

PORT ST. LUCIE CITY COUNCIL  
AGENDA ITEM REQUEST

COUNCIL ITEM 13F  
DATE 12/12/11

Meeting Date: December 12, 2011

Public Hearing \_\_\_\_\_ Ordinance \_\_\_\_\_ Resolution \_\_\_\_\_ Motion X

Item: #20120023, Culpepper & Terpening Engineers, Inc.

Recommended Action:

- 1) Approval to use the Master Contract #20100050 and enter in a contract #20120023 with Culpepper & Terpening Engineers, Inc. for \$610,190.00 for the Design Services for the project to replace the City Water Mains.

Exhibits: Department memo attached - yes

Copies of the Contract.

Summary Explanation/Background Information: The City has determined that it is necessary to replace the water transmission mains in targeted areas within the City. Culpepper & Terpening Engineers, Inc., is pre-qualified for this type of service under Master Contract #20100050 and was the design engineer for similar water main installation. Therefore, to ensure an expedited project staff recommends awarding the attached contract.

The need for the above is:

Purchase is a replacement

Purchase was not budgeted.

Estimated Testing Expense: \$610,190.00

Department requests expenditure from the following:

Fund	447	Pipe Replacement
Cost Center	3316	Utility-Improvements O/T Bldgs.
Object Code	563004	Improvements-Design
Project	Y1206	Water Main Replacement Project

Director of OMB concurs with award: SRP

City Manager concurs with award: JAB

Department requests \_\_\_\_\_ minutes to make a presentation.

Submitted by: *Jesus Merejo*

Title: Director of Utilities

Date Submitted: 12/6/11

**RECEIVED**

DEC 07 2011

City Manager's Office

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## INTEROFFICE MEMORANDUM

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TO: Jerry A. Bentratt, City Manager  
FROM: Jesus A. Merejo, Utility Systems Director  
SUBJECT: Utility Improvements  
DATE: December 6, 2011

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In 1994 the City, acting in the best interest of the public, accepted the transfer of ownership and operational control of all of the assets of the Port St. Lucie Division of the St. Lucie County Utility Services Department. Since a majority of those utility assets were previously constructed by General Development Utilities ("GDU") beginning in the late 1950s, the City has been pursuing projects to repair, replace, rehabilitate and expand the transferred Utility Systems. As sufficient funding has become available, the City has undertaken various efforts to facilitate a successful water and sewer expansion program to meet demand and provide quality utility services to its customers within the City's Utility Service Area.

Among the City's projects concerning GDU-era facilities and infrastructure has been our pursuit of a program to replace water and wastewater mains and related appurtenances throughout the original system in accordance with today's construction standards. Those water and wastewater mains are quite expansive and require significant funding to accomplish their replacement. Certain investment proceeds belonging to the City's Utility Systems Department have become available and therefore present us with an opportunity to use those funds to replace water mains in some of our oldest service areas and take advantage of the current low construction costs. The considerable decline in construction costs due to the current economy that we have observed in our recent projects and the availability of funding has prompted us to consider accelerating our ongoing water main replacement program and starting now will allow us to take advantage of good winter construction weather.

The areas which we are currently targeting to continue our program to replace the GDU-era facilities are essentially fully developed and thus present multiple problems associated with retrofitting the old infrastructure. Such problems are similar to those previously encountered when we installed water and wastewater mains as part of our projects associated with the water/wastewater assessment program. The engineering and construction firms that performed the majority of the work for those particular projects were Culpepper & Terpening, Inc. and Felix Associates of Florida, Inc.

The design and field engineering expertise gained by Culpepper & Terpening and the familiarity with this type of construction and customer relations gained by Felix Associates is invaluable and would be of great benefit to the City as we proceed to replace those old GDU-era water mains.

Jerry Bentrott  
December 6, 2011  
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Moreover, engaging those experienced consultants and contractors to perform the project engineering, construction and geotechnical services through their continuing service contracts with the City would allow us to efficiently and expeditiously complete the work. Therefore, it is recommended that the Council approve the attached contracts with Culpepper & Terpening, Inc., Felix Associates of Florida, Inc., and Andersen Andre Consulting Engineers, Inc., all of whom are ready, willing and able to do this important work.

