

Prepared By and Return to:
Stefanie Beskovoyne, Esq.
City of Port St. Lucie
900 SE Ogden Lane
Port St. Lucie, FL 34984

**SERVICES AND MAINTENANCE AGREEMENT
BETWEEN THE
CITY OF PORT ST. LUCIE, FLORIDA
AND
SOURCE TECHNOLOGIES LLC**

THIS SERVICES AND MAINTENANCE AGREEMENT (“AGREEMENT”) is entered into as of the 2nd day of September 2021 (“Effective Date”) by and between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation whose mailing address is 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984 (“City”) and **SOURCE TECHNOLOGIES LLC**, a Kentucky limited liability company (“Contractor”) whose mailing address is 157 Venture Court, Suite 9, Lexington, KY 40511. The City and Contractor may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, the City desires to acquire the services of Contractor to maintain and service odor scrubber systems at Lift Stations SP 16, NP 39, NP 41 and NP 22; and

WHEREAS, Contractor sent a proposal to the City on June 16, 2021 for ST 200/ST 209 Air Scrubber Pricing, attached hereto (“Proposal”) and hereby incorporated by reference; and

WHEREAS, the City acquired odor scrubber systems from Contractor; and

WHEREAS, City desires to sell the existing odor scrubber systems at NP 22 and NP 41 back to the Contractor,

WHEREAS, Contractor agrees to remove the odor scrubber system from NP 22, at its own expense, and relocate and install the odor scrubber system to NP 39; and

WHEREAS, Contractor agrees to replace the odor scrubber system NP 22; and

WHEREAS, Contractor shall replace the odor scrubber system at SP 16; and

WHEREAS, City desires to expand this program in the future should funding become available; and

WHEREAS, Contractor agrees to own, insure, operate and maintain the odor scrubber systems at SP 16, NP 22, NP 39, and NP 41, and any other stations, as amended, in accordance with the following terms and conditions,

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct and by this reference incorporated herein and made a part hereof.
2. The City agrees to the “Lease” option referred to in the Proposal and as briefly summarized in the foregoing recitals, more particularly described in the Scope of Work.
3. All other terms and conditions of the Proposal shall be incorporated herein by reference.

SECTION I – SCOPE OF SERVICES AND RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES. Contractor agrees to provide those services to City, generally and typically encompassed by and as a function of Contractor's professional discipline(s) and as more fully specified in connection with the Project more particularly described in the attached **Exhibit “A”** which is incorporated herein (hereinafter “Scope of Work”). Contractor shall use, in performing any and all services for City, the level of care, skill, and due diligence expected of and recognized by a reasonable, prudent, and experienced professional in Contractor's professional discipline(s) as being sound professional practice under similar conditions and circumstances. **If Contractor fails to possess or use such care, skill, and due diligence in providing the services, Contractor shall be responsible to City for any loss or damages resulting there from, except as monetarily limited herein.**

B. SPECIFIC RESPONSIBILITIES.

1. The specific services to be provided by Contractor shall be pursuant to the terms and conditions hereof and as further defined in the Scope of Work or as otherwise amended by a written agreement signed by both parties (hereinafter collectively referred to as the “Documents”). The Scope of Work includes the specific services and work to be provided by Contractor, City's responsibilities in addition to those provided herein, and the method and amount of Contractor's compensation. Contractor shall serve as City's professional representative to the extent set forth in the Scope of Work and shall give professional advice to City during the term of this Agreement.
2. In order to accomplish the work described and authorized by City within the time frames and conditions set forth herein, Contractor agrees to observe the following requirements:
 - (a) Contractor shall maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Agreement so as to achieve acceptable and timely completion of the work.
 - (b) Contractor will perform all services in such a manner as to be in conformance with all applicable federal, state, and local laws, codes, rules, and regulations.

