

Office Use Only

MASTER CONTRACT NUMBER:

c2023-0186

PURCHASE OF COMMODITIES CONTRACT

THIS AGREEMENT made and entered into this date _____, by and between the City of Branson, Missouri (the "City") and **CarbUSA LLC** ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (Scope of Work); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

1. Item(s) and dates of Purchase. The City agrees to purchase and the Seller agrees to sell the following item(s): **Granular activated carbon, from a date beginning on the execution date of this contract to a date ending December 31, 2023.**

2. Quantities to be Purchased and Purchase Price.

- a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
- b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
- c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Fifty-Nine Thousand Seven Hundred Fifty-One Dollars And Sixty Cents (\$59,751.60)**, all of which is dependent upon budget appropriations.

3. Delivery and Shipment.

- a. The Seller is responsible for the costs of shipment.
- b. Time is of the essence with respect to each shipment.
- c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
- d. Deliveries are to be made to: **2855 Fall Creek Drive, Branson, Missouri 65616.**

4. Invoices. An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.

5. Inspection and Acceptance.

- a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
- b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
- c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.

6. Warranty.

- a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
- b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
- c. Any implied warranties are not altered by this written contract.
- d. Additional terms: N/A.

7. Patents. Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.

8. Bankruptcy or Insolvency. In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

9. Compliance with Applicable Laws. The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any time for the City's convenience (without cause) or for cause if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of the City. In the event of such termination for cause, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby (except that Seller will not be liable for such excess costs occasioned thereby in instances where this agreement is terminated by the City without cause or for City's convenience).
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

17. Severability. If any term or provision of this agreement is held invalid or unenforceable, the remainder of this agreement will be considered valid and enforceable to the fullest extent permitted by law.

18. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SELLER:

CITY OF BRANSON, MISSOURI

By:  DocuSigned by:
0D4B1E4E21C0407...
(Signature) 8/8/2023
Date

Larry D. Milton
Mayor Date

ATTEST:

Hillary Briand
City Clerk Date

APPROVED AS TO FORM:

 DocuSigned by:
89345C499FC42115...
Interim City Attorney 8/7/2023
Date

Exhibit A

CarbUSA LLC
140 Metro Park
Rochester, NY 14623

SCOPE OF WORK

1. Purpose: The Seller, CarbUSA LLC shall provide activated carbon used in odor control towers at the City's wastewater treatment facilities.
2. General Requirements:
 - 2.1. The city has a need to purchase approximately 35,100 lbs. of granular activated carbon. Total quantities ordered per shipment shall be in equal proportion to the packaging containers provided by the supplier, not to exceed the approximate quantity specified.
3. Technical Requirements:
 - 3.1. The activated carbon shall be virgin (i.e., not reactivated) and shall not be impregnated or catalytically modified. The activated carbon shall be derived from acceptable raw materials including lignite coal, sub-bituminous, or bituminous coal. The activated carbon shall be visually free of clay, dirt and deleterious material.
 - 3.2. The activated carbon supplied shall be suitable for continuous removal of H₂S from air, and other odor causing compounds such as mercaptans, indoles, and skatoles found in vapors emitted by wastewater or various treatment processes.
 - 3.3. The activated carbon shall meet the minimum standards and performance criteria regarding material specifications and physical properties. These performance criteria shall be evaluated prior to bid award based on representative samples of the proposed material submitted to the City and/or Supplier lab reports. Failure of samples to meet the performance criteria shall result in rejection of the activated carbon and in the removal and replacement of any installed materials at no cost to the City.
 - 3.4. The activated carbon to be furnished shall have adsorptive and physical characteristics as indicated below:

Specifications		
H ₂ S capacity (ASTM D6646),	g/mL	0.2 minimum
Moisture (as packed),	wt. %	8 maximum
Mesh size (U.S. Sieve Series)		
Greater than 4 Mesh (4.75 mm),	%	10 maximum
Less than 8 Mesh (2.36 mm),	%	5 maximum

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Typical Properties

Apparent density (poured),	lbs/ft ³	25
Mean particle diameter,	mm	3.4

4. Requirements of the Activated Carbon Supplier:

- 4.1. The supplier or subcontractor must be certified to ISO 9001:2000 Standard at the activation plant (not a warehouse or re-processing facility).
- 4.2. Detailed specifications and material quality and testing results shall be submitted to the City for review and approval prior to delivery of the activated carbon. Manufacturer's test reports shall include the following information:
 - 4.2.1. Manufacturer's name
 - 4.2.2. Material source and manufacturer plant location
 - 4.2.3. Date of sampling
 - 4.2.4. Lot or stockpile number identification
 - 4.2.5. Demonstration of compliance with physical properties and specifications

5. Material Quality and Testing:

1. The quality of the activated carbon shall be determined by testing in accordance with the following test methodologies or equivalent:
 - Hydrogen sulfide (H₂S) capacity ASTM D6646
 - Sieve analysis (U.S. Standard Sieve Series) ASTM D5158
 - Moisture ASTM D2867

6. Material Testing and Approval:

6.1. Test Reports

- 6.2. The bidder shall submit Certificates of Analysis to ensure that the activated carbon provided meets the required specifications. Test reports on the representative samples of activated carbon shall contain the following information:
 - 6.2.1. Hydrogen sulfide (H₂S) capacity, (g/mL)
 - 6.2.2. Mesh size confirmation
 - 6.2.3. Moisture, (% as packed)

7. Delivery

7.1. Placement of GAC

- 7.2. Deliveries will take place by trailer(s) loaded at the production facility. Tamper evident seals may be requested.
- 7.3. The bidder and/or the Contractor will be responsible for cleanup of all activated carbon spills that may occur during the transfer operation.
- 7.4. Quantities can only be estimated, and actual usage will vary annually depending upon demand and budget restrictions. The City reserves the right to purchase quantities above or below the annual quantity estimated. Product will be ordered on an as-needed if-needed basis, in any quantity proportional to packaging containers. The city will pay only for the actual quantities ordered and received. Prices shall be as specified on a per pound (lb.) basis listed on the pricing page and remain firm regardless of actual quantities ordered.
- 7.5. Delivered carbon must include all shipping costs* for product delivered to various plants located in Branson, MO. (* Shipping costs shall include all cost related to the delivery and unloading of product to the proper place in the various locations, additions i.e., fuel surcharges, handling fees etc. will not be accepted.) Pricing given excluding freight may be considered non-compliant and the bid will be rejected.
- 7.6. The City reserves the right to inspect the product prior to purchase.

Exhibit B

PRICING PAGE

Item	Description	Unit Cost
001.	Activated Carbon	<u>\$1.70</u> Lb.

Provide additional information below:
Total Qty Shipped will be 35,148 lbs