Should you have any questions or need additional information, please do not hesitate to contact me.

/dr

#### Attachments

c: Roger G. Orr, City Attorney  
Bradley E. Macek, Assistant Utility Systems Director  
Danny M. Segui, Deputy Utility Systems Director  
Laney C. Southerly, PE, Utility Engineering Mgr.  
Donna M. Rhoden, Utility Safety & Public Affairs Mgr.

**CITY OF PORT SAINT LUCIE  
CONTRACT #20120023**

This is a Time and Expense CONTRACT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between the CITY OF PORT ST. LUCIE (the "City"), FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, CULPEPPER & TERPENING, INC. (the "Engineer"), a Florida Corporation, Telephone No.(772) 464-3537 Fax No.(772) 464 9497, hereinafter called "Engineer", party of the second part.

**RECITALS**

In consideration of the below agreements and covenants set forth herein, the parties agree as follows:

**SECTION I**

**NOTICES & DESCRIPTION OF SERVICES TO BE PROVIDED**

The scope of work that the Engineer has agreed to perform is the design, permitting, and construction administration of the replacement of potable water mains within Sections U1, U2, U3, U4, U7, U9, U10, U11, U14, U15, U18, U19, 41, 42, 49, 50, 61 and any additional sections added per the City's direction of the City of Port St. Lucie. All Terms and Conditions of the Master Contract #20100050 will apply.

**Notices**

All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person, sent by certified mail with return receipt request, email or fax and addressed as follows unless written notice of a change of address is given pursuant to the provisions of this Contract.

Engineer: Culpepper & Terpening, Inc.  
Attn: James P. "Butch" Terpening, P.E.  
President  
2980 South 25<sup>th</sup> Street  
Ft. Pierce, FL. 34981  
Telephone: 772 464-3537, Fax: 772 464-9497  
Email: bterpening@ct-eng.com

City Contract Administrator: Office of Management & Budget  
Attn: Cheryl Shanaberger, Deputy Director OMB  
City of Port St. Lucie  
121 SW Port St. Lucie Blvd.  
Port St. Lucie, FL. 34984  
Telephone 772-871-7390, Fax: 772- 871- 7337  
Email: cheryls@cityofpsl.com

City Project Manager: Port St. Lucie Utility Systems Department (the "PSLUSD")

Mr. Laney Southerly, P.E.  
City of Port St. Lucie  
121 SW Port St. Lucie Blvd.  
Port St. Lucie, FL. 34985  
Telephone 772- 873- 6400, Fax: 772- 871-7615  
Email lsoutherly@cityofpsl.com

### **Scope of Work**

The Engineer shall design, permit, and provide contract administration for the replacement of approximately 42.0 miles of existing potable water mains and associated services within the above described sections of the City.

The engineering services for this project shall include the design, permitting and contract administration for the construction of replacement water mains, varying in sizes from 6" through 12" diameter. The project will include transmission mains, lot services, fire hydrants, valves and fittings, miscellaneous appurtenances and abandonment of the existing water mains within the project area. The design and permitting shall include upgrading the existing facility to meet current codes such as fire protection, and shall include the associated hydraulic modeling.

The Engineer shall utilize the City's Basemap for preparation of the construction documents.

The construction drawings shall be prepared on a 50 Scale, 24" x 36", plan views with conceptual details of crossing conflicts, provided as a "bubble" insert on the sheet. Profile views will only be provided for aerial and underground crossings of major canals or water bodies.

The Engineer shall coordinate with the public and/or private utilities the location of the proposed improvements. When applicable the Engineer shall assist the City in submitting permit applications for the proposed utility relocations and/or adjustments with applicable regulatory agencies.

The construction contract will be negotiated and awarded to one of the City's selected continuing service contractors. Construction plans, specification and documents shall be prepared and provided to the City for delivery to their Continuing Service Contractor.

The specific scope of services shall be as follows:

#### **PHASE 1: PLANNING DESIGN SERVICES**

Not In Contract

#### **PHASE 2: PRELIMINARY DESIGN SERVICES**

##### **Task 2.1: Design Survey**

Engineer shall provide surveying services as necessary to update the City's basemap as needed for the preparation of the construction documents.

