



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

MEMO NO. ST12-009

1. Agenda Item Number:

14

2. Council Meeting Date:

May 24, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: April 24, 2012

THROUGH: CITY MANAGER

4. Requesting Department: Transportation & Development

5. SUBJECT: Approve Agreement ST2-760-3054 for the purchase of a Backhoe Loader from RDO Equipment Co. in the amount of \$99,752.65

6. RECOMMENDATION: Recommend approval of Agreement ST2-760-3054 for the purchase of a Backhoe Loader from RDO Equipment Co. in the amount of \$99,752.65

7. BACKGROUND/DISCUSSION: The new backhoe is a direct replacement for the concrete crew's 1986 backhoe which is underrated for current working requirements. The new backhoe will be capable of moving steel trench plates, has four (4) wheel drive, an extended backhoe bucket arm, higher rated hydraulics, improved cooling system, multi-use front loader bucket, and an operator cab; all of which are crucial but absent with the current older model backhoe

8. EVALUATION PROCESS: On March 10, 2012 staff issued Invitation For Bid (IFB) for the purchase of a Backhoe Loader. The IFB was advertised and all 120 registered vendors were notified. Staff received two bids, which are summarized below. Staff is recommending award to RDO Equipment Co. which submitted the low responsive bid.

	RDO	Empire Machinery
Equipment Offered	John Deere 410J	Caterpillar 430E
Backhoe	\$ 91,265.00	\$ 103,533.00
Tax	\$ 8,487.65	\$ 9,369.74
Total	\$ 99,752.65	\$ 112,902.74

9. FINANCIAL IMPLICATIONS:

Cost: \$99,752.65

Fund Source:

<u>Acct Name</u>	<u>Fund</u>	<u>Program Name</u>	<u>CIP funded</u>	<u>Amount</u>
402.3300.6320.0000	Capital Replacement Fund	Motor Vehicles	N/A	\$99,752.65

10. PROPOSED MOTION: Move to approve Agreement ST2-760-3054 for the purchase of a Backhoe Loader from RDO Equipment Co. in the amount of \$99,752.65

APPROVALS

11. Requesting Department

Daniel W. Cook, Transportation Manager

13. Department Head

R.J. Zeder, Transportation & Development Director

12. Procurement Officer

Mike Mandt

14. City Manager

Rich Dlugas, City Manager

CITY OF CHANDLER PURCHASE CONTRACT
BACKHOE
AGREEMENT NO.: ST2-760-3054

THIS AGREEMENT is made and entered into this 2 day of MAY, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and RDO Equipment Co. a Delaware Corporation, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

- 1.1. **Contract Administrator:** CONTRACTOR shall act under the authority and approval of the Fleet Manager/designee (Contract Administrator), to provide the goods and merchandise required by this Contract.
- 1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein. Parties agree that minor changes may occur at pre-build conference, which will be documented by a contract amendment in the form of a shop order signed by authorized representatives of both parties.

- 2.1. **Safety Standards:** All items supplied pursuant to this contract must comply with the current applicable Federal Motor Vehicle Safety Standards.
- 2.2. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.3. **Product Discontinuance (Categories):** In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

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

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

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

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

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

- 2.4. Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.
- 2.5. Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 2.9. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 2.10. Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.11. Estimated Quantities.** The quantities shown on Exhibit A (Specification and Price Sheet) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.12. Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.13. Current Products.** All products offered in response to this solicitation shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.14. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new/not used, and of the most suitable grade for the purpose intended. Equipment shall be model year 2011 or newer, not a demonstration model and have never been used to perform dirt work.

2.15. Packing and Shipping. The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. WARRANTIES:

3.1. Liens: CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

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

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

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

3.2.3. Conform to the written promises or affirmations of fact made by CONTRACTOR.

3.3. Fitness: CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.

3.4. Inspection/Testing: The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.

3.5. Warranty (Equipment). All equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of one year unlimited hours from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

4. ACCEPTANCE AND DOCUMENTATION: All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

4.1. Records. The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

4.2. Audit. At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.

- 4.3. **Delivery.** Delivery shall be made within ten (10) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed ninety nine thousand seven hundred and fifty two Dollars and sixty five cents (\$99,752.65) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit A, attached hereto and made a part hereof by reference.
- 5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **Taxes:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
6. **TERM:** The term of the contract shall commence on award and terminate on when the contractor has fulfilled all obligations under the contract.
7. **USE OF THIS CONTRACT:**
- 7.1. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7.2. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

8. CITY'S CONTRACTUAL REMEDIES:

8.1. Right to Assurance: If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Non-exclusive Remedies: The rights and the remedies of CITY under this Contract are not exclusive.

