FORT PIERCE UTILITIES AUTHORITY
REGULAR MEETING
AGENDA

TUESDAY
June 20, 2023 2:00 PM
City Commission Chambers
100 North U.S. #1, Fort Pierce, Florida

MEETING TO ORDER

Opening Prayer DeVoshay Johnson, City of Fort Pierce

Pledge of Allegiance

ROLL CALL AND DECLARATION OF A QUORUM

A. SET THE AGENDA

B. APPROVAL OF MINUTES:

1. Approve the Minutes of the Regular Meeting on June 6, 2023.

C. COMMENTS FROM THE PUBLIC:

D. CONSENT AGENDA:

1. ITB 23-16: Approve the award of Bid and Contract for the purchase of approximately 81,920 pounds per year of Ortho/Polyphosphate Blended Liquid (Corrosion Inhibitor) from Shannon Chemical Corporation, of Malvern, Pennsylvania, in an amount not to exceed $87,654.40 annually. The initial term of this Contract will be from June 1, 2023 through May 31, 2024, with two one-year renewal options, contingent on receiving the required Certificate(s) of Insurance.
2. Approve the Transportation Services Agreement for Bus Transportation Service for Manatee Observation Education Center with the School Board of St. Lucie County. Agreement start date is June 1, 2023, and ends on May 31, 2026, in an amount not to exceed $2,000 annually.
3. POA 21-50: Approve funding of maintenance and repairs for Chevrolet and Ford vehicles with 1) Auto Partners III, LLC dba Dyer Chevrolet, Florida, in an amount of $50,000 annually and 2) Mullinax Ford of Vero Beach, LLC of Apopka, Florida, in an amount not to exceed $90,000 annually and 3) Pierce AFL VF, LLC dba Sunrise Ford, in an amount not to exceed $10,000 annually for a total of $150,000 annually beginning on 10/1/2023 through 9/30/2024.
4. POA 23-35-043: Approve the contract for procurement, repairs and installation of Best Lock Locksets with D. H. Pace Company, Inc. of Olathe, Kansas, in an amount not to exceed $9,500 annually, through participation under GSA contract No. 47QSWA20D002B. The initial contract period will be from March 21, 2023 through December 10, 2024, with four one-year renewal options contingent upon GSA Contract extension and contingent on receiving the required Certificate(s) of Insurance.

5. Builder/Developer Agreement Installing Natural Gas to Cabo Rio in Lakewood Park.
6. POA No. 17-42: Approve Amendment No. 3 to the Tree Trimming and Removal Contract with Brooker Equipment, LLC dba Sampson Tree Service of Port St. Lucie, Florida, for the Assignment and Assumption of Contract to Brooker Equipment, LLC.

E. RECOGNITION OF EXCELLENCE:

1. Note from FMPA – Madam Mayor, Madam Chair, FPUA Board Members, Javier & FPUA Team: Thank you for the tremendous honor that you did for Dan and I with the resolution of appreciation for us both. It is our honor to be of service and assistance to FPUA. It was a great opportunity to coordinate closely with Javier and the entire FPUA Team, and a pleasure to work with FPUA in continuing to provide the high quality and cost-conscious services that you provide to your community. We believe that Caroline will be a great asset to the FPUA Team. Please, always feel free to call on us if we can help in any way in the future. Yours, Jody.

F. OLD BUSINESS:

G. NEW BUSINESS:

1. POA 17-64: Approve Amendment No. 2 to the Sodium Hypochlorite Contract with Allied Universal Corp., of Miami, Florida to 1) increase the not to exceed contract amount by $140,000 from $350,000 to $490,000 annually, and 2) extend for an additional 2 years, contingent upon receipt of the required Certificate(s) of Insurance.
2. Sunshine Law Update
3. State Appropriation Update

H. AWARD OF BID:

I. RESOLUTIONS:

J. DIRECTOR:

K. ATTORNEY:

L. COMMENTS FROM BOARD MEMBERS:

M. ADJOURN

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY, TUESDAY, JUNE 6, 2023, 4:00 P.M., CITY COMMISSION CHAMBERS.

Members Present: Chairman Kristina Gibbons, Vice Chair Barbara Bennett; Secretary Larry Lammers; and Mayor Linda Hudson.

Members Excused: Deputy Secretary Frank H. Fee, IV.

Others present: Javier Cisneros, Director of Utilities; Barbara Mika, Director of Finance and Administrative Services; Daniel Retherford, Director of Utility Support Services; Bo Hutchinson, Director of Water/Wastewater Systems, Craig Crawford, Director of Electric & Gas Systems, and Caroline A. Valentin, General Counsel to FPUA Board.

The meeting was called to order by Madam Chair Kristina Gibbons.

Opening Prayer was by Carol Wilson, Human Resources.

The Pledge of Allegiance was recited.

The roll was called and a quorum declared.

ITEM A: SET THE AGENDA

A motion was made by Mayor Hudson, seconded by Mr. Lammers, and unanimously carried to approve the set agenda.

ITEM B: APPROVAL OF MINUTES

A motion was made by Mr. Lammers, seconded by Mrs. Bennett, and unanimously carried to approve the Minutes of the Regular Meeting of May 16, 2023.

ITEM C: COMMENTS FROM THE PUBLIC

ITEM D: CONSENT AGENDA

A motion was made by Mayor Hudson, seconded by Mrs. Bennett, and unanimously carried to approve the Consent Agenda.

ITEM E: RECOGNITION OF EXCELLENCE

ITEM F: OLD BUSINESS

ITEM G: NEW BUSINESS

1. Status Report on Electric Power Cost Adjustment (PCA) for April 2023

A motion was made by Mrs. Bennett, seconded by Mayor Hudson, and unanimously carried to decrease the PCA from $29 to $19 for the July 1st bill.

ITEM H: AWARD OF BID

ITEM I: RESOLUTIONS

ITEM J: DIRECTOR

Mr. Cisneros said a couple of updates here. FPUA received the 2023 review from the Finch Rating Agency and we had no change in our rating so we maintained an "A" rating which is good news for the organization. We had a second meeting with the strategic planning consultant. He had very good feedback about the interaction with the Board and the interactions with the team. Earlier today, we received the draft of the proposed goals and strategies from our consultant. He developed that from the interactions with the Board and the feedback from the staff. We will get a chance to review that and the next step will be to have online survey that goes to the Board, Directors, General Counsel, and Department Heads so we can get some initial feedback on the vision, mission, and values. The survey will open up on June 26th and close on July 3rd. We hope everybody can participate in that survey. We will be working on the agenda for the June 21st Budget Workshop. Once we finalize the agenda, we will schedule some time for the Board members to review the agenda and answer any questions prior to the meeting. Next Board Meeting will be June 20th at 2:00 pm. There will not be a meeting on July 4th due to the holiday. There will be a meeting on July 18th at 2:00 pm to allow for travel to FMEA Annual Conference. Natural Gas has been hovering around $2.26 for MBTU and it has been there very consistently for the past couple of months. Some of the future projections for the next five to six months are pretty low but there are some indicators that show a stronger demand in the near future with a reduction of supply. The latest reports show a decline in the active oil rigs that are available, and there are several maintenance projects schedule for later this year. What that means is fi supply reduces and demand goes up, that obviously impacts the price of gas. Tomorrow staff will be presenting an update on the new wastewater relocation project to the Advisory Committee. Just wanted to remind the Board Members that that it is open to the public. The meeting is at the Energy Services center and it starts at 4:00 pm. We are working on an internal newsletter that recognizes year in service and graduating from college, but I can't wait for a newsletter to come out to congratulate Dr. Tennant. On Saturday, she officially graduated with her

JD from Law School. I would also like to congratulate Mr. Crawford, he completed 25 years of services.

ITEM K: ATTORNEY

Mrs. Valentin said no comments at this time.