## **Task 2.2: Project Management/Coordination**

Engineer shall provide the City with management and coordination of the design with the project stakeholders. The Engineer shall be responsible for establishing the project schedule and facilitating the coordination required to adhere to the project completion milestones set by the City.

The Engineer shall conduct weekly project design meetings to facilitate the management and coordination of the Project. The Engineer shall host weekly meetings, establish meeting agendas and publish meeting minutes to keep the project stakeholders informed of the development of the project. Progress plans shall be updated and posted to a web based file management system (i.e. Basecamp) to allow real time access to the plan development.

## **Task 2.3: Preliminary Design Drawings**

Engineer shall provide the City with the Preliminary Design Plans on an ongoing basis to meet the continual construction schedule as set as part of Task 2.2 above. Engineer shall update the City's hydraulic model of the area to insure that the water mains are sized appropriately to accommodate the required fire flow demands within the system. Any upsizing of existing water mains shall be approved by the City.

The Plans shall be prepared on 24" x 36" plan sheets at 50 scale. The plans shall be prepared in AutoCADD software compatible with the City's requirements. The plan preparation shall comply with the City's criteria and Design Standards. The Preliminary Design Plan submittal shall include the following components:

- Key Sheet (Preliminary)
- Sequence of Construction (Preliminary)
- Overall Utility Plan @ 200 scale (Preliminary)
- Plan Sheets @ 50 Scale (Preliminary)

The submittal documents shall also include the following:

- Engineer's Estimate of Probable Construction Cost
- Utility Verification Plan submittal to all affected utility providers

## **PHASE 3: FINAL DESIGN SERVICES**

### **Task 3.1: Construction (100% Plan) Submittal**

Engineer shall provide the City with the Construction (100%) Plans on an ongoing basis to meet the continual construction schedule as set as part of Task 2.3 above.

The Plans shall be prepared on 24" x 36" plan sheets at 50 scale. The plans shall be prepared in AutoCADD software compatible with the City's requirements. The plan preparation shall comply with the City's criteria and Design Standards. The Final Design Plan submittal shall include the following components:

- Key Sheet (Final)

- General Notes (Final)
- Overall Utility Plan @ 200 scale (Final)
- Sequence of Construction (Final)
- Plan Sheets @ 50 Scale (Final)
- Specific Crossing Detail Sheets (Final)
- Storm Water Pollution Prevention Plan (Final)
- Potable Water Details (Final) (Only if not in the existing City Utility Details)

The submittal documents shall also include the following:

- Update to the Engineer's Estimate of Probable Construction Cost commensurate with the development of the 100% plan information.
- City Review Response. Engineer shall prepare a written response to the City plan review of the Preliminary Plan submittal.

### **Task 3.2: Project Permitting**

The project shall be permitted through the PSLUSD for the facilities to be owned and maintained by the PSLUSD. Engineer shall provide the technical information required to allow the PSLUSD to self permit the potable water replacement improvements. The following permits are specifically not included:

- South Florida Water Management District - Environmental Resource Permits:
- South Florida Water Management District - Dewatering Permits:
- US Army Corps of Engineer's - Wetland Permits:
- Gopher Tortoise or Endangered Species – Permits
- Proprietary Utility Right of Way or Use Agreements

### **DELIVERABLES**

The Engineer shall be required to prepare and submit the following:

- One (1) hard copy of Preliminary Design Drawings
- One (1) PDF copy of Preliminary Design Drawings
- One (1) AutoCad copy of Preliminary Drawings
- Six (6) sets of full sized (24 x 36") signed and sealed 100% "Approved for Construction" Drawings
- One (1) PDF copy of 100% "Approved for Construction" Drawings
- One (1) AutoCad copy of 100% "Approved for Construction" Drawings

### **PHASE 4: CONSTRUCTION CONTRACT NEGOTIATION – NIC (by City)**

### **PHASE 5: CONSTRUCTION SERVICES**

#### **Task 5.1: General Services during Construction**

Engineer will provide contract administration assistance to the City throughout the duration of the construction of the project, resident Project Representation will be provided

concentrating on the mainline crews. The City will be responsible for inspections other than the mainline crews. The services to be provided during construction are based upon a seventy (70) weeks mainline construction duration.

