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# PURCHASING ITEM FOR COUNCIL AGENDA

**Memo No. MUA16-079**

**1. Agenda Item Number:** 15

**2. Council Meeting Date:** June 9, 2016

**TO:** MAYOR AND COUNCIL

**3. Date Prepared:** May 27, 2016

**THROUGH:** CITY MANAGER

**4. Requesting Department:** Municipal Utilities

**5. SUBJECT:** Agreement No. MU6-885-3693 for the Sole Source Purchase of Powdered Activated Carbon

**6. RECOMMENDATION:** Staff recommends City Council approve Agreement No. MU6-885-3693, with Calgon Carbon Corporation, for the sole source purchase of powdered activated carbon, for a two-year term, in an amount not to exceed $360,000 per year, with the option of two (2) one-year extensions for a total amount of $720,000.

**7. BACKGROUND/DISCUSSION:** The Pecos Surface Water Treatment Plant, located at 1475 E. Pecos Road, treats Salt River Project surface water and delivers it to the potable water system. The treatment includes the addition of powdered activated carbon (PAC) to the process for removal of specific constituents linked to taste and odor issues. In an effort to optimize PAC use and improve taste and odor removal, staff has performed laboratory and field analyses on several PAC products manufactured by different companies. Calgon PAC was proven to outperform the other brands tested. Use of this product will result in lower dose requirements and reduction of solids produced for disposal.

**8. EVALUATION:** The requested product is only available through Calgon Carbon Corporation. Therefore, staff is requesting approval to purchase powdered activated carbon as a Sole Source.

The term of this agreement is from August 1, 2016, through July 31, 2018, with the option of two (2) one-year extensions.

**9. FINANCIAL IMPLICATIONS:**

Cost: $360,000 per year
Savings: N/A
Long Term Costs: N/A

Fund Source:

| Account No.: | Fund Name: | Program Name: | CIP Funded: | Amount: |
|---|---|---|---|---|
| 605.3830.5318.0 | Water Operating, Water Treatment | Chemicals | No | $360,000 |
| | | | Total (2 years): | $720,000 |

**10. PROPOSED MOTION:** Move City Council approve Agreement No. MU6-885-3693, with Calgon Carbon Corporation, for the sole source purchase of powdered activated carbon, for a two-year term, in an amount not to exceed $360,000 per year, with the option of two (2) one-year extensions for a total amount of $720,000.

**ATTACHMENTS:** Agreement

**APPROVALS**

**11. Requesting Department**

For

Victoria Sharp, Water Systems Operation Superintendent

**13. Department Head**

John Knudson, Municipal Utilities Director

**12. Procurement Officer**

Carolie Stee

Mike Mandt, CPPB

**14. City Manager**

Marsha Reed

Marsha Reed

**CITY OF CHANDLER PURCHASE AGREEMENT**
**Powdered Activated Carbon**
**AGREEMENT NO.:MU6-885-3693**

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Calgon Carbon Corporation, hereinafter referred to as "Contractor".

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

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

**1. AGREEMENT ADMINISTRATOR:**

**1.1. Agreement Administrator.** Contractor shall act under the authority and approval of the Cost Center Superintendent or designee (Agreement Administrator), to provide the requirements of this Agreement.

**1.2. Key Staff.** This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the requirements herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.

**1.3. Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor 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 Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

**2. SCOPE OF WORK/SPECIFICATIONS:** Contractor shall Powdered Activated Carbon all as more specifically set forth in Exhibit A, attached hereto and made a part hereof by reference.

**2.1. Non-Discrimination.** The Contractor shall comply with all 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 agreement.

**2.3. Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement 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. 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, hereinafter "Contractor Immigration Warranty".

2.4.2. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.

2.4.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement 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 verification.

2.4.5. The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide materials or services under this Agreement 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.

**2.5. Ordering Instructions:** Authorization for purchases under the terms and conditions of this agreement will be made only upon issuance of a City Purchase Order, a Agreement Release Order or use of a City Procurement Card.

**2.6. Annual Usage Report.** Contractor shall furnish City a usage report on an annual basis delineating the acquisition activity governed by the agreement. The format of the report shall be approved by City and shall disclose the quantity and the dollar value of each agreement item by individual purchasing unit.

**2.7. Catalogs/Agreement Price Listing.** As applicable, the Contractor (s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline agreement prices.

**2.8. 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.

**2.9. Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; 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.

**2.10. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended.

**2.11. New Products.** New products announced by manufacturers on agreement may be submitted by the Contractor for add-ons to the existing agreement. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.

**2.12. 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.

**2.13. 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.

**2.14. Risk of Loss:** Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the purchase order or Agreement. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.