ITEM L: COMMENTS FROM BOARD MEMBERS

Mr. Lammers said I got a call from a customer last week. He had a salesman, for solar installer there at this door claiming that had a relationship with us and that they represented us in some way, trying to sell them a solar system and a lot of his facts were not facts at all. From what Mr. Cisneros and I were discussing before the meeting, we have had some communications with the public, some PSAs letting them know that we have not partnered with any solar vendors for local, residential solar panels.

Mrs. Bennett would like to congratulate Ms. Tennant.

Mayor Hudson wanted to confirm the schedule for the July 18th meeting and the FMEA Conference.

Madam Chair asked how are we doing with procurement. Mr. Cisneros stated that we still a long lead-time on the transformer and wires. We have done some internal evaluations of transformers that maybe underutilized and switched them out to restock our store stock. Lead-times are still an issue. Specialty metals are still an issue. This is an industry issue for all utilities. Will follow up with any specific.

Madam Chair Gibbons said meeting adjourned.

ITEM M: ADJOURN

There being no further business, the meeting was adjourned at 4:30 pm.

ATTEST:

_____ _____

SECRETARY CHAIRMAN

Note: These minutes are not verbatim, only important issues and motions are reproduced in writing for the benefit of the Fort Pierce Utilities Authority and Board Members. The recording itself is the official record for the meeting.

D-1

Fort Pierce Utilities Authority

206 South Sixth Street (34950) | PO Box 3191, Fort Pierce, FL 34948-3191 | Phone: 772.466.1600

Board Submission Form

6/5/2023

Department: 62 - Water Resources

Board Meeting Date: 06/20/2023

Item Type: Consent, Contract Agreement

Subject: CORROSION INHIBITOR

Recommendation:

ITB 23-16: Approve the award of Bid and Contract for the purchase of approximately 81,920 pounds per year of Ortho/Polyphosphate Blended Liquid (Corrosion Inhibitor) from Shannon Chemical Corporation, of Malvern, Pennsylvania, in an amount not to exceed $87,654.40 annually. The initial term of this Contract will be from June 1, 2023 through May 31, 2024, with two one-year renewal options, contingent on receiving the required Certificate(s) of Insurance.

Reviewed By Attorney: NA (FPUA Standard Contract)

Funds Available From: ___ No Funds Needed _X_ Budgeted ___ Contingency

Approvals:

System Director:

Director of Finance: MIKA, BARBARA A. May 31 2023 1:08PM

Director of Utilities: CISNEROS, JAVIER Jun 1 2023 11:28AM

Fort Pierce Utilities Authority

Memorandum

TO: Javier Cisneros, P.E., Director of Utilities

THROUGH: Bowdoin G. Hutchinson, P.E., Director of W/WW Systems

FROM: Brian Keith Stephens, Water Superintendent

DATE: June 05, 2023

SUBJECT: **CORROSION INHIBITOR**

PRESENTER(S): KEITH STEPHENS

RECOMMENDATION:

ITB 23-16: Approve the award of Bid and Contract for the purchase of approximately 81,920 pounds per year of Ortho/Polyphosphate Blended Liquid (Corrosion Inhibitor) from Shannon Chemical Corporation, of Malvern, Pennsylvania, in an amount not to exceed $87,654.40 annually. The initial term of this Contract will be from June 1, 2023 through May 31, 2024, with two one-year renewal options, contingent on receiving the required Certificate(s) of Insurance.

SUMMARY/SUPPORTING INFORMATION

Corrosion Inhibitor is used to decrease the rate of corrosion of metal and alloy piping in the water treatment plant and distribution system.

The Invitation to Bid (ITB) was uploaded to DemandStar on April 13, 2023, and was advertised on April 14 and 19, 2023, with the opening at 11:15 AM local standard time, May 19, 2023. The ITB was sent to 125 vendors. Eleven (11) vendors requested specifications with five (5) responding and one (1) no Bid, resulting in a 46% response rate, none were local vendors. A recommendation was received from the Water Resources Superintendent on May 19, 2023 to request authorization from the Board to accept the lowest compliant bid from Shannon Chemical Corporation.

ALTERNATIVES (IF ANY):

Do not approve, this is not recommended as failure to use this chemical would put FPUA in violation with the Florida Department of Environmental Protection who has mandated its use.

ATTACHMENTS:

Bid Tabulation
FPUA Contract

FORT PIERCE UTILITIES AUTHORITY
CONTRACT FOR
ORTHO/POLYPHOSPHATE BLENDED LIQUID (CORRSION INHIBITOR)
ITB NO. 23-16

THIS CONTRACT ("Contract") is made between Fort Pierce Utilities Authority ("FPUA") and Shannon Chemical Corporation, with its principal address at 602 Jeffers Circle, Exton, Pennsylvania, 19341 ("Contractor").

The parties to this Contract in consideration of the mutual covenants and stipulations set out herein agree as follows:

Section 1
Contractor shall be defined as an individual, firm, or corporation having a direct contract with FPUA or with any other subcontractor in the performance of a part of the work contracted for under the terms of Contractor's direct contract with FPUA.

Section 2
Contractor is hereby contracted with to perform the following services: to supply Ortho/Polyphosphate Blended Liquid (corrosion inhibitor) on an as needed basis for the FPUA Water Treatment Plant in accordance with Invitation to Bid (ITB) No. 23-16, and Contractor's Bid attached hereto as Attachment B and incorporated herein (the specifications set forth in the ITB together with Contractor's quote are hereinafter referred to as "Services." In the event of a conflict between the terms of the main body of this Contract, Attachment B, and the ITB, the terms and conditions set forth in the main body of this Contract will control, followed by the terms set forth in Attachment B, followed by the terms set forth in the ITB.

Section 3
The Services to be performed by Contractor shall be on the following site(s), hereinafter referred to as Project Site: Water Treatment Plant, 715 South 25th Street, Fort Pierce, Florida 34947.

Section 4
The job upon which Contractor is to perform the Services shall be referred to as the Corrosion Inhibitor, ITB No. 23-16 job.

Section 5
Contractor shall be paid by FPUA per delivery in the amount of $1.07 per pound and in accordance with the Local Government Prompt Payment Act, sections 218.70-79, Florida Statutes. The calculations shall begin using the date the invoice was received. Invoices should be sent to AP@FPUA.com or may be mailed to FPUA Attn: Accounts Payable, PO Box 3191, Fort Pierce, Florida 34948-3191.

The total job price shall not to exceed $87,654.40 (eighty-seven thousand six hundred fifty-four dollars and forty cents) annually on the terms contained in Attachment B the Specifications herein specifically referred to and made a part of this Contract.

Section 6
Contractor shall, under no circumstances, look to FPUA to provide any labor or equipment for Contractor. Contractor shall provide all of the labor and equipment necessary to perform the job or services contracted for at the expense of Contractor. Property of any kind that may be on the premises, which are the site of the performance of this Contract, during the performance of this Contract, shall be at the sole risk of Contractor.

Section 7
Contractor shall provide certificate of insurance to FPUA setting forth the type and amount of insurance carried by Contractor and conforming to the minimum requirements set forth in Attachment A. All requirements of this section shall be approved by FPUA.

Section 8
This instrument contains the entire agreement between the parties and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Contract shall be valid or binding and this Contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

Section 9
This Contract shall commence on June 1, 2023 and end on May 31, 2024. There shall be two (2) one (1) year renewal options on terms and conditions that are mutually acceptable to the parties in writing. This Contract will remain in effect in the event of a natural disaster, pandemic or other emergency event(s).

Section 10
Contractor acknowledges and understands that he is an independent contractor in his relationship to FPUA.

Section 11
This Contract shall inure to the benefit of and be binding upon the heirs, executors, administrator, assignees and successors of the respective parties.

