

**CITY CLERK  
ORIGINAL**

**C-8630  
09/24/2013**

**AGREEMENT BETWEEN CITY OF GLENDALE AND  
CALGON CARBON CORPORATION FOR SUPPLY, PLACEMENT, REMOVAL AND  
THERMAL REACTIVATION OF GRANULAR ACTIVATED CARBON**

**THIS CONTRACT** is entered into this 24 day of Sept., 2013, by and between the City of Glendale, an Arizona Municipal Corporation (the "City") and Calgon Carbon Corporation, a Delaware corporation, and authorized to do business in the State of Arizona (the "Company" or the "Contractor").

**RECITALS**

- A. The City desires to contract for services for the supply, placement, removal, and thermal reactivation of granulated activated carbon;
- B. The Company is duly qualified to perform those specific duties and supply the products and services as set forth in this Agreement and its exhibits; and
- C. The City and the Company desire to memorialize their agreement with this document.

**AGREEMENT**

In consideration of Recitals, which are confirmed as true and correct and incorporated herein by reference, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

**1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION**

The Company will act under the authority and approval of the Contract Administrator for the City, to provide the services required by this Contract.

**1.1 SERVICE DESCRIPTION**

The entire Scope of Services identified as Exhibit A, Supply, Placement, Removal and Thermal Reactivation of Granular Activated Carbon, and Exhibit B, including Appendices 1-5, attached hereto, are incorporated herein by reference and are an enforceable part of this Agreement. If any provision incorporated by reference from Exhibit A, Scope of Services, and Exhibit B, including its Appendices, conflicts with any provision of this Contract, this Contract will control.

**1.2 ACCEPTANCE AND DOCUMENTATION**

- 1.2.1 The City will provide all necessary information to the Company for timely completion of the tasks and services specified in Section 1.1 above.
- 1.2.2 The City's Contract Administrator shall review all Contractor services to determine acceptable performance.

**2.0 BILLING RECORDS, AUDIT**

- 2.0.1 Company must maintain all books, papers, documents, accounting records and other evidence pertaining to costs incurred and agrees to make these materials available for inspection and audit by the City in accordance with Section 4.7 of this Contract.
- 2.0.2 Payments to the Company shall in no way affect the Company's obligations hereunder or the right of the City to obtain a refund of any payment to the Company which is in excess of that to which it was lawfully entitled

## 2.1 FEE SCHEDULE

Unit Pricing. The City shall pay the Company for the performance of the GAC Services on a unit price per pound of thermally reactivated GAC basis in accordance with the terms and conditions of this Contract and its attachments. The unit price per pound of thermally reactivated GAC shall serve as the sole compensation to the Company for the performance of all obligations under this Service Contract. Without limiting the generality of the foregoing, the unit pricing is inclusive of all costs associated with labor, materials, transportation, incidentals, equipment, risk, administration, overhead and profit, facility operation and maintenance, and any other services or items necessary to effectively perform and complete the GAC Services in accordance with this Contract.

2.1.1 Unit Pricing for Local GAC Services. As of the Contract Date, and as further set forth in subsection 4.1(B) of Exhibit A, the unit price for the performance of the Local GAC Services (the "Local Service Price") is **\$0.651** per pound of reactivated GAC

2.1.2 Unit Pricing for Non-Local GAC Services. As of the Contract Date, and as further set forth in subsection 4.1(C) of Exhibit A, the unit price for the performance of non-local GAC Services (the "Non-Local Service Price") is **\$1.02** per pound of reactivated GAC

2.1.3 Fuel Surcharge Applicable to Non-Local GAC Services. As further set forth in subsection 4.1(D) of Exhibit A, and to the extent the Non-Local Service Price is applicable pursuant to subsection (C) of this Section, if the cost of diesel fuel is equal to or greater than \$4.00 per gallon, according to the U.S. National Average On-Highway Diesel Price, the Company shall be entitled to a surcharge on non-local GAC Services ("Non-Local Fuel Surcharge") in accordance with Exhibit B, Appendix 5, Price Adjustments.

2.1.4 Virgin GAC Required for City Operational GAC Losses. As of the Contract Date, and as further set forth in subsection 4.1(E) of Exhibit A, the unit price for the Virgin GAC required to make up for City Operational GAC Losses is \$1.233 per pound of Virgin GAC (the "Additional GAC Price") The Company acknowledges and agrees that, except with respect to City Operational GAC Losses and as otherwise directed by the City pursuant to subsection 3.1(E) of Exhibit A, the Local Service Price and the Non-Local Service Price include all compensation to the Company with respect to the Company's obligation to provide makeup Virgin GAC. The Company shall be entitled to additional compensation associated with Virgin GAC on a unit price basis solely to the extent such Virgin GAC is required in order to make up for City Operational GAC Losses or as otherwise directed by the City, as determined in accordance with subsection 3.1(E) of Exhibit A. The Additional Virgin GAC Price shall be subject to adjustment annually from the Contract Date in accordance with subsection 4.1(F) of Exhibit A.

Amounts indicated in this Section 2.1 and as further outlined in Exhibit B, Appendix 5, Price Adjustments, represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

## 2.2 INVOICING AND PAYMENT APPROVAL

2.2.1 Invoicing. The Company shall submit monthly invoices to the City for the performance of GAC Services performed during the prior month. Company invoices must include the following: description of services performed, including number of GAC Filter Exchanges and applicable pricing in accordance with Section 2.1; invoice number and date; and such other documentation or information as the City may reasonably require to determine the accuracy and appropriateness of the invoice.

- 2.2.2 Payment. The City shall pay the Company the applicable price for the performance of the GAC Services, as determined in accordance with Section 2.1 and subsection 4.1 of Exhibit A, on a monthly basis in arrears. Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received. The Company further agrees that, in order to receive payment, the Company must have a current IRS Form W-9 on file with the City. The City's obligation to make payments pursuant to this Section shall be subject to the City's rights to dispute any invoice pursuant to Section 2.2.3. The City will issue payment thirty (30) days from the City's receipt of a proper form of invoice, with electronic payment via ACH or wire transfer.
- 2.2.3 Invoice and Payment Disputes. If the City disputes any amount invoiced by the Company, the City may either: (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the City for its objection to or disagreement with such amount; or (2) withhold payment of the disputed amount and provide the Company with a written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the City to the Company of amounts withheld or reimbursement to the City by the Company of amounts paid under protest is required, such payment to the Company or reimbursement to the City shall be made within 45 days after the date of final resolution.
- 2.2.4 Charges All charges must be approved by the Contract Administrator before payment.

### **2.3 PRICE ADJUSTMENT**

Annual adjustment. As further set forth in subsection 4.1(F) of Exhibit A, the Local Service Price, the Non-Local Service Price and the Additional Virgin GAC Price shall each be subject to annual adjustment in accordance with Exhibit B, Appendix 5. In no event shall any such annual adjustments increase such prices by more than ten percent (10%) or decrease such prices by more than five percent (5%). Any increase or reduction that is not made as a result of the limitations established by the preceding sentence shall carry forward and be applied to the next Contract Year's adjustment, subject to the same percentage limitations. The Interim Service Price shall not be subject to annual adjustment.

### **3.0 TERM AND EXTENSION**

- 3.0.1 Effective Date and Initial Term. This Contract shall become effective on the date first written above ("Contract Date") and shall continue in effect thereafter for ten (10) years (the "Initial Term") or, if renewed as provided below, until the last day of any renewal term (the "Renewal Term"; the Initial Term and any Renewal Term being referred to herein as the "Term"), unless earlier terminated pursuant to the termination provisions of this Contract, in which event the Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the Parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. At the end of the Term, all other obligations of the Parties hereunder shall terminate, except as provided in Section 3.5.4.
- 3.0.2 Renewal and Extension Option. This Contract may be renewed and extended for additional term of five years at the election of the City in its sole discretion. Except as provided in Section 3.1 with respect to the City's convenience termination rights during any Renewal Term, the terms and conditions governing a Renewal Term shall be the same terms and conditions governing the Initial Term. The Company shall give the City notice of the approaching expiration of the Initial Term no later than 180 days prior to such expiration. The City, no later than 120 days prior to the expiration of the Initial Term shall give the Company written notice of its intent as to whether the City will exercise its renewal option.

### **3.1 TERMINATION**

- 3.1.1 Termination for Convenience. Subject to Section 3.1.2 and 3.1.3 below, Both Parties reserve the right to terminate this Contract or any part of this Contract for its sole convenience with sixty (60) days prior written notice. Upon issuance of such termination notice, the Company must immediately stop all work and must immediately cause any of its suppliers and Subcontractors to cease all work. Should the City choose to terminate this Contract for convenience, the City shall remain obligated to pay the Company for any pounds still under commitment for the remainder of the then current Commitment Volume.
- 3.1.2 Termination Fee During Initial Term. Both Parties agree that they shall not give notice of termination for convenience within the first four (4) years after the Effective Date of this Agreement. Beginning on the fourth anniversary of the Effective Date of this Agreement, Both Parties may terminate this Contract during the Initial Term for convenience, at their discretion, for any reason, by giving the Other Party a written notice at least one (1) year in advanced of the date it intends to terminate this Contract for convenience
- 3.1.3 Termination During Renewal Term. At any time during any Renewal Term, the City may terminate this Contract for any reason, at its discretion, without cost to the City upon sixty (60) days prior written notice to the Company. The Parties acknowledge and agree that the City's termination rights under this Section are for the sole convenience of the City and are in addition to the City's rights to terminate this Contract in the event of a Company Default. Should the City choose to terminate this Contract during a Renewal Term, the City shall remain obligated to pay the Company for any pounds still under commitment for the remainder of the then current Commitment Volume.
- 3.1.4 The requirements of this Section shall not apply in the event of a termination of this Contract for cause pursuant to Section 3.1.5, for a Company Default pursuant to Section 3.2, for non-appropriation of funds pursuant to Section 3.2, or for a Force Majeure pursuant to Section 3.4.
- 3.1.5 Termination for Cause. Unless otherwise provided in in subsection 3.2.8 below, the City may immediately terminate this Contract for cause in the event of any Company Default as set forth below or if the Company is in violation of any Federal, State, County or City law, regulation or ordinance. The City's termination for cause shall be effective immediately upon providing written notice to the Company in accordance with Section 3.2.9 below. In the event of any termination for cause, the City shall also be entitled to the rights and remedies set forth in section 3 5 (Remedies for Breach) below.
- 3.1.6 Improper Termination. If the City improperly terminates this Contract for cause, the purported termination will be converted to a termination for convenience in accordance with the provisions of Section 3.1.1.

