

**CITY OF PORT SAINT LUCIE
CONTRACT # 20210041**

This Contract is for Professional Consulting Services for Construction Engineering and Inspection (CEI) & Geotechnical (GEO) Services for Floresta Drive Phase 2, executed this _____ day of _____, 202_, by and between the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, and Consultant's Name, Address, Telephone No. , hereinafter called "Consultant", party of the second part.

**SECTION I
RECITALS**

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

WHEREAS, Consultant is licensed in the State of Florida; and

WHEREAS, the City wishes to contract for Professional Consulting Services for Construction Engineering and Inspection (CEI) & Geotechnical (GEO) Services for Floresta Drive Phase 2 as well as other tasks (Work) more specifically described in this Contract; and

WHEREAS, Consultant is qualified, willing, and able to provide the Scope of Services and work on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Provider to perform the Scope of Services and work/services specified and, in an amount, agreed to below.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein name, the Parties agree as follows: The Recitals set forth above are hereby incorporated into this Contract and made a part of hereof for reference.

**SECTION II
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.

Consultant: Marcelo Dimitriou, P.E.
Director of Construction Services
[Culpepper and Terpening, Inc.](#)
2980 South 25th Street
Fort Pierce, FL 34981
Telephone: 772-979-0082
Facsimile: 772-464-9497
Email: mdimitriou@ct-eng.com

City Contract Administrator: Procurement Management Department
Jason Bezak, CPPB, NIGP-CPP, Procurement Agent II
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
772-344-4068 / FAX 772-871-7337
E-mail: JBezak@cityofpsl.com

City Project Manager: Public Works Department
Attn: Frank Knott, Engineering Manager
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Telephone: 772-344-4290
Email: FKnott@cityofpsl.com

SECTION III
DESCRIPTION OF SERVICES TO BE PROVIDED

Scope of Work

This project consists of constructing improvements associated with the Floresta Drive Phase 2 Project. **Estimated construction duration – 730 calendar days.**

The CEI services for Floresta Drive Phase 2 shall include:

- Review of construction plans for constructability issues
- Field observations, including daily photos and documentations for compliance
- Design modifications as needed (*adjustments that can be made with field changes not requiring EOR*)
- Geotechnical Services and Testing, including but not limited to:
 - Density Testing
 - Concrete compressive strength testing
 - Proctor Tests (AASHTO T180)
 - Asphalt cores/densities
- Coordination and meetings, including pre-construction and progress meetings, with the Consultant, City, public, utility companies, landowners, and testing firms
- Coordination of a public informational meeting
- Review all Consultant's change orders
- Review Consultant's pay estimates, pay requests, and schedules
- Review shop drawings
- Review of test results
- Preparation of project progress reports
- Coordination of permit conditions and compliance, including preparation of all required reporting and documents
- Provide City with copies of project records
- Respond to request for information by the Consultant and public
- Project Closeout and *review of as-builts by others* to ensure compliance with permitting agencies

The Engineer shall observe work performed and material used to determine if the work has been completed in accordance with the construction contract.

Deliverables

The Engineer shall prepare and submit the following:

1. Construction Completion Package containing 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 Consultant.
 - c. Final as-built plans provided to Engineer by the Consultant.
 - d. Documentation of progress meetings, public informational meetings, and any other pertinent project meetings with dates and notes.
 - e. Documentation of all field decisions which caused any deviation from the plans and/or specifications.

- f. Signed and Sealed test results.
 - g. Documentation of progress payments and final payment to the Consultant.
 - h. Copies of all RFIs and responses.
 - i. Copies of all executed changes to the contract.
 - j. Copies of the final inspection punch lists with dates of item resolution.
 - k. All other project records.
2. CD/DVD containing electronic copy of all deliverables noted above in PDF format.
 3. Final as-built plans in AutoCAD (2015 version or newer), PDF and hard copy formats *as provided by the Consultant*.

**SECTION IV
TIME OF PERFORMANCE**

Contract period shall begin on _____, 2021 and terminate on _____, 202 for a total of **850 calendar days**. The Consultant will be required to commence work under this Contract within ten (10) calendar days after the start date identified in this Contract. In the event all work required in this contract has not been completed by the specified date, the Consultant agrees to provide work as authorized by the Project Manager until all work specified in this contract has been rendered. Written requests shall be submitted to the Project Manager for consideration of extension of completion time due to strikes, unavailable materials, or other similar causes over which the Consultant feels he has no control. Requests for time extensions shall be submitted immediately but in no event more than two (2) weeks upon occurrence of conditions, which, in the opinion of the Consultant, warrant such an extension with reasons clearly stated and a detailed explanation given as to why the delays are considered to be beyond the Consultant's control.