Section 12
FPUA may terminate this Contract in accordance with the following terms and conditions:

A. **Termination for Convenience.** The FPUA has the right at any time upon 30 days written notice to Contractor to terminate this Contract for any reason whatsoever. In the event of such termination, the FPUA will be responsible to Contractor only for the fees and compensation earned by Contractor prior to the effective date of said termination. In no event will the FPUA be responsible for lost profits of the Contractor or any asserted damages which may arise out of an alleged premature termination of this Agreement. Contractor acknowledges that the 30 days' notice provision set forth in this Section is adequate additional consideration supporting this Termination for Convenience clause. Upon termination of the Contract, Contractor shall refund any prepaid annual fee in a prorated amount covering the remainder of the term of the Contract.

a) The total sum to be paid Contractor under this subsection A shall not exceed the total contract amount, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

B. **Termination for Cause.** If Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligation for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then FPUA, in addition to any other rights it may have against Contractor or others, may immediately terminate the performance of Contractor, in whole or in part at FPUA's sole option, and assume possession of the Project Site and all materials and equipment at the site and may complete the work.

In such case, Contractor shall not be paid further until the work is complete. After completion has been achieved, if any portion of the contract price, as it may be modified hereunder, remains after the cost to FPUA of completing the work, including all costs and expenses of every nature incurred, has been deducted by FPUA, such remainder shall belong to Contractor. Otherwise, Contractor shall pay and make whole FPUA for such cost. This obligation for payment shall survive the termination of the Contract.

In the event the employment of Contractor is terminated by FPUA for cause pursuant to this subsection B and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under subsection A and the provisions of subsection A shall apply.

C. **Termination for Non-Appropriation.** FPUA may also terminate this Contract in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the project, regardless of the source of such funds, and such termination shall be on the terms of subsection A.

D. FPUA's rights under this section shall be in addition to those contained elsewhere herein or provided by law.

Section 13

A. **Indemnification.** Contractor shall indemnify and hold harmless FPUA and its officers, agents and employees, from any liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or used by Contractor in the performance of this Contract.

B. **Audit Rights.** In accordance with section 2-439 of the City of Fort Pierce Code of Ordinances, FPUA has the right to audit the books and records of Contractor under any Contract other than a firm fixed-price contract to the extent that such books and records are pertinent to the performance of such Contract. Such books and records shall be maintained by Contractor for a period of three (3) years from the date of final payment under the Contract.

C. **No Assignment or Third-Party Rights.** Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same without the prior written approval

of FPUA. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than FPUA and Contractor.

D. **Consequential Damages.** Neither party shall be liable to the other for any incidental, consequential, exemplary, special, or punitive damages, including lost profits, that may arise in connection with this Contract, regardless of the cause of action (whether in contract, tort, negligence, strict liability, or otherwise) and regardless of how characterized, even if such party was advised of the possibility of such damages in advance.

E. **Choice of Law and Venue.** This Contract shall be construed in accordance with the laws of the State of Florida, without consideration of any conflict of law principles. Venue shall be in the federal or state courts in St. Lucie County.

F. **E-Verify Required.** Pursuant to 448.095, Florida Statutes, FPUA and every Contractor and subcontractor entering into an agreement to provide labor, supplies or services to FPUA must use the E-Verify system (www.e-verify.gov) to verify the work authorization status of any newly hired employees. If a Contractor subcontracts any of the labor or services for FPUA, the subcontractor must provide the Contractor with an affidavit stating that it does not employ, contract or subcontract with any person not authorized to work in the United States. The contractor must keep a copy of the affidavit on file for the duration of the contract. If FPUA or any Contractor or subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly employed, hired, or recruited an unauthorized alien for public or private employment, it must terminate the contract with that person or entity. Pursuant to 448.095 a contract terminated under this provision is not a breach of contract.

G. **Scrutinized Companies List.** Pursuant to Section 287.135, Florida Statutes, a company is ineligible and may not bid on, submit a proposal, or enter into or renew a contract with an agency or local governmental entity, and FPUA is prohibited from contracting or renewing contracts for goods or services: (1) for any amount with a company that is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, or is engaged in a boycott of Israel; (2) for $1,000,000 or more with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List, created pursuant to Section 215.473; or (3) is engaged in business operations in Cuba or Syria. By signing below Contractor certifies that it is not on any of the above referenced lists, is not engaged in a boycott of Israel, and is not engaged in business operations in Cuba or Syria. The company further acknowledges that FPUA may immediately terminate any contract if the company is found to have falsely certified that it is not on any of the forgoing lists, been placed on any of the foregoing lists, been engaged in a boycott of Israel, or engaged in business operations in Cuba or Syria.

H. **Public Records.**

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PUBLICRECORDS@FPUA.COM, (772) 466-1600, OR PO BOX 3191, FORT PIERCE, FL 34948-3191.

To the extent the Contract includes providing services and acting on behalf of a FPUA as provided under section 119.011(2), Florida Statutes, the Contractor agrees to comply with Florida Public Records Law, Chapter 119, Florida Statutes, and shall:

1) Keep and maintain public records required by FPUA to perform the service;

2) Upon request from FPUA's custodian of public records, provide FPUA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;

3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to FPUA;

4) Upon completion of the Contract, transfer, at no cost to FPUA, all public records in possession of the company or keep and maintain public records required by FPUA to perform the service. If all public records are transferred to FPUA upon completion of the contract Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor maintains public records upon completion of the contract, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to FPUA upon request in a format compatible with FPUA's information technology systems.

I. **Trade Secret or Confidential Material.** In accordance with Florida Statutes, including 119.01 (Public Records) and 815.045 (Trade Secret Information), if Contractor considers any information related to this Contract or the services to be provided to FPUA thereunder to be a trade secret or confidential material under Florida or federal law(s), Contractor shall designate such portions of the material by clearly marking it CONFIDENTIAL or TRADE SECRET when it is submitted to FPUA (hereinafter the Confidential Material). If FPUA receives a public records request for the Confidential Material FPUA will provide only the materials not designated confidential or trade secret. If the requester of the information asserts a right to examine the Confidential Material FPUA will notify Contractor, and Contractor shall be responsible for responding to and resolving any claims for access to the Confidential Material. If FPUA is served with a request for discovery or order related to the Confidential Material, FPUA will promptly notify Contractor, and Contractor shall be responsible for filing the appropriate motion, objection, or seek an injunction to prevent disclosure of its Confidential Material. FPUA will provide the Confidential Material only if the Contractor fails to take appropriate action to protect the Confidential Material from disclosure within the timeframe(s) established by the applicable statute, rule or order. The Contractor agrees to protect, defend, and indemnify FPUA and its members and employees from all claims, fines or costs, including attorney's fees, arising from or relating to the designation of Confidential Material.

J. **Waiver.** The failure of the FPUA to take any action with respect to any breach of any term, covenant, or condition contained herein, or any instance of default hereunder by Contractor, will not be deemed to be a waiver of any default or breach by the FPUA.

K. **Sovereign Immunity.** The FPUA expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the FPUA beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the FPUA, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

L. **Compliance with Applicable Law.** This Cotnract is governed by the laws of the State of Florida. Contractor covenants to promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the Project and in effect at the time of performance. Contractor covenants that it will conduct no activity or provide any goods or service that is unlawful or offensive.

[signatures are on the following page]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Contract the day and year set forth below.

Signed, sealed and delivered in the presence of:

SHANNON CHEMICAL CORPORATION

BY: DCM-
Signature/Officer of Firm (Manual)

Daniel C. Flynn
Name (Typed or Printed)

TITLE: President

DATE: 05/30/23

ATTEST:

_____
Secretary
(FPUA Seal)

FORT PIERCE UTILITIES AUTHORITY

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM & CORRECTNESS:

BY: _____
Fort Pierce Utilities Authority Attorney

ATTACHMENT A
REQUIRED LIMITS OF INSURANCE
FOR
FORT PIERCE UTILITIES AUTHORITY

FPUA - TYPE IV (POLLUTION)

Contractor shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the Fort Pierce Utilities Authority (FPUA), the types and amounts of insurance conforming to the minimum requirements set forth herein.