### **3.2 COMPANY DEFAULT**

- 3.2.1 Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute a Company Event of Default upon which the City, by notice to the Company, may terminate this Contract without any requirement of having to give prior notice or requiring the City to give the Company an opportunity to cure:
- 3.2.2 Failure to Meet Certain Performance Standards The failure of the Company to meet certain Performance Standards, as and to the extent provided in Section 3.2 of Exhibit A (City GAC Testing Rights), unless caused by the occurrence of Force Majeure;

- 3.2.3 Water Treatment Facilities Access Control Requirements. The Company fails to comply with the security and access control requirements for the Water Treatment Facilities set forth in Exhibit B, Appendix 4 and Appendix 5, as and to the extent provided therein;
- 3.2.4 Confidentiality and Data Security. The Company breaches its obligations with respect to Confidentiality and Data Security;
- 3.2.5 Insolvency. The insolvency of the Company as determined under the Bankruptcy Code;
- 3.2.6 Voluntary Bankruptcy. The filing by the Company of a petition of voluntary bankruptcy under the Bankruptcy Code, the consenting of the Company to the filing of any bankruptcy or reorganization petition against the Company under the Bankruptcy Code, or the filing by the Company of a petition to reorganize the Company pursuant to the Bankruptcy Code; or
- 3.2.7 Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, or the filing against the Company of a petition to reorganize the Company pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing.
- 3.2.8 Events of Default Requiring Prior Notice and an Opportunity to Cure. Each of the following shall constitute a Company Event of Default upon which the City, by notice to the Company, may terminate this Contract, but only after giving the Company prior notice and a reasonable time in which to cure the Default:
- 3.2.8.1 Any representation or warranty of the Company hereunder was false or inaccurate in any material respect when made, and the legality of this Contract or the ability of the Company to carry out its obligations hereunder is thereby materially and adversely affected;
- 3.2.8.2 The Company fails to obtain or maintain the insurance policies required by this Contract or to provide evidence of renewal;
- 3.2.8.3 The Company unreasonably fails to comply with the instructions of the City consistent with this Contract;
- 3.2.8.4 The Company fails to perform GAC Filter Exchanges within the time stipulated in this Contract;
- 3.2.8.5 The Company fails to comply with any Applicable Law, including, but not limited to, the legal worker requirements, including all Federal, State and Local immigration requirements set forth in Sections 4.17, 4.18, 4.19, and 4.20 of this Contract;
- 3.2.8.6 The Company assigns or transfers (or attempts to assign or transfer) this Contract or any right or interest herein without the City's prior written consent; or
- 3.2.8.7 The Company otherwise fails to perform any other material obligation under this Contract, unless such default is excused by a Force Majeure as provided herein.
- 3.2.9 The Company acknowledges that the City has an immediate termination right upon the occurrence of any of the defaults listed in Section 3.2 above, and that the Company has no further right of notice or cure in such circumstances of default. Conversely, no default listed in subsection 3.2.8 shall constitute a Company Default giving the City the right to immediately terminate this Contract for cause under this Section unless:
- 3.2.9.1 The City has given prior written notice to the Company stating that a specified default has occurred which gives the City a right to terminate this Contract for cause under this subsection, and describing the default in reasonable detail, and

- 3.2.9.2 The Company has not initiated within a reasonable time (in any event not more than 20 days from the initial default notice) and continued, with due diligence, to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence. If the Company has initiated and continued with due diligence to carry out to all corrective actions required to cure the non-compliance, the default shall not constitute a Company Default during such period of time (in any event not more than 60 days from the initial default notice) as the Company shall continue, with due diligence, to perform corrective actions to cure all such Company Defaults.
- 3.2.10 Notwithstanding the City's right to terminate the Agreement pursuant to subsection 3.2.8 above, the City in its sole unreviewable discretion, may extend the length of time the Company has to cure if the Company has initiated and continued with due diligence to carry out to completion all actions required to correct any curable default.
- 3.2.11 Other Remedies Upon Company Event of Default. The right of termination provided under this subsection 3.2.5 is not exclusive. If this Contract is terminated by the City for a Company Default, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement or under Applicable Law. Without limiting the generality of the foregoing, upon a Company Default under this subsection 3.2.5, the City may re-procure or repurchase GAC Services from another source and may recover the excess costs by deducting any unpaid balance otherwise due the Company. The Company shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for a Company Default under this Section.

### **3.3 FUNDS APPROPRIATION**

- 3.3.1 Continuation Subject to Appropriation. The Company and the City herein recognize that the continuation of this Contract after the close of any Contract Year shall be subject to the approval of the City's budget providing for or covering such contract item as an expenditure therein. The City does not represent that any budget item will be actually adopted, such determination being the determination of the City Council at the time of the adoption of the budget. The City agrees to give written notice of non-appropriation to the Company at least thirty (30) days prior to the end of its current fiscal period and will pay to the Company all approved charges incurred through the end of this period.
- 3.3.2 Suspension If Funds Non-appropriated. In the instance where the City does not appropriate funds to continue this Contract for a given fiscal year, this Contract shall be considered suspended for that year and not terminated, and the City shall have no volume commitment responsibility to the Company for that fiscal year as a result of the suspension of the Contract. The City shall adjust its Commitment Volume, Volume Forecast, and Long-Term Planning Forecast to reflect that it shall not be purchasing GAC Services during the suspension period. Once the City restores funding for this Contract, the City shall again revise its Commitment Volume, Volume Forecast, and Long-Term Planning Forecast, and this Contract shall no longer be considered suspended. Years lost to suspension may be replaced via contract extensions per Section 3.0, at the discretion of the City.
- 3.3.3 Termination If Funds Not Appropriated Should the City determine that funding will not be restored during the time remaining under the Initial Term of this Contract, the City may then terminate this Contract for convenience pursuant to Section 3.1.1. The City agrees, however, that if this Contract is terminated solely because of the City Council's failure to approve a budget that funds services under this Contract, the City may be subject to claims for damages pursuant to Section 3.5 below.

### 3.4 **FORCE MAJEURE**

Neither Party will be responsible for delays or failures in performance resulting from acts beyond its control. "Force Majeure" means any act, event or condition that: (1) is solely beyond the reasonable control of the Party relying on it as a justification for not performing an obligation or complying with any condition required of the Party under this Contract; and (2) materially expands the scope, interferes with, delays or increases the cost of performing the Party's obligations under this Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the Party claiming the occurrence of an Force Majeure.

3.4.1 Inclusions. Subject to the foregoing, Force Majeure includes, but is not limited to, the following:

3.4.1.1 Naturally occurring events, such as unusually severe and abnormal climactic conditions, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God,

3.4.1.2 Explosion, sabotage, acts of terrorism, war, or civil disturbance; or

3.4.1.3 Labor disputes, strikes, slowdowns, stoppages, or boycotts.

3.4.2 Exclusions. Without limitation, none of the following acts, events or circumstances shall constitute a Force Majeure:

3.4.2.1 Change in Applicable Law,

3.4.2.2 Changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, labor availability, exchange rates or other economic conditions;

3.4.2.3 Changes in the financial condition of the Company or its affiliates or subcontractors affecting the ability to perform their respective obligations; or

3.4.2.4 Failure of the Company to secure patents, copyrights or any other intellectual property right which it deems necessary for the performance of its obligations under this Contract.

3.4.3 Extent of Relief Available to the Company. Except as provided in this Section, the only relief the Company shall be entitled to with respect to the occurrence of an Force Majeure is an extension of the time required to perform a GAC Filter Exchange or relief from a specific performance obligation associated with the GAC Services, each subject to the terms and conditions of this Section. The Company shall be entitled to the Non-Local Service Price rather than the Local Service Price for the performance of GAC Services that would otherwise be subject to the Local Service Price pursuant to the terms and conditions of this Contract in the event of the occurrence of an Force Majeure that prevents the Company from performing GAC thermal reactivation services at the Thermal GAC Reactivation Facility, subject to the terms and conditions of this Section.

3.4.4 Relief from Obligations. Except as expressly provided under the terms of this Contract, neither Party to this Contract shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation if it results from a Force Majeure. The occurrence of a Force Majeure shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Contract, or to perform any obligation hereunder not affected by the occurrence of the Force Majeure.

3.4.5 Notice and Mitigation. The Party that asserts the occurrence of an Force Majeure shall notify the other Party by telephone, facsimile or email (with confirmation of receipt), on or promptly after the date the Party experiencing such Force Majeure first knew of the

occurrence thereof, followed within 15 days by a written description of: (1) the Force Majeure and the cause thereof (to the extent known); and (2) the date the Force Majeure began, its estimated duration, and the estimated time during which the performance of such Party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Force Majeure, the affected Party shall also provide the other Party with a description of: (i) the equitable relief requested, if any; (ii) any areas where costs might be reduced and the approximate amount of such cost reductions; and (iii) its estimated impact on the other obligations of such Party under this Contract. The affected Party shall also provide prompt written notice of the cessation of such Force Majeure. Whenever such act, event or condition shall occur, the Party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause thereof, reduce costs and resume performance under this Contract. While the Force Majeure continues, the affected Party shall give notice to the other Party, before the first day of each succeeding month, updating the information previously submitted. The Party claiming to be adversely affected by a Force Majeure shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Force Majeure reasonably requested by the other Party.

- 3.4.6 Conditions to Relief. In the event of a Force Majeure, the Company shall, subject to the limitations specifically provided for in this Contract, be entitled to relief in accordance with subsection (A) of this Section, but only to the minimum extent reasonably forced on the Company by the Force Majeure, and the Company shall perform all other services unaffected by the Force Majeure as provided in this Contract. In the event that the Company believes it is entitled to any relief on account of an Force Majeure, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (C) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Company, the City shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance or schedule relief, and the reasons therefor. The agreement of the Parties as to the specific relief to be given the Company hereunder on account of a Force Majeure shall be evidenced by a Contract Administration Memorandum or addendum, as applicable.
- 3.4.7 Acceptance of Relief Constitutes Release. The Company's acceptance of any performance, price or schedule adjustment under this Section shall be construed as a release of the City by the Company from any and all losses or expenses resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed.

### **3.5 REMEDIES FOR BREACH**

- 3.5.1 Generally. The Parties agree that, except as otherwise provided in this Section with respect to termination rights, in the event that either Party breaches this Contract, the other Party may exercise any legal rights it may have under this Contract or under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach
- 3.5.2 Strict Performance. Failure of either Party to insist upon the strict performance of any item or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, or by Applicable Law, or the acceptance of materials or services, obligations imposed by this Contract or by Applicable Law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of this Contract.

- 3.5.3 Right to Assurance. Whenever one Party to this Contract in good faith has reason to question the other Party's intent to perform, the former Party may demand that the other Party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory breach or repudiation of this Contract, subject to the rights and responsibilities of the Parties hereunder.
- 3.5.4 Survival of Certain Provisions Upon Termination. All representations and warranties of the Parties herein contained, the Company's indemnity obligations with respect to events that occurred prior to the termination date of this Contract, and all other provisions of this Contract that so provide shall survive any termination of this Contract. No termination of this Contract shall: (1) limit or otherwise affect the respective rights and obligations of the Parties hereto accrued prior to the date of such termination; or (2) preclude either Party from impleading the other Party in any legal proceeding originated by a third party as to any matter occurring during the Term
- 3.5.5 No Limitation of Liability Associated with Actual Damages of the City. The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, the Company agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law. Accordingly, this Contract establishes no such limitation of liability with respect to actual damages that may be incurred by the City as a result of a failure of performance by the Company hereunder.
- 3.5.6 Waiver of Consequential and Punitive Damages. Notwithstanding any provision to the contrary herein, unless prohibited by Applicable Law, in no event shall either Party hereto be liable to the other or obligated in any manner to pay to the other any consequential or punitive damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Contract, or the material falseness or inaccuracy of any representation made in this Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory; provided, however, that the waiver of the foregoing damages under this subsection is intended to apply only to disputes and claims as between the City and the Company. Nothing in this subsection shall limit the obligation of the Company to indemnify, defend and hold harmless the City Indemnitees for any consequential or punitive damages payable to third parties resulting from any act or circumstance for which the Company is obligated to indemnify the City Indemnitees hereunder.

### **3.6 ATTORNEYS' FEES**

- 3.6.1 Fees and Costs. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing Party will be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses ("Fees and Costs"), determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.
- 3.6.2 Continuation During Disputes. The Company agrees that notwithstanding the existence of any dispute between the Parties, the Company shall continue to perform the obligations required of the Company during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- 3.6.3 Forum for Legal Proceedings. The Parties expressly intend that all legal proceedings related to this Contract or to any rights or any relationship between the Parties arising therefrom

shall be solely and exclusively initiated and maintained in federal or State courts located in the Maricopa County, Arizona. The Company and the City irrevocably consent to the jurisdiction of such courts in any such legal proceeding and waive any objection they may have to so designating the jurisdiction of any such legal proceeding.

**4.0 ENTIRE AGREEMENT**

This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each Party. The table of contents and any headings preceding the text of the sections, subsections, sections, and subsections of this Contract shall be solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.

**4.1 ARIZONA LAW**

This Contract is governed and interpreted according to the laws of the State of Arizona.

**4.2 MODIFICATIONS**

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract. The City reserves the right at any time to make changes to any one or more of the following: (a) specifications, including the Performance Standards, and (b) any implementation schedule as set forth in Section 3 of Exhibit A. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the City's Contract Administrator prior to the institution of the change.

**4.3 ASSIGNMENT**

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the authorized representative of the non-assigning party. Notwithstanding the foregoing, no permission is needed for Company to assign this Contract and/or title to the GAC Thermal Reactivation Facility to any wholly-owned subsidiary or other affiliate of Company so long as such assignment does not release Company of its obligations hereunder. The Company may, upon giving the City one year prior written notice, assign this Contract and may transfer the GAC Thermal Reactivation Facility to a third party for legitimate business purposes, so long as such third party is in excellent financial standing, has an A bond rating, is seasoned and experienced in the nature of this work, and competent and capable of carrying out all terms and conditions of this Contract and the City reasonably agrees to such assignment. If the City consents to the assignment, the third party agrees to be bound by all terms and conditions of this Agreement without further action. The City's consent will not be unreasonably withheld or delayed.