8.3. Nonconforming Tender: Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.4. Right of Offset: CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

9.1 Termination for Convenience: CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

9.2 Termination for Cause: City may terminate this Agreement for Cause:

Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement

- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
 - 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
 - 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
 - 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
 - 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.
- 9.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.
- 9.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.
- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

- 9.9. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. DISPUTE RESOLUTION:**
- 11.1 Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 11.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.3 Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County In the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 11.4 Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
- 12. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and

except their negligence is found to be the sole cause of the injury to persons or damages to property.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY	In the case of the CONTRACTOR
Department: Streets	Firm Name: RDC Equipment Co.
Contact: Rex Hartmann	Contact: Mark Demers
Mailing Address: PO Box 4008 MS 909	Address: 2649 N 29 th AVE
Physical Address: 975 E. Armstrong Way, Bldg. C	City, State, Zip: Phoenix, AZ 85009
City, State, Zip: Chandler, AZ 85244-4008	Phone: 602-415-4700
Phone: 480-782-3493	FAX: 602-233-0383
FAX: 480-782-3495	

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. **GENERAL TERMS:**

- 14.1. **Entire Agreement:** This Contract, including Exhibit A and B attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.
- 14.5. **Conflict of Interest:**
- 14.5.1 **No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

- 14.5.2 Kickback Termination:** CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

- 14.5.3 No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

- 14.6. Independent CONTRACTOR:** The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

- 14.7. No Parole Evidence:** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

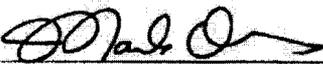
- 14.8. Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

- 14.9. Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2012.

FOR THE CITY OF CHANDLER

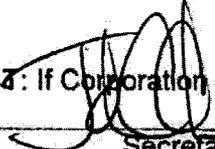
 Mayor

FOR THE CONTRACTOR
 By: 

 Signature

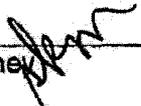
ATTEST:

 City Clerk

SEAL ATTEST: If Corporation


 Secretary

Approved as to form:

 City Attorney 

**EXHIBIT A
TECHNICAL SPECIFICATIONS
Backhoe
Bid No. ST2-760-3054**

GENERAL: The intent of this bid is to provide the City with the most functional and cost effective equipment for the servicing of facilities. All specifications are minimum unless stated.

1.0 TECHNICAL SPECIFICATIONS (MINIMUM):	
1.	<u>ENGINE</u>
2.	<u>Type</u> – diesel, Four-cycle, liquid cooled, 95 net horsepower turbo SAE.
3.	<u>Air Cleaner</u> – Two (2) stage dry type with pre-cleaner
4.	<u>Cooling</u> – Cooling – Manufacturer’s maximum available cooling package capable of operating continuously at full capacity with in an ambient temperature of 130 120 degrees Fahrenheit. Stacked cooling system heat exchangers, including but not limited to engine coolant, engine oil, hydraulics, condenser, etc. are undesirable. If stacked heat exchangers are used they must not negatively affect the machine's ability to operate in specified ambient temperatures. Stacked units must be limited to as few as possible. They shall be designed and located to permit easy access to clear dirt and debris from the device's exterior fins and coils. (changed by addendum 2)
5.	<u>Emissions</u> – Shall meet all applicable Federal, State and Local Emissions at time of manufacturer.
6.	<u>ELECTRICAL</u>
7.	<u>System Volts</u> – 12/24
8.	<u>Alternator Output</u> – minimum 90 amps.
9.	
10.	<u>Gauge Package</u>
11.	Engine Coolant Temperature
12.	Fuel Gauge
13.	Transmission Torque Converter Oil Temperature (Warning light OK in place of gauge)
14.	Air Cleaner Restriction Gauge - prefer that the gauge be installed in the instrument panel in clear view of the operator (Warning light OK in place of gauge)
15.	Alternator Voltage (Warning light OK in place of gauge)
16.	Engine Oil Pressure (Warning light OK in place of gauge)
17.	Hydraulic Oil Filter Restriction (Warning light OK in place of gauge)
18.	Park Brake Indicator (Warning light OK in place of gauge)
19.	Hour-Meter/Tachometer

