

**CITY OF CHANDLER SERVICES AGREEMENT
FILTER MEDIA, REMOVAL AND INSTALLATION SERVICES
AGREEMENT NO. MU2-885-3042:**

THIS AGREEMENT is made and entered into this _____ day of October, 2011, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Carbon Activated Corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

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

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Water Systems Operations Superintendent /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.
- 1.4. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide anthracite filter media and related removal/installation services all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

- 2.1. **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.
- 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3. **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 CITY.
- 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration

laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

- 2.4.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed pursuant to this Contract.
- 3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
 - 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to 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.
 - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
 - 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. **Property of CITY.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.
 - 3.5. **Delivery.** Entire shipment of anthracite must be delivered to City Water Treatment Plant located at 1475 East Pecos Road, Chandler, AZ at least three (3) weeks prior to commencement of installation work to allow City personnel adequate time to take samples for testing by a third party lab. If the lab

discovers any sample that does not meet specifications, Contractor shall remove entire shipment of anthracite media at no cost to the City.

4. PRICE:

4.1. CITY shall pay to CONTRACTOR an amount not to exceed Five Hundred Thirty-six Thousand Four Hundred Seven Dollars (\$536,407) 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 C, attached hereto and made a part hereof by reference.

4.2. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

4.3. **Estimated Quantities.** The quantities shown on Exhibit B 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.

4.4. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

5.1. The work must be completed within 90 days from the Notice to Proceed.

6. USE OF THIS CONTRACT:

The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

6.1. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the 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.

6.2. **Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR

shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

- 8.1 **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.
- 8.2 **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.
- 8.3. **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 the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

- 8.4. 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 CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The 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 CONTRACTOR.
- 8.5. Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that 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 SUBCONTRACTOR 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 CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.6. 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.
- 8.7. 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.
- 8.8. 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.
- 9. 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.
- 10. DISPUTE RESOLUTION:**
- 10.1 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.
- 10.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3 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.
- 10.4 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.

11. 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. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by

anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the

performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

- 12.7. Such insurance shall include coverage for loading and off-loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.
13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement 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 the CITY

Contract Administrator: City of Chandler

Contact: Carolee Stees
Mailing Address: PO Box 4008 MS 901
Physical Address: 175 S. Arizona Avenue
City, State, Zip: Chandler, AZ 85225
Phone: 480-782-2405
FAX: 480-782-2410

In the case of the CONTRACTOR

Firm Name: Carbon Activated Corporation
Contact: Dale Kerr
Address: 250 E. Manville Street
City, State, Zip: Compton, CA 90220
Phone: 310-885-4555
FAX: 310-885-4558

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. CONFLICT OF INTEREST:

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the 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 the CITY.
- 14.2. **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or 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 of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. **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.

15. GENERAL TERMS:

- 15.5 **Entire Agreement.** This Agreement, including Exhibits A, B and C 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 Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

- 15.6 **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.7 **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.8 **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 the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any 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 such changes.
- 15.9 **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.
- 15.10 **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.
- 15.11 **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of October 2011.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: _____
Signature

ATTEST:

ATTEST: If Corporation

City Clerk

SEAL

Secretary

Approved as to form:

City Attorney
[Signature]

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: MU2-885-3042		
Name (as listed in the contract): Carbon Activated Corporation		
Street Name and Number: 250 E. Manville Street		
City: Compton	State: CA	Zip Code: 90220

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Dale Kerr

Title: Operator

Date (month/day/year): November 4, 2011

**EXHIBIT B
SCOPE OF WORK**

Contractor shall provide all labor, materials and equipment to remove and dispose of, in an environmentally friendly manner, approximately 168 cubic yards of spent GAC, per filter from eight (8) filters and provide a single layer of anthracite coal filter media into eight (8) filters. The filters are composed of two cells; each cell has the following dimensions: Diameter – 14 feet, Length – 27 feet, Media Height – 6 feet.

Contractor shall remove existing 5 feet of anthracite and 1 foot of sand from two (2) filters, reuse the removed anthracite and add an additional foot of anthracite to replace the removed sand.

Each filter is equipped with a Leopold Universal-type under drain with an Integrated Media Support (IMS) cap; no filter gravel or other support material will be required.

This is a total of 1400 cubic yards of anthracite.