Workers' Compensation/Employers' Liability - Such insurance shall be no more restrictive than that provided by the Florida Workers Compensation Act. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The Workers' Compensation policy must be endorsed to waive the insurer's right to subrogate against FPUA (and if required the project engineer) and its board members, officials, officers, agents and employees.

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	$1,000,000	(Each Accident)
	$1,000,000	(Disease-Each Employee)
	$1,000,000	(Disease-Policy Limit)

Commercial General Liability - The limits are to be applicable only to work performed under the Contract and shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 25 03) to a Commercial General Liability policy. FPUA (and if required the project engineer) and its board members, officials, officers, agents and employees shall be included as "Additional Insureds" on a form no more restrictive than ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or Contractors).

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Each Occurrence	$1,000,000
Personal and Advertising Injury	$1,000,000
General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000
Medical Expense (any one person)	$Nil
Damage to Rented Premises (ea. occurrence)	$Nil

Contractor shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Work. The insurance shall be on a form no more restrictive than, and shall cover those sources of liability which would

be covered by Coverage A of, the latest occurrence form edition of the Commercial General Liability Coverage Form (ISO Form CG 00 01), or of the occurrence Products/Completed Operations Liability Coverage Form (ISO Form CG 00 37), as filed for use in the State of Florida by ISO, without restrictive endorsements other than mandatory endorsements under an ISO filing.

Automobile Liability - Such insurance shall be no more restrictive than that provided by Section II of the latest occurrence edition of the standard Business Auto Coverage (ISO Form CA 00 01) as filed for use in the State of Florida by ISO without restrictive endorsements other than mandatory endorsements under an ISO filing. Coverage shall include all owned, non-owned and hired autos used in connection with this Contract.

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	$1,000,000

Pollution/Environmental Impairment Liability - Contractor shall provide coverage for third party liability and clean-up costs at the proposed site resulting from pollution or other environmental impairment arising out of the activities that are contemplated by the agreement. Such insurance shall be on a form acceptable to FPUA. Coverage must either be on an occurrence basis; or, if on a claims made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. FPUA (and if required the project engineer) and its board members, officials, officers and employees shall be included as "Additional Insureds" on the policy.

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Each Claim/Occurrence	$1,000,000
Annual Aggregate	$1,000,000

Miscellaneous Provisions - The insurance provided by Contractor shall apply on a primary and non-contributory basis to any insurance or self-insurance maintained by FPUA. Any insurance, or self-insurance, maintained by FPUA shall be excess of the insurance provided by Contractor.

The insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, FPUA may permit the application of a deductible or permit Contractor to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. In such instances, Contractor shall pay on behalf of FPUA or FPUA's board members, officials, officers and employees any deductible or self-insured retention applicable to a claim.

Compliance with these insurance requirements shall not limit the liability of Contractor or the remedies available to FPUA under this Agreement or otherwise. If Contractor obtains insurance with higher limits than the requirements herein, those higher limits shall apply.

Evidence of Insurance - Contractor shall not commence work until the required insurance is in force and evidence of insurance acceptable to FPUA has been provided and approved by FPUA. **An appropriate Certificate of Insurance (identifying the project) signed by an authorized representative of the insurer(s), with copies of the actual additional insured endorsement and notice of cancellation endorsement as issued on the policies, shall be satisfactory evidence of insurance.** With respect to Property Insurance, Contractor shall provide a Certificate of Property Insurance form or other evidence satisfactory to FPUA.

Until such insurance is no longer required by this Agreement, Contractor shall provide FPUA with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance. Contractor shall, within thirty (30) days of a written request from FPUA, provide FPUA with a certified copy of the policy or policies providing the coverage required herein. Contractor or its agent may redact or omit provisions of the policy that are not relevant to the insurance required herein.

Policies shall be endorsed to provide FPUA with 30 days' notice of cancellation.

Certificates of Insurance must be completed as follows:

Additional Insured:
Fort Pierce Utilities Authority (and if required the project engineer) and its board members, officials, officers and employees

Certificate Holder
Fort Pierce Utilities Authority
Attn: Risk Management
PO Box 3191
Fort Pierce FL 34948-3191

Certificates may be emailed to: risk@fpua.com

(Rev. 10/2020)

BID RESPONSE FORM

Bid Item	ORTHO/POLYPHOSPHATE BLENDED LIQUID (CORROSION INHIBITOR)

Bid Number	ITB 23-16	Due Date and Time	MAY 19, 2023 @ 11:00 AM local standard time

The offeror agrees to furnish and deliver to the Fort Pierce Utilities Authority at the place specified, the following items or services in accordance with specifications and scope of work herein at the prices quoted below:

Approximate Annual Quantity	Description	Unit Price Per Pound	Total Extended Price
81,920 lbs.	Ortho/Polyphosphate Blended Liquid (Corrosion Inhibitor), including FOB delivery	$1.07/#	$ 87,654.40

Standard Package Quantity: 55 gallon drums **Minimum Order Quantity:** 4-55 gallon drums

7-10 **OF CALENDAR DAYS FOR DELIVERY AFTER RECEIPT OF ORDER (ARO) DELIVERY MUST BE F.O.B. FORT PIERCE, FLORIDA**

The Bidder hereby acknowledges receipt of the following addenda:

ADDENDUM NO.	ADDENDUM DATE

Vendor Shannon Chemical Corporation

Address P.O. Box 376

City, State, Zip Code Malvern, PA 19355

Email Address dcflynn@shannonchem.com

Typed Name, Title Daniel C. Flynn, President

Signature DCM **Date** 05/10/23

Telephone # 610-363-9090 **Fax #** 610-524-6050

Is this business registered with the State of Florida as a minority-owned, disadvantaged business?

Yes / (No)

FORT PIERCE UTILITIES AUTHORITY
TABULATION OF BIDS

Offers from the vendors listed herein are the only offers received timely as of the above opening date and time. All other offers submitted in response to this solicitation, if any, are hereby rejected as late.

BID ON:	**ORTHO/POLYPHOSPHATE BLENDED LIQUID (CORROSION INHIBITOR)**
BID NUMBER:	ITB 23-16
DATE/TIME:	May 19, 2023 @ 11:15 AM local time
AWARDED:	Shannon Chemical Corporation

CORROSION INHIBITOR Based on approximate Annual Quantity of 81,920 pounds			
VENDOR	**CALENDAR DAYS FOR DELIVERY**	**UNIT PRICE PER POUND**	**TOTAL EXTENDED PRICE**
Univar Solutions USA, Inc. Phoenix, AZ	NO BID	NO BID	NO BID
Shannon Chemical Corporation Exton, PA	7-10	$1.07	$87,654.40
Carus LLC Peru, IL	3	$1.22	$99,92.40
AquaSmart Seaquest, Inc. Atlanta, GA	7	$1.08	$88,473.60
Sterling Water Technologies LLC Croydon, PA	7-10	$1.5783	$129,294.34
Brenntag Mid-South, Inc. Henderson, KY	5-10	$1.084	$88,801.28

D-2

Fort Pierce Utilities Authority

206 South Sixth Street (34950) | PO Box 3191, Fort Pierce, FL 34948-3191 | Phone: 772.466.1600

Board Submission Form

6/5/2023

Department: 01 - Manatee Obs & Educ. Center

Board Meeting Date: 06/20/2023

Item Type: Contract Agreement

Subject: MOEC - SLC Bus Transportation Service local agreement

Recommendation:

Approve the Transportation Services Agreement for Bus Transportation Service for Manatee Observation Education Center with the School Board of St. Lucie County. Agreement start date is June 1, 2023, and ends on May 31, 2026, in an amount not to exceed $2,000 annually.