20.	<u>MALFUNCTION MONITORING SYSTEM</u> Visual and Audible warnings
21.	Engine Coolant Temperature Engine Oil Pressure
22.	Stop Engine indicator
23.	Torque Converter oil Temp
24.	<u>TRANSMISSION</u>
25.	<u>Type</u> –Clutchless Power shift transmission, on the go shifting forward and reverse
26.	<u>Speeds</u> – Minimum Four speeds forward and Minimum two in reverse minimum
27.	<u>Safety Switch</u> – Neutral start only
28.	<u>Travel Speed</u> – Minimum 20 MPH forward, 13 MPH reverse
29.	<u>BRAKES</u>
30.	<u>Type</u> – Power assist, Hydraulic wet disc, self adjusting self equalizing
31.	<u>Parking Brake</u> – Disc type, spring applied, independent design, meeting all Federal Standards. Parking must immobilize the equipment (must prevent driving through the parking brake).
32.	<u>STEERING</u>
33.	<u>Type</u> – Power assist
34.	<u>Axel Oscillations</u> – Stop to stop, approximately 20°
35.	<u>Curb Turning Radius</u> – Approximately 13' without using brakes
36.	<u>Steering wheel</u> – Tilt
37.	<u>FINAL DRIVES</u>
38.	<u>Type</u> – Heavy duty, inboard or outboard planetary design with differential lock with controls to engage and disengage accessible to operator position.
39.	Backhoe shall be 4-wheel drive
40.	<u>Front Axle</u> – Sealed 4WD axle
41.	<u>Rear Axle</u> – Standard
42.	<u>HYDRAULIC SYSTEM</u>
43.	<u>Type</u> – Open or closed center, load sensing design
44.	<u>Filtration</u> – 10 micron or better, spin-on type filter
45.	<u>Relief Pressure</u> – Approx. 3600 PSI
46.	<u>Pump</u>
47.	<u>Type</u> – Radial piston or approved equivalent

48.	<u>Capacity</u> – Approx. 40 g.p.m. @2500 PSI, or equivalent
49.	<u>Filtration</u> – 10 micron or better, spin-on filter
50.	<u>TIRES AND RIMS</u> (Size as specified or pre-approved exception)
51.	No split rims allowed
52.	<u>Tire Manufacturer</u> – GOODYEAR or equivalent
53.	State tire manufacturer and model #(s) must be a traction tire front and rear
54.	<u>CAB</u>
55.	<u>Type</u> – All steel, fully enclosed
56.	<u>ROPS/FOPS</u> – Shall meet all federal safety standards
57.	<u>Sound Suppression</u> – shall meet all OSHA/MSHA standards
58.	<u>Pressurized Cab</u> – Approximately .24-in. Hg.
59.	<u>Heater/Defroster</u> – Manufacturer's maximum with fresh air intake
60.	<u>Air Conditioning</u> – Manufacturer's maximum with R134A refrigerant. Must be capable of cooling the cab from 100 degrees F. to 75 degrees F in 50% relative humidity in no less than 20 minutes with the apparatus standing still and the engine speed at high idle.
61.	<u>Seat</u> – Suspension-type fully adjustable with federally approved seat belt. Durable cloth covering.
62.	<u>Windows</u> – Tinted glass except front windshield.
63.	<u>Windshield Wipers/Washer</u> – Front and rear
64.	<u>Locking Doors</u>
65.	<u>Keyed alike</u>
66.	Five (5) sets of keys, each with 1" key rings and identification tags with serial number
67.	<u>Dome Light</u> – Overhead type
68.	<u>Rear View Mirrors</u>
69.	<u>Interior</u> – Single
70.	<u>Outside</u> – One on each side, large size, heavy-duty design
71.	<u>AM/FM Radio</u> – Factory installed
72.	<u>FENDERS</u>

