

AGREEMENT FOR HYDROGEN SULFIDE CONTROL SERVICES
(Utilizing the City of Orlando Contract)

THIS AGREEMENT FOR HYDROGEN SULFIDE CONTROL SERVICES (“Agreement”) is made as of the 11th May, 2022, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a Florida municipal corporation organized and existing under the laws of the State of Florida, (“CITY”), and **US Peroxide, LLC dba USP Technologies**, corporation authorized to do business in the State of Florida, whose address is 900 Circle 75 Parkway, Atlanta, GA 30339 (“CONTRACTOR”).

RECITALS

WHEREAS, the CITY’s Water Utility Department is in need of Odor Control Services; and

WHEREAS, on or around August 24, 2021, City of Orlando awarded a contract for Hydrogen Sulfide Control Services Contract No.: IFB21-0285 to the CONTRACTOR (“City of Orlando Contract”); and

WHEREAS, the CITY has requested and the CONTRACTOR along with the City of Orlando has agreed to extend the terms and conditions of the City of Orlando Contract to the CITY for Hydrogen Sulfide Control Services; and,

WHEREAS, the CITY has reviewed the unit prices from the City of Orlando Contract and determined that the City of Orlando Contract unit prices are competitive and will result in the best value to the CITY.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. City of Orlando Contract. The City of Orlando Contract and any amendments executed by City of Orlando and the CONTRACTOR are hereby incorporated by reference into and expressly made a part of this Agreement as if set forth at length herein. The term of this Agreement shall be consistent with the term of the City of Orlando Contract (valid until August 23, 2024 unless extended). The CITY Manager may approve and execute renewals of this Agreement consistent with City of Orlando Contract.
3. Price and Maximum Amount Not to Exceed. The prices set forth in the City of Orlando Contract (attached as Exhibit A) shall control the prices charged to the CITY. The maximum amount of this Agreement is not to exceed \$400,000.00 (Four Hundred Thousand Dollars) annually.
4. Purchase Orders. The CITY’s ordering mechanism under this Agreement shall be a CITY issued Purchase Order; however, in the event of a conflict, all contractual terms and conditions stated herein and as stated in the City of Orlando Contract shall take precedence over the terms and conditions stated in the CITY issued Purchase Order. The CONTRACTOR shall not provide any goods or services under this Agreement without a CITY issued Purchase Order specifically for this purpose, which shall include the items listed on the provided quote. The pricing in each Purchase Order shall be consistent with the pricing set forth in the City of Orlando Contract and attached as Exhibit “A”. Each issued Purchase Order shall be incorporated into this Agreement and made a part hereof.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Agreement;
- b. The City of Orlando Contract; and,
- b. The City issued Purchase Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit itemized invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and the CITY's issued Purchase Order and then will be sent to the Finance Department for payment. The invoices will reflect the rates to be charged under the City of Orlando Agreement. Invoices will be due and paid within thirty (30) days following the date of the CITY's receipt of the CONTRACTOR'S invoice; provided, that if the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice and payment may be delayed pending resolution of any such dispute.

7. Miscellaneous Provisions.

- A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.
- C. The CONTRACTOR shall maintain the same level of insurance as required by the City of Orlando Contract with the CITY named as an "additional insured".
- D. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- E. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement. Notices to the CITY shall be to the attention of the City Manager.
- F. The CITY and the CONTRACTOR agree that this Agreement (including the terms and conditions of City of Orlando Contract) sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Agreement which is of a

continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

- G. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
- H. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- I. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- J. In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.
- K. **PUBLIC RECORDS.** The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:
 - 1. Keep and maintain public records required by the CITY to perform the service.
 - 2. Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY.
 - 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN

**OF PUBLIC RECORDS AT (561) 586-1660,
CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT
CITY OF LAKE WORTH BEACH, ATTN: City Clerk, 7 NORTH
DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.**

IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for Hydrogen Sulfide Control Services as of the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: **US PEROXIDE, LLC DBA USP TECHNOLOGIES.**

By: _____

[Corporate Seal]

Print Name: Tom Siller

Title: General Manager

STATE OF Virginia)
COUNTY OF Henrico)

THE FOREGOING instrument was acknowledged before me by means of •physical presence or •online notarization on this 11th day of May 2022, by Tom Siller, as the General Manager [title] of US Peroxide, LLC dba USP Technologies., a corporation, which is authorized to do business in the State of Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[SEAL]

NOTARY PUBLIC

9-30-2023
147205

Exhibit "A"

City of Orlando - Bid Tabulation IFB21-0285 : Hydrogen Sulfide Control Services Bid Opened July 8, 2021 at 2:00 pm					US Peroxide LLC 1375 Peachtree Street NE, Suite 300N Atlanta, GA 30309 Moneke Gibbs Phone: 404 3526070 Fax: mgibbs@uspstechnologies.com View Quote SLVMP:			
Item #	Group	Item	Quantity	Unit of Measure	Required	Vendor Item	Unit Price/ Percent	Extended Price/ Percent
1		Make: Model: Model #: Description: Lift Station #1 and #7 - Iron Salt Solution/PRI-SCl ₂ Technology (7,500 gallon dbi wall tank) Price/Percent: Price Brand Name/Equal Value/Service: Service	12	Months	Yes	Make: N/A Model: N/A Model #: N/A Description: Lift Station #1 and #7 - Iron Salt Solution/PRI-SCl ₂ Technology (7,500 gallon dbi wall tank)	\$560.00	\$6,720.00
2		Make: Model: Model #: Description: Lift Station #37 - Iron Salt Solution/PRI-SCl ₂ Technology (3,000 gallon dbi wall tank) Price/Percent: Price Brand Name/Equal Value/Service: Service	12	Months	Yes	Make: N/A Model: N/A Model #: N/A Description: Lift Station #37 - Iron Salt Solution/PRI-SCl ₂ Technology (3,000 gallon dbi wall tank)	\$560.00	\$6,720.00
3		Make: Model: Model #: Description: Lift Station #248 - Hydrogen Peroxide / PRI-SCl ₂ Technology (3,000 gallon dbi wall tank) Price/Percent: Price Brand Name/Equal Value/Service: Service	12	Months	Yes	Make: N/A Model: N/A Model #: N/A Description: Lift Station #248 - Hydrogen Peroxide / PRI-SCl ₂ Technology (3,000 gallon dbi wall tank)	\$560.00	\$6,720.00
4		Make: Model: Model #: Description: Iron Salts Chemicals (Ferrous Chloride minimum of 24-28% iron per gallon)/PRI-SCl ₂ Technology Price/Percent: Price Brand Name/Equal Value/Service: Brand Name Only	100000	Gallons	Yes	Make: Model: Model #: Description: Iron Salts Chemicals (Ferrous Chloride minimum of 24-28% iron per gallon)/PRI-SCl ₂ Technology	\$1.74	\$174,000.00
5		Make: Model: Model #: Description: Hydrogen Peroxide 50% Solution, Technical Grade Price/Percent: Price Brand Name/Equal Value/Service: Brand Name Only	50000	Gallons	Yes	Make: Model: Model #: Description: Hydrogen Peroxide 50% Solution, Technical Grade	\$4.19	\$209,500.00
							Sub Total	\$403,660.00
							Shipping	\$0.00
							Total	\$403,660.00