Reviewed By Attorney: No

Funds Available From: ___ No Funds Needed X Budgeted ___ Contingency

Approvals:

System Director: RETHERFORD, DANIEL PAUL May 9 2023 12:08PM

Director of Finance:

Director of Utilities: CISNEROS, JAVIER May 16 2023 2:30PM

Fort Pierce Utilities Authority

Memorandum

TO: Javier Cisneros, P.E., Director of Utilities

THROUGH: Daniel Paul Retherford, Director of Utility Support Services

FROM: Jessica Lynn Kadie Barclay, MOEC Manager

DATE: June 05, 2023

SUBJECT: **MOEC - SLC Bus Transportation Service local agreement**

PRESENTER(S): Jessica Kadie Barclay

RECOMMENDATION:

Approve the Transportation Services Agreement for Bus Transportation Service for Manatee Observation Education Center with the School Board of St. Lucie County. Agreement start date is June 1, 2023, and ends on May 31, 2026, in an amount not to exceed $2,000 annually.

SUMMARY/SUPPORTING INFORMATION

The attached is an agreement with the School Board of St. Lucie County (SLCSB) is to provide service of one school bus for transportation of Manatee Center summer campers to and from select locations for camp activities. All requirements of the contract have been met, including certificates of insurance. There are budgeted funds for the Transportation Services Agreement. Total amount for bus service is unknown as it is paid by mileage, but shall not exceed $2,000 annually.

ALTERNATIVES (IF ANY):

Do not approve, this is not recommended as utilizing a SLCSB bus is the most cost-efficient method for transportation. FPUA could RFQ for transportation vendors at a substantial increase in cost to the program.

ATTACHMENTS:

SLCSB Transportation Agreement

Transportation Services Agreement

THIS AGREEMENT ("Agreement") is made this 17th day of May, 2023, between THE SCHOOL BOARD OF ST. LUCIE COUNTY, a district school board constituted as provided in Article IX, Section 4, of the Florida Constitution, whose address is 9461 Brandywine Lane, Port St. Lucie, FL, 34986, hereinafter referred to as ("School District"), and the Fort Pierce Utilities Authority on behalf of its FPUA Manatee Center Summer Camps, whose address is 480 N. Indian River Drive, Fort Pierce, FL 34950, hereinafter referred to as ("FPUA").

WITNESSETH:

WHEREAS, the School District is the governing body of the local school district of St. Lucie County, and is responsible for education services, to include transportation of students on its school buses; and

WHEREAS, FPUA desires to utilize the School District's school bus transportation services for its sponsored programs.

NOW, THEREFORE, in consideration of the mutual benefits which will accrue to the parties hereto it is mutually understood and agreed as follows:

1. **SCOPE OF SERVICE.** The service to be provided is transportation to and from designated FPUA-sponsored program locations. The customers to be served under this Agreement are youths residing in St. Lucie County, Florida. Buses are to be parked at the School District's St. Lucie West Transportation Compound when not in use during the day unless an alternate location is approved in writing by the School District's Transportation Department.

2. SPECIFIC RESPONSIBILITIES OF THE SCHOOL DISTRICT:

A. Interview, select, conduct a Level 2 background investigation, and hire on a nondiscriminatory basis, only School District school bus drivers and pay all wages, including benefits (if any) to be determined by the School District.

B. Provide buses to transport eligible youths from strategic pick-up sites in St. Lucie County for FPUA sponsored programs and from designated sites back to the strategic pick-up locations.

C. Bus drivers shall utilize the St. Lucie Public Schools Daily Vehicle Log, see Attachment "A," to record beginning and ending mileage, as well as total miles driven daily. These forms will be completed daily and submitted to the School District's Transportation Department no later than the Monday following the week the bus was driven.

D. School District shall maintain Automobile Liability coverage for its buses and Workers Compensation coverage for its Drivers under this Agreement.

E. Insurance. School District agrees to purchase and maintain in full force and effect during

the term of this Agreement an insurance policy issued by a company or companies licensed to do business in the State of Florida, providing coverage for General Liability, Automobile Liability, and Employment Practices Liability in an amount no less than one million dollars ($1,000,000.00) or to the requirements of Section 768.28, Florida Statutes. School District agrees to provide the FPUA a copy of School District's Certificate of Insurance evidencing coverage and naming the Fort Pierce Utilities Authority, its officers, agents, and employees as an additional insured.

3. **SPECIFIC RESPONSIBILITIES OF FPUA:**

A. Prior to utilizing School District's buses, FPUA will furnish a completed Transportation Agreement Contact Information 2023 form, See Attachment "B," to the School District's Transportation Department.

B. Provide the School District with a schedule of trips planned at least 15 working days prior to the scheduled trip.

C. FPUA shall procure a sign to be placed on school bus to read, "This bus is contracted to "FPUA."

D. FPUA shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all local ordinances, state and federal law, rules and regulations applicable to business to be carried out under this Agreement.

E. Insurance. FPUA agrees to purchase and maintain in full force and effect during the term of this Agreement an insurance policy issued by a company or companies licensed to do business in the State of Florida, providing coverage for General Liability, Automobile Liability, and Employment Practices Liability in an amount no less than one million dollars ($1,000,000.00) or to the requirements of Section 768.28, Florida Statutes. FPUA agrees to provide the School District a copy of FPUA's Certificate of Insurance evidencing coverage and naming the School District of St. Lucie County, Florida as an additional insured.

4. GENERAL PROVISIONS.

A. **PAYMENT.** Payment will be made to School District when FPUA has determined that the service has been satisfactorily completed. Should FPUA reject an invoice, FPUA's authorized representative will notify School District at (772) 785-6602 of such rejection giving the reason(s). The right to reject an invoice shall extend throughout the term of this contract for thirty (30) days after the final invoice for payment is submitted. This invoice shall be sent at the first of the month following the previous monthly service upon receipt of the Daily Vehicle Log sheet. All invoices must be submitted to FPUA by July 1st of each school year. Monthly invoices must be sent to:

Jessica Kadie Barclay
480 N. Indian River Drive

Fort Pierce 34950
kadiebarclay@fpua.com
772-466-1600 x 3339

B. **RATE.** School District shall assess a charge of $4.00 per mile for each mile its school buses are driven under the terms of this Agreement. Beginning and ending odometer readings shall be recorded by the drivers on the Daily Vehicle Log. The Log shall serve as the record of distance driven. Fuel is furnished by the School District and the cost of fuel is included in this rate. Bus Drivers are billed at $35.00 per hour and Bus Aides if needed are billed at $20.00 per hour. The School District will compensate its bus drivers.

C. **TERM; TERMINATION.** The term of this Agreement shall be from the date of execution by both parties, or June 1, 2023, whichever is later, and continue through and including May 31, 2026. Annual cost adjustments based on economic indicators for fuel prices may apply with the written notice to FPUA. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice to the other party.

D. **PUBLIC RECORDS.** FPUA and School District shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Chapter 119, Florida Statutes, and made or received by the FPUA or School District in conjunction with this Agreement. If FPUA or School District meets the definition of "Contractor" as set forth in Section 119.0701, Florida Statutes, FPUA and School District shall also:

1. Keep and maintain public records that ordinarily and necessarily would be required by the other party in order to perform the service;

2. Provide the public with access to public records on the same terms and conditions that the other party would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

4. Meet all requirements for retaining public records and upon termination of the Agreement transfer to the other party, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the other party in a format that is compatible with the information technology systems of the party receiving the records.

IF FPUA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FPUA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE SCHOOL DISTRICT CUSTODIAN OF PUBLIC RECORDS AT (772) 429-5546, 9461 BRANDYWINE LANE, PORT ST. LUCIE, FL 34986, OR PRR@STLUCIESCHOOLS.ORG.