73.	<u>Manufacturer Standard</u>
74.	
75.	<u>LIGHTING</u>
76.	<u>Driving/Working</u> – Heavy-duty halogen. Two each, front and rear
77.	<u>Stop/Tail</u> – Two each, rear
78.	<u>Turn Signal/Emergency</u> – Two each, front and rear
79.	<u>VANDAL PROTECTION</u>
80.	Shall be equipped with lockable and securable doors, gas cap and hydraulic tank cap.
81.	<u>LOADER</u>
82.	<u>Bucket Type/Capacity</u> –
83.	<u>Capacity</u> – Minimum 1.2 yd. heaped
84.	– 4 in 1multi-purpose clamshell bucket, heavy-duty design with bolt on cutting edge
85.	<u>Breakout Force</u> – Minimum 9,500 lbs
86.	<u>Dump Clearance</u> – Minimum 8’ 4” at 45 degrees
87.	<u>Bucket Dump Angle</u> – Approx. 45 degrees
88.	<u>Rollback Angle</u> – Approx. 45 degrees at ground level
89.	<u>Reach</u> – Minimum 30.3” at maximum height and 45 degree dump angle
90.	<u>Lift Capacity Full Height</u> – Minimum 6,500 lb.
91.	<u>Controls</u> – Single lever with auto leveling
92.	
93.	<u>BACKHOE W/EXTENDABLE DIPPER-STICK</u>
94.	<u>Digging Force, Bucket Cylinder</u> – Minimum 14,000 lb
95.	Extendable backhoe with outer box design on lower dipper arm
96.	<u>Digging Force, Crown Cylinder</u> – Minimum 8,000 lb.
97.	<u>Swing Arc</u> – 180 degrees
98.	<u>Operator Control</u> – Two levers
99.	<u>Bucket Rotation</u> – 190 degrees
100.	<u>Stabilizer Spread</u> – Operating position, minimum 11’
101.	<u>Loading Height</u> – Truck loading position, minimum 12’
102.	<u>Reach From Center of Swing Point</u> – Minimum 19’
103.	<u>Digging Depth</u> – Approx. 19’6” extended, 15’6” retracted
104.	<u>Bucket</u> – Heavy-duty design with lifting loop, 24” width, equipped with welded shanks and pin-on teeth
105.	<u>Stabilizer Pads</u> – Heavy-duty design, with reversible pads

106.	<u>SAFETY EQUIPMENT</u>
107.	<u>Horn</u> – Automotive type, meeting Federal Standards
108.	<u>Non-Skid Surfaces</u> – All ladders, steps, walking and standing areas
109.	<u>Slow Moving Placard</u> – Installed on rear in a highly visible location
110.	<u>Backup Alarm</u> – Shall be heavy waterproof design, meeting all AZ State and federal regulations
111.	<u>Mini Light Bar</u> – mini, Federal Signal Highlighter, perm mount economy model # 454205-02, with driver's control switch
112.	<u>Fire Extinguisher</u> – 5 lb. all purpose, installed in the cab, within easy reach of the operator
113.	<u>First Aid Kit</u> – Arizona Glove & Safety #10DOTM, or approved equivalent, installed inside the cab within easy reach of the operator
114.	<u>PAINT</u>
115.	Manufacturer's standard color
116.	<u>WARRANTY</u>
117.	<u>Warranty Requirement Criteria</u> – One (1) full year parts and labor.
118.	<u>Replacement Equipment</u> -Contractor shall deliver replacement comparable equipment at no charge to the City if the backhoe is out of service for repairs more than 72 hrs during the warranty period. If contractor is unable to provide loner equipment The City will charge \$400 per day.
119.	It is understood that if warranty repairs are necessary during the warranty period, the successful bidder shall be required to make said repairs F.O.B. machine location within the City of Chandler limits at no charge. In the event of major repairs, dealer has, as his option, the choice of transporting the machine to the closest service facility for repairs. The above warranty shall become effective the first day after twenty-one (21) consecutive days of satisfactory service.
120.	<u>Mandatory Performance Specification Requirement</u>
121.	The loader must be capable of dumping into the City's dump truck approximately 8' tall. Bidder will be required to demonstrate compliance with to this specification with the exact make and model offered.
122.	The backhoe must be capable of lifting 8' X 12' X 1" steel plate weighing minimum 3980 lbs. At minimum height of 6'. Bidder will be required to demonstrate compliance with to this specification with the exact make and model offered.
123.	The Backhoe must be incapable of moving with the parking brake engaged. This will be tested by setting the parking brake and attempting to drive through the parking brake.
124.	Demonstration will be at the City of Chandler, 1800 South McQueen, Chandler, Arizona. Failure to demonstrate compliance with this specification will be considered non-responsive.

**Exhibit B
Price**

Backhoe John Deere 410J	\$	91,265.00
Tax	\$	8,487.65
Total	\$	<u>99,752.65</u>