**4.4 SUCCESSORS AND ASSIGNS**

Except as provided elsewhere in this Contract, this Contract extends to and is binding upon Company, its successors and assigns, including any individual, company, partnership or other entity with or into which Company merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which Company sells its assets.

**4.5 CONTRACT ADMINISTRATION**

4.5.1 Contract Administrator. The Contract Administrator for the City is the City's Water Resources Planning and Engineering Director or designee. The Contract Administrator will oversee the execution of this Contract, assist the Company in accessing the organization,

audit billings, approve changes to specifications and schedules, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Company will channel reports and special requests through the Contract Administrator.

- 4.5.2 Administrative Communications. The Parties recognize that a variety of contract administrative matters will routinely arise during the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the Parties so as to permit the orderly and effective administration of this Contract.
- 4.5.3 Contract Administration Memoranda The principal formal tool for the administration of routine matters arising under this Contract between the Parties which do not require an Amendment shall be a "Contract Administration Memorandum". A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (2) notices, waivers, releases, satisfactions, confirmations, further assurances and approvals given hereunder; and (3) other similar contract administration matters.
- 4.5.4 Procedures. Either Party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the City reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by the City Contract Administrator and, at the request of the City, co-signed by a Senior Corporate Representative for the Company. The City and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Contract.
- 4.5.5 Effect. The executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of this Contract. Any material change, alteration, revision or modification of this Contract, however, shall be effectuated only through a formal Amendment authorized, approved or ratified by resolution of the governing body of the City and properly authorized by the Company.

#### **4.6 RECORDS AND AUDIT RIGHTS**

- 4.6.1 Company's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this Contract are open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the work and any invoices, change orders, payments or claims submitted by the Company or any of its payees in accordance with the terms of the Contract. The City's authorized representative must be given access, at reasonable times and places, to all of the Company's records and personnel in accordance with the provisions of this Section throughout the term of this Contract and for a period of three (3) years after last or final payment.
- 4.6.2 Company must require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section by insertion of these Contract requirements in

a written contract agreement between Company and payee. These requirements will also apply to any and all Subcontractors.

- 4.6.3 Any adjustments and/or payments which must be made as a result of any audit or inspection of the Company's invoices and/or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Company. In the event an audit by the City shall determine that the City has overpaid the Company, the Company, upon demand, shall refund to the City the amounts overpaid or undocumented. If the overpayment exceeds one percent (1%) of the total amount that should have been properly paid by the City during the period audited, then the Company shall, in addition, reimburse the City for any and all fees and costs incurred in connection with the inspection or audit.

#### **4.7 CONFIDENTIALITY AND DATA SECURITY**

- 4.7.1 Generally. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to the Company in connection with this Contract is confidential, proprietary information owned by the City. Except as specifically provided in this Contract, the Company shall not disclose data generated in the performance of services under this Contract to any third person without the prior written consent of the Water Resources Executive Director, or his/her designee.
- 4.7.2 Securing Information. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Company must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.
- 4.7.3 Compromise of Confidentiality. In the event that data collected or obtained by the Company in connection with this Contract are believed to have been compromised, the Company shall notify the City Contract Administrator immediately. The Company agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. The Company agrees that the requirements of this subsection shall be incorporated into all Subcontracts. It is further agreed that a violation of this subsection shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

#### **4.8 CONTRACTOR WARRANTIES**

- 4.8.1 Warranties; Responsibility for Correction. The Company expressly warrants that all goods or services furnished under this Contract shall conform to the Performance Standards and the requirements of Applicable Law. The Company shall be fully responsible for making any correction, replacement, or modification necessary for compliance with the Performance Standards or Applicable Law. The Company shall make any required corrections, replacements or modifications to work completed prior to any relevant change in Applicable Law, subject to Force Majeure relief as and to the extent provided in Section 4.12 below.
- 4.8.2 Reliance. The Company acknowledges and agrees that the City is entering into this Contract in reliance on the Company's expertise with respect to the GAC Services, so that the City may continue to meet applicable regulatory requirements at its Water Treatment Facilities and to deliver safe, high quality drinking water to its residents.

4.8.3 Intellectual Property. The Company owns, or has express rights to use, all patents, copyrights and other intellectual property rights necessary for the performance of its obligations under this Contract without any known material conflict with the rights of others.

**4.9 INDEPENDENT CONTRACTOR**

4.9.1 The services Company provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

4.9.2 City will not withhold income tax as a deduction from contractual payments. As a result of this, Company may be subject to I.R.S. provisions for payment of estimated income tax. Company is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

**4.10 CONFLICT OF INTEREST**

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

**4.11 NOTICES**

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other Party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the Parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Company:

Calgon Carbon Corporation  
500 Calgon Carbon Drive  
Pittsburgh, PA 15205  
(412) 787-6700  
Attn: General Counsel

In the case of City:

City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, AZ 85301

City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, AZ 85301

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail

**4.12 TAXES**

Company will be solely responsible for any and all Tax obligations which may result from the Company's performance of this Contract. The City will have no obligation to pay any amounts for

Taxes, of any type, incurred by the Company. The unit pricing established pursuant to this Contract does not include state and local Taxes directly related to the performance of the GAC Services, as the City is exempt from such Taxes. In the event a Change in Law occurs imposing such taxes, the City shall pay such Taxes on a pass-through basis. Notwithstanding the foregoing, the Company shall be solely responsible for all Taxes associated with the Thermal GAC Reactivation Facility and for all Taxes associated with the income of the Company or otherwise imposed on the Company and not directly related to the performance of the GAC Services.

**4.13 ADVERTISING**

No advertising or publicity concerning the City using the Company's services will be undertaken without first obtaining the written approval for the advertising or publicity from the City Contract Administrator.

**4.14 COUNTERPARTS**

This Contract may be executed in one or more original counterparts, and each such counterpart shall constitute but one and the same Contract.

**4.15 CAPTIONS**

The captions used in this Contract are solely for the convenience of the Parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

**4.16 SUBCONTRACTORS**

4.16.1 During the performance of the Contract, the Company may engage any additional Subcontractors as may be required for the timely completion of this Contract. The approval of the City must be obtained before the addition of any Subcontractors.

4.16.2 In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract remains with the Company.

**4.17 COMPLIANCE WITH FEDERAL AND STATE LAWS**

The Company understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

**4.18 IMMIGRATION LAW COMPLIANCE**

4.18.1 Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A)

4.18.2 A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Contract and may subject the Contractor or its subcontractor to penalties up to and including termination of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

4.18.3 The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

4.18.4 The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to

indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

**4.19 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS***

Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

**4.20 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION***

In accordance with the provisions of ARTICLE 2, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

**4.21 *INDEMNIFICATION***

4.21.1 General Indemnification. To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Glendale, its agents, representatives, officers, directors, officials and employees (“City Indemnitees”) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, 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 relating to work or services in the performance of this Contract, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor’s and subcontractor’s employees.

4.21.2 Insurance Provisions. Insurance provisions stated in this contract are separate and independent from the indemnity provisions of this paragraph and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.21.3 Patent, Copyright and Trademark Indemnity. The Company shall indemnify, defend, save and hold harmless the City Indemnitees against any Claims, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. The Company agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract, and the Company further agrees to indemnify the City Indemnitees against any and all expenses, losses, royalties, profits and damages including court costs and attorney’s fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. Any counsel selected by the Company shall be competent in the area of law at issue and shall offer timely and professional representation. The Company expressly agrees that these covenants are irrevocable and perpetual

4.21.4 Confidentiality and Data Security. The Company shall also indemnify, defend, save and hold harmless the City Indemnitees against any Claims for any loss caused, or alleged to be caused, in whole or in part, by the Company’s or any of its owners’, officers’, directors’, agents’ or employees’ failure to comply with the requirements of this Section regarding confidentiality and data security. This indemnity includes any Claim arising out of the failure

of the Company to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

- 4.21.5 Liens. The Company shall hold the City harmless from claimants supplying labor or materials to the Company or its subcontractors in the performance of the work required under this Contract.

#### **4.22 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS**

For any non-construction City supplier whose service contract(s) (either singular or in aggregate) results in the contractor working 500 or more hours on site at a City of Glendale location(s) in any one calendar quarter, the following documentation must be provided by the contractor to the Contract Administrator:

- 4.22.1 The contractor's most recent OSHA 300A (if applicable),
- 4.22.2 All accident reports for injuries that occurred in the City under the contract during the most recent review period;
- 4.22.3 The contractor's current worker's compensation experience modifier;
- 4.22.4 The above information is to be provided upon the commencement of the Initial Term and every February thereafter as long as this Contract is in force,
- 4.22.5 The Contract Administrator will provide this information to Risk Management when requested.

#### **5.0 INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

**Additionally, Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.**

#### **5.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS**

- 5.1.1 General:** Contractor agrees to comply with all applicable City ordinances and state and federal laws and regulations. The insurance policies are to contain, or be endorsed to contain all the following provisions.

Without limiting any obligations or liabilities of Contractor, Contractor must purchase and maintain, at its own expense, the minimum insurance with companies properly licensed by the State of Arizona with an AM Best, Inc. rating of no less than A-VII, and Failure to maintain insurance as specified may result in termination of this Contract at City of Glendale's option. If the contractor maintains higher limits than the minimums shown within, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor.

- 5.1.2 No Representation of Coverage Adequacy:** By requiring the insurance stated in this Contract, the City of Glendale does not represent that coverage and limits will be adequate to protect Contractor. City of Glendale reserves the right to review any and all of the insurance policies and/or endorsements required by in this Contract, but has no obligation to do so. Failure to demand any evidence of full compliance with the insurance requirements stated in this Contract or failure to identify any insurance deficiency does not

relieve Contractor from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

- 5.1.3** Coverage Term: All insurance required by this Contract must be maintained in full force and effect until all work or services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City of Glendale, unless specified otherwise in this Contract.
- 5.1.4** Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance stating that applicable coverage is in force and contains the required provisions for the 3-year period.
- 5.1.5** Policy Deductibles and or Self Insured Retentions: The policies stated in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Contractor is solely responsible for any deductible or self-insured retention amount. City of Glendale, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6** Use of Subcontractors: If any work under this agreement is subcontracted in any way, Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Contract protecting City of Glendale and Contractor. Contractor will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7** Evidence of Insurance: Before beginning any work or services under this Contract, Contractor must furnish City of Glendale with original Certificate(s) of Insurance and amendatory endorsements or copies of the applicable policy language effecting coverage as required herein. If any of the above cited policies expire during the life of this Contract, it will be Contractor's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates will specifically cite the following provisions:
- 5.1.7.1 City of Glendale, its agents, representatives, officers, directors, officials and employees, volunteers are to be covered as additional insureds under the following policies:
    - 5.1.7.1.1 Commercial General Liability
    - 5.1.7.1.2 Auto Liability
    - 5.1.7.1.3 Excess Liability- Follow Form to underlying insurance as required.
  - 5.1.7.2 Contractor's insurance must be primary insurance as respects performance of subject contract. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  - 5.1.7.3 Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5.1.7.4 If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, the Contractor is responsible for providing prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.1.7.5 City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **5.2 Required Coverage**

5.2.1 **Commercial General Liability:** Contractor must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, including products and completed operations, personal & advertising injury, \$4,000,000 Annual Aggregate, The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, 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.

5.2.2 **Automobile Liability:** Insurance covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property used in the performance of the Contractor’s work or services under this Contract. 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. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this Contract, an MCS 90 endorsement is required providing \$1,000,000 per occurrence limits of liability for bodily injury and property damage.

5.2.3 **Workers Compensation Insurance:** As required by the State of Arizona, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

## **6.0 SEVERABILITY**

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and that term or provision will be considered deleted.

