FI84 9/96
Division of Finance

PBOS-62

CONTRA # 059274

004024

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation	810	Proc./Region Two
Agency Name	Agency Code	Division

referred to as STATE and the following:

CONTRACTOR Custom Crushing Inc
Name

5720 Browns Canyon Road
Address

Peoa	UT	84061
City	State	Zip Code

Steve Zabriskie (801) 580-9556
Contact Person Phone Number

870361194	900075A	75077310298, 75077310299, 75077310303 & 75077310307
Federal ID#	Vendor Number	Commodity Code(s)

LEGAL STATUS OF CONTRACTOR
- ____ Sole Proprietor
- ____ Non-Profit Corporation
- X For-Profit Corporation
- ____ Partnership
- ____ Government Agency

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with 1" & 1 ½" gravel. To be picked up by State forces. 1" by Stations 235, 236, 237,& 238. 1 ½" to be picked up by Stations 234, 235, 236, 237 & 238. All product is $5.50 per ton.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid RF5148, Requisition # 810 56000000175 ,FY 2005 .

4. CONTRACT PERIOD: Effective date 21 - June - 2005 . Termination date 20 - June - 2007 , unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) None .

5. CONTRACT COSTS: This is a requirements contract. See #2 for pricing.

6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.
ATTACHMENT B: Scope of Work.
ATTACHMENT C: Special Terms and Conditions.
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.
B. Utah State Procurement Code, Procurement Rules and Contractor's responses to Bid # RF5148 dated 25-May-2005 .

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
SEE ATTACHED
Contractor's Signature
STEVE ZABRISKIE
Contractor's Name
PRESIDENT
Title

STATE OF UTAH
David K. Miles, Operations Engineer
JUL 14 2005
Director, Division of Purchasing
CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE JUL 15 2005
Director, Division of Finance

Debra Boulton	(801) 965-4070	(801) 965-4073	dboulton@utah.gov
Agency Contact Person	Phone Number	Fax Number	Email Address

ENT'D JUL 26 2005

JUL 21 2005

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
http://purchasing.utah.gov

Invitation to Bid

Solicitation Number: RF5148

Due Date: 05/25/05 @ 2:00 P.M.

Date Sent: May 10, 2005

Agency Contract

Goods and services to be purchased: 1" AND 1 1/2" GRAVEL

Must complete

Company Name: Custom Crushing Inc.		Federal Tax Identification Number: 87-0361194	
Ordering Address: 5720 Browns Canyon Road	City: Peoa	State: UT	Zip Code: 84061
Remittance Address (if different from ordering address): P.O.Box 711370	City: SLC	State: UT	Zip Code: 84171
Type: XX Corporation ☐ Partnership ☐ Proprietorship ☐ Government	Company Contact Person: Steve Zabriskie		
Telephone Number (include area code): (801)580-9556	Fax Number (include area code): (801)272-9125		
Company's Internet Web Address: N/A	Email Address: N/A		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered): N/A	Days Required for Delivery After Receipt of Order (see attached for any required minimums): 5		

The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, Terms and Conditions, and specifications. Please review all documents carefully before completing.

The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes XX No____. If no, enter where produced, etc._____

Offeror's Authorized Representative's Signature: [signature]	Date: 5-23-05
Type or Print Name: Steve Zabriskie	Position or Title: Pres.

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract

unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS**: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

SECTION 02722P
GRAVEL

PART 1 GENERAL

1.1 SECTION INCLUDES

A. Production and delivery of unwashed gravel.

1.2 REFERENCES

A. AASHTO T 11: Materials Finer than 75 μm (no. 200) Sieve in Mineral Aggregates by Washing.

B. AASHTO T 19: Unit Weight and Voids in Aggregate.

C. AASHTO T 27: Sieve Analysis of Fine and Coarse Aggregates.

D. ASHTO T 89: Determining the Liquid Limit of Soils.

E. ASHTO T 90: Determining the Plastic Limit and Plasticity Index of Soils.

1.3 DEFINITIONS

A. **Mean of the Deviations:** The sum of the absolute values of the deviations divided by the number of tests in the lot.

1.4 SUBMITTALS

A. Ten days before delivery begins, submit a written report on the following:
   1. Aggregate suitability. Refer to this Section, Part 2.
   2. Name of supplier and source.
   3. Gradation including single values for each sieve size based on the dry weight of the aggregate.

B. Resubmit all quality documents 24 hours before a day's production starts if a change in source is required.
   1. Changes must fall within bands of Table 2 in this Section, and are subject to approval.
   2. Retroactive changes are allowed only for the first day's production for each construction season.

1.5 QUALITY ASSURANCE

A. Remove products found defective at no additional cost to the Department.

1.6 ACCEPTANCE

A. Engineer takes random sample at the aggregate source.

B. Acceptance will be on a lot-by-lot basis where a lot consists of a single days production.

1. Conduct one random moisture, gradation and density test within each sublot. AASHTO T 310.
2. If the Mean of the Deviations of test results varies from the Combined Aggregate Target more than the minimum shown under the 0.70 pay factors of Table 2, the pay factor for the material allowed to remain in place is 0.50. This applies only if the Engineer does not order correction or removal of any or all of the material represented by the tests.
    a. The results of five density tests must indicate that the average of 97 percent of maximum laboratory density has been met with no test less than 94 percent. AASHTO T 180, Method D.