The work is to be done from late November, 2011 through February, 2012. The city will work with the contractor on the schedule, as we will be on line for some of this time.

Filter media materials shall comply with AWWA B100, except as modified herein. Gradation sizes shall be based on square hole sieves conforming to ASTM E11.

Anthracite Media shall meet the following specifications:

Must meet NSF certified and comply with AWWA B100.

Effective Size	0.90 to 1.10 mm
Uniformity Coefficient	1.50 maximum
Passing No.8 Sieve (2.36 mm)	98% minimum
Passing No. 25 Sieve (0.71mm)	2% maximum
Specific Gravity	1.5 or greater
Acid Solubility	1% maximum
Hardness, Moh' Scale	2.7 or greater
Caustic Solubility	2% maximum in 1% sodium hydroxide @190 F.

Installation, delivery and disposal shall include:

Removal of all spent GAC media from the owner-designated filters. Approximately 168 cubic yards, per filter.

Provide all labor and equipment necessary to transport material removed from the filters.

Allow for underdrain inspection by City personnel.

Each layer of filter media shall be deposited to a uniform thickness, with the top surface screened or otherwise brought to a true level plane. Care shall be taken in depositing each layer not to disturb the level surface of the

layer beneath. Placement of filter media shall be performed so as to avoid staining or damaging of the filter walls. Flat particles shall be removed from the anthracite by skimming.

Initial skimming to take place after completing five initial air/water backwashes. Subsequent skimming (if required) shall take place after a minimum of three additional backwashes per skimming action.

Washing and scraping shall comply with the governing standard, except the initial scraping of anthracite shall be a layer approximately 3/8 inches thick.

Install Anthracite Media, meeting the above specifications, at the Chandler Water Treatment Plant, 1475 East Pecos Road, Chandler, AZ.

**EXHIBIT C
PRICING**

City shall pay Contractor an amount not to exceed \$536,407 for all product supplied and work completed as specified in Exhibit B above.



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

16

2. Council Meeting Date:
November 17, 2011

TO: MAYOR & COUNCIL

3. Date Prepared: November 1, 2011

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. SUBJECT: Award an agreement for the purchase of filter media, removal and installation services to Carbon Activated Corporation in an amount not to exceed \$536,407.

6. RECOMMENDATION: Recommend award of an agreement for the purchase of filter media, removal and installation services to Carbon Activated Corporation in an amount not to exceed \$536,407.

7. HISTORICAL BACKGROUND/DISCUSSION: During the recent expansion of the Chandler Surface Water Treatment Plant, the filters were outfitted with Granular Activated Carbon (GAC). After a short time, GAC loses its effectiveness and must be replaced. An assessment at the Plant found the removal of total organic carbon declines rapidly and its replacement is cost prohibitive. Installing anthracite is a better choice because it's a more cost effective filter media.

8. EVALUATION PROCESS: On September 30, 2011, Purchasing issued bid MU2-885-3042. All registered vendors were notified and the bid was advertised in the local newspaper. The City received bids from Prominent Systems, All Service Contracting, Carbon Activated, SNR Technologies, UMI-2000/Tetrasol V Filtration, KC International, Hunter Contracting and MGC Contractors. Staff recommends awarding Carbon Activated Corporation as the lowest responsive and responsible bidder.

<u>Company Name</u>	<u>Bid Amount</u>
Carbon Activated	\$536,407.00
KC International	\$544,424.00
UMI/2000 Tetrasol V	\$580,350.75
All Service Contracting	\$593,351.00
Hunter Contracting	\$606,800.00
Prominent Systems	\$620,888.00
SNR Technologies	\$666,555.56
MGC Contractors	\$726,471.00

9. FINANCIAL IMPLICATIONS:

Costs: \$536,407.00
Savings: N/A
Long Term Costs: N/A

Fund Source:

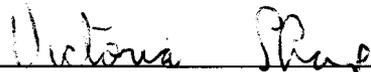
<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
605.3830.5911.0000	Water Operating/Water Treatment	Contingency Reserve	No	\$ 436,550
605.3830.5318.0000	Water Operating/Water Treatment	Chemicals	No	\$ 99,857

10. PROPOSED MOTION: Move to award an agreement for the purchase of filter media, removal and installation services to Carbon Activated Corporation in an amount not to exceed \$536,407.