## **6.1 AUTHORITY**

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

## **7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM**

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at [www.IRS.gov](http://www.IRS.gov) under their forms section.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**CITY OF GLENDALE**, an Arizona  
municipal corporation ("City")



\_\_\_\_\_  
Brenda S. Fischer  
City Manager

ATTEST:



\_\_\_\_\_  
Pamela Hanna (SEAL)  
City Clerk

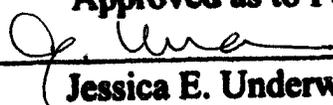
APPROVED AS TO FORM:



\_\_\_\_\_  
Michael D. Bailey  
City Attorney

**CALGON CARBON CORPORATION**,  
a Delaware corporation

By:   
\_\_\_\_\_  
Its: Ex. Vice President & C.O.O.  
Date: September 16, 2013

**Approved as to Form**  
  
\_\_\_\_\_  
**Jessica E. Underwood**  
**Associate General Counsel**

**EXHIBIT A**

SCOPE OF SERVICES  
FOR THE  
SUPPLY, PLACEMENT, REMOVAL AND THERMAL REACTIVATION  
OF GRANULAR ACTIVATED CARBON  
between  
THE CITY OF GLENDALE, ARIZONA  
and  
CALGON CARBON CORPORATION

TABLE OF CONTENTS

Page

**SECTION 1  
DEFINITIONS**

SUBSECTION 1.1 DEFINITIONS..... 23

**SECTION 2  
THERMAL GAC REACTIVATION FACILITY**

SUBSECTION 2.1 THERMAL GAC REACTIVATION FACILITY OPERATIONS..... 26

- (A) Operations and Maintenance Generally..... 26
- (B) Compliance with Applicable Law..... 26
- (C) NSF Certification . . . . . 26
- (D) City Access Rights..... 26

SUBSECTION 2.2 PRIORITY CUSTOMERS OF THERMAL GAC REACTIVATION FACILITY..... 26

- (A) Priority Customer. .... 26
- (B) Most Favored Customer Status ..... 26
- (C) Uncommitted Capacity/Right of First Refusal ..... 26

SUBSECTION 2.3 THERMAL GAC REACTIVATION FACILITY EXPANSIONS. .... 27

- (A) Expansions Generally..... 27
- (B) Consultations with the City..... 27
- (C) Expansions Dictated by Increase in Demand ..... 27

**SECTION 3  
PERFORMANCE OF THE GAC SERVICES**

SUBSECTION 3.1 COMPANY OBLIGATIONS GENERALLY.. .... 28

- (A) Performance Standards ..... 28
- (B) Affidavits and Chain of Custody ..... 28
- (C) Commencement of Work; Turn-Around Time ..... 28
- (D) GAC Reactivation Demand and Local Capacity. . . . . 29
- (E) Virgin GAC..... 29
- (F) Spills ..... 29
- (G) Title and Risk of Loss..... 29
- (H) Damage to City Property and Private Property ..... 29

SUBSECTION 3.2	CITY GAC TESTING RIGHTS .....	30
SUBSECTION 3.3	CITY OBLIGATIONS GENERALLY .....	30
	(A) General City Obligations .....	30
	(B) Exclusivity .....	30
	(C) Scheduling of GAC Filter Exchanges.....	31
	(D) Demand Forecasting.....	31
SUBSECTION 3.4	DEMAND MANAGEMENT .....	31
	(A) Commitment Volume .....	31
	(B) Volume Forecast .....	31
	(C) Long-Term Planning Forecast.....	32
	(D) Reconciling Actual Demand with Demand Forecast.....	32
SUBSECTION 3.5	SERVICE COORDINATION AND CONTRACT ADMINISTRATION .....	33
	(A) Company's Service Manager.....	33
	(B) Company's Senior Corporate Representatives .....	33
	(C) City Representative .....	33
	(D) Communications and Meetings .....	33
SUBSECTION 3.6	PERSONNEL .....	34
	(A) Account Staffing.....	34
	(B) Background Screening .....	34
	(C) Water Treatment Facilities Access Requirements.....	34
SUBSECTION 3.7	SUBCONTRACTORS....	34
	(A) Use Restricted. ....	34
	(B) Limited City Review and Approval of Permitted Subcontractors .....	34
	(C) Subcontract Terms and Subcontractor Actions .....	34
	(D) Payments to Subcontractors.....	35

**SECTION 4**

**PAYMENT FOR GAC SERVICES**

SUBSECTION 4.1	UNIT PRICING. ....	35
	(A) Generally.....	35
	(B) Unit Pricing for Local GAC Services.....	35
	(C) Unit Pricing for Non-local GAC Services .....	35
	(D) Fuel Surcharge Applicable to Non-local GAC Services .....	36
	(E) Virgin GAC Required for City Operational GAC Losses.....	36
	(F) Annual Adjustments to Unit Prices ....	36

## *SECTION 1*

### *DEFINITIONS*

**1.1 For the purposes of this Contract, the following words and terms shall have the respective meanings set forth in this Section.**

“Additional GAC Price” has the meaning specified in subsection 4.1(F).

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Contract and identified as such in Exhibit B.

“Applicable Law” means any federal, state, or local law, regulation, rule, policy, or order, as and all amendment thereto, of any Governmental Body having jurisdiction, or any Governmental Approval relating to any services provided by the Company under this Contract.

“Bankruptcy Code” means the United States Bankruptcy Code, Title 11 U.S.C., as amended from time to time and any successor statute thereto. “Bankruptcy Code” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“City” means the City of Glendale, Arizona.

“City Indemnitees” has the meaning set forth in Services Contract Section 4.24.

“City Operational GAC Loss” means (a) GAC loss occurring between the completion of any GAC Filter Exchange and the commencement of any subsequent GAC Filter Exchange; (b) degradation of the GAC during operation of the filter, such as caused by build-up of calcium carbonate or other minerals on the carbon which impact the ability of the GAC to be reactivated such that yield losses are higher than the 5% to 10% “normal” and require the supply of additional Virgin GAC; or (c) higher than the 5% to 10% “normal” Virgin GAC make-up rates incurred due to the lower than normal yield rates resulting from the use by the City of Virgin GAC supplied by another vendor.

“City Representative” has the meaning specified in subsection 3.5(C).

“Commitment Volume” has the meaning specified in subsection 3.4(A).

“Company” or “Contractor” means Calgon Carbon Corporation, a corporation organized and operating under the laws of the State of Delaware, having its principal offices at 500 Calgon Carbon Drive, Pittsburgh, Pennsylvania 15205, and authorized to do business in the State of Arizona.

“Contract Date” means the date this Contract is fully executed by the Parties hereto.

“Contract Year” means the City’s fiscal year commencing on July 1 in any year and ending on June 30 of the following calendar year, provided, however, that the first Contract Year shall commence on the Contract Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Service Contract expires or is terminated, whichever is appropriate, and shall end on the date of termination. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Demand Forecast” has the meaning specified in subsection 3.3(D).

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any legal proceeding.

“GAC” means granular activated carbon.

“GAC Filter Exchange” means the performance of all GAC Services necessary to provide for the thermal reactivation of the GAC of a single GAC filter at the Water Treatment Facilities

“GAC Services” means everything required to be furnished and done for and relating to the supply, transportation, placement, removal and thermal reactivation of GAC by the Company for the City pursuant to this Contract, including the Interim GAC Services and the Local GAC Services.

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Thermal GAC Reactivation Facility or the performance of the GAC Services

“Governmental Body” means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Initial Term” has the meaning set forth in Services Contract Section 3.0.

“Local GAC Services” means the GAC Services to be provided under this Contract by the Company where reactivation is processed at the Company’s Reactivation Plant in Gila Bend, AZ

“Local Service Price” has the meaning specified in subsection 4.1(B).

“Long Term Planning Forecast” has the meaning specified in subsection 3.4(C)

“Non-Local Fuel Surcharge” has the meaning specified in subsection 4.1(D).

“Non-Local Service Price” has the meaning specified in subsection 4.1(C).

“NSF” means the NSF Water Division of NSF International, an independent, not-for-profit organization that provides standards development, product certification, auditing, education and risk management for public health and the environment, including any successor division or organization.

“Performance Standards” means the requirements and standards for the performance of the GAC Services by the Company, which are set forth Exhibit B, Appendix 1.

“Priority Customers” has the meaning specified in subsection 2.4(A).

“Renewal Term” has the meaning set forth in Services Contract Section 3.0.

“Senior Corporate Representative” has the meaning specified in subsection 3.5(B).

“Services Contract” or “Contract” means this Contract for the Supply, Placement, Removal and Reactivation of Thermal Granular Activated Carbon between the City and the Company, including the Exhibits and Appendices, as the same may be amended or modified from time to time in accordance herewith.

“Service Manager” has the meaning specified in subsection 3.5(A).

“Subcontract” means any contract entered into by the Company or a Subcontractor of the Company of any tier, with one or more persons in connection with the carrying out of the Company’s obligations under this Contract, whether for the furnishing of labor, materials, equipment, supplies, services (including professional design services) or otherwise, excluding contracts related to the construction and commissioning of the GAC Thermal Reactivation Facility.

“Subcontractor” means any person, other than the Company, that enters into a Subcontract, excluding any person entering into a Subcontract related to the construction and commissioning of the GAC Thermal Reactivation Facility.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

“Term” means the Initial Term and any Renewal Term.

“Thermal GAC Reactivation Facility” or “Facility” means the potable water thermal GAC reactivation facility to be designed, constructed, financed, owned, operated and maintained by the Company in Maricopa County, Arizona in order to perform the Local GAC Services in accordance with this Contract, including any expansions or capital modification made thereto

“Thermal GAC Reactivation Facility Site” or “Site” means the parcel of real property identified in Appendix 1 on which the Thermal GAC Reactivation Facility is to be constructed, operated and maintained by the Company

“Virgin GAC” means newly produced GAC meeting the quality, size, manufacturing and other requirements specified in Exhibit B, Appendix 21

“Volume Forecast” has the meaning specified in subsection 3.4(B).

“Water Treatment Facilities” means the City’s water treatment plants and related assets and facilities, as specifically identified in Exhibit B, Appendix 4.

“WTP” means water treatment plant.

## SECTION 2

### *THERMAL GAC REACTIVATION FACILITY*

#### *2.1 THERMAL GAC REACTIVATION FACILITY OPERATIONS*

- (A) Operations and Maintenance Generally. The Company shall be fully responsible for operating and maintaining the Thermal GAC Reactivation Facility for the full Term of this Contract in order to provide for the thermal reactivation of the City's GAC at the Thermal GAC Reactivation Facility.
- (B) Compliance with Applicable Law. The Company shall operate and maintain the Thermal GAC Reactivation Facility in accordance with all requirements of all Applicable Laws, including compliance with the terms and conditions of all Governmental Approvals required for the continued operations of the Thermal GAC Reactivation Facility. The Company shall report to the City, promptly upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Thermal GAC Reactivation Facility and shall promptly correct any such violation and resume compliance with Applicable Law.
- (C) NSF Certification. The Company shall maintain NSF certification of the Thermal GAC Reactivation Facility for the full Term of this Contract and, in operating and maintaining the Thermal GAC Reactivation Facility, shall adhere to all applicable quality control procedures and audit requirements established by NSF.
- (D) City Access Rights. The City Representative, providing the Company with reasonable advance notice, shall have the right at any time during normal business hours to visit and inspect the Thermal GAC Reactivation Facility and observe the Company's performance of the GAC Services. During any such observation or inspection, the City Representative shall comply with the Company's reasonable operating and safety procedures and rules, and shall not interfere with the Company's operations of the Thermal GAC Reactivation Facility. The Parties agree that the City shall have immediate access to the Thermal GAC Reactivation Facility during normal business hours, and no Company rule or procedure shall impede, impair or delay such access.

#### *2.2 PRIORITY CUSTOMERS OF THERMAL GAC REACTIVATION FACILITY*

- (A) Priority Customer. The Company agrees that the City, along with the Cities of Phoenix and Scottsdale, Arizona, as the Initial Term primary sponsors for the development of the Thermal GAC Reactivation Facility, are and shall remain the Priority Customers at the Facility. Accordingly, the Company agrees that it shall make no commitment to any other Facility customer to the extent such commitment would materially impair service to the City or the Cities of Phoenix and Scottsdale, Arizona.
- (B) Most Favored Customer Status. In the event the Company charges any other customer of the Thermal GAC Reactivation Facility an amount less than the Local Service Price in effect at any given time for the performance of GAC thermal reactivation services, the Company shall provide the same pricing to the City. The City shall never pay more than any other Thermal GAC Reactivation Facility customer.
- (C) Uncommitted Capacity/Right of First Refusal: Both Parties shall remain in communication on an on-going basis and shall review projections of all customer demand as part of the two-

year Long Term Planning Forecast in order to aid both Parties in decision making related to the disposition of uncommitted capacity. Should the Company identify an opportunity to sell uncommitted capacity of the Thermal GAC Reactivation Facility to a customer other than the City or another Priority Customer, the Company shall first provide the City with the opportunity to increase the volume and/or duration of its commitment; subject to the Company's obligation to first provide the opportunity to another Priority Customer. Prior to making a firm proposal to the other customer to reactivate its GAC, the Company shall meet with the City and review the Long Term Planning Forecast to determine whether or not the sale of the uncommitted capacity to another customer would potentially displace volume required by the City. If the City determines that the sale of the uncommitted capacity to another customer would not displace volume required by the City, the Company may proceed with the sale. If the City determines that the sale of uncommitted capacity would potentially displace volume required by the City, the City may choose to exercise its right of first refusal. Should the City exercise its right to increase the volume and/or duration of its commitment, the Company shall make alternative plans with the other customer that will ensure that the City's volume commitment is protected (e.g., quote some or all of the other customer's required volume based on use of Company reactivation facilities other than the local Thermal GAC Reactivation Facility, if necessary). Should the City decline to exercise its option to increase its commitment, the Company shall be free to sell the uncommitted capacity to the other customer. The City shall have three (3) business days in which to choose to exercise its right to increase its commitment, after which the Company shall have to the right to proceed with selling the uncommitted capacity to the other customer without restriction.