**SECTION V
RENEWAL OPTION**

There are no renewal options for this contract.

**SECTION VI
COMPENSATION**

The total amount to be paid by the City to the Consultant is on a time and expense basis per the fee schedule for a grand total of **\$2,625,990.75**. Payments will be disbursed in the following manner:

Start-up	Hrs./Week	Total Weeks	Total Hours	Rate/Hr.	Total
Project Manager/Sr. P.E.	15	3.00	45.00	\$ 190.00	\$ 8,550.00
Sr. Project Engineer	3	3.00	9.00	\$ 190.00	\$ 1,710.00
Deputy Project Manager	20	3.00	60.00	\$ 142.00	\$ 8,520.00
Sr. Inspector	30	2.00	60.00	\$ 96.00	\$ 5,760.00
Sr. Inspector	10	2.00	20.00	\$ 96.00	\$ 1,920.00
CADD Technician/GIS	---	---	6.00	\$ 110.00	\$ 660.00
Administrative Support	6	3.00	18.00	\$ 55.00	\$ 990.00
				Subtotal	\$ 28,110.00
Construction (104.3 weeks; 730-day construction time)	Hrs./Week	Total Weeks	Total Hours	Rate/Hr.	Total
Principal Engineer, P.E. (C&T)	0.5	104.30	52.15	\$ 195.00	\$ 10,169.25
Project Manager/Sr. P.E. (C&T)	20	104.30	2,086.00	\$ 190.00	\$ 396,340.00
Sr. Project Engineer (JMT)	4.5	104.30	469.35	\$ 190.00	\$ 89,176.50
Deputy Project Manager (JMT)	20	104.30	2,086.00	\$ 142.00	\$ 296,212.00
Sr. Inspector (C&T, JC)	40	104.30	4,172.00	\$ 96.00	\$ 400,512.00
Sr. Inspector (JMT, JA)	40	104.30	4,172.00	\$ 96.00	\$ 400,512.00
Inspector (C&T, TG)	40	80.00	3,200.00	\$ 90.00	\$ 288,000.00
Inspector (JMT, FR)	40	96.00	3,840.00	\$ 90.00	\$ 345,600.00