- (c) Contractor shall prepare all applications and completed forms and other documents as may be specified in the Scope of Work.
 - (d) Contractor shall cooperate fully with City in order that the services may be properly scheduled and coordinated. City's representatives shall have the right to inspect the work of Contractor at any time during normal business hours.
 - (e) Contractor shall, upon request of City, make available on electronic digital media the documents and other data produced by Contractor under this Agreement. Contractor may not charge the City for access or copies of such electronic digital media.
 - (f) Contractor must maintain all requisite licenses and acquire any and all permits required for the Scope of Work.
3. Contractor shall furnish additional copies of the reports, drawings, specifications, and other documents produced by Contractor as may be requested by City in addition to those required in the Scope of Work. All original documents furnished to Contractor by City pursuant to this Agreement or the Scope of Work are and shall remain the property of City and shall be delivered to City upon completion of the work or at City's request, whichever occurs first.
4. Compensation to Contractor for services rendered shall be in accordance with this Agreement or the Scope of Work or amendment issued and delivered hereunder. Except as otherwise provided herein, all of Contractor's services are included within the scope of basic compensation provided for in the Scope of Work or amendment signed by both parties.

SECTION II – DURATION OF AGREEMENT

- A. **AGREEMENT.** This Agreement is effective when fully executed and shall remain in full force and effect until completion of the work as specified in the Scope of Work unless otherwise terminated pursuant to the terms of this Agreement.
- B. **SCOPE OF WORK.** The Scope of Work may be modified by City's issuance and delivery to Contractor of a written amendment which will become effective upon acknowledgment by Contractor and return of an executed original to City.
- C. **ORDERLY AND CONTINUOUS PROGRESS.** The provisions of this Agreement, the Scope of Work, unless stated otherwise therein, anticipate the orderly and continuous progress of the work.

SECTION III – TERM AND TERMINATION

- A. TERM AND TERMINATION. The term of this Agreement shall commence on the date this Agreement is fully executed for a period of three years.
- B. TERMINATION FOR CAUSE. The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations under the Agreement:
- i. The Contractor fails to deliver or has delivered nonconforming services or fails to perform, to the City's satisfaction, any material requirement of the Agreement or is in violation of a material provision of this Agreement, including, but without limitation, the express warranties made by the Contractor;
 - ii. The Contractor fails to make substantial and timely progress toward performance of the Agreement;
 - iii. The revocation or loss of required license(s) or certification(s) may result in immediate termination of the Agreement effective as of the date on which the license or certification is no longer in effect;
 - iv. The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - v. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Agreement;
 - vi. The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
 - vii. The Contractor furnished any statement, representation or certification in connection with the Agreement, which is materially false, deceptive, incorrect or incomplete.
- C. TERMINATION FOR CONVENIENCE. Either party may terminate this Agreement at any time without cause, by providing thirty (30) days' prior written notice to Contractor. Any such termination shall be accomplished by delivery in writing of a notice to Contractor. Following termination without cause, the Contractor shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the Agreement to the City up to the time of termination, pursuant to Florida law.
- D. PAYMENT IN THE EVENT OF TERMINATION. In the event this Agreement is terminated by either Party prior to final completion of the work, Contractor shall receive payment from City for the unpaid portion, if any, of Contractor's services actually authorized and provided under this Agreement to the effective date of such termination, provided that Contractor is not in default of any provision of this Agreement, the Scope of Work.

SECTION V – PAYMENTS TO CONTRACTOR

City shall pay to Contractor, and Contractor agrees to accept, for services rendered pursuant to this Agreement, fees in accordance with the following conditions:

1. The basic compensation of Contractor shall be as provided in the Scope of Work specifying the services to be performed by Contractor, except as may be otherwise authorized by City.
2. City is exempt from state and local sales and use taxes and shall not be invoiced for same.
3. The Scope of Work, as well as any amendment, may be divided into units of deliverables or phases of work, including, but not limited to, reports, findings, drawings, drafts, or other work product, that must be received and accepted in writing by City's designated representative prior to approval of payment for such work.
4. Contractor shall submit a duly certified and proper invoice for approval to City's representative. Such invoices shall be reviewed by City and, if approved, shall be submitted to the City's finance department for payment together with certification that the services invoiced have been rendered and that the services are in conformity with this Agreement. In any case in which an improper invoice is submitted by Contractor, City shall within ten (10) business days after such improper invoice is received by the designated City representative, notify Contractor that the invoice is improper and indicate what corrective action on the part of Contractor is needed to make the invoice proper.
5. In the event a dispute occurs between City and Contractor concerning payment of an invoice, such disagreement shall be resolved by the City Manager or his designee. City shall pay Contractor the amount agreed between the Parties as proper for the invoice or, if agreement cannot be reached, the amount determined by a party mutually agreed upon by both Parties to be proper for the invoice. Such payment shall be less any amounts previously paid by City with respect to such invoice.
6. In order for both Parties to close their books and records, Contractor shall clearly state "Final Invoice" on Contractor's final billing to City for the services provided. Contractor shall submit with such Final Invoice certification that all services under this Agreement, the Scope of Work have been performed and that all fees, charges, and costs have been invoiced to City, together with a list of suppliers providing goods or services under this Agreement, the Scope of Work, and certification that all such suppliers have been fully paid. No Final Invoice shall be approved for payment until Contractor has fully complied with this provision.

SECTION V – INSURANCE

The Contractor agrees to indemnify, defend, and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligent act, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized, including any independent contractors or subcontractors by the Contractor in the performance of this Agreement. The

Contractor shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Agreement.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

Workers' Compensation Insurance & Employer's Liability: The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: The Contractor shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, Certificates of Insurance and policies shall clearly state that coverage required by the Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for

the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents the Services and Maintenance Agreement shall be listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Agreement to exceed the above limits, the Contractor shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Automobile Liability Insurance: The Contractor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Property Insurance: The Contractor shall agree to procure and maintain Commercial Property Insurance covering the buildings, including Building Ordinance and Law coverage, fixtures and equipment, improvements and betterments related to this Agreement. Flood insurance is required for building/improvements and betterments if property lies within a Special Flood Hazard Area. Perils insured should be equivalent to ISO special causes of loss form and the valuation of covered property should be replacement cost. Coverage is to be written in an amount of not less than the full replacement cost without deduction for depreciation, special form, including perils of fire, windstorm/hail, earth movement, theft, vandalism, and malicious mischief. All forms of Business Income to be included. Equipment Breakdown / Boiler & Machinery is to be included.

Waiver of Subrogation: The Contractor shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the contractor's most recent annual report or audited financial statement.

It shall be the responsibility of the Contractor to ensure that all independent contractors and sub-contractors comply with the same insurance requirements referenced herein. It will be the responsibility of the contractor to obtain Certificates of Insurance from all independent contractors and subcontractors listing the City as an Additional Insured without the language when required by written contract. If contractor, independent contractor or subcontractor maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by contractor, independent contractor, or subcontractor.

The Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but not the obligation, to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better. When a self insured retention or deductible exceeds \$5,000, The City reserves the right, but not the obligation, to review and request a copy of bidder's most recent annual report or audited financial statement.

SECTION VI – CONFLICT

In the event of a conflict in this Agreement or the Proposal or other contract documents, the terms of this Agreement shall apply and supersede over conflicting terms.

SECTION VII – NOTICES

Any notices shall be in writing, addressed to the Party's representative designated herein, as amended, and shall be deemed served as follows: (1) on the date hand delivered, as evidenced by an affidavit of service; (2) on the date delivered by courier service such as FedEx, UPS, or U.S. Priority or Express Mail; (3) on the date delivered by First Class U.S. Mail, as evidenced by a return receipt; (4) on the fifth day after the date sent by First Class U.S. Mail, as evidenced by an affidavit of mailing executed by the sender, a copy of which affidavit is provided simultaneously to the recipient with the notice or request. Any notice or request the delivery of which is refused by the recipient shall be deemed given as of the date it is mailed or sent. Notwithstanding the foregoing, notices and request, including but not limited to Change Orders issued hereunder, necessary or required for prosecution of Contractor's services and work pursuant to the Scope of Work or any Change Order may be exchanged electronically between the Parties, the transmission of which shall be simultaneously provided in writing and hand delivered or mailed by First Class U.S. Mail to the parties identified in the Scope of Work.