The Engineer will hold regularly scheduled construction progress meetings as a construction scheduling tool. Critical elements and dates will be monitored with the contractor as construction progresses, so that avoidable delays can be anticipated and adjustments made. The City and affected residents will be kept informed by the Engineer of the Contractor's schedule.

Engineer shall provide a part time senior project representative, a resident project representative, Engineering Management and Clerical support during the construction for observing performance of the work of the contractor(s). The City will assist in Project Management to assist the Consultant.

### **Task 5.2: Resident Project Representation**

The Engineer shall provide Contract Management and Daily Construction Observation Services during the construction of the designed improvements and shall assist with interpretations of, and report on issues related to the construction plans and contract documents. Engineering services shall be provided for contract management support during the procurement process, review of construction documents and plans, coordination and daily field observation and documentation of construction activities, schedule monitoring, pay item tracking and monthly progress payments, coordination of progress meetings and other project related meetings as necessary, and review of as-built drawings by others to facilitate construction final payment and close-out.

The Engineer shall perform the following scope of construction related services:

1. Review and become familiar with contract documents (construction plans, specifications, bid documents, permits, etc.)
2. Conduct the pre-construction meeting and prepare response to questions if necessary.
3. Assist the City with any public involvement efforts necessary for the project.
4. Review the following Contractor supplied documents for consistency with the bid documents, plans and specifications prior to site mobilization:
  - A) Construction Project Schedule
  - B) Shop Drawings
  - C) Product Specifications
  - D) Dewatering Plan
  - E) NPDES Construction Notification
  - F) Utility Coordination Documentation
5. Coordination of daily site observation by Engineer's Resident Inspector, with the following tasks performed:
  - A) Review contractor's planned activities for the day
  - B) Coordinate testing of materials
  - C) Summarize personnel and equipment present
  - D) Observe construction materials staged onsite
  - E) Observe and monitor offsite property impacts

- F) Observe and monitor erosion control measures
  - G) Observe benchmarking
  - H) Observe and monitor maintenance of traffic
  - I) Perform periodic checks of contractor's compliance with contract specification requirements
  - J) Photo document site as needed
  - K) Document and summarize resolution of any problems, issues, contract interpretations, etc.
  - L) Complete Daily Work Reports
  - M) Document pay item quantities for constructed/installed materials
  - N) Coordinate with City inspectors as to the City's schedule.
6. Review and coordinate response for any written Contractor Requests for Information (RFIs) provided to Engineer.
  7. Review and provide recommendations to the City on any change orders necessary to complete intent of project scope.
  8. Review and provide recommendations to the City on the Contractor's Monthly Pay Request.
  9. Conduct progress meetings with City and Contractor personnel to discuss construction progress and issues.
  10. Review and provide the City with recommendations and resolution on any claim issue provided to Engineer by the Contractor.
  11. Conduct initial walk-through inspection of project with pertinent stakeholders and provide City with punch list input for correction of any deficient items.
  12. Conduct final walk-through inspection of project with the City to ensure correction of any deficient items noted on punch list.

## **DELIVERABLES**

The Engineer shall be required to prepare and submit the following:

1. A Construction Completion Package ( 1 hard copy) for the City's records. The package will include the following:
  - A) Dated final as-built schedule, time file and daily work reports.
  - B) Field survey/geotechnical verification data provided to Engineer by the Contractor and/or City.
  - C) Documentation of progress meetings, and any other pertinent project meetings with dates and notes.
  - D) Documentation of field decisions which caused any deviation from the plans and/or specifications.
  - E) Documentation of testing results provided to Engineer by the City's testing firm.
  - F) Documentation of progress payments and final payment to the Contractor.
  - G) Copies of all RFIs and responses, and change order requests provided by the contractor. Copies of all executed changes to the contract.
  - H) Copy of the initial inspection and punch list developed.
  - I) Copy of the final inspection along with the dates of resolution of the Punch list items.
  - J) Copy of all other permit satisfactions.
  - K) All other project records as developed.

2. Prepare CD/DVD containing electronic copy of deliverables in PDF format.

**PHASE 6: POST CONSTRUCTION SERVICES**

**Task 6.1: Agency Certifications**

Engineer shall prepare and submit certifications of construction completion to the appropriate permitting agencies. The certifications shall be based upon the site observations performed by the Engineer, testing reports provided by an outside testing agency, and as-built drawings by others.