**2.15. Warranties:**

**2.16. Liens:** Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.

**2.17. 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:

2.17.1. Of a quality to pass without objection in the trade under the Agreement description;

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

2.17.3. Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;

2.17.4. Adequately contained, packaged and marked as the Agreement may require; and

2.17.5. Conform to the written promises or affirmations of fact made by Contractor.

**2.18. Fitness:** Contractor warrants that any material supplied to City shall fully conform to all requirements of the Agreement and all representations of Contractor, and shall be fit for all purposes and uses required by the Agreement.

**2.19. Inspection/Testing:** The warranties set forth in Section 2 herein are not affected by inspection or testing of or payment for the materials by City.

**3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Agreement 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 Agreement for a period of five years after the completion of the Agreement.

**3.2. Audit.** At any time during the term of this Agreement 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 Agreement 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 Agreement 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 Agreement 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 time.** Delivery shall be made within ten (10) business days after receipt of order.

**4. PRICE:**

**4.1.** The City shall pay Contractor the per-unit cost as set forth in Exhibit B in an amount not to exceed $720,000 for the two year term of the contract, attached hereto and made a part hereof by reference.

**4.2.** **Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. 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.

**4.3.** **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. Any 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.

**4.5.** **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

**5. TERM:**

**5.1.** The term of the Agreement is two years, commencing on August 1, 2016 and terminating on July 31, 2018 unless sooner terminated in accordance with the provisions herein. City reserves the right, at its with mutual agreement of the Contractor, to extend the Agreement for up to two additional terms of one year each.

**6.** **USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like materials or services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.

**6.1.** **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement 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.

If required to provide materials or services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such material or service. The District shall conduct a fingerprint of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, sub-contractors, vendors and their employees shall not provide materials or services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

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.

6.3. **Non-Exclusive Agreement:** This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

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 Agreement, the Agreement 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 Agreement in addition to any other rights and remedies provided by law or this Agreement.

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 Agreement 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.

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 Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

7.5. **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 Agreement, 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 materials or services performed to the date of such termination, the Contractor shall receive a fee for the percentage of materials or 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 or designee 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;

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 Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. 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 Agreement, 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 Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement 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 Agreement 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 an agreement 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 Agreement, 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 Agreement 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 materials or 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 materials and 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. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

10.2. **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.

10.3. **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.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor , its successors, assigns and guarantors, shall defend , indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract/Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract/Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.

12. **INSURANCE:**

12.1. General.

A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.

B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.

C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

D. The City in no way warrants that the minimum insurance limits contained in this Agreement are

sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

12.2. Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $2,000,000 for each occurrence, $4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* Contractor must maintain Business/Automobile Liability insurance with a limit of $1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than $1,000,000 for each accident and $1,000,000 disease for each employee.

12.3. Additional Policy Provisions Required.

A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

2. The Contractor's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

4. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.

5. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.

7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.

8. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

C. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.

2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

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 CITY | | In the case of the CONTRACTOR | |
|---|---|---|---|
| Department: | Purchasing | Firm Name: | Calgon Carbon Corporation |
| Contact: | Mike Mandt | Contact: | Mark Peet |
| Mailing Address: | PO Box 4008 MS 901 | Address: | 400 Caalgon Carbon Drive |
| Physical Address: | 175 South Az Avenue | City, State, Zip | Pittspurgh, PA 15205 |
| City, State, Zip | Chandler, AZ 85244 | Phone: | 412-787-7600 |
| Phone: | 480-782-2406 | | |

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 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:**

15.1. **Ownership**. All deliverables and/or other products of the Agreement (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 Agreement) 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.

15.2. **Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect

to the material or services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

**15.3. Assignment:** Materials or services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.

**15.4. Amendments.** The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, 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 Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.

**15.5. Independent Contractor.** The Contractor under this Agreement is an Independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.

**15.6. No Parole Evidence.** This Agreement 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.

**15.7. 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 _____, 2016.

FOR THE CITY OF CHANDLER

_____
Mayor

Approved as to form:

_____
City Attorney

ATTEST:

_____
City Clerk

SEAL

FOR THE CONTRACTOR

By: _____
Signature

ATTEST: If Corporation

_____
Secretary

## EXHIBIT A
## SPECIFICATIONS

The City has an ongoing need for the chemicals listed below to be delivered as requested at various city facilities. The purpose of this Contract is to supplement the Cities existing chemical contracts. The Facilities served under this Contract are dynamic and chemical needs can change over time due to equipment functionality, process results, changes in standards and other circumstances. As a result, the City reserves the right to add, remove, and or substitute products under this Contract as needs arrive via contract amendment, subject to Contractor's agreement.

**Item Powder Activated Carbon**

Product: Calgon WPH Powder Carbon

Delivery Quantity: Bulk full load (40,000lbs).

## EXHIBIT B
## PRICE SCHEDULE

| | Estimated Quantity | Unit of Measure | Unit Price | Extended Price |
|---|---|---|---|---|
| Year 1 | 300,000 | Pound | $ 1.20 | $ 360,000.00 |
| Year 2 | 300,000 | Pound | $ 1.20 | $ 360,000.00 |
| Total | | | | $ 720,000.00 |