NOTICE OF DEFAULT. If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City may:

- i. Immediately terminate the Agreement without additional written notice(s); and/or
- ii. Enforce the terms and conditions of the Agreement and seek any legal or reasonable remedies; and/or
- iii. Procure substitute services from another source and charge the difference between the Agreement and the substitute Agreement to the defaulting Contractor.

SECTION VIII – PUBLIC RECORDS COMPLIANCE

Contractor acknowledges its responsibility for compliance with Chapter 119, Florida Statutes. Pursuant to section 119.0701, Florida Statutes, Contractor shall comply with all public records laws, specifically to:

- A. Keep and maintain public records required by the City to perform the service.
- B. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.myflorida.com/library-archives/records-management/general-records-schedules>)
- C. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Agreement include but are not limited to, supplier/subcontractor invoices and contracts, documents, meeting notes, emails, and all other documentation generated during the term of this Agreement.
- D. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or provide copies within a reasonable time at a cost that does not exceed the cost provided for by law that may be charged by a local government. If a Contractor does not comply with the City's request for records, City shall enforce the provisions in accordance with the Agreement.
- E. Ensure that 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 the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to City.
- F. Upon completion of the 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 the completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. **IF 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:**

CITY CLERK
121 SW PORT ST. LUCIE BLVD.
PORT ST. LUCIE, FL 34984
(772) 871-5157
PRR@CityofPSL.com

G. A Contractor who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.

SECTION IX – NONDISCRIMINATION

Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. Contractor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

SECTION X – INDEMNIFICATION/LIMITATION OF LIABILITY

For good and valuable consideration paid by City to Contractor, the receipt and sufficiency of which is hereby acknowledged by Contractor, Contractor agrees to indemnify and hold harmless the City, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees through trial and appeal) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of Contractor or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; and excluding those acts or omissions arising out of the sole negligence of City. The City's liability, if any, in all instances shall be subject to the limits of liability established in section 768.28, Florida Statutes (as amended), and no other provision of this Agreement or related documents shall be deemed or operate as a waiver of City's sovereign immunity. The Parties' obligations under this section shall survive the termination of this Agreement for any matter arising prior to the effective date of the termination.

SECTION XI – WAIVER OF COMPLIANCE; CONSENTS

Any term or condition of this Agreement may be waived by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party

shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

SECTION XII – THIRD-PARTY BENEFICIARIES; NO JOINT VENTURE

The terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person. Nothing in this Agreement or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the Parties.

SECTION XIII – CONTRACTOR ORGANIZATION

Contractor's status as a legal entity, if applicable, shall continuously be in good standing, active, and current with the state of its incorporation or registration and with the State of Florida, and Contractor shall keep its status active and current throughout the term of this Agreement. Contractor shall keep City apprised of all changes in its designated officers, directors, and other officials.

SECTION XIV – PUBLIC ENTITY CRIMES

This Agreement shall be null and void if Contractor or any person or affiliate is identified on the Department of Management Services' "Convicted Vendor List". This list is defined as consisting of persons and affiliates who are disqualified from public contracting and purchasing process because they have been found guilty of a public entity crime. No public entity shall award any contract to, or transact any business in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two with any person or affiliate on the "Convicted Vendor List" for a period of thirty- six (36) months from the date that person or affiliate was placed on the "Convicted Vendor List" unless that person or affiliate has been removed from the list. By signing and submitting this Agreement, Contractor attests that neither it nor any affiliate has been placed on such Convicted Vendor List.

SECTION XV – GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies. Venue for resolution of any dispute arising from or under this Agreement or its performance shall be in St. Lucie County, Florida and all actions and proceedings arising from or under this Agreement or otherwise related to the subject matter of this Agreement shall be in the court of the State of Florida in St. Lucie County, Florida, which court shall have exclusive jurisdiction for such purpose.