IF THE SCHOOL DISTRICT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SCHOOL DISTRICT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE FPUA CUSTODIAN OF PUBLIC RECORDS AT PUBLICRECORDS@FPUA.COM, (772) 466-1600, OR PO BOX 3191, FORT PIERCE, FL 34948-3191.

E. **NON-DISCRIMINATION.** No person shall, on the basis of age, ancestry, citizenship status, color, disability, ethnicity, genetic information, gender, gender expression, gender identity, marital status, medical condition, national origin, political beliefs, pregnancy, race, religion, religious beliefs, sex, sexual orientation, or veteran status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity, or in any employment conditions or practices conducted by this School District, except as provided by law.

F. **AUDIT.** Both parties agrees that until the expiration of three years after expenditure of funds under this Agreement, the either party and any of the party's duly authorized representatives shall have access to and the right to examine any and all directly pertinent books, documents, papers, and records of the other party involving transactions related to this Agreement. The parties agrees that payments made under this Agreement shall be subject to reduction for amounts charged that are found on the basis of audit examination not to constitute allowable fees or costs. All required records shall be maintained until an audit is completed and all questions arising from such audit are resolved, or until five (5) years after completion of all work under this Agreement, whichever last occurs.

G. **ASSIGNMENT.** Neither party shall assign this Agreement to any other person or firm without first obtaining the other party's written approval.

H. **NOTICES.** All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail, return receipt requested, and addressed as follows:

If to the School District:	With copies to:
George Petruff, Trip Manager	Carmen Rossello, Clerk
Transportation Department	Ph 772-340-7186

PH 772-344-4497
George.Petruff@stlucieschools.org

Carmen.Rossello@stlucieschools.org

If to FPUA:
Jessica Kadie Barclay
480 N. Indian River Drive
Fort Pierce 34950
kadiebarclay@fpua.com
772-466-1600 x 3339

With copies to:
FPUA General Counsel
206 S. 6th Street
Fort Pierce 34950
valentin@fpua.com
772-466-1600 x 2501

I. **INDULGENCE NOT WAIVER.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time of the breach or failure occurs, or at any time throughout the term of this Agreement.

J. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements between the parties. This Agreement may only be amended by written document, properly authorized, executed, and delivered by both parties.

K. **INTERPRETATION; VENUE.** This Agreement shall be interpreted as a whole unit, and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. Each party has had ample opportunity to seek the advice of legal counsel prior to entering this Agreement, which shall not be construed against the party responsible for drafting the instrument. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court.

L. **NO THIRD-PARTY BENEFICIARY.** This Agreement does not confer any right or obligation enforceable by a third party. Nothing in this Agreement shall be construed as consent by an agency or subdivision of the State of Florida to be sued by a third party in any matter arising out of any contract.

M. **SEVERABILITY.** In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

N. **SURVIVAL.** The covenants, warranties, representations, indemnities, and undertakings of the parties that create obligations extending beyond the term of this Agreement shall survive the expiration or termination of this Agreement regardless of the reason for such expiration or termination.

O. **FORCE MAJEURE.** Neither party shall be obligated to perform any duty,

requirement, or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, sabotage, accident, flood, act of God, strike, or other labor dispute, riot or civil commotion, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense.

P. **E-VERIFY REQUIRED.** Pursuant to 448.095, Florida Statutes, FPUA and every Contractor and subcontractor entering into an agreement to provide labor, supplies or services to FPUA must use the E-Verify system (www.e-verify.gov) to verify the work authorization status of any newly hired employees. If a Contractor subcontracts any of the labor or services for FPUA, the subcontractor must provide the Contractor with an affidavit stating that it does not employ, contract or subcontract with any person not authorized to work in the United States. The contractor must keep a copy of the affidavit on file for the duration of the contract. If FPUA or any Contractor or subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly employed, hired, or recruited an unauthorized alien for public or private employment, it must terminate the contract with that person or entity. Pursuant to 448.095 a contract terminated under this provision is not a breach of contract.

Q. **SOVEREIGN IMMUNITY.** Both parties expressly retain all rights, benefits, and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of either party beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of either party for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against either party, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties to this Agreement have set their hands and seals on the date first above-written.

ATTEST:

SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA

_____
Dr. Jon R. Prince, Superintendent
and Ex Officio Secretary

(Seal)

By: _____
Print Name: Troy Ingersoll
Chairman

ATTEST:

_____
Secretary
(FPUA Seal)

FORT PIERCE UTILITIES AUTHORITY

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM &
CORRECTNESS:

BY: _____
Fort Pierce Utilities Authority Attorney

Attachment "A"

St. Lucie Public Schools

Daily Vehicle Log

Bus Driver Name (Print) _____

St. Lucie County Bus Number: _____

Day	Date	Bus Number	AM Odometer	PM Odometer	Total Miles
Monday					
Tuesday					
Wednesday					
Thursday					
Friday					
Saturday					
Sunday					

Community Agency or School Group: FPUA

_____

Driver Signature **Date**

_____

Signature of Agency/School Representative **Date**

Note: **This form must be completed daily and submitted no later than Monday following the week worked.**

Please fax this form weekly to SLCSB Transportation 772-340-7125. Please confirm receipt of fax.

Transportation Agreement Contact Information 2023

Agency Name: Fort Pierce Utilities Authority

Program Name: Manatee Center Summer Camps

Address: 480 N Indian River Drive, Fort Pierce, FL 34950

Local Agency Contact Person: Jessica Kadie Barclay; Elyse Geraghty

Daytime Office Number: 772-466-1600, Jessica x3339; Elyse x3337

Cell Number: Elyse: 954-205-9426; Jessica: 724-757-4977

Fax Office Number: NA

E-Mail Address: geraghty@fpua.com; kadiebarclay@fpua.com

Billing Agency Contact Person: Jessica Kadie Barclay

Daytime Office Number: 772-466-1600 x3339

Fax Office Number: NA

E-Mail Address: kadiebarclay@fpua.com

Agency Contact and phone numbers for Pick Up/Delivery or Discipline Issues:

Elyse Geraghty, 954-205-9426. Camp leader and counselors will always accompany campers while on the bus. They will address disciplinary matters immediately.

Number Buses anticipated: 1

Normal Days of Week Buses Requested: Tuesday through Friday

Anticipated Program Start Date: Tuesday, July 11, 2023

Anticipated Program End Date: Friday, July 14, 2023

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Fort Pierce Utilities Authority

206 South Sixth Street (34950) | PO Box 3191, Fort Pierce, FL 34948-3191 | Phone: 772.466.1600

Board Submission Form

6/5/2023

Department: 22 - Materials Management

Board Meeting Date: 06/20/2023

Item Type: Consent Agenda

Subject: ADDITIONAL FUNDING FOR FORD PARTS AND REPAIRS AT MULLINAX FORD

Recommendation:

POA 21-50: Approve funding of maintenance and repairs for Chevrolet and Ford vehicles with 1) Auto Partners III, LLC dba Dyer Chevrolet, Florida, in an amount of $50,000 annually and 2) Mullinax Ford of Vero Beach, LLC of Apopka, Florida, in an amount not to exceed $90,000 annually and 3) Pierce AFL VF, LLC dba Sunrise Ford, in an amount not to exceed $10,000 annually for a total of $150,000 annually beginning on 10/1/2023 through 9/30/2024.