Bridge Inspector (JMT, SL)	40	40.00	1,600.00	\$ 96.00	\$ 153,600.00
CADD Technician/GIS	---	---	50.00	\$ 110.00	\$ 5,500.00
Survey Crew (2 Man)	---	---	40.00	\$ 125.00	\$ 5,000.00
Administrative Support	6	104.30	625.80	\$ 55.00	\$ 34,419.00
				Subtotal	\$2,425,040.75
Close-out	Hrs./Week	Total Weeks	Total Hours	Rate/Hr.	Total
Project Manager/Sr. P.E.	15	3.00	45.00	\$ 190.00	\$ 8,550.00
Sr. Project Engineer	2	3.00	6.00	\$ 190.00	\$ 1,140.00
Deputy Project Manager	16	3.00	48.00	\$ 142.00	\$ 6,816.00
Sr. Inspector	40	3.00	120.00	\$ 96.00	\$ 11,520.00
Sr. Inspector	10	3.00	30.00	\$ 96.00	\$ 2,880.00
Inspector	0	-	-	\$ 85.00	\$ -
CADD Technician/GIS	---	---	10.00	\$ 110.00	\$ 1,100.00
Administrative Support	4	4.00	16.00	\$ 55.00	\$ 880.00
				Subtotal	\$ 32,886.00
Geotech/Testing			Total Hours	Rate	Total
Project Engineer (Geo)			120.00	\$ 150.00	\$ 18,000.00
Sr. Field Tech.			120.00	\$ 80.00	\$ 9,600.00
Admin./Tech Secretary			60.00	\$ 55.00	\$ 3,300.00
Vibration Monitoring Budget					
Project Engineer (Geo)			-	\$ 150.00	\$ -
Sr. Field Tech.			-	\$ 80.00	\$ -
Seismograph (per week)			-	\$ 400.00	\$ -
			Est. Qty.	Unit Price	
Density Tests			-	\$ 28.00	\$ -
Proctor Tests			30.00	\$ 95.00	\$ 2,850.00
LBR			30.00	\$ 305.00	\$ 9,150.00
Percent Fines Tests			30.00	\$ 55.00	\$ 1,650.00
Concrete Cylinders (sets)			16.00	\$ 110.00	\$ 1,760.00
Coring Mobilization (each mob)			8.00	\$ 125.00	\$ 1,000.00
Core Machine Rental (per day)			8.00	\$ 155.00	\$ 1,240.00
Generator Rental (per day)			8.00	\$ 55.00	\$ 440.00
Field Tech. (2 Person, coring)			48.00	\$ 120.00	\$ 5,760.00
Cores SG Testing (each core)			24.00	\$ 60.00	\$ 1,440.00
Liquid AC, Gradation (each sample)			24.00	\$ 350.00	\$ 8,400.00
PDA			1.00	\$ 45,000.00	\$ 45,000.00
				Sub-total	\$ 109,590.00
Plan Review	Hrs./Week	Total Weeks	Total Hours	Rate/Hr.	Total
Project Manager/Sr. P.E.	---	---	18.00	\$ 190.00	\$ 3,420.00
Sr. Project Engineer	---	---	18.00	\$ 190.00	\$ 3,420.00
Deputy Project Manager	---	---	18.00	\$ 142.00	\$ 2,556.00
Sr. Inspector	---	---	18.00	\$ 96.00	\$ 1,728.00
Administrative Support	---	---	4.00	\$ 55.00	\$ 220.00
				Subtotal	\$ 11,344.00
Pre-Work Tasks - Misc. City Requests	Hrs./Week	Total Weeks	Total Hours	Rate/Hr.	Total
Project Manager/Sr. P.E.	---	---	50.00	\$ 190.00	\$ 9,500.00
Sr. Project Engineer	---	---	10.00	\$ 190.00	\$ 1,900.00
Deputy Project Manager	---	---	10.00	\$ 142.00	\$ 1,420.00
Sr. Inspector	---	---	60.00	\$ 96.00	\$ 5,760.00

Administrative Support	---	---	8.00	\$ 55.00	\$ 440.00
				Subtotal	\$ 19,020.00
Direct Expense				TOTAL =	\$2,625,990.75

Engineer VISA Payment Procedures

1. An 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 expenses. The account will also have limits as per the Merchant Category Code (MCC). Reasonable total invoice amounts will also be established. The account will be entered with the proper expense codes. The Engineer will be provided this account number to process payments.
2. A purchase order to the Engineer for this project may not be issued.
3. The Engineer will send the Project Manager (PM) by the 1st of each month a detailed pay request listing employee title, hours of work, hourly rate and related tasks that are completed. Partial release of liens will be provided if subconsultants were used by Engineer.
4. The PM will audit to determine that work and materials that are being billed have been completed and installed as per contract specifications. The PM will verify the partial release of liens. The PM will sign documents that state the payment is correct and payment by the City is authorized.
5. The PM will email the approved pay request to the City's P-Card Administrator and the Project Manager to proceed with placing the charge on the BOA specified account.
6. The Engineer may not place the charge on the account until contacted by the City giving approval. Under no circumstances will the account be used between the 1st and 5th of the month.
7. Invoices that are not approved by the PM will be returned to the Engineer with a detailed explanation.
8. Procurement Management Department will balance statement and issue all dispute items.
9. Procurement Management Department will produce summary sheet and send all documentation to Finance for payment.

The Consultant shall not be paid additional compensation for any loss or damage, arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulties encountered in the performance of the work, or for any expenses incurred by, or as a consequence of the suspension or discontinuance of the work.

Payments shall be made provided the submitted invoice is accompanied by adequate supporting documentation and approved by Project Manager.

No payment for projects involving improvements to real property shall be due until Consultant delivers to City a complete release of all claims arising out of the Contract or receipts in full in lieu thereof, and an affidavit asserting personal knowledge that the releases and receipts include labor and materials for which a lien could be filed.

All invoices and correspondence relative to this Contract must contain the VISA Order number, Contract number, detail of items with prices that correspond to the Contract, unique invoice number and partial or final release of liens.