SECTION XVII – WAIVER OF JURY TRIAL

Each of the Parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement or otherwise related to the subject matter of this Agreement. This provision is a material inducement for the Parties hereto to enter into this Agreement and shall survive the termination of this Agreement.

SECTION XIX – REMEDIES

Any remedies provided in this Agreement, the Scope of Work, or any Change Order shall be deemed cumulative and additional and are not in lieu of or exclusive of each other or of any other rights or remedies any Party otherwise has by law, equity or statute.

SECTION XX – ATTORNEYS' FEES; COSTS

In any action arising under this Agreement or the Scope or Work, the prevailing Party is entitled to recover reasonable fees for the services of such Party's attorneys, experts, and Contractors, together with costs of the action, through trial and appeal, in an amount to be determined by the court (and including fees and costs incurred in establishing entitlement to and the amount of such fees and costs). In the event each Party shall partially prevail in such action, costs and reasonable attorneys' fees shall be equitably apportioned between the Parties by the court.

SECTION XXI – MISCELLANEOUS

- A. PAROL EVIDENCE RULE. This Agreement and its exhibits and attachments (if applicable), together with any amendments properly executed pursuant to the provisions of this Agreement, set forth all the promises, agreements, conditions, and understandings, either oral or written, between the Parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged into this Agreement. Except as otherwise provided in this Agreement, all exhibits and attachments referred to herein are intended to be and hereby are specifically made a part of this Agreement. The Parties were given the opportunity to have their legal counsel participate in the preparation of this Agreement; therefore, this Agreement shall be construed neither against nor in favor of any Party hereto, but rather in accordance with the fair meaning thereof.
- B. WORK CHANGES. The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Agreement, and agrees to make corresponding adjustments in the Agreement price and time for completion. Any and all changes must be authorized by a written change order signed by the City's Purchasing Agent or designee as representing the City. Any adjustment in the Agreement price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before starting the work involved in the change.
- C. DELIVERY OF DOCUMENTS. Upon completion of Contractor's work authorized under this Agreement, or upon early termination of this Agreement by either Party, Contractor shall, within ten (10) days, or any extensions thereto as may be mutually agreed to by the Parties, deliver or otherwise make available to City all documents, materials, files, and

electronic digital media, including, but not limited to, reports, drawings, plans, specifications, and other data and documents, that have been obtained, prepared, or produced by Contractor in performing services under this Agreement, regardless of whether the work on such documents and materials has been completed or is in progress.

- D. PAYMENT AND PERFORMANCE BOND. Pursuant to Section 255.05(1), Florida Statutes, a person entering into a formal contract with the City for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. This bond must be approved as to form by the City of Port St. Lucie.

SECTION XXII – ASSIGNMENT AND AMENDMENT

Neither this Agreement or the Documents nor any duties or obligations thereunder, shall be assigned or delegated by Contractor without the prior written consent of City. This Agreement and the Scope of Work may be amended only in writing signed by the Parties and made a part of this Agreement by reference hereto.

SECTION XXIII – SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision shall be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling and to include as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.

SECTION XXIV – CAPTIONS

The captions, paragraphs, sections, or letters appearing in this Agreement are inserted only as a matter of convenience and in no way affect, define, limit, construe, or describe the scope or intent of the sections and paragraphs of this Agreement.

SECTION XXV – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties are authorized to bind their respective entities and have affixed their hands and seals on the dates entered below.

[SIGNATURE PAGES FOLLOW]

CONTRACTOR:

ATTEST:

Sign: [Signature]

By: [Signature]

Wesley Harris
CEO

Print: Wesley Harris

Date: 9/2/21

[SEAL]

STATE OF Kentucky

COUNTY OF Fayette

The foregoing instrument was acknowledged before me via online notarization or physical presence this 2 day of September 2021, by Wesley Harris. He is personally known to me or produced Drivers License as identification and did/did not take an oath.