Reviewed By Attorney:

Funds Available From: ___ No Funds Needed X Budgeted ___ Contingency

Approvals:

System Director:	TENNANT, RACHEL REBECCA	May 23 2023 9:12AM
Director of Finance:	MIKA, BARBARA A.	Jun 5 2023 10:23AM
Director of Utilities:	CISNEROS, JAVIER	Jun 5 2023 3:18PM

Fort Pierce Utilities Authority

Memorandum

TO: Javier Cisneros, P.E., Director of Utilities

THROUGH: Daniel Paul Retherford, Director of Utility Support Services

FROM: Eric R. Winterstein, Cfm, Facilities And Fleet Super

DATE: June 05, 2023

SUBJECT: **ADDITIONAL FUNDING FOR FORD PARTS AND REPAIRS AT MULLINAX FORD**

PRESENTER(S): Eric Winterstein

RECOMMENDATION:

POA 21-50: Approve funding of maintenance and repairs for Chevrolet and Ford vehicles with 1) Auto Partners III, LLC dba Dyer Chevrolet, Florida, in an amount of $50,000 annually and 2) Mullinax Ford of Vero Beach, LLC of Apopka, Florida, in an amount not to exceed $90,000 annually and 3) Pierce AFL VF, LLC dba Sunrise Ford, in an amount not to exceed $10,000 annually for a total of $150,000 annually beginning on 10/1/2023 through 9/30/2024.

SUMMARY/SUPPORTING INFORMATION

Vehicle services shall include performing diagnostics and/or trouble shooting, repairs and/or maintenance of applicable authorized Chevrolet and Ford parts. Both Dyer Chevrolet and Mullinax Ford are current reliable local vendors. Sunrise Ford is now under new ownership and while they currently have not been able to provide parts and service in a timely manner, we would like to maintain our ongoing relationship in the event that they are able to provide requested parts and services.
The current request for additional funding falls within the scope of our current agreement ending on 9/30/2023.

ALTERNATIVES (IF ANY):

Do not approve, this is not recommended as this could jeopardize returning the vehicle(s) back to service in a timely manner.

ATTACHMENTS:

D-4

Fort Pierce Utilities Authority

206 South Sixth Street (34950) | PO Box 3191, Fort Pierce, FL 34948-3191 | Phone: 772.466.1600

Board Submission Form

6/13/2023

Department: 35 - Facilities

Board Meeting Date: 06/20/2023

Item Type: Consent, Contract Agreement

Subject: Best Locks

Recommendation:

POA 23-35-043: Approve the contract for procurement, repairs and installation of Best Lock Locksets with D. H. Pace Company, Inc. of Olathe, Kansas, in an amount not to exceed $9,500 annually, through participation under GSA contract No. 47QSWA20D002B. The initial contract period will be from March 21, 2023 through December 10, 2024, with four one-year renewal options contingent upon GSA Contract extension and contingent on receiving the required Certificate(s) of Insurance.

Reviewed By Attorney: NA (FPUA Standard Contract)

Funds Available From: ___ No Funds Needed ___ Budgeted ___ Contingency

Approvals:

System Director:	RETHERFORD, DANIEL PAUL	Mar 10 2023 8:25AM
Director of Finance:	MIKA, BARBARA A.	Mar 27 2023 12:39PM
Director of Utilities:	CISNEROS, JAVIER	Jun 13 2023 8:29AM

Fort Pierce Utilities Authority

Memorandum

TO: Javier Cisneros, P.E., Director of Utilities

THROUGH: Daniel Paul Retherford, Director of Utility Support Services

FROM: Eric R. Winterstein, Cfm, Facilities And Fleet Super

DATE: June 13, 2023

SUBJECT: **Best Locks**

PRESENTER(S): Eric Winterstein

RECOMMENDATION:

POA 23-35-043: Approve the contract for procurement, repairs and installation of Best Lock Locksets with D. H. Pace Company, Inc. of Olathe, Kansas, in an amount not to exceed $9,500 annually, through participation under GSA contract No. 47QSWA20D002B. The initial contract period will be from March 21, 2023 through December 10, 2024, with four one-year renewal options contingent upon GSA Contract extension and contingent on receiving the required Certificate(s) of Insurance.

SUMMARY/SUPPORTING INFORMATION

Best Locks provide security at the FPUA Energy Services Center, Administration Building, and Water Resources facilities. Best Locks are considered the optimal security locksets and were installed at the Energy Services Center during the initial construction of the building. These locksets are manufactured by Dormak aba/Best Lock and may only be procured through authorized vendors with an authorized signature. The D. H. Pace Company, Inc. (DH Pace) is the approved vendor for Best Locks in St. Lucie County area. The other Best Lock Distributors are in Miami and Tampa Bay Florida. The 2 to 3-hour travel time from Miami and Tampa make these two best lock distributors not cost effective. Staff recommends approval of the contract with the DH Pace in the amount of $9,5000 annually.

ALTERNATIVES (IF ANY):

If the contract is not approved the purchase of the Best Locks can continue without the support of the manufacturers franchise for repairs and installation at FPUA facilities. The manufacturers agent will not be able to access FPUA facilities without the contract and the additionally insured clause

ATTACHMENTS:

FPUA Contract (Needs Attorney and Board Signatures)

FORT PIERCE UTILITIES AUTHORITY
CONTRACT FOR
BEST LOCKS
POA NO. 23-35-043

This Contract is made between **Fort Pierce Utilities Authority (FPUA)** and **D. H. Pace Company, Inc.**, of 1901 East 119th Street, Olathe, Kansas 66061, hereinafter referred to as Contractor.

The parties to this Contract in consideration of the mutual covenants and stipulations set out herein agree as follows:

Section 1
Contractor shall be defined as an individual, firm, or corporation having a direct contract with FPUA or with any other subcontractor in the performance of a part of the work contracted for under the terms of Contractor's direct contract with FPUA.

Section 2
Contractor is hereby contracted with to perform the following services: purchase, installation and repairs of Best Lock Locksets through participation in General Services Administration (GSA) Cooperative, and in accordance with and in the GSA Contract No. 47QSWA20D002B and Contractor's Proposal – Hourly Rates (Attachment B) appended hereto, hereinafter referred to as Specifications, and made a part thereof of this Contract. In the event of a conflict between the terms of this Contract and the terms and conditions of any proposal, quote, statement of work, or purchase order provided by Contractor the terms of this Contract shall take precedence and control.

Section 3
The services to be performed by Contractor shall be on the following site(s), hereinafter referred to as Project Site: Various locations throughout FPUA's service territory.

Section 4
The job upon which Contractor is to perform the services shall be referred to as the Best Locks, POA 23-35-043 job.

Section 5
Contractor shall be paid by FPUA in the following manner: per job and in accordance with the Local Government Prompt Payment Act, sections 218.70-79, Florida Statutes. The calculations shall begin using the date the invoice was received. Invoices should be sent to AP@FPUA.com or may be mailed to FPUA Attn: Accounts Payable, PO Box 3191, Fort Pierce, Florida 34948-3191.

Total job price: not to exceed $9,500.00 (nine thousand five hundred dollars and zero cents) annually on the terms contained in the Contractor's Specifications, and the Specifications herein specifically referred to and made a part of this Contract.

Section 6
Contractor shall, under no circumstances, look to FPUA to provide any labor or equipment for Contractor. Contractor shall provide all of the labor and equipment necessary to perform the job or services contracted for at the expense of Contractor. Property of any kind that may be on the premises, which are the site of the performance of this Contract, during the performance of this Contract, shall be at the sole risk of Contractor.

Section 7
Contractor shall provide certificate of insurance to FPUA setting forth the type and amount of insurance carried by Contractor and conforming to the minimum requirements set forth in Attachment A. All requirements of this section shall be approved by FPUA.

Section 8
This instrument contains the entire agreement between the parties and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Contract shall be valid or binding and this Contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

Section 9
This Contract shall commence on March 21, 2023 and end on December 10, 2024. There shall be four (4) one (1) year renewal options on terms and conditions that are mutually acceptable to the parties in writing contingent upon the GSA Contract Extension. This Contract will remain in effect in the event of a natural disaster, pandemic or other emergency event(s).

Section 10
Contractor acknowledges and understands that he is an independent contractor in his relationship to FPUA.