### **2.3 THERMAL GAC REACTIVATION FACILITY EXPANSIONS**

- (A) Expansions Generally. The Parties recognize that it may be necessary or desirable from time to time to expand the capacity of the Thermal GAC Reactivation Facility. The Company shall bear the cost and expense of all expansions of the Thermal GAC Reactivation Facility and shall be solely responsible for the financing, permitting, design, construction, and operation of any expansion of the Thermal GAC Reactivation Facility.
- (B) Consultations with the City. The Company shall consult with the City prior to undertaking or committing to any expansion of the Thermal GAC Reactivation Facility. Such consultation shall include providing the City with the Company's plan for the expansion, including the reasons for the expansion and the Company's design, construction and operation plans associated with the expansion.
- (C) Expansions Dictated by Increases in Demand. The Company agrees to consult annually with its Priority Customers defined in subsection 2.2(A) with the express purpose of ensuring adequate local reactivation capacity will be available throughout the full contract period for said Priority Customers, including all Renewal Terms.

Based on the best available information, which shall be reviewed jointly by all Priority Customers, the Priority Customers and the Company shall mutually determine whether the projected increased demand is likely and sustainable and that no other practicable, viable option exists to maintain the supply other than expansion of the plant. The Company shall give a Priority Customer's request for expansion serious consideration, in good faith, and shall agree to expansion if the expansion request would generally be deemed reasonable. A milestone schedule shall be jointly prepared for the provision of the expansion. The milestone schedule shall provide for intermediate points at which the expansion can be cancelled if demand projections change. The Company and the City shall in good faith

negotiate and execute an amendment to this Service Contract incorporating such a milestone schedule if any Thermal GAC Reactivation Facility expansion is required to satisfy the City's demand. Once the amendment is signed by both parties, the Company shall complete the expansion based on the milestone schedule submitted by the Company, but no later than 420 days following the formal notification of the intent to expand. The rights and responsibilities of the Parties with respect to any expansion pursuant to this subsection shall be contained within the amendment, with the understanding that in the case of expansions, the definition of Force Majeure shall also include unforeseen issues regarding the securing of permits related to the design and construction of the expansion. The City acknowledges that expansions agreed upon in later years of the Contract may entail a requirement for the City to extend the term of the Contract in order to ensure that the Company realizes an acceptable return on the additional investment. The exact nature of the Contract term extension shall be negotiated and mutually agreed upon during the expansion determination process.

### SECTION 3

#### *PERFORMANCE OF THE GAC SERVICES*

##### *3.1 COMPANY OBLIGATIONS GENERALLY*

- (A) Performance Standards. The Company shall furnish all labor, materials, equipment and incidentals required to provide the GAC Services at City Water Treatment Facilities, including the removal and replacement of GAC. The Company shall perform the GAC Services in accordance with the Performance Standards set forth in Exhibit B, Appendix 1. As regards Subcontractors, this provision applies only to Subcontractors on City-owned sites, and not at the GAC Thermal Reactivation Facility.
- (B) Affidavits and Chain of Custody. At the time of delivery of any GAC pursuant to this Contract, the Company shall provide an affidavit of compliance stating that the thermal activation services provided and the thermally activated GAC produced comply with all applicable Performance Standards described in Appendix 1, including all applicable provisions of ANSI/AWWA B605-07 Standard, NSF, and City requirements. The Company shall provide a "Chain of Custody" certification that documents that the handling procedure used assures that the GAC from each of the City's Water Treatment Facilities has been separated from other spent GAC sources from the time of removal, through the thermal reactivation process, and during storage and transportation until the GAC is received and placed at the Water Treatment Facility.
- (C) Commencement of Work; Turn-Around Time. The Company shall not commence any GAC Filter Exchange until the Company receives a written demand notice from the City Representative pursuant to subsection 3.3(C). The Company shall commence each GAC Filter Exchange within seven (7) days following receipt of such notice, or as otherwise agreed to by the City pursuant to subsection 3.3(C). Commencement of a GAC Filter Exchange shall be deemed to have occurred upon commencement of filter preparation in accordance with the Performance Standards set forth in Appendix 1. The total turn-around time for each GAC Filter Exchange, from commencement until placement of thermally reactivated GAC and including all transit time, shall not exceed thirty (30) days, except to the extent excused due to the occurrence of Force Majeure as set forth in Service Contract Section 3.4

- (D) GAC Reactivation Demand and Local Capacity. The Company shall satisfy all of the City's GAC reactivation needs associated with the Water Treatment Facilities for any Term in accordance with the terms and conditions of this Contract. The Company shall provide and perform the Local GAC Services to satisfy all of the City's GAC reactivation needs, subject to the terms and conditions of subsection 3.4.
- (E) Virgin GAC. As indicated in Exhibit B, Appendix 1, makeup Virgin GAC shall be provided by the Company, at no additional cost to the City, to compensate for any loss of GAC that might have occurred during transportation, handling (including removal and installation), and thermal reactivation of the spent GAC, or as otherwise necessary to meet the Performance Standards for GAC set forth in Appendix 1. In addition, GAC that has become contaminated by the Company before, during, or after being placed in the basin shall be removed and replaced with Virgin GAC at no additional cost to the City and in a manner satisfactory to the City. The Company shall also provide Virgin GAC to make up for any other operational GAC loss occurring between the completion of any GAC Filter Exchange and the commencement of any subsequent GAC Filter Exchange (a "City Operational GAC Loss") or for any other reason at the direction of the City; provided, however, that the Company shall be compensated for Virgin GAC required to make up for such City Operational GAC Losses or as otherwise directed by the City as provided in subsection 4 1(E). The Company acknowledges and agrees that the City has no exclusivity requirements pursuant to this Contract with respect to the purchase of Virgin GAC and may purchase Virgin GAC from the Company pursuant to this Contract or from any other source. The City acknowledges that Virgin GAC that is materially outside the agreement specifications and purchased from other sources may prove to be less durable under typical thermal reactivation conditions than Virgin GAC manufactured by the Company, and that use of Virgin GAC from other sources may result in higher thermal reactivation losses, requiring the Company to supply more Virgin GAC to make-up for these losses. Such losses, as validated by the Company and agreed upon by the City, shall be considered City Operational GAC Losses, and the City shall compensate the Company for any such additional Virgin GAC required to be supplied.
- (F) Spills. The Company shall be responsible for the cleanup of any spills during placement or removal of media in the basins that are caused by the Company's equipment, off-loading technique or failure to comply with the Performance Standards, including all cost associated therewith. In addition, the Company shall provide technical support for spills of materials supplied by the Company, including a 24-hour emergency phone number. The Company shall be fully responsible for any spill occurring during transport or during the reactivation process.
- (G) Title and Risk of Loss. All service and materials are subject to final inspection and acceptance by the City Representative or assigned designee. The title and risk of loss of material or service shall not pass to the City until the City actually accepts the material or service at the point of delivery; and such loss, injury, or destruction shall not release the Company from any obligation hereunder. The City assumes no responsibility, at any time, for the protection of or for the loss of materials, from the commencement of performance of the GAC Services until final acceptance of the work associated with each GAC Filter Exchange by the City Representative or assigned designee.
- (H) Damage to City Property and Private Property. The Company shall perform the GAC Services so that no damage results to any City property, including the buildings and grounds of the Water Treatment Facilities. The Company shall promptly repair or replace, at no cost to the City, all City property and private property damaged by the Company or any officer,

director, employee, representative, agent or Subcontractor of the Company in connection with the performance of, or the failure to perform, the GAC Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage

### **3.2 CITY GAC TESTING RIGHTS**

The City reserves the right to perform periodic, random, unannounced, testing of any reactivated GAC delivered under this Contract. The reactivated GAC shall be tested for conformance with the Performance Standards associated with iodine number, apparent density, abrasion, and ash by an independent laboratory. Should the reactivated GAC fail any of tests conducted by the independent laboratory, the Company shall provide samples of the same lot of GAC from its manufacturing retain samples and submit them to a mutually acceptable second independent laboratory for testing. Should the test results from the second independent laboratory indicate that the GAC meets specification, it shall be determined that the GAC does meet specification and no further actions shall be taken. Should the test results from the second independent laboratory confirm the results of the testing from the first independent laboratory, it shall be determined that the GAC does not meet specification. In the case that it is determined that the GAC does not meet specification, the Parties shall discuss all possible financial and/or physical remedies, up to and including partial or total replacement of the GAC which failed the testing. The Parties shall in good faith negotiate and execute a mutually agreeable settlement. All costs associated with the failed testing shall be borne by the Company. Three (3) "significant" failed test reports within any twelve (12) month period may, at the City's discretion, result in the City terminating this Contract for cause. "Significant" failed test reports are defined as test results which are out of compliance with a specification parameter by more than 10% of the numeric value of the parameter. Without limiting any of the City's rights under this Contract with respect to any failure of Company compliance with the Performance Standards, other specifications listed in the Performance Standards may also be tested pursuant to this Section but shall not be cause for rejection of GAC.

### **3.3 CITY OBLIGATIONS GENERALLY**

- (A) General City Obligations. The City, in addition to the obligations it has undertaken elsewhere in this Contract, shall

Provide the Company access to the Water Treatment Facilities to the extent necessary for the performance of the Company's obligations hereunder, subject to the terms and conditions of this Contract;

Perform the obligations of the City specified in Exhibit B, Appendix 1 with respect to GAC media washing; and

Pay the Company for the performance of the GAC Services in accordance with and subject to the terms and conditions set forth in Section 4.

- (B) Exclusivity. During the Term of this Contract, the City shall direct all of its required thermal GAC reactivation needs associated with its Water Treatment Facilities exclusively to the Company. Without limiting any of the City's rights under this Contract with respect to any breach of the Company's obligations hereunder, the Company's failure to meet the City's local reactivation needs more than three (3) times during the Term of this Contract, subject to the terms and conditions of subsection 3.4(A) below, may, at the City's discretion, result in this Contract becoming non-exclusive for the purpose of the City meeting some or all of its reactivation needs from a source other than the Company, with non-exclusivity applying

only during the period in which the Company is unable to meet the City's local reactivation needs. The Company acknowledges and agrees that the exclusivity requirements of this subsection do not apply to the purchase of Virgin GAC and that the City may purchase Virgin GAC from the Company pursuant to this Contract or from any other source. It is the City's intention that the Virgin GAC shall materially meet the same specifications as that of the Virgin GAC originally supplied for each Water Treatment Facility. Should the City purchase Virgin GAC from a source other than the Company, the City shall provide to the Company upon request a copy of the Certificate of Analysis for the Virgin GAC, as well as documentation confirming that the Virgin GAC is of bituminous coal origin manufactured via a re-agglomeration process. This documentation shall be used to confirm that the Virgin GAC is of suitable quality to be reactivated to the specified parameters for Thermal Reactivated GAC, with Virgin GAC make-up requirements falling within the range considered normal for Thermal Reactivated GAC.