**SECTION II  
TIME OF PERFORMANCE**

Contract period shall commence December 12, 2011, and terminate July 30, 2013 encompassing 567 calendar days. In the event all work required in the proposal specifications has not been completed by the specified date due to circumstances beyond the control of the Engineer, the Engineer agrees to provide work until all work specified in the proposal specifications has been rendered, at no additional cost to the City.

**SECTION III  
COMPENSATION**

This is a Time and Expense Contract. The total amount to be paid by the City to the Engineer is based on actual time spent on this project with an estimated amount of \$610,190.00. All Estimated Fee Amounts are Not to Exceed amounts. The City will not pay for out-of-pocket expenses and any reimbursable expense.

The Engineering fees for Port St. Lucie Sections U1, U2, U3, U4, U7, U9, U10, U11, U14, U15, U18, U19, 41, 42, 49, 50, and 61 are as follows:

**PHASE 1: PLANNING DESIGN SERVICES**

No Fee

**PHASE 2: PRELIMINARY DESIGN SERVICES**

**Task 2.1: Design Survey:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Project Manager	8	\$ 175.00	\$ 1,400.00
Project Surveyor	16	\$ 125.00	\$ 2,000.00
Survey Field Crew	80	\$ 125.00	\$ 10,000.00
<b>TOTAL</b>			<b>\$ 13,400.00</b>

**Task 2.2: Project Management/Coordination:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Project Manager	0	\$ 175.00	\$ -
Project Engineer	0	\$ 125.00	\$ -
CADD Technician	0	\$ 60.00	\$ -
Clerical	0	\$ 40.00	\$ -
Principal Engineer	150	\$ 195.00	\$ 29,250.00
<b>TOTAL</b>			\$ 29,250.00

**Task 2.3: Preliminary Design Drawings:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Project Manager	75	\$ 175.00	\$ 13,125.00
Project Engineer	185	\$ 125.00	\$ 23,125.00
CADD Technician	318	\$ 60.00	\$ 19,080.00
Principal Engineer	0	\$ 195.00	\$ -
<b>TOTAL</b>			\$ 55,330.00

**PHASE 3: FINAL DESIGN SERVICES**

**Task 3.1: Construction (100% Plan) Submittal:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Project Manager	50	\$ 175.00	\$ 8,750.00
Project Engineer	140	\$ 125.00	\$ 17,500.00
CADD Technician	390	\$ 60.00	\$ 23,400.00
Principal Engineer	0	\$ 195.00	\$ -
<b>TOTAL</b>			\$ 49,650.00

**Task 3.2: Construction Documents:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Project Manager	17	\$ 175.00	\$ 2,975.00
Project Engineer	78	\$ 125.00	\$ 9,750.00
Clerical	33	\$ 40.00	\$ 1,320.00
Principal Engineer	0	\$ 195.00	\$ -
<b>TOTAL</b>			\$ 14,045.00

**Task 3.3: Project Permitting:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Project Manager	12	\$ 175.00	\$ 2,100.00
Project Engineer	6	\$ 125.00	\$ 750.00
CADD Technician	0	\$ 60.00	\$ -
Clerical	0	\$ 40.00	\$ -
Principal Engineer	0	\$ 195.00	\$ -
<b>TOTAL</b>			\$ 2,850.00

**PHASE 4: CONSTRUCTION CONTRACT NEGOTIATIONS:**

**Task 4.1: Construction Contract Negotiations:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Construction Manager	2	\$ 175.00	\$ 350.00
Project Engineer	0	\$ 125.00	\$ -
Clerical	0	\$ 40.00	\$ -
Principal Engineer	5	\$ 195.00	\$ 975.00
<b>TOTAL</b>			<b>\$ 1,325.00</b>

**PHASE 5: CONSTRUCTION SERVICES:****Task 5.1: General Services During Construction:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Construction Manager	940	\$ 175.00	\$ 164,500.00
Clerical	940	\$ 40.00	\$ 37,600.00
<b>TOTAL</b>			<b>\$ 202,100.00</b>