All payments not made within the time specified by this section shall bear interest from thirty (30) calendar days after the due date at the rate of 1 percent per month on the unpaid balance.

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

In the event the City deems it expedient to perform work which has not been done by the Consultant as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant as required in these Specifications, all expenses thus incurred by the City, at the City's option, will be invoiced to the Consultant and/or

deducted from payments due to the Consultant. Deductions thus made will not excuse the Consultant from other penalties and conditions contained in the Contract.

A Visa Order Form constitutes as the Notice to Proceed.

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. Any and all changes must be authorized by a written change order signed by the City's Purchasing Agent 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 before starting the work involved in the change.

SECTION VIII
CONFORMANCE WITH PROPOSAL

It is understood that the materials and/or work required herein are in accordance with the proposal made by the Consultant pursuant to the Request for Proposal and Specifications on file in the Procurement Management Department of the City. All documents submitted by the Consultant in relation to said proposal, and all documents promulgated by the City for inviting proposals are, by reference, made a part hereof as if set forth herein in full.

SECTION IX
INDEMNIFICATION/HOLD HARMLESS

Consultant agrees to indemnify, defend and hold harmless, the City, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of Consultant, agents, laborers, subconsultants or other personnel entity acting under Consultant control in connection with the Consultant's performance of services under this Contract and to that extent Consultant shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses including appeals. That the aforesaid hold-harmless Contract by Consultant shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Consultant or any agent laborers, subconsultants or employee of Consultant regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. Consultant shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by Consultant on the work. This indemnification shall survive the termination of this Contract.

SECTION X
SOVEREIGN IMMUNITY

Nothing contained in this Contract shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

SECTION XI
INSURANCE

The Consultant 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 Consultant and persons employed or utilized, including any independent consultants or subconsultants by the Consultant in the performance of this contract.

The Consultant 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 requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

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 Contract 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 Contract.

Workers' Compensation Insurance & Employer's Liability: The Consultant 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: 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 consultants 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, and Professional Liability, Certificates of Insurance and policies shall clearly state that coverage required by the Contract 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 contract name and number shall 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 Contract to exceed the above limits, the Consultant 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 Consultant 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 Consultant does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Consultant 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.

Professional Liability Insurance: Consultant shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 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 Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Consultant 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, Consultant shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided

Waiver of Subrogation: The Consultant 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 Consultant 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 Consultant for any and all claims under this Contract. 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 bidder's most recent annual report or audited financial statement.

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

The Consultant 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.

A failure on the part of the consultant to execute the contract and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

SECTION XII **ACTS OF GOD**

The Consultant shall be responsible for all preparation of the site for Acts of God, including but not limited to; earthquake, flood, tropical storm, hurricane or other cataclysmic phenomenon of nature, rain, wind or other natural phenomenon of normal intensity, including extreme rainfall. No reparation shall be made to the Consultant for damages to the Work resulting from these Acts. The City is not responsible for any costs associated with pre or post preparations for any Acts of God.

Emergencies – In the event of emergencies affecting the safety of persons, the work, or property, at the site or adjacent thereto, the Consultant, or his designee, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. In the event such actions are taken, the Consultant shall promptly give to the City written notice and contact immediately by phone, of any significant changes in work or deviations from the Contract documents caused thereby, and if such action is deemed appropriate by the City a written authorization signed by the City covering the approved changes and deviations will be issued.

SECTION XIII PROHIBITION AGAINST FILING OR MAINTAINING LIENS AND SUITS

Subject to the laws of the State of Florida and of the United States, neither Consultant nor any Sub-Consultant 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 XIV COMPLIANCE WITH LAWS

The Consultant 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 permits required for the performance of the Contract. All materials furnished and works done are to comply with all federal, state, and local laws and regulations. Consultant will comply with all requirements of 28 C.F.R. § 35.151. Consultants and Sub-Consultant, shall comply with § 119.0701, Fla. Stat. The Consultant and Sub-Consultant, are to allow public access to all documents, papers, letters, or other material made or received by the Consultant in conjunction with this Contract, unless the records are exempt from Art. I, § 24(a), Fla. Const. and § 119.07(1)(a), Fla. Stat. Pursuant to § 119.10(2)(a), Fla. Stat., any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in § 775.082 and § 775.083 Fla. Stat.