NOTARY PUBLIC:

[Signature]
Name:

Commission No. 612609

My Commission Expires: 12/12/2022

LEZLIE SHIVAR
Notary Public – State at Large
Kentucky
My Commission Expires: Dec. 12, 2022
Notary ID 612609

CITY:

CITY OF PORT ST. LUCIE

By: _____

City Purchasing Agent

Date: _____

EXHIBIT "A"
SCOPE OF WORK

CONTRACTOR'S RESPONSIBILITIES

1. Contractor shall purchase and provide all chemicals for maintenance and upkeep of the odor control units.
2. Contractor shall accept turnover of the odor control unit for NP 41.
3. Contractor shall accept turnover of the odor control unit for NP 22 and move the odor control unit to NP 39.
4. Contractor shall replace the odor control units at NP 22 immediately upon removal of the system.
5. Contractor shall install SP 16 after Council Approval and within 30 days of City approved scrubber manufacturing date.
6. Contractor shall be responsible for the maintenance, costs and standard repairs for all four odor control units throughout the duration of this Agreement, including the removal, relocation and replacement as detailed herein.
7. Contractor understands that the Lift Stations must be operational and time is of the essence with respect to this Agreement.
8. Should Contractor discover damage, or a lift station non-operable, Contractor must notify the City immediately.
9. Contractor shall maintain the odor control units at the lift stations to the PSLUSD standards and other applicable policy, regulation, and law.
10. **Contractor shall be responsible to City for any loss or damages resulting there from, except as monetarily limited herein.**

CITY'S RESPONSIBILITIES

1. City shall provide power and water to each site.
2. Contractor has been provided a key to access the gate. Contractor will not access any other portion of the real property. Nothing contained in this Agreement shall be considered a property right or right of access to the City's property.
3. City is responsible for any damage to Contractor owned equipment caused by City or vandalism.

Contact information:

For the City:
Mike Jolly
900 SE Ogden Road
Port St. Lucie, FL 34983
MJolly@CityofPSL.com
(772) 344-4121

For the Contractor:
Wesley Harris
157 Venture Ct., Suite 9
Lexington, KY 40511
wharris@sourcetechnologiesllc.com
(859) 223-1444

With a copy to:
Stefanie Beskovoyne, Esq.
Deputy Director
900 SE Ogden Road

Port St. Lucie, FL 34983
SBeskovoyne@CityofPSL.com
 (772) 873-6400

Contractor shall perform regular inspections of the odor control units at each lift station. Contractor shall inspect each lift station monthly and provide reports following inspection. If the City receives an odor complaint, Contractor shall respond to the complaint within **48 hours** to address and/or remedy the complaint. Contractor shall notify the City immediately should a defect or repair be necessary.

City shall compensate Contractor as follows:

	<u>ST 200</u>	<u>ST 209</u>	
NP 41	x		The City shall not be charged a lease rate or chemical cost for 6 months.
NP 22		x	
NP 39	x		The City shall not be charged a lease rate or chemical cost for 6 months.
SP 16		x	

Estimated (Monthly) Total Cost: \$5,591.30

*This cost is inclusive of removal, replacement and acquisition of the odor control systems required to fulfill the terms of this Agreement.

Contractor shall hold pricing firm for three (3) years from agreement date.

Periodic chemical changes will be required which will be based on H₂S loading rates.

Lease

- ST 200 Three Year Lease Agreement - \$1,215.50 (monthly)
 - Source ST 200 Scrubber will be utilized.
 - Single and 3phase power units are available.
 - Makeup water source must be provided.
 - Source Technologies is responsible for set up.
 - Source Technologies is responsible for all chemical upkeep and unit maintenance.
- ST 209 Three Year Lease Agreement - \$1,580.15 (monthly)
 - Source ST 209 Scrubber will be utilized for higher H₂S concentrations.
 - Single and 3phase power units are available.
 - Makeup water source must be provided.
 - Source Technologies is responsible for set up.
 - Source Technologies is responsible for all chemical upkeep and unit maintenance.