ATTACHMENTS: Agreement

APPROVALS

11. Requesting Department


Victoria Sharp, Water Operations Superintendent

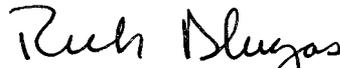
13. Department Head


Dave Siegel, Municipal Utilities Director

12. Procurement Officer


Carolee Stees, CPPB

14. City Manager


Rich Dlugas



CITY OF CHANDLER, ARIZONA
NOTICE OF FORMAL SOLICITATION

SOLICITATION TYPE: INVITATION FOR BIDS
SOLICITATION INVITATION NO.: MU2-885-3042
BID DUE DATE AND TIME: October 19, 2011 – 4:00 pm local Arizona time
LOCATION: MAILING ADDRESS:
Purchasing Division Mail Stop 901
175 S. Arizona Ave., 3rd Floor P.O. Box 4008
Chandler, Arizona 85225 Chandler, AZ 85244-4008

Sealed bids for the commodity or service specified will be received by the Purchasing Division, City of Chandler, 175 S. Arizona Ave., 3rd Floor, Chandler, Arizona 85225, until the time and date cited above. Solicitations received by the correct time and date will be opened publicly and the prices shall be read aloud at the Purchasing Division Office.

Bids must be in the actual possession of the Purchasing Division Office and stamped by a member of the Purchasing Division staff on or prior to the exact time and date indicated above. Late submittals or unsigned submittals will not be considered under any circumstances.

Bids must be submitted in a sealed envelope with the solicitation invitation number and the Bidder's name and address clearly indicated on the envelope. All bids must be completed in ink or typewritten. Additional instructions for preparing your bid are provided on the following pages.

Commodity and/or Service Filter Media, Removal and Installation Services

Contract Type and Period One-time purchase

Issue Date: September 30, 2011

CONTACT:

Carolee Stees, CPPB
Procurement Officer
PH: (480) 782-2405 / FAX: (480) 782-2410
Email: carolee.stees@chandleraz.gov

THIS BID IS SUBMITTED BY:

Name of Company

Carbon Activated Corp.
DALE KEAR

Contact Name

IMPORTANT VENDOR/BIDDER'S CHECK LIST

- 1. The bid has been signed in the Vendor/Bidder's Offer Section. (Bids not signed in this section will not be considered.)
- 2. The bid prices offered have been reviewed.
- 3. The price extensions and totals have been checked.
- 4. Any required drawings or descriptive literature have been included.
- 5. All items listed on the Bid Sheet have been responded to as applicable/required (see Information and Instructions to Bidders Section 4.5)
- 6. Any addendums have been included/noted on Bid Sheet.
- 7. The mailing envelope/package has been addressed to:

Location:

City of Chandler
Purchasing Division
175 S. Arizona Ave., 3rd Floor
Chandler, AZ 85225

Mailing:

City of Chandler
Purchasing Division
P.O. Box 4008 – MS 901
Chandler, AZ 85244-4008

- 8. Bid Package/Envelope has been identified with bid number and title.
- 9. Bid Bond has been included (if applicable).
- 10. Certificate of Insurability has been signed and included with offer (if applicable).
- 11. Contractor Immigration Warranty form (Exhibit A) has been included.
- 12. The bid is mailed in time to be received and stamped in by Purchasing representative no later than specified time on designated date. (Otherwise the bid cannot be considered.)

BID SECTION
(Including all information required to be submitted with Bid)

1. **BIDDER**

Firm Name: CARBON Activated Corp.
Contact Name: Dale Kemp
Principal Address: 250 E. Mainville St.
Compton Ca 90220
Phone: (310) 885-4555
Fax: (310) 885-4554
E-Mail: dalek@activatedcarbon.com
Local Address: NONE

Type of Organization: Corporation
Tax ID #: 95-45777883
License #: California "A" 842091

2. Disclosure of Debarment information: none

3. Prices:
- A. Price (all inclusive): \$ 536,407.00
 - B. Prompt Payment Terms: net 30
 - C. Will you accept a City Procurement Card (MasterCard) for payment of invoices? no
 - D. Will you accept automated clearinghouse (ACH) for payment of invoices? yes

4. **REFERENCES:**

Provide names, addresses and telephone numbers of government agencies/business' to which you have provided **anthracite filter media** and installation services.