- (C) Scheduling of GAC Filter Exchanges. The City shall have the right to demand a GAC Filter Exchange at any time, by written notice from the City Representative to the Company, subject to the terms and conditions of this Section. The City shall provide the Company with at least seven (7) days written notice prior to the commencement of any GAC Filter Exchange. The Company may request a longer period prior to commencement (not to exceed 30 days), subject to the reasonable approval of the City.
- (D) Demand Forecasting. The City shall provide a Commitment Volume, a Volume Forecast, and a Long Term Planning Forecast (collectively, the "Demand Forecast") to the Company in order to facilitate demand management for the Thermal GAC Reactivation Facility in accordance with subsection 3.4, below.

### **3.4 DEMAND MANAGEMENT**

- (A) Commitment Volume. The "Commitment Volume" shall be the quantity of pounds of GAC that the City shall commit to reactivate for a given six-month period, expressed in monthly quantities and subject to the terms and conditions of this subsection. The Commitment Volume shall be a guaranteed volume with a variance of no more than 20% over the six-month period. The City shall provide the Commitment Volume to the Company in May for the July to December period and in November for the January to June period. The Company shall review the proposed commitment and verify that the City's demand as projected can be met utilizing the capacity of the local Thermal GAC Reactivation Facility, considering the committed pounds of the City plus the committed pounds of other customers. Should the analysis indicate that the City's proposed demand exceeds the Thermal GAC Reactivation Facility's ability due to the demand pattern (i.e., an excessive amount being scheduled in a single month or condensed time frame or the total demand being in excess of the available plant capacity [given the total capacity of the Thermal GAC Reactivation Facility less the committed pounds of other customers] over the projection time period), then the sourcing and scheduling mechanisms within subsection 3.4(D)(2), below, will be applied to resolve the overage. Otherwise, should the actual volume add up to a quantity of up to 110% of the Commitment Volume, the Company will be responsible for meeting the City's Commitment Volume at the Local Pricing and per the agreed upon schedule. Should the actual variance result in a volume greater than 110% but no more than 120% of the City's Commitment Volume, the City shall pay a price for such variance volume which is the average of the Non-Local Pricing and Local Pricing.
- (B) Volume Forecast. The "Volume Forecast" is a rolling six-month forecast of expected demand, based on the most current information available and expressed in monthly

quantities. The City shall provide the Company with the Volume Forecast, and the City and the Company shall review the Volume Forecast, on a monthly basis. The rolling Volume Forecast is a planning tool and not used to determine price basis as is associated with the Commitment Volume as outlined in subsection 3.4(A), above.

- (C) Long-Term Planning Forecast. The “Long Term Planning Forecast” shall be developed and updated quarterly by the City to give a two-year forecast, based upon the latest water quality data, of anticipated GAC usage and reactivation demand. These data will be combined with other forecasts by regional partners to help anticipate thermal regeneration capital expansion needs. Planning associated with the Long Term Planning Forecast will help ensure proper expansions of the Thermal GAC Reactivation Facility pursuant to subsection 2.3, above.
- (D) Reconciling Actual Demand with Demand Forecast During the monthly Volume Forecast review, when comparing the actual quantity and most recent forecast quantities with the current Commitment Volume quantities:
  - (1) Actual Quantity within Specified Range of Commitment Volume. Where the actual quantity is not less than 80% nor more than 120% of the Commitment Volume quantity, reactivation shall proceed at the Thermal GAC Reactivation Facility as planned. Should the actual volume add up to a quantity of up to 110% of the Commitment Volume, the Company will be responsible for meeting the Committed Volume at the Local Pricing and per the agreed upon schedule. Should the actual variance result in a volume greater than 110% but no more than 120% of the Commitment Volume, the City shall pay a price which is the average of the Non-Local Pricing and Local Pricing for such variance volume.
  - (2) Actual Quantity in Excess of 120% of Commitment Volume. Where the actual quantity exceeds the Commitment Volume quantity by more than 20% and the Company does not have the capacity to handle such demand at the Thermal GAC Reactivation Facility, the City may, in its sole discretion: (a) agree to reschedule GAC Filter Exchanges in order to accommodate the excess demand situation at the Thermal GAC Reactivation Facility without incurring any additional charge beyond the Local Service Price for the performance of the excess GAC Filter Exchanges; or (b) direct the Company to perform GAC Filter Exchanges in excess of 120% of the Commitment Volume quantity at other Company GAC thermal reactivation facilities at the Non-Local Service Price. The Company shall be required to handle such excess demand at other Company GAC thermal reactivation facilities at the Non-Local Service Price. The Company must demonstrate the lack of local capacity prior to the City agreeing to or paying the Non-Local Service Price.
  - (3) Actual Quantity Less than 80% of Commitment Volume. Where the actual quantity is less than 80% of the Commitment Volume quantity, the Company shall make reasonable efforts to make up for the shortfall with GAC from another reactivation customer. If the Company is successful in making up for the shortfall with GAC from another customer or fails to make reasonable efforts to make up for the shortfall, the City shall have no payment responsibility to the Company with respect to the fact that the actual quantity is less than 80% of the Commitment Volume quantity. If, however, the Company demonstrates to the reasonable satisfaction of the

City that it has made reasonable efforts to make up for the shortfall but has not been successful in making up for the shortfall, the Company reserves the right to charge the City at the Local Service Price for the amount of the shortfall in GAC quantity less than 80% of the Commitment Volume quantity, as reduced by the extent to which the Company is able to make up for the shortfall pursuant to the terms and conditions of this subsection.

### **3.5 SERVICE COORDINATION AND CONTRACT ADMINISTRATION**

- (A) Company's Service Manager. The Company shall appoint a full-time service manager for the performance of the GAC Services (the "Service Manager") who shall be licensed, trained, experienced and proficient in the performance of the GAC Services. The Company acknowledges that the performance of the individual serving from time to time as the Service Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the City and the Service Manager will be essential to effectuating the intent and purposes of this Contract. The Company shall promptly notify the City in writing of a change in the Service Manager. As such, the Company agrees that if the City reports that an unworkable or very difficult working relationship has developed between the Service Manager and the City, that the Company will look closely and seriously into such reports and shall seriously consider replacing the Service Manager after meeting with the City to attempt to mutually work out any issues regarding the Service Manager.
- (B) Company's Senior Corporate Representatives. The Company shall appoint and inform the City from time to time of the identity of the corporate officials of the Company with direct, senior supervisory responsibility for the performance of this Contract (the "Senior Corporate Representatives"). The Company shall promptly notify the City in writing of the appointment of any successor Senior Corporate Representatives. The Senior Corporate Representatives shall cooperate with the City in resolving any issues that may arise in connection with the performance of the GAC Services over the Term.
- (C) City Representative. The City shall designate an employee or employees to administer this Contract and act as the City's liaison with the Company in connection with the GAC Services (the "City Representative"). The Company understands and agrees that the City Representative has only limited authority with respect to the implementation of this Contract, and cannot bind the City with respect to any Amendment or to incurring costs in excess of the amounts appropriated therefor.
- (D) Communications and Meetings. The Company shall inform the City of the telephone, cellular telephone, fax numbers, e-mail addresses and other means by which the Service Manager and Senior Corporate Representatives may be contacted. The City shall furnish to the Company comparable communications information with respect to the City Representative. On a monthly basis, the Company shall meet with the City to review the Demand Forecasts and the performance of the GAC Services generally. The Service Manager shall personally attend these monthly operations meetings with the City. If requested by the City, the Senior Corporate Representatives shall attend one such monthly operations meeting per calendar quarter during the Term. In addition, the City shall have the right to require special meetings in its reasonable discretion to review performance and planning matters arising with respect to this Contract. The Service Manager and, if requested by the City, the Senior Corporate Representatives or a duly designated representative shall each attend all such special meetings. The Parties agree to use their best good faith efforts to resolve any disputes. The resolution of any disputes shall be reflected in a Contract Administration Memorandum or an addendum to this Contract, as applicable.

### **3.6 PERSONNEL**

- (A) Account Staffing. The Company agrees to assign experienced personnel to provide for successful and timely accomplishment of the GAC Services. The City reserves the right at any time and for any reason during the Term to reject any Company or Subcontractor personnel from performing services under this Contract.
- (B) Background Screening. All Company and Subcontractor employees performing services under this Contract are subject to the background screening requirements set forth in Exhibit B, Appendix 3.
- (C) Water Treatment Facilities Access Requirements. All Company and Subcontractor employees performing services at the Water Treatment Facilities under this Contract are subject to the current access control requirements established by the City at each of its Water Treatment Facilities.

### **3.7 SUBCONTRACTORS**

- (A) Use Restricted. The Company shall operate the Thermal GAC Reactivation Facility with its own employees and in accordance with this Contract. Additionally, all GAC Services performed at the Water Treatment Facilities shall be performed by Company personnel. Subcontractors may be used to perform other services under this Contract, subject to the City's right of approval identified in subsection 3.7 (B).
- (B) Limited City Review and Approval of Permitted Subcontractors. Except as provided in the next sentence of this subsection, the City shall have the right, based solely on the criteria provided below in this subsection, to approve all Subcontractors, which approval shall not be unreasonably withheld. The Company shall furnish the City with written notice of its intention to engage any Subcontractor, together with all information reasonably requested by the City pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest, (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, state or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the City, the State or the federal government. The approval or withholding thereof by the City of any proposed Subcontractor shall not create any liability of the City to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from federal, State or City contracting.
- (C) Subcontract Terms and Subcontractor Actions. The Company shall retain full responsibility to the City under this Contract for all matters related to the GAC Services notwithstanding the execution or terms and conditions of any Subcontract. Except as set forth in Section 3.4 of the Contract (Force Majeure), no failure of any Subcontractor used by the Company in connection with the provision of the GAC Services shall relieve the Company from its obligations hereunder to perform the GAC Services. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Company or inflicted on the Company or a Subcontractor by the actions of another Subcontractor. Subcontracts entered into by the Company for the performance of the GAC Services shall neither supersede nor abrogate any of the terms or provisions of this Contract.

- (D) Payments to Subcontractors. The Company shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts and the requirements of Applicable Law. No Subcontractor shall have any right against the City for labor, services, materials or equipment furnished for the GAC Services. The Company acknowledges that its indemnity obligations under the Contract shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the GAC Services.

## SECTION 4

### *PAYMENT FOR GAC SERVICES*

#### *4.1 UNIT PRICING*

- (A) Generally. The City shall pay the Company for the performance of the GAC Services on a unit price basis per pound of thermally reactivated GAC in accordance with the terms and conditions of this Section. The unit price per pound of thermally reactivated GAC, as determined in accordance with this Section, shall serve as the sole compensation to the Company for the performance of all obligations under this Contract. Without limiting the generality of the foregoing, the pricing set forth in this Section is inclusive of all costs associated with labor; materials; transportation; incidentals; equipment; space; risk; administration, overhead and profit; operation and maintenance of the Thermal GAC Reactivation Facility; and any other services or items necessary to effectively perform and complete the GAC Services in accordance with this Contract. The Company agrees that consideration for such costs has been included in the pricing set forth in this Section.
- (B) Unit Pricing for Local GAC Services. The Local Service Price shall be applicable for all GAC Services performed by the Company through the expiration or earlier termination of this Contract, subject to subsection (C) of this Section. As of the Contract Date, the unit price for the performance of the Local GAC Services (the "Local Service Price") is \$0.651 per pound of reactivated GAC. The Local Service Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section. Except as provided in subsection (E) of this Section, the Local Service Price includes all compensation to the Company for providing necessary make-up Virgin Carbon.
- (C) Unit Pricing for Non-local GAC Services. The Company shall be entitled to the Non-Local Service Price, as determined in accordance with this Section, solely to the extent provided in Section 2.1, Fee Schedule, of this Contract. As of the Contract Date, the unit price for the performance of such non-local GAC Services (the "Non-Local Service Price") is \$1.02 per pound of reactivated GAC. The Non-Local Service Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section. Except as provided in subsection (E) of this Section, the Non-Local Service Price includes all compensation to the Company for providing necessary make-up Virgin Carbon. The Company acknowledges and agrees that, except as provided in subsections 3.4(D)(1) and 3.4(D)(2), above, the Non-Local Service Price shall not be applicable to any GAC Filter Exchange scheduled by the City, even if the Company is required to meet such demand by thermally reactivating GAC at Company facilities other than the Thermal GAC Reactivation Facility.
- (D) Fuel Surcharge Applicable to Non-local GAC Services. Additionally, to the extent the Non-Local Service Price is applicable pursuant to subsection (C) of this Section, if the cost of

diesel fuel is equal to or greater than \$4.00 per gallon, according to the U.S. National Average On-Highway Diesel Price, the Company shall be entitled to a surcharge on non-local GAC Services (“Non-Local Fuel Surcharge”) in accordance with Exhibit B, Appendix 5. The Company acknowledges and agrees that the Non-Local Fuel Surcharge shall only be applicable to the extent provided in Exhibit B, Appendix 5.

