

MASTER CONTRACTOR/SERVICES AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and Fortiline, Inc. (hereinafter referred to as "Contractor"), authorized to do business in Florida, whose address is 7025 Northwinds Drive NW, Concord, NC 28147 this 10th day of November, 20 20.

WHEREAS, the City desires to purchase water meter fittings and water line accessories; and

WHEREAS, the City desires to procure these services from Contractor, utilizing existing contract prices provided to Southeast Florida Governmental Purchasing Cooperative Group, pursuant to its solicitation number ITB#2018-19/12; and

WHEREAS, in accordance with solicitation number ITB#2018-19/12, Southeast Florida Governmental Purchasing Cooperative Group, entered into a three-year agreement with Contractor for services effective March 6, 2019 through March 5, 2022, with an additional three (3) one-year renewal options; and

WHEREAS, the City desires to purchase services from Contractor on the same terms, conditions, and pricing provided under solicitation number ITB#2018-19/12, subject to the terms and conditions of this Agreement, the City's Purchasing ordinance, and Florida law; and

WHEREAS, the Contractor agrees to extend the terms, conditions, and pricing of solicitation number ITB#2018-19/12 to the City, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Contractor shall provide to the City water meter fittings and water line accessories, in accordance with and pursuant to the same terms, conditions, and pricing of solicitation number ITB#2018-19/12 procured by Southeast Florida Governmental Purchasing Cooperative Group.

3 This Agreement shall terminate on March 5, 2022, unless ITB#2018-19/12 is renewed by Southeast Florida Governmental Purchasing Cooperative Group, in which case this Agreement will automatically renew.

4 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

5 The Contractor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors. The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

6 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

For CONTRACTOR:

Fortiline, Inc.
7025 Northwinds Drive NW
Concord, NC 28147
Attn: Sheri Smith

7 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

8 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

9 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

a. Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. 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 Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

10 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this

contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

11 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

12 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and Conditions of Southeast Florida Governmental Purchasing Cooperative Group solicitation number ITB#2018-19/12.
- c. Contractor's response to solicitation number ITB#2018-19/12 and any subsequent information submitted by Contractor during the evaluation and negotiation process.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson
Katerri Johnson, City Clerk

By: Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin
Lynn Gelin, City Attorney

CONTRACTOR

By: Tray Petersen

Print Name: Tray Petersen

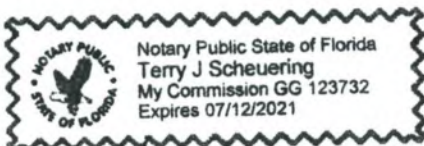
Title: Regional Vice President

(SEAL)

STATE OF Florida
COUNTY OF Seminole

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of November, 2020, by Tray Petersen (name of person), as Regional VP (type of authority) for Fortiline, Inc (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification
Type of Identification Produced _____



Terry J. Scheuering
Notary Public – State of Florida

(The remainder of this page intentionally left blank)

CITY ATTORNEY OFFICE - LEGAL REVIEW CHECKLIST

Name of Agreement: Agreement with Fortiline, Inc. to purchase water meter fittings and water line accessories

Department: Utilities

Contact person: Natasha Tucker

City Manager approval ☐

City Commission approval ☒

Agenda item #:

Agenda meeting date:

Resolution #: 166-20

Agreement Action:

New ☒

Renewal* ☐

Amendment* ☐

*Renewal: Only change is the agreement term

*Amendment: For changes other than/in addition to term

Does the Contractor require the City to sign first?: No

For City Attorney Use only:

Agreement Terms:

Comments/Specific Provision in Agreement

Term (Duration of Agreement)	3- Execution to March 5, 2022, unless Southeast Florida Governmental Purchasing Cooperative Group
Termination Clause	4- with or without cause
Renewal Clause	ITB: 6: three one year renewal options
Insurance	City standard
Indemnification	City standard
Assignment	7
Fiscal Funding Requirement	11
FL. Public Records Provision (2016)	9
Inspector General Provision	10
Governing Law	Florida
Venue	Palm Beach County
Attorney's fees	n/a

Business Principles:

Comments

Fees: Total Value	app. 5 years: \$1,000,000.00
Fees: Per Fiscal Year	Not to Exceed \$200,000 per year (amount is for five approved providers)

Other Issues:

Comments

Non-Negotiable Issues/ Miscellaneous Issues/ Special Considerations	Department requests not to exceed amount of \$200,000. Fortiline, Inc. is one of five approved providers.
---	--

Consistent with applicable policies including, but not limited to, Procurement policies. Yes ☒

Attorney: Kelly Brandon, Esq.

Reviewed and approved as to form and legal sufficiency only

RESOLUTION NO. 166-20

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA APPROVING AN AGREEMENT WITH CORE & MAIN LP, EMPIRE PIPE AND SUPPLY, INC., FERGUSON ENTERPRISES, INC., FORTILINE, INC., AND LEHMAN PIPE AND PLUMBING SUPPLY, INC. FOR WATER METER FITTINGS AND WATER LINE ACCESSORIES; AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THIS AGREEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach (City) is authorized to enter into agreements to provide services, programming, and products in accordance with its Charter; and

WHEREAS, the City requires the following services for the purpose water meter fittings and water line accessories; and

WHEREAS, the City desires to enter into agreements with Core & Main LP, Empire Pipe and Supply Company, Inc., Ferguson Enterprises, Inc., Fortiline, Inc., Lehman Pipe and Plumbing Supply, Inc. for water meter fittings and water line accessories; and

WHEREAS, the City Commission deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The City Commission of the City of Delray Beach has reviewed and hereby approves this Agreements between the City and Core & Main LP (attached to this Resolution as Exhibit "A"), Empire Pipe and Supply Company, Inc. (attached to this Resolution as Exhibit "B"), Ferguson Enterprises, Inc., (attached to this Resolution as Exhibit "C"), Fortiline, Inc., (attached to this Resolution as Exhibit "D"), and Lehman Pipe and Plumbing Supply, Inc., (attached to this Resolution as Exhibit "E").

Section 3. The City Commission authorizes the City Manager to execute any amendments and/or renewals thereto and take any other actions necessary to effectuate this Agreement.


Section 4. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the 10th day of November, 2020.

ATTEST:

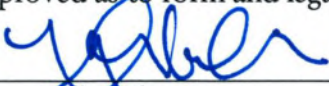


Katerri Johnson, City Clerk



Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:



Lynn Gelin, City Attorney