RECORDS

The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. CONSULTANT'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

Consultant agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service;

1. 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.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
2. During the term of the contract, the Consultant shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City.
3. 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.

Consultant's records under this Contract include but are not limited to, supplier/subconsultant invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.

4. The Consultant agrees to make available to the City, during normal business hours all books of account, reports and records relating to this contract.
5. A Consultant 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.

Upon request from the City's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.

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 the contract term and following completion of the contract if the Consultant does not transfer the records to the City.

Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Consultant, or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant 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 in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871 5157
pr@cityofpsl.com**

**SECTION XV
INSPECTION AND CORRECTION OF DEFECTS**

Deductions - In the event the City deems it expedient to perform work which has not been done by the Consultant(s) as required by these Specifications, or to correct work which has been improperly and/or inadequately performed by the Consultant(s) as required in these Specifications, all expenses thus incurred by the City, in the City's option, will be invoiced to the Consultant(s) and/or may be deducted from payments due to the Consultant(s). Deductions thus made will not excuse the Consultant(s) from other penalties and conditions contained in the Contract.

**SECTION XVI
SCRUTINIZED COMPANIES**

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over \$1,000,000 that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran petroleum Energy Sector List, or do any business with Cuba or Syria. Both lists are created pursuant to section 215.473,

FloridaStatutes.https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Quarterly/2017_12_13_Web_Update_PFIA_Prohibited_List.pdf?ver=2017-12-13-144624-667

SECTION XVII
ADDITIONAL REQUIREMENTS

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

City's Public Relations Image – The Consultant's personnel shall at all times handle complaints and any public contact with due regard to the City's relationship with the public. Any personnel in the employ of the Consultant involved in the execution of work that is deemed to be conducting him/herself in an unacceptable manner shall be removed from the project at the request of the City Manager.

Patent Fees, Royalties, and Licenses – If the Consultant requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the Consultant and his surety shall indemnify and hold harmless the City from any and all claims for infringement in connection with the work agreed to be performed. The Consultant shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during the prosecution of or after completion of the work.

Permits - The Consultant shall be responsible for obtaining all permits, licenses, certifications, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation. The Consultant shall be required to complete a **W-9 Taxpayer Identification Form**, provided with the City's contract, and return it with the signed contract and insurance documents.

Cooperative Purchasing Agreement - This contract may be expanded to include other governmental agencies provided a cooperative purchasing agreement exists or an inter-local agreement for joint purchasing exists between the City of Port St. Lucie and other public agencies. Consultant(s) may agree to allow other public agencies the same items at the same terms and conditions as this contract, during the period of time that this contract is in effect. Each political entity will be responsible for execution of its own requirements with the Consultant.

Contractual Relations - The Consultant(s) are advised that nothing contained in the contract or specifications shall create any contractual relations between the City and Sub-Consultant of the Consultant(s).

SECTION XVIII
ASSIGNMENT

Consultant shall not delegate, assign 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 XIX
TERMINATION AND DELAYS

Termination for Breach of Contract - If the Consultant refuses or fails to deliver material as required and/or prosecute the work with such diligence as will ensure its completion within the time specified in this Contract, the City by written notice to the Consultant, may terminate Consultant's rights to proceed. Upon such termination, the City may take over the work and prosecute the same to completion, by Contract or otherwise, and the Consultant and his sureties shall be liable to the City for any additional cost incurred by it in its completion of the work. The City may also in event of termination obtain undelivered materials, by Contract or otherwise, and the Consultant and his sureties shall be liable to the City for any additional cost incurred for such material. Consultant and his sureties shall also be liable to the City for liquidated damages for any delay in

the completion of the work as provided below. If the Consultant's right to proceed is so terminated, the City may take possession of and utilize in completing the work such materials, tools, equipment and facilities as may be on the site of the work and necessary, therefore.