**Task 5.2: Resident Project Representation:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Senior Construction Inspector	544	\$ 90.00	\$ 48,960.00
Construction Inspector	2528	\$ 75.00	\$ 189,600.00
<b>TOTAL</b>			<b>\$ 238,560.00</b>

**PHASE 6: POST CONSTRUCTION SERVICES****Task 6.1: Agency Certifications:**

	<u>Est. Hours</u>	<u>Rate</u>	<u>Est. Fee</u>
Construction Manager	12	\$ 175.00	\$ 2,100.00
Project Engineer	0	\$ 125.00	\$ -
Clerical	12	\$ 40.00	\$ 480.00
Principal Engineer	0	\$ 195.00	\$ -
<b>TOTAL</b>			<b>\$ 2,580.00</b>

**TASK 8: DIRECT EXPENSES****Task 8.1: Direct Expenses:**

Task 8.1:		<u>Fixed Fee</u>
Direct Expenses		\$ 1,100.00
<b>TOTAL</b>		<b>\$ 1,100.00</b>

<b>TOTAL FEES</b>	<b>\$610,190.00</b>
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Total is a Not to Exceed amount that will be paid at actual time and expense

**Engineer VISA Payment Procedures**

1. A ghost account with Bank of America (BOA) will be established for the project. The account dollar limit will be established by the City's estimate of monthly expense. The account will also have limits as per the MCC code. Reasonable total invoice amounts will also be established. The ghost account will be entered with the proper expense codes. The Engineer will be provided this ghost account number to process payments.
2. A purchase order will be issued to the Engineer for this project.
3. The Engineer will send the Project Manager by the 5th of each month a detail pay request listing employee title, hours of work, hourly rate and related tasks that were completed by the end of the previous month. A copy of the up to date as-built drawings and revised project schedule shall accompany each pay request.
4. The Project Manager will audit to determine that work and materials that are being billed have been completed and installed as per contract specifications. The Project Manager will sign documents that state the payment is correct and payment by the City is authorized. This is the invoice that will authorize the City to pay the bank provider-BOA. The Project Manager will breakout the pay items and assign to purchase order subsections as part of the process.
5. The Project Manager will email the approved pay request to the Contract Specialist, City's P-Card Administrator and the Engineer to proceed with placing the charge on the BOA specified account.
6. The Engineer may not place the charge on the ghost account until the 10<sup>th</sup> of each month. Under no circumstances will the account be used between the 1<sup>st</sup> and 5<sup>th</sup> of the month.
7. The Project Manager will have the signed invoice and documents to the Contract Specialist and P-Card Administrator no later than the 10<sup>th</sup> of each month.
8. The Project Manager will mark any pay request that should not be paid and provide explanation. All pay estimates approved by the Project Manager that are charged to Visa must equal the invoice. All adjustments must be made on following pay estimate.
9. The Office of Management and Budget will balance statement and issue all dispute items.
10. The Office of Management and Budget will produce summary sheet and send all documentation to Finance for payment.

All work compensated for under this Contract, including partial payments, shall become the property of the City of Port St. Lucie without restrictions or limitations. Work under this Contract shall include but not be limited to field notes, data collector downloads, sketches, tracings, drawings, computations, details, design calculations, plan, electronic files and other related documents. The Engineer shall not be held liable for any reuse of the work and shall not be held liable for any modifications made to the work by others.

All invoices and correspondence relative to this Contract must contain the Purchase Order number, last 4 digits of the BOA ghost account and Contract number.

#### **SECTION IV CONFORMANCE WITH PROPOSAL**

It is understood that the materials and/or work required herein are in accordance with the proposal made by the Engineer.

#### **SECTION V INDEMNIFICATION/INSURANCE**

To the extent permitted under Florida Statutes, the Engineer shall indemnify, defend, and hold harmless the City, its representatives, employees and elected and appointed officials, from and against all claims, cause, demands, legal fees, cost of action, losses, damages or other expenses occasioned by any negligent act, conduct, error or omission by the Engineer, or its agents, employees or sub-consultants, in the performance of this Contract. As consideration for this indemnity provision the Engineer shall be paid the sum of ten dollars (\$10.00), which will be paid at execution of Contract.

The Engineer 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 Contract, insurance coverage, limits, including endorsements, as described herein.