- (E) Virgin GAC Required for City Operational GAC Losses. The Company acknowledges and agrees that, except with respect to City Operational GAC Losses and as otherwise directed by the City pursuant to this subsection (E), the Interim Service Price, the Local Service Price and the Non-Local Service Price include all compensation to the Company with respect to the Company’s obligation to provide makeup Virgin GAC in accordance with this subsection (E). The Company shall be entitled to additional compensation associated with Virgin GAC on a unit price basis in accordance with this subsection solely to the extent such Virgin GAC is required in order to make up for City Operational GAC Losses or as otherwise directed by the City, as determined in accordance with this subsection (F). As of the Contract Date, the unit price for the Virgin GAC required to make up for City Operational GAC Losses is \$1.233 per pound of Virgin GAC (the “Additional GAC Price”). The Additional Virgin GAC Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section.
  
- (F) Annual Adjustments to Unit Prices. The Local Service Price, the Non-Local Service Price and the Additional Virgin GAC Price shall each be subject to annual adjustment in accordance with Exhibit B, Appendix 5. In no event shall any such annual adjustment increase such prices by more than ten percent (10%) or decrease such prices by more than five percent (5%). Any increase or reduction that is not made as a result of the limitations established by the preceding sentence shall carry forward and be applied to the next Contract Year’s adjustment, subject to the same percentage limitations. The Interim Service Price shall not be subject to annual adjustment.

**EXHIBIT B**

**APPENDICES  
TO THE  
SERVICE CONTRACT  
FOR THE  
SUPPLY, PLACEMENT, REMOVAL AND THERMAL REACTIVATION  
OF GRANULAR ACTIVATED CARBON**

**APPENDIX 1**

**PERFORMANCE STANDARDS**

## ***PERFORMANCE STANDARDS***

### ***1.1 APPLICABILITY, STRINGENCY AND CONSISTENCY***

The Company shall be obligated to comply only with those Performance Standards which are applicable in any particular case. Where more than one Performance Standard applies to any particular performance obligation of the Company hereunder, the Company shall comply with each such applicable Performance Standard. In the event there are different levels of stringency among such applicable Performance Standards, the most stringent of the applicable Performance Standards shall govern. In the event of any inconsistency among the Performance Standards, the City's determination as to the applicable standard shall be binding.

### ***1.2 FILTER PREPARATION***

The Company shall thoroughly clean each filter before any GAC is placed and shall keep each filter clean throughout placement operations. The Company shall thoroughly clean and sweep the filter walls and underdrains and shall verify that all openings of the underdrain porous plates are open and free of obstructions. The Company shall keep clean the GAC unloading area external to each filter throughout the placement operations.

### ***1.3 THERMALLY REGENERATED GAC REPLACEMENT***

#### ***1.3.1 Placing GAC***

Placing of GAC, as applicable, shall conform to:

**AWWA B604-05: Virgin Granular Activated Carbon**

**AWWA B605-07: Reactivation of Granular Activated Carbon**

**AWWA B100-09: Granular Filter Media**

The procedure for placement of the thermally regenerated GAC media shall be reviewed and approved by the City prior to media placement in the basins.

Special care shall be taken in transporting and placing the GAC to prevent it from being contaminated and to prevent damage to the GAC.

The Company shall mark the top level of the GAC before removing the spent GAC from the filters. During delivery, the Company shall ensure that the delivered GAC is filled up to the marked top level in the filter. To ensure proper comparison, the filter bed shall be backwashed and drained prior to marking the media depth. Makeup Virgin GAC shall be provided by the Company to compensate for any loss of GAC that might have occurred during transportation, handling, and thermal reactivation of the spent GAC.

Basins shall be filled to a water depth 12-15 inches above the top surface of the underdrain.

GAC media shall be placed as directed by the City Representative at each facility who will dictate the sequencing of filling and backwashing best suited to the operation of the facility.

### **1.3.2 Properties of Thermally Reactivated Carbon**

The thermally reactivated carbon shall have the following properties prior to placement in the plants filters:

Iodine Number – Target value of greater than or equal to 90% of the existing virgin carbon Iodine Number, with a minimum value of 800 milligrams/gram. It is assumed that some fraction of the thermally reactivated material will be comprised of virgin make-up carbon.

Abrasive Number (Stirring Abrasion Test or Ro-Tap Abrasion Test as described in AWWA Standard for Granular Activated Carbon ANSI/AWWA B604-05) – Target value greater than or equal to 95% of the Abrasive Number prior to the thermal regeneration process, with a minimum value of 70. It is assumed that some fraction of the thermally reactivated material will be comprised of virgin make-up carbon.

Apparent Density (AD) of thermally reactivated material only – Target value of 0.54g/cc to 0.60g/cc  
The Apparent Density shall be similar to that of the virgin material. It is assumed that Virgin GAC will be added after this value has been met.

The GAC shall conform to the National Sanitation Foundation Standard 61.

Maximum Total Ash: Less than or equal to 10 percent by weight.

The molasses number shall be no less than 170.

### **1.3.3 GAC Media Washing**

City staff shall operate all basin backwash controls when washing the new GAC media placed in the basin.

The Company is responsible for coordinating the scheduling of GAC media washing through the City. The City shall govern scheduling the use of the backwash system. The Company is responsible for this coordination to avoid delays to his schedule.

The Company shall coordinate initial backwash of GAC media with the City to confirm that GAC fines have been sufficiently washed.

Service water required for placement of the GAC shall be supplied by the City.

Workers shall not stand or walk directly on media. Workers shall walk on plywood mats that will sustain their weight without displacing the media. All materials in contact with the GAC media, including plywood, boots, and implements, shall be disinfected by spraying high concentration of chlorine solution.

After placing, the GAC shall be soaked overnight prior to backwashing.

## **1.4 REFERENCE STANDARDS**

The GAC Services shall comply with applicable provisions and recommendations of the following, except as otherwise shown or specified:

ASTM D 2854 Standard Test Method for Apparent Density of Activated Carbon.

ASTM D 2862 Standard Test Method for Psection Size Distribution of Granular Activated Carbon.

ASTM D 2866 Standard test Method for Total Ash Content of Activated Carbon

ASTM D 2867 Standard Test Method for Moisture in Activated Carbon.

ASTM D 3802 Standard Test Method for Ball-Pan Hardness of Activated Carbon.

ASTM D 3838 Standard Test Method for pH of Activated Carbon.

ASTM D 4607, Test Method for Determination of Iodine Number of Activated Carbon.

ASTM E 11 Specification for Wire Cloth and Sieves for Testing Purposes.

AWWA B100-09 Filtering Material, including any addenda.

AWWA B604-05 Granular Activated Carbon, including any addenda.

Food Chemical Codex: Third Edition.

NSF International Standard 61 - Drinking Water System Components - Health Effects.

## **1.5 VIRGIN GAC**

### **1.5.1 Quality**

The Virgin or makeup GAC shall conform to ANSI/AWWA B604-05 in addition to the modifications listed herein. Virgin GAC shall also conform to Section 4 (Testing Methods) of the most current AWWA Standard B604, the Food Chemical Codex protocol when tested under the conditions outlined in the Food Chemical Codex, Third Edition

Controlled activation shall produce a material having a high internal surface area with optimum pore size for the effective adsorption of a broad range of high and low molecular weight organic material. Carbon shall have a minimum iodine number of 900 milligrams/gram.

Carbon shall be based on bituminous coal only. Carbons based on wood, lignite, sub-bituminous, peat, or coconut shall not be permitted. GAC shall be manufactured from only select grades of bituminous coal combined with suitable binders as required to produce a highly active, durable granular material capable of withstanding the abrasion and dynamics associated with repeated backwashing, surface washing and hydraulic transport. Activation shall be carefully controlled to produce a material having a high internal surface area with optimum pore size for effective adsorption of a broad range of high and low molecular weight organic contaminants. The material shall be visually free of foreign materials.

To assure a high initial hardness and durability of the material for future reprocessing, the carbon must be manufactured by re-agglomerating powdered bituminous coal that is bound and briquetted, then crushed to final size and thermally processed via steam activation. The carbon must be irregularly shaped and granular (not pellet material that has been broken or crushed) to provide a filtration benefit in addition to adsorptive capacity.

Carbon shall be composed of hard, durable grains with an abrasion resistance of no less than 75 by the RO-tap method.

The maximum moisture content of the as-packed GAC shall be two percent.

Carbon shall be thoroughly washed, screened, and free of clay, loam, dust, dirt, organic matter, and other foreign material prior to delivery to the site.

Manufacturing process shall include re-agglomeration by a supplier with a minimum experience of five years. Product shall have five years history in water treatment. Manufacturing of virgin GAC SHALL NOT employ the direct activation process.

Extruded or pelletized carbon to include broken pellets shall not be accepted.

Maximum Total Ash: Less than or equal to 10 percent by weight.

Carbon shall be NSF/ANSI 61 certified for potable water applications. The GAC shall contain no substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water treated using the GAC or cause the water so treated to fail to meet the requirements of county, state or federal drinking water regulations.

Possess a unique product identifier.

The molasses number shall be no less than 170.

**1.5.2 Size The contactor GAC shall meet the following requirements:**

12 x 40 mesh with not more than 5% of the material retained on a 12 mesh screen, and not more than 4% of material passing through a 40 mesh screen

Effective size between: 0.55 and 0.75mm.

Uniformity Coefficient: For 12 x 40 mesh, Maximum of two (2.0).

Apparent Density: Between twenty seven and twenty nine pounds per cubic foot (27 – 29 lbs/cf).

Abrasion Number: Minimum of seventy five (75).

Fines: Less than one percent (1%).

Moisture Content: Less than two percent (2%) by weight.

**APPENDIX 2**

**INFORMATION CONCERNING WATER TREATMENT FACILITIES**

<i>Site</i>	<i># of Contactors</i>	<i>Individual Contactor Capacity</i>	<i>EBCT</i>	<i>Contactors Capacity</i>
<i>Cholla</i>	<i>6</i>	<i>MGD 5.6</i>	<i>6.4 min</i>	<i>3,334.5 Cubic Feet</i>
<i>Oasis</i>	<i>5</i>	<i>MGD 3.1</i>	<i>9.6 min</i>	<i>2,760.0 Cubic Feet</i>

***INFORMATION CONCERNING WATER TREATMENT FACILITIES***

***WATER TREATMENT FACILITIES IDENTIFIED***

The Water Treatment Facilities include the following:

- Cholla WTP
- Oasis WTP

***ESTIMATED THERMAL GAC REACTIVATION QUANTITIES***

The estimated thermal GAC reactivation quantities associated with each Water Treatment Facility are set forth in the Table 2-1. The quantities in Table 2-1 are only presented as an estimate of the amount of carbon the City may need to thermally regenerate in any year. The Company acknowledges that these quantities do not represent a guarantee of the amount of the carbon the City will actually need to thermally regenerate in any year. The City shall have no liability to the Company associated with actual thermal regeneration needs not meeting the estimated needs set forth in Table 2-1

Table 2-1

Potential GAC Volume Needs Summary

SITE	No. Contactor	Pounds GAC per Contactor	Total Pounds GAC	Contactors Thermally Regenerated /Year	Total Pounds Spent GAC /Year
Cholla WTP	6	88,000	528,000	12	1,056,000
Oasis WTP	5	80,000	400,000	5	400,000
Total	11	168,000	928,000	17	1,456,000

**APPENDIX 3**

**EMPLOYEE BACKGROUND SCREENING**

## ***EMPLOYEE BACKGROUND SCREENING***

### ***COMPANY AND SUBCONTRACTOR WORKER BACKGROUND SCREENING***

Security Generally. The Parties acknowledge that security measures required in this Appendix are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, the Company shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

Security Inquiries. The Company acknowledges that all of the employees that it provides pursuant to the Contract shall, at the request of the City, be subject to background and security checks and screening ("Security Inquiries"). The City shall perform all such Security Inquiries, as it deems appropriate, for all employees considered for performing work (including supervision and oversight) under this Contract. The City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Company for performing work under this Contract. Employees rejected by the City for performing GAC Services under this Contract may still be engaged by the Company for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City agreements or engagements without the City's prior written approval.