PART 2 PRODUCTS

2.1 AGGREGATES

A. Clean, hard, tough, durable and sound mineral aggregates that consist of crushed stone, crushed gravel or crushed slag; free of detrimental and organic matter; and complies with Table 3 and Table 4.

Table 3

Aggregate Properties		
Dry Rodded Unit Weight	Not less than 75 lb/ft^3	AASHTO T 19
Material Passing No. 40 Sieve	Non plastic	AASHTO T 90 AASHTO T 89
Dry Weight Values	Within bands shown in Table 4	
Gradation Limits	Table 4	AASHTO T 11 AASHTO T 27

Table 4

Gradation Limits			
Sieve Size	**Percent Passing of Total Aggregate (Dry Weight)**		
	¾ inch	1 inch	1-1/2 inch
1-1/2 inch	--	--	100
1 inch	--	100	--
3/4 inch	100	--	81 -91
1/2 inch	78-90	79 - 91	67 - 77
3/8 inch	--	--	--
No. 4	48-60	49 - 61	43 - 53
No. 16	27-35	27 - 35	23 - 29
No. 200	6-10	7 - 11	6 – 10

B. Recycled Asphalt Pavement (RAP): Do not use RAP.

PART 3 EXECUTION

3.1 DELIVERY

A. Deliver to locations listed on bid schedule FOB

B. Stockpiles: Gravel stockpiling method for is specified for each delivery location. The method will be one of the following:

1. Method 1: Stockpile by butting loads – Build stockpiles at designated locations. Supplier uses end dumps, end dumps and pups, or belly dumps to haul material. Butt end dump loads one against the other in such a manner as to occupy as small a total stockpile area as possible. If the supplier elects to use belly dumps or pups, he must supply equipment to keep the stockpile pushed up to cover an area no larger than a stockpile area produced by an end dump. If Engineer is not satisfied with the stockpiling, supplier reshapes the stockpile to an acceptable configuration. If UDOT personnel reshape the stockpile, the cost of reshaping is deducted from the contract.
2. Method 2: Stockpile by supplier-furnished loader – Build stockpiles at designated locations. Supplier uses end dumps, end dumps and pups, or belly dumps. Supplier places each load and load is "bucked up" using a supplier-furnished loader and operator. Stockpiles occupy as little space as possible and are bucked up to a uniform 10-foot height. If Engineer is not satisfied with the stockpiling, supplier reshapes the stockpile to an acceptable configuration. If UDOT personnel reshape stockpile, reshaping cost is deducted from the contract.
3. Method 3: Stockpile by state forces shaping pile – Build stockpile at designated locations. Supplier uses end dumps, end dumps and pups, or belly dumps. State forces shape stockpile.

END OF SECTION

Change One – April 27, 2002
Created document from specification 02721
Added ¾" gravel gradation and stockpile method – September 1, 2004

ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

1. **CONTRACT PURCHASE:** This is a requirements contract to provide the State with 1" and 1 ½" unwashed gravel for a period of two (2) years.

2. **CONTRACT ACCEPTANCE**: At the time the bid form is signed by the offeror, the signature of that offeror will be used as a legally binding signature if awarded the contract. When signed by the Division of Purchasing and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract with the offeror for the contract period specified.

3. **QUANTITY OR AMOUNT ESTIMATES**: This is a requirements contract with the State. Estimated contract amounts/quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any specific amount.

4. **PRICING**: The Contractor agrees that the prices bid on materials/services in this contract shall be guaranteed for a period of two (2) years.

   ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR THE SAME LENGTH OF TIME AS INDICATED ABOVE AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY REQUEST FOR CHANGE ON PRICES OR SPECIFICATIONS MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON PRICES OR SPECIFICATIONS SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.

5. **WAGES**: The Contractor shall be responsible for all applicable company wages in accordance with the federal, state, and local laws and ordinances.

6. **INVOICING: THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES AND ALL CORRESPONDENCE RELATING TO EACH ORDER AND DELIVERY.**

   The Contractor will promptly submit invoices to the Utah Department of Transportation, Region Two, 2010 South 2760 West, Salt Lake City, Utah 84104. The State will remit payment by mail.

7. **NON-COMPETE CLAUSE**: The Contractor represents its officers and employees are free to contract with the state and are not subject to restrictions by the terms of their present or past employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. A Contractor must disclose to the State any possible conflicts, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standards Terms and Conditions and will not provide the specified notice to the Contractor.

ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

8. **CERTIFIED WEIGHT TICKETS**: The Contractor shall provide certified weight tickets to determine the amount of material for payment. Certified weight tickets are imprinted automatically by the weight scale or as approved by the UDOT Engineer or a designated agent. Each weight ticket shall show the date, destination, size gravel and Contractor's name in addition to the imprinted weights.