The Engineer shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Florida Statutes Chapter 440. Coverage must include Employers' Liability with a minimum limit of \$100,000 each.

The Engineer shall agree to maintain any Auto, Business Automobile Liability at a limit of liability not less than \$500,000 each occurrence for all owned, non-owned and hired automobiles. In the event the Engineer does not own any automobiles the Business Auto Liability requirement shall be amended allowing Engineer 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.

Commercial General Liability for public liability during the lifetime of this Contract shall have minimum limits of \$1,000,000 per occurrence, \$2,000,000 per aggregate, for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on a per project occurrence-made basis; the City shall not accept claims-made policies. Specific endorsements will be requested depending upon the type and scope of work to be performed.

The Engineer shall agree to maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but not the

obligation, to review and request a copy of Engineer's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Engineer warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Engineer shall agree to purchase a SERP with a minimum reporting period not less than three (3) years.

Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and Policies shall clearly state that coverage required by the contract has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, to its Commercial General Liability and Automobile Liability Policies. The name for the Additional Insured endorsement issued by the insurer shall read "City of Port St. Lucie, political subdivision of the State of Florida, its officers, employees and agents", and Contract #20120023. The Certificate of Insurance and Policy shall unequivocally provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Said liability insurance must be acceptable by and approved by the City as to form and types of coverage. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Engineer 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.

Engineer 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 agreement to waive subrogation without an endorsement then Engineer 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. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Engineer enter into such an agreement on a pre-loss basis.

It shall be the responsibility of the Engineer to insure that all subconsultants comply with the same insurance requirements referenced above.

All deductible amounts shall be paid for and be the responsibility of the Engineer for any and all claims under this Contract.

The Engineer may satisfy the minimum limits required above for 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 Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability Policy 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 and reject any insurer providing coverage.

**SECTION VI**  
**PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS**

Subject to the laws of the State of Florida and of the United States, neither Engineer nor any subconsultant, supplier of materials, laborer or other person shall file or maintain any lien for labor or materials delivered in the performance of this Contract against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

**SECTION VII**  
**WORK CHANGES**

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Contract, and agrees to make corresponding adjustments in the Contract price and time for completion. All changes will be authorized by a written change order signed by the Director of OMB or his designee as representing the City. Work shall be changed and the contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the contract price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties.

**SECTION VIII**  
**COMPLIANCE WITH LAWS**

The Engineer shall give all notices required by and shall otherwise comply with all applicable laws, ordinances and codes and shall, at his own expense, secure and pay the fees and charges for all licensing required for the performance of his work. All materials furnished and work done is to comply with all local, state and federal laws and regulations.

**SECTION IX**  
**ADDITIONAL REQUIREMENTS**

In the event of any conflict between the terms and conditions, appearing on any purchase order or work authorization issued relative to this Contract, and those contained in this Contract and the RFP herein referenced, the terms of this Contract and RFP herein referenced shall apply.

**SECTION X**  
**LICENSING**

Engineer warrants that he possesses all licenses and certificates necessary to perform required work and is not in violation of any laws. Engineer warrants that his license and certificates are current and will be maintained throughout the duration of the contract.

**SECTION XI**  
**SAFETY PRECAUTIONS**

Precaution shall be exercised at all times for the protection of persons, including employees, and property. All plans and construction must be ADA compliant. The safety provisions of all applicable laws and building and construction codes shall be observed. The

selected Proposer will submit all proposals in compliance with the 28 C.F.R. § 35.151. Where ADA and Florida Building Codes do not agree the most stringent applies or ADA supersedes.

## **SECTION XII ASSIGNMENT**

Engineer shall not delegate or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City.

## **SECTION XIII TERMINATION**

If the Engineer refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in this Contract, or as may be modified in accordance with this Contract, the City by written notice to the Engineer, may terminate Engineer's rights to proceed. On such termination, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Engineer and his sureties shall be liable, jointly and severally to the City for any additional cost incurred by it in its completion of the work.

