contract Amendment or other written order of the Field and Facilities Services Director, the e shall not be entitled to payment for such extra work. In no case shall work be undertaken without written notice from the Field and Facilities Services Director to proceed with the work. All Contract Amendments must be approved by the Field and Facilities Services Director. Contract Amendments over $10,000.00 must be approved by City Council.

23. (A) The Supplier shall obtain and maintain in effect during the term of, and until final acceptance of all work under this Agreement, a policy or policies of liability insurance with the following coverage:

1) Commercial General Liability – Occurrence Form (if applicable)

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

General Aggregate	$ 2,000,000
Products – Completed Operations Aggregate	$ 2,000,000
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 of the activities performed by, or on behalf of the Supplier."

2) Business Automobile Liability (if applicable) 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

(B) City and Supplier waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, sub-contractors and employees for damages covered by property insurance during and after completion of the Services.

(C) All insurance required pursuant to this Agreement 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 each applicable bond or binder.

(D) Prior to commencing work under this Agreement, the Supplier shall provide City with evidence that it is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by ARS 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

(E) 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.

(F) Acceptability 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. All insurance is to be placed with an insurer admitted in the state in which operations are taking place.

(G) Verification of Coverage: Supplier 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. Please note the contract number on the Certificate.

24. The Supplier, 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 sub-contractors, including procurement of materials and leases of equipment. The Supplier 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.

25. Supplier Immigration Warranty

Supplier 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 Supplier 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, Supplier hereby warrants to the City that the Supplier and each of its sub-contractors (“Sub-contractors”) 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 “Supplier Immigration Warranty”).

A breach of the Professional Immigration Warranty shall constitute a material breach of this Contract and shall subject the Supplier 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 Supplier or Sub-contractors employee who works on this Contract to ensure that the Supplier or Sub-contractor is complying with the Professional Immigration Warranty. Supplier 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 Supplier and any of sub-contractors to ensure compliance with Supplier’s Immigration Warranty. Supplier agrees to assist the City in regard to any random verification performed.

Neither the Supplier nor any Sub-contractor shall be deemed to have materially breached the Professional Immigration Warranty if the Supplier or Sub-contractor 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 Supplier enters into with any and all of its sub-contractors who provide services under this Contract or any sub-contract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a Supplier or sub-contractor. Services

include construction or maintenance of any structure, building or transportation facility or improvement to real property.

26. Supplier shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances.
27. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Supplier.
28. In the event of a discrepancy between this Agreement and Exhibit "A", this Agreement shall control over Exhibit "A".
29. 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.

Dated this _____ day of _____, 2015.

City of Prescott, a municipal corporation

_____
Harry B. Oberg, Mayor

SUPPLIER

_____
**

By: _____

Title: _____

ATTEST:

_____
Dana R. DeLong, City Clerk

APPROVED AS TO FORM:

_____
Jon M. Paladini, City Attorney