Excusable Delays - The right of the Consultant to proceed shall not be terminated nor shall the Consultant be charged with liquidated damages for any delays in the completion of the work or delivery of materials due to: (1) any acts of the Federal Government, including controls or restrictions or requisitioning of materials, equipment, tools or labor by reason of war, national defense or any other national emergency, (2) any adverse acts of the City, (3) causes not reasonably foreseeable by the parties at the time of the execution of the Contract that are beyond the control and without the fault or negligence of the Consultant, including but not restricted to, acts of God, acts of the public enemy, acts of another Consultant in the performance of some other Contract with the City, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions, and (4) any delay of any Subconsultant occasioned by any of the above mentioned causes. However, the Consultant must promptly notify the City in writing within two (2) calendar days of the cause of delay. If, on the basis of the facts and the terms of this Contract, the delay is properly excusable the City shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

Termination by the City - The City may terminate this Contract with or without cause by giving the Consultant thirty (30) day notice in writing. Upon delivery of said notice the Consultant 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 and no charges, penalties or other costs shall be due Consultant except for work timely completed.

Termination for Insolvency. The City also reserves the right to terminate the remaining services to be performed in the event Consultant is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

SECTION XX **LAW, VENUE AND WAIVER OF JURY TRIAL**

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 to enforce this Contract shall be in St. Lucie County, Florida.

The parties to this contract hereby freely, voluntarily, and expressly waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

SECTION XXI **APPROPRIATION APPROVAL**

The Consultant acknowledges that the City of Port St Lucie's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. The Consultant 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 XXII **TRUTH-IN-NEGOTIATIONS**

In accordance with the provisions of Section 287.055, Florida Statutes, the Consultant 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 XXIII

CONFLICT OF INTEREST

The City hereby acknowledges that the Consultant 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 Consultant 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 the Consultant shall disclose all of its Treasure Coast clients and related Scope of Work.

SECTION XXIV **PUBLIC RECORDS / TRADE SECRETS / COPYRIGHT**

The Proposer's response to the RFP is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFQ and the Contract to be executed for this RFP, subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFQ AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFQ OR ANY PART THEREOF AS COPYRIGHTED.

SECTION XXV **PROHIBITION AGAINST CONTINGENT FEES**

The Consultant warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

SECTION XXVI **CODE OF ETHICS**

Consultant warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in Chapter 112.311 et seq., Florida Statutes, and Code of Ethics Ordinances in Section 9.14 of the City of Port St. Lucie Code.

SECTION XXVII **POLICY OF NON-DISCRIMINATION**

Consultant shall not discriminate against any person in its operations, activities or delivery of services under this Contract. Consultant 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 XXVIII
SEVERABILITY

The Parties to this Contract expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Contract is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Contract) and the remainder of this Contract, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Contract to be inequitable under the circumstances.

SECTION XXIX
ENTIRE AGREEMENT

The written terms and provisions of this Contract shall supersede any and all prior verbal or written 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.

TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT

STATE OF FLORIDA §
COUNTY OF §

Before me, the undersigned authority, personally appeared affiant Sherry T. Terpening, 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 Construction Engineering and Inspection (CEI) & Geotechnical (GEO) Services and is entering into an agreement with the City of Port St. Lucie, St. Lucie County, Florida to provide these services for a project known as # 20210041, Construction Engineering and Inspection (CEI) & Geotechnical (GEO) Services for Floresta Drive Phase 2.

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

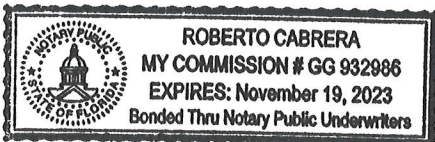
Calpepper & Terpening, Inc.
Name of Firm

Sherry Terpening
President

The foregoing instrument was acknowledged before me by Sherry T. Terpening who is personally known to me.

WITNESS my hand and official seal in the State of County last aforesaid this 30th the day of November, 2021.

(SEAL)



[Signature]
Signature

Robert Cabrera
Notary Name (typed or printed)

Title or Rank

IN WITNESS WHEREOF, the parties have executed this contract, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

CONSULTANT

By: _____ By: Sherry T. Terpening
Purchasing Agent Authorized Representative

State of: Florida County of: St. Lucie

Before me personally appeared: Sherry T. Terpening
(Please print)

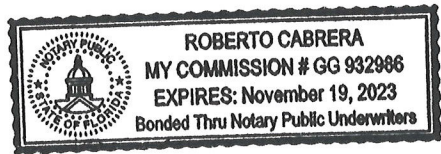
Please check one:

Personally known Produced Identification: _____
(Type of identification)

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

WITNESS my hand and official seal, this 30th day of November, 2021.

[Signature]
Notary Signature



Notary Public State of Florida at Large.

My Commission Expires 11-19-23.

(seal)