Additional City Rights Regarding Security Inquiries In addition to the foregoing, the City reserves the right, but not the obligation to: (1) have an employee and/or prospective employee of the Company be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to Arizona Revised Statutes (A.R.S.) § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of the Company's employees and/or prospective employees; and (4) object, at any time and for any reason, to an employee of the Company performing work (including supervision and oversight) under the Contract.

Terms Applicable to All of the Company's Agreements and Subcontracts. The Company shall include the terms of this Appendix for employee background and security checks and screening in all agreements and subcontracts for work performed under this Contract, including supervision and oversight.

### ***MATERIALITY OF SECURITY INQUIRIES PROVISIONS***

Notwithstanding any provisions to the contrary, the Security Inquiries provisions in this Appendix are material to the City's entry into the Contract, and any breach thereof by the Company may, at the City's option and sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate the Contract for cause. Such termination shall subject the Company to liability for its breach of contract pursuant to Section 5 of Exhibit A and Section 3 of the Contract.

### ***DOCUMENT/INFORMATION RELEASE***

Documents and materials released to the Company, which are identified by the City as sensitive and confidential, are the property of the City of Glendale Water Resources Division. The document/material must be issued by and returned to the Water Resources Division upon completion of its intended release purposes. Secondary dissemination, disclosure, copying, or duplication in any manner is prohibited without the approval of the Water Resources Division. The document/material must be kept secure at all times. This directive is applicable to all City of Glendale documents, whether in photographic, printed, or electronic data format.

**APPENDIX 4**

**WATER TREATMENT FACILITIES**

**ACCESS CONTROLS**

## ***WATER TREATMENT FACILITIES ACCESS CONTROLS***

### ***COMPANY/ CONTRACTOR EMPLOYEE ACCESS***

Access Generally. All Company workers (“Contract Workers”) entering the City’s WTP facilities to execute GAC services or any other purpose, shall comply with all City Security requirements established for each facility requiring GAC Reactivation.

Restricted Areas. All Contract Workers are forbidden access to designated restricted areas. Beyond meeting rooms and other areas open to the public, access to particular operational premises shall be as directed by the City’s authorized representative.

Authorized Employee Access. Only authorized Contract Workers are allowed on the premises of the City’s buildings. The Company’s employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person has been so authorized by the Company’s employee.

### ***COMPANY’S DEFAULT; LIQUIDATED DAMAGES; RESERVATION OF REMEDIES FOR MATERIAL BREACH***

The Company’s default under this Appendix shall include, but is not limited to the following: (1) Contract Worker gains access to a City facility without the proper access granted by City Water Services Staff; (2) Contract Worker commences GAC Services under the Service Contract without being properly granted access per this Contract; (3) Contract Worker or the Company submits false information or negligently submits wrong information to the City to obtain access to the City’s facilities or to complete the Security Inquiries. The Company acknowledges and agrees that City WTP site security is necessary to preserve and protect public health, safety and welfare. Accordingly, the Company agrees to properly cure any default under this Appendix within three (3) business days from the date notice of default is sent by the City. The Parties agree that the Company’s failure to properly cure any default under this Appendix shall constitute a breach of this Appendix. In addition to any other remedy available to the City at law or in equity, the Company shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000 00) for each breach by the Company of this Appendix. The Parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Contract in the event that the Company breaches this Appendix. Further, the Parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City’s actual damages in the event that the Company breaches this Appendix. The Parties further agree that three (3) breaches by the Company of this Appendix arising out of any default within a consecutive period of three (3) months or three (3) breaches by the Company of this Appendix arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Contract by the Company, and the City expressly reserves all of its rights, remedies and interests under this Contract, at law and in equity, including, but not limited to, termination of this Contract, in accordance with Section 5 of Exhibit A and Section 3 of this Contract.

**APPENDIX 5**

**PRICE ADJUSTMENTS**

**PRICE ADJUSTMENTS**

**LOCAL SERVICE PRICE ADJUSTMENTS**

Annual Adjustment to Local Service Price. The Local Service Price shall be adjusted on July 1 of each Contract Year following the Contract Date by multiplying the Local Service Price applicable in the prior Contract Year by the adjustment factors applicable for the upcoming Contract Year, as determined in accordance with this subsection. That is:

$$LSP_n = LSP_{(n-1)} \times [(0.7 \times NGAF_n) + (0.3 \times CPIAF_n)]$$

Where,

$$LSP_n = \text{Local Service Price for Contract Year "n"}$$

$$NGAF_n = \text{Natural Gas Adjustment Factor applicable for Contract Year "n"}$$

$$CPIAF_n = \text{CPI Adjustment Factor applicable for Contract Year "n"}$$

The "Natural Gas Adjustment Factor" and the "CPI Adjustment Factor" are as set forth, respectively, as follows:

**Natural Gas Adjustment Factor.** *The Natural Gas Adjustment Factor shall be determined as follows:*

$$NGAF_n = NGP_{n-1} - NGP_{n-2}$$

Where,

$$NGAF_n = \text{The Natural Gas Adjustment Factor for Contract Year "n"}$$

$$NGP_{n-1} = \text{Natural gas price based upon the Platt's Gas Market Report inside FERC First of the Month Index El Paso Natural Gas Permian Basins Index for Contract Year}$$

$$NGP_{n-2} = \text{The natural gas price one year prior based upon the Platt's Gas Market Report inside FERC First of the Month Index El Paso Natural Gas Permian Basins Index}$$

**CPI Adjustment Factor.** *The CPI Adjustment Factor shall be determined as follows:*

$$CPIAF_n = CPI_{n-1} - CPI_{n-2}$$

Where,

$$CPIAF_n = \text{The CPI Adjustment Factor for Contract Year "n"}$$

$$CPI_{n-1} = \text{The average of the 12-month CPI values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the U.S. Department of Labor CPI for Urban Wage Earners and Clerical Work, specific to the West (CWUR040SA0)}$$

$$CPI_{n-2} = \text{The average of the 12-month CPI values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the U.S. Department of Labor CPI for Urban Wage Earners and Clerical Work, specific to the West (CWUR040SA0)}$$

Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the U.S. Department of Labor CPI for Urban Wage Earners and Clerical Work, specific to the West (CWUR040SA0)

***ANNUAL ADJUSTMENT TO NON-LOCAL SERVICE PRICE***

The Non-Local Service Price shall be adjusted on July 1 of each Contract Year following the Contract Date in the same manner as the Local Service Price set forth above.

***ADDITIONAL VIRGIN GAC PRICE ADJUSTMENTS***

Annual Adjustment to Additional Virgin GAC Price. The Additional Virgin GAC Price shall be adjusted on July 1 of each Contract Year following the Contract Date by multiplying the Additional Virgin GAC Price applicable in the prior Contract Year by the adjustment factors applicable for the upcoming Contract Year, as determined in accordance with this subsection. That is:

$$AVGACP_n = AVGACP_{(n-1)} \times [(0.5 \times PIAF_n) + (0.5 \times OCIAF_n)]$$

Where

- AVGACP<sub>n</sub> = Local Service Price for Contract Year “n”
- PIAF<sub>n</sub> = Petroleum Index Adjustment Factor applicable for Contract Year “n”
- OCIAF<sub>n</sub> = Organic Chemical Index Adjustment Factor applicable for Contract Year “n”

The “Petroleum Index Adjustment Factor” and the “Organic Chemical Index Adjustment Factor” are as set forth, respectively, as follows:

***Petroleum Index Adjustment Factor. The Petroleum Index Adjustment Factor shall be determined as follows:***

$$PIAF_n = PIP_{n-1} - PIP_{n-2}$$

Where,

- PIAF<sub>n</sub> = The Petroleum Index Adjustment Factor for Contract Year “n”
- PIP<sub>n-1</sub> = The average of the 12-month PIAF values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Other Petroleum & Coal Products Manufacturing (CCWUR0400SA0)
- PIP<sub>n-2</sub> = The average of the 12-month PIAF values occurring in the Contract Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Other Petroleum & Coal Products Manufacturing (CCWUR0400SA0)

***Organic Chemical Index Adjustment Factor. The Organic Chemical Index Adjustment Factor shall be determined as follows:***

$$\text{OCIAF}_n = \text{OCI}_{n-1} - \text{OCI}_{n-2}$$

Where,

$\text{OCIAF}_n$  = The OCI Adjustment Factor for Contract Year “n”

$\text{OCI}_{n-1}$  = The average of the 12-month OCIAF values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Basic Organic Chemicals (WPU0614)

$\text{OCI}_{n-2}$  = The average of the 12-month OCIAF values occurring in the Contract Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Basic Organic Chemicals (WPU0614)

***INDICES***

If the final value of any component of the formula for any Adjustment Factor in this section of this Appendix is not available for the applicable period when required hereunder, the amount of the adjustment to be made shall be estimated by using the preliminary value of the index for the applicable period or the final value of the index for the latest available period. All calculations and payments based on such estimate shall be adjusted as soon as reasonably practicable after the final value of the index for the applicable period is published. The Company shall set forth the calculation of the estimated values of the index in its invoices until the final values are published. The Company shall set forth the calculation of the final values of the index and the resulting calculation of the adjustment, if any, to payments made based on the estimated values during the Contract Year in an invoice as soon as practicable after the final value is published. If the index is no longer published at the time that an adjustment is to be calculated, or if the base or method of calculation used for the index is substantially altered, the calculation shall be made using a comparable similar index or method mutually agreed upon by the Company and the City.

***NON-LOCAL FUEL SURCHARGE***

The Non-Local Fuel Surcharge shall consist of a \$200.00 charge per order from all Water Treatment Facilities plus a mileage charge based on the difference between the base of \$4.00/gallon and the fuel index at time of actual delivery in accordance with Table 6-1 in this Appendix. The mileage and surcharge amount will be established at time of delivery by the Company

Each Monday at 5:00pm Eastern Standard Time, the Company will determine the Average Diesel Price. The Non-Local Fuel Surcharge will become effective on Tuesday of that week (except if Monday is a National Holiday, then it will be Wednesday) and will be effective for the following seven (7) day period.

In computing charges, fractions of less than one-half cent will be dropped and fractions of one-half cent or more will be increased to the next whole cent.

If the Average Diesel Price is greater than \$5.50 per gallon, the Non-Local Fuel Surcharge will increase one (1) cent for every five (5) cent increase of the Average Diesel Price exceeding \$5.50. If the Average Diesel Price is less than \$4.00 per gallon, the Company will not charge a Non-Local Fuel Surcharge.

**TABLE 5-1**

When the Fuel Index Is:				When the Fuel Index Is:				When the Fuel Index Is:		
At Least	But Less Than	Fuel Surcharge		At Least	But Less Than	Fuel Surcharge		At Least	But Less Than	Fuel Surcharge
\$4.00	\$4.05	1 Cent per Mile		\$4.50	\$4.55	11 Cents per Mile		\$5.00	\$5.05	21 Cents per Mile
\$4.05	\$4.10	2 Cents per Mile		\$4.55	\$4.60	12 Cents per Mile		\$5.05	\$5.10	22 Cents per Mile
\$4.10	\$4.15	3 Cents per Mile		\$4.60	\$4.65	13 Cents per Mile		\$5.10	\$5.15	23 Cents per Mile
\$4.15	\$4.20	4 Cents per Mile		\$4.65	\$4.70	14 Cents per Mile		\$5.15	\$5.20	24 Cents per Mile
\$4.20	\$4.25	5 Cents per Mile		\$4.70	\$4.75	15 Cents per Mile		\$5.20	\$5.25	25 Cents per Mile
\$4.25	\$4.30	6 Cents per Mile		\$4.75	\$4.80	16 Cents per Mile		\$5.25	\$5.30	26 Cents per Mile
\$4.30	\$4.35	7 Cents per Mile		\$4.80	\$4.85	17 Cents per Mile		\$5.30	\$5.35	27 Cents per Mile
\$4.35	\$4.40	8 Cents per Mile		\$4.85	\$4.90	18 Cents per Mile		\$5.35	\$5.40	28 Cents per Mile
\$4.40	\$4.45	9 Cents per Mile		\$4.90	\$4.95	19 Cents per Mile		\$5.40	\$5.45	29 Cents per Mile
\$4.45	\$4.50	10 Cents per Mile		\$4.95	\$5.00	20 Cents per Mile		\$5.45	\$5.50	30 Cents per Mile