A. Company: City of Peoria
Address: 7300 W. Broadway Rd Peoria Az 85381
Contact: Ray Schultz
Phone: (623) 773-8355

Goods or Services supplied and when provided: Removal and Install Filter media

B. Company: City of Chandler
Address: 1475 E. Pecos Rd., Chandler AZ 85286
Contact: Vicki Sharp
Phone: (480) 782-3628

Goods or Services supplied and when provided: Sub contract for North America we did the removal + install of media in one filter system

C. Company: Golden State Water
Address: 11200 Coloma Rd., Rancho Cordova CA 95670
Contact: Travis
Phone: (916) 796-6091

Goods or Services supplied and when provided: Remove and install Authority Sand, Gravel and Gravel

5. Receipt of Addenda:

Bidder acknowledges receipt of the following Solicitation Addendum(s):

<u>Addendum No.</u>	<u>Date</u>
<u>#1</u>	<u>Oct 9, 2011</u>
_____	_____
_____	_____



October 4, 2011

**Filter Media, Removal and Installation Services
Bid No. MU2-885-3042
Addendum #1**

Please note the following clarifications:

Scope of Work, page 25, 2nd paragraph should read: Contractor shall remove existing 5 feet of anthracite and 1 foot of sand from two (2) filters, reuse the removed anthracite and add an additional foot of anthracite to replace the removed sand.

End of Addendum.

6. Intent to be bound by Bid:

SIGNATURE PAGE

If BIDDER is:

An Individual

By:

(Individual's Signature)

(Printed or Typed Name of Individual)

Doing business as:

License or Registration No.:

Business Address:

Phone No.:

Fax No.:

A Partnership

By:

(Firm Name)

(Partner's Signature)

(Printed or Typed Name of Partner)

License or Registration Number:

Business Address:

Phone No.:

Fax No.:

A Corporation

By: Carban Activated Corp.
(Corporation Name)

California
(State of Incorporation)

By: [Signature]
(Signature of Officer Authorized to Sign)
Joseph House C.F.O.
(Printed or Typed Name)

Attest: [Signature]
(Secretary)

Federal I. D. Number: 95-4577883

Business Address: 250 E. Mainville St
Compton Ca 90220

Phone No.: (310) 885-4555

Fax No.: (310) 885-4538

A Joint Venture

By: _____
(Signature)

(Printed or Typed Name)

(Address)

By: _____
(Signature)

(Printed or Typed Name)

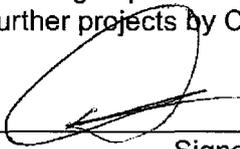
(Address)

(Each party to the joint venture must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

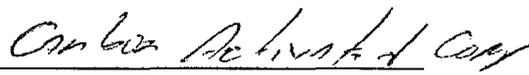
CERTIFICATE OF INSURABILITY

I hereby certify that as an Offeror to City of Chandler for Filter Media, Removal and Installation Services Agreement No. MU2-885-3042 , I am fully aware of Insurance Requirements contained in the Contract and by the submission of this offer, I hereby assure City of Chandler that I am able to produce the Insurance coverage required should I be selected to be awarded the Contract.

Should I be awarded the Contract by City of Chandler, and then become unable to produce the Insurance coverage specified within ten working days, I am fully aware and understand that I may not be considered for further projects by City of Chandler.



Signature of Offeror



Company



Date

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: <i>MU2 885-3042</i>
Name (as listed in the contract): <i>Cabin Activities Corp</i>
Street Name and Number: <i>250 E. Maxwell St.</i>
City: <i>Camden</i> State: <i>CA</i> Zip Code: <i>90220</i>

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: *Dale Kern*

Title: *operator*

Date (month/day/year): *October 17, 2011*

CARBON ACTIVATED CORP.

250E Manville Street
Manville, CA 90220
Phone: (310) 885-4555
Fax: (310) 885-4558
E-mail: info@carbonactivatedcorp.com
Website: www.carbonactivatedcorp.com

October 13, 2011

City of Chandler

Dear Carolee Stees:

This letter is to address on Site Storage/Handling, Removal, Disposal, and Installation.