The City may terminate this Contract with or without cause by giving the Engineer a thirty (30) days notice in writing. Upon delivery of said notice and upon expiration of the thirty (30) day period, the Engineer shall discontinue all services in connection with the performance of this Contract and shall proceed to cancel promptly all related existing third party contracts. Termination of the Contract by the City pursuant to this paragraph shall terminate all of the City's obligations hereunder. In the event of termination, the Engineer will be paid for all services rendered to the date of termination, all expenses subject to reimbursement hereunder.

## **SECTION XIV LAW AND VENUE**

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken pursuant to this Contract shall be in St. Lucie County, Florida.

## **SECTION XV APPROPRIATION APPROVAL**

The Engineer acknowledges that the City of Port Saint Lucie's performance and obligation to pay under this contract is contingent upon an annual appropriation by the City Council. The Engineer agrees that, in the event such appropriation is not forthcoming, this Contract may be terminated by the City and that no charges, penalties or other costs shall be assessed.

**SECTION XVI  
RENEWAL OPTION**

**Not Applicable**

**SECTION XVII  
ENTIRE AGREEMENT**

The written terms and provisions of this contract shall supersede all prior verbal statements of any official or other representative of the City. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this contract or contract documents.

**SECTION XVIII  
TRUTH-IN-NEGOTIATIONS**

In accordance with the provisions of Section 287.055, Florida Statutes, the Engineer agrees to execute a truth-in-negotiations certificate and agrees that the original contract price and any additions may be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

**SECTION XIV  
CONFLICT OF INTEREST**

The City hereby acknowledges that the Engineer may be performing professional services for private developers within the Treasure Coast area. Should a conflict of interest arise between providing services to the City and/or other clients, the Engineer shall terminate its relationship with the other client to resolve the conflict of interest. The City Manager shall determine whether a conflict of interest exists. At the time of each Project Proposal, and throughout the duration of this contract, the Engineers shall disclose all of their Treasure Coast clients and related Scope of Work.

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**TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT**

STATE OF FLORIDA       §  
COUNTY OF ST. LUCIE   §

Before me, the undersigned authority, personally appeared affiant who being first duly sworn, deposes and says:

1. That the undersigned firm is furnishing this Truth in Negotiation Certificate pursuant to Section 287.055(5)(a) of the Florida Statutes for the undersigned firm to receive an agreement for professional services with the City of Port St. Lucie, St. Lucie County, Florida.

2. That the undersigned firm is a corporation which engages in furnishing professional architect and engineering services and is entering into an agreement with the City of Port St. Lucie, St. Lucie County, Florida to provide professional services for a project known as #20120023 Design, Permitting and Construction Administration for Potable Water Main Replacements.

3. That the undersigned firm has furnished the City of Port St. Lucie, St. Lucie County, Florida a detailed analysis of the cost of the professional services required for the project.

4. That the wage rate information and other factual unit cost, which the undersigned firm furnished, were accurate, complete and current at the time the undersigned firm and the City of Port St. Lucie entered into the agreement for professional services on the project.

5. That the agreement which the undersigned firm and the City of Port St. Lucie entered into on this job contained a provision that the original agreement price and any additions thereto shall be adjusted to include any significant sums by which the City of Port St. Lucie determines the agreement price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit cost and that all such agreement adjustments shall be made within one (1) year following the end of the agreement.

FURTHER AFFIANT SAYETH NAUGHT

Culpepper & Terpening, Inc.  
Name of Firm

\_\_\_\_\_  
By: President

The foregoing instrument was acknowledged before me by \_\_\_\_\_  
who has produced \_\_\_\_\_ as identification or is personally known to  
me.

WITNESS my hand and official seal in the State of County last aforesaid this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Notary Name (typed or printed)

\_\_\_\_\_  
Title or Rank

IN WITNESS WHEREOF, the parties have executed this contract at Port St. Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By:

\_\_\_\_\_  
City Manager

ATTEST:

By:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Authorized Representative of Culpepper & Terpening Inc.)

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Before me personally appeared: \_\_\_\_\_ )  
(please print)

Please check one:

Personally known \_\_\_\_\_

Produced Identification: \_\_\_\_\_  
(type of identification)

Identification No. \_\_\_\_\_

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that \_\_\_\_\_ executed said instrument for the purposes therein expressed. he/she

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Signature

Notary Public-State of \_\_\_\_\_ at Large.

My Commission Expires \_\_\_\_\_.  
(seal)