The President of the Corporation, Mr. Lionel Perera, has over 26 years experience in Manufacturing, Quality Control, Storage, Reactivation, and Installation of Activated Carbon.

The Operations/Project Manager of the Corporation Dale Kerr has over 16 years of experience in Activated Carbon and Filter Media applications. His experience is in System Design for Industrial/Municipal applications, Reactivation/Disposal, to ask questions on factors dealing with Chemical Loading on Carbon, Media Compatibility, and to determine the life of the Carbon.

On Site Storage of the carbon: The media will be left in its original packaging and Staged by type and grade to eliminate mixing of media's.

Removal of Carbon: We will be using our Trailer mounted Vacuum System to extract the carbon out if the filter moving it through our 5" suction Hose and at the end of the vacuum cycle it will dump it into a Super Sack for Disposal.

Disposal of Media: The media will be transported off site back to our Reactivation Plant in Compton, CA for Thermal reactivation so it can be used in Industrial and remediation projects. After the media has been reactivated we will issue the City of Chandler a Reactivation Certificate that can be used for recycling credits.

ISO-9001: 2008
Certified



Load using Surry method: We will load all 10 Filter Systems using our Eductor System that we will connect to the Fire hose connection by the filters. We require at least 70psi system water pressure. This type of loading system uses a hopper to hold the media, which is attached to the Eductor system. Setting up the system we would attach on the discharge side of the Eductor 4" Transfer Hoses this is used to transfer the media to the Filter System next a Fire Hose is attached to the educators Suction Chamber so as water flows through it will create suction on the hopper. As the media is pulled into the eductors suction chamber it will transfer the media via water slurry through the 4" hose into the Filter System. The loading of the Eductor System is done by using a Forklift to lift and hold the Super Sack over the hopper, and then we open the bottom spout to allow the Media to slowly flow into the hopper. The soak time that is necessary for the Anthracite media is shorten from 24 hours to 12 hours using this method.

The services **CARBON ACTIVATED CORPORATION** can provide to your Water Treatment plant through our Lab is testing of the carbon to check Iodine number for life left in carbon, Particle Size Distribution Sieve Analysis to insure Mean Particle Diameter, Effective Size, Uniformity Coefficient, and Apparent Density.

Regards,



Dale Kerr
Operations Manager/Sales

ISO-9001: 2008
Certified



CARBON ACTIVATED CORP.

250 E. Manville Street, Compton, CA 90220
TEL: (310) 323-8132, FAX: (310) 323-8366
E-MAIL: info@carbonactivatedcorp.com

ANTHRACITE COAL FOR WATER PURIFICATION

PRODUCT DATA SHEET

OUR ANTHRACITE IS USED IN INDUSTRIAL WASTE FILTERS, WATER AND WASTE WATER TREATMENT PLANTS, AND ORGANIC WATER FILTERS. THESE WOULD INCLUDE SWIMMING POOL FILTERS (PORTABLE OR IN PLACE), PRESSURE FILTERS, RAPID AND SLOW GRAVITY FILTERS. MEETS A.W.W.A. STANDARD B100 AND NSF 61 CERTIFIED FOR USE IN TREATMENT PROCESS OF POTABLE DRINKING WATER AND IS TOTALLY COMPATIBLE WITH ALL MUNICIPAL WATER TREATMENT SYSTEMS. ALSO IT MEETS A.W.W.A. STANDARD B100 FOR USE IN TREATMENT PROCESS OF WATER WELLS.

APPARENT SPECIFIC GRAVITY PER ASTM C-128	MEAN 1.65 (STD DEVIATION +/- .05)
HARDNESS	3.0 TO 3.8 MOH SCALE
ACID SOLUBILITY AWWA B100-89	MEAN .67% SD +/- .29 <2%
CAUSTIC SOLUBILITY	MEAN .70% SD +/- .31 <2%
EFFECTIVE SIZE	0.90 TO 1.10MM
UNIFORMITY COEFFICIENT	1.50max.
SIEVE ANALYSIS	
SIEVE #8 (2.36MM)	98% PASSING
SIEVE # 25 (0.71MM)	2% MAX PASSING

STANDARD PACKING: 1 CUBIC FOOT PLASTIC BAGS AND 1-TON SUPER SACKS ARE AVAILABLE.