Section 11
This Contract shall inure to the benefit of and be binding upon the heirs, executors, administrator, assignees and successors of the respective parties.

Section 12
FPUA may terminate this Contract in accordance with the following terms and conditions:

A. **Termination for Convenience.** Either partymay, when in the interests of either party, terminate performance under this Contract by Contractor, in whole or in part, for the convenience of FPUA. The terminating party shall give written notice of such termination to the other party specifying when termination becomes effective, with at least thirty (30) days advance written notice. Contractor shall incur no further obligation in connection with the work so terminated, other than warranties and guarantees for completed work, and Contractor shall stop work when such termination becomes effective. Contractor shall also terminate outstanding orders and subcontracts for the affected work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. FPUA may direct Contractor to assign Contractor's rights, title and interest under termination orders or subcontracts to FPUA or its designee. Contractor shall transfer title and deliver to FPUA such

completed or partially completed work and materials, equipment, parts, fixtures, information and contract rights as Contractor has in their possession or control. When terminated for convenience, Contractor shall be compensated for the work performed in accordance with the pricing set forth in Exhibit B.

The total sum to be paid Contractor under this subsection A shall not exceed the total contract amount, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

B. **Termination for Cause.** If Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligation for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then FPUA, in addition to any other rights it may have against Contractor or others, may immediately terminate the performance of Contractor, in whole or in part at FPUA's sole option, and assume possession of the Project Site and all materials at the site and may complete the work.

In such case, Contractor shall not be paid further until the work is complete. After completion has been achieved, if any portion of the contract price, as it may be modified hereunder, remains after the cost to FPUA of completing the work, including all costs and expenses of every nature incurred, has been deducted by FPUA, such remainder shall belong to Contractor. Otherwise, Contractor shall pay and make whole FPUA for such cost. This obligation for payment shall survive the termination of the Contract.

In the event the employment of Contractor is terminated by FPUA for cause pursuant to this subsection B and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under subsection A and the provisions of subsection A shall apply.

C. **Termination for Non-Appropriation.** FPUA may also terminate this Contract in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the project, regardless of the source of such funds, and such termination shall be on the terms of subsection A.

D. FPUA's rights under this section shall be in addition to those contained elsewhere herein or provided by law.

Section 13

A. **Indemnification.** Contractor shall indemnify and hold harmless FPUA and its officers, agents and employees, from any liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or used by Contractor in the performance of this Contract.

B. **Audit Rights.** In accordance with section 2-439 of the City of Fort Pierce Code of Ordinances, FPUA has the right to audit the records of Contractor under any Contract other than a firm

fixed-price contract to the extent that such books and records are pertinent to the performance of such Contract. Such records shall be maintained by Contractor for a period of three (3) years from the date of final payment under the Contract.

C. **No Assignment or Third-Party Rights.** Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same without the prior written approval of FPUA. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than FPUA and Contractor.

D. **Consequential Damages.** Neither party shall be liable to the other for any incidental, consequential, exemplary, special, or punitive damages, including lost profits, that may arise in connection with this Contract, regardless of the cause of action (whether in contract, tort, negligence, strict liability, or otherwise) and regardless of how characterized, even if such party was advised of the possibility of such damages in advance.

E. **Choice of Law and Venue.** This Contract shall be construed in accordance with the laws of the State of Florida, without consideration of any conflict of law principles. Venue shall be in the federal or state courts in St. Lucie County.

F. **E-Verify Required.** Pursuant to 448.095, Florida Statutes, FPUA and every Contractor and subcontractor entering into an agreement to provide labor, supplies or services to FPUA must use the E-Verify system (www.e-verify.gov) to verify the work authorization status of any newly hired employees. If a Contractor subcontracts any of the labor or services for FPUA, the subcontractor must provide the Contractor with an affidavit stating that it does not employ, contract or subcontract with any person not authorized to work in the United States. The contractor must keep a copy of the affidavit on file for the duration of the contract. If FPUA or any Contractor or subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly employed, hired, or recruited an unauthorized alien for public or private employment, it must terminate the contract with that person or entity. Pursuant to 448.095 a contract terminated under this provision is not a breach of contract.

G. **Scrutinized Companies List.** Pursuant to Section 287.135, Florida Statutes, a company is ineligible and may not bid on, submit a proposal, or enter into or renew a contract with an agency or local governmental entity, and FPUA is prohibited from contracting or renewing contracts for goods or services: (1) for any amount with a company that is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, or is engaged in a boycott of Israel; (2) for $1,000,000 or more with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List, created pursuant to Section 215.473; or (3) is engaged in business operations in Cuba or Syria. By signing below Contractor certifies that it is not on any of the above referenced lists, is not engaged in a boycott of Israel, and is not engaged in business operations in Cuba or Syria. The company further acknowledges that FPUA may immediately terminate any contract if the company is found to have falsely certified that it is not on any of the forgoing lists, been placed on any of the foregoing lists, been engaged in a boycott of Israel, or engaged in business operations in Cuba or Syria.

H. Public Records.

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 CONTRACT, CONTACT THE CUSTODIAN OF

PUBLIC RECORDS AT PUBLICRECORDS@FPUA.COM, (772) 466-1600, OR PO BOX 3191, FORT PIERCE, FL 34948-3191.

To the extent the Contract includes providing services and acting on behalf of a FPUA as provided under section 119.011(2), Florida Statutes, the Contractor agrees to comply with Florida Public Records Law, Chapter 119, Florida Statutes, and shall:

1) Keep and maintain public records required by FPUA to perform the service;

2) Upon request from FPUA's custodian of public records, provide FPUA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;

3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to FPUA;

4) Upon completion of the Contract, transfer, at no cost to FPUA, all public records in possession of the company or keep and maintain public records required by FPUA to perform the service. If all public records are transferred to FPUA upon completion of the contract Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor maintains public records upon completion of the contract, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to FPUA upon request in a format compatible with FPUA's information technology systems.

I. **Trade Secret or Confidential Material.** In accordance with Florida Statutes, including 119.01 (Public Records) and 815.045 (Trade Secret Information), if Contractor considers any information related to this Contract or the services to be provided to FPUA thereunder to be a trade secret or confidential material under Florida or federal law(s), Contractor shall designate such portions of the material by clearly marking it CONFIDENTIAL or TRADE SECRET when it is submitted to FPUA (hereinafter the Confidential Material). If FPUA receives a public records request for the Confidential Material FPUA will provide only the materials not designated confidential or trade secret. If the requester of the information asserts a right to examine the Confidential Material FPUA will notify Contractor, and Contractor shall be responsible for responding to and resolving any claims for access to the Confidential Material. If FPUA is served with a request for discovery or order related to the Confidential Material, FPUA will promptly notify Contractor, and Contractor shall be responsible for filing the appropriate motion, objection, or seek an injunction to prevent disclosure of its Confidential Material. FPUA will provide the Confidential Material only if the Contractor fails to take appropriate action to protect the Confidential Material from disclosure within the timeframe(s) established by the applicable statute, rule or order. The Contractor agrees to protect, defend, and indemnify FPUA and its members and employees from all claims, fines or costs, including attorney's fees, arising from or relating to the designation of Confidential Material.

[signatures are on the following page]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Contract the day and year set forth below.

Signed, sealed and delivered in the presence of:

D. H. PACE COMPANY, INC.

BY: _____
Signature/Officer of Firm (Manual)

Ryan DiCocco
Name (Typed or Printed)

TITLE: Vice President

DATE: June 8, 2023

ATTEST:

_____
Secretary

(FPUA Seal)

FORT PIERCE UTILITIES AUTHORITY

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM & CORRECTNESS:

BY: _____
Fort Pierce Utilities Authority Attorney

ATTACHMENT A

REQUIRED LIMITS OF INSURANCE
FOR
FORT PIERCE UTILITIES AUTHORITY
TYPE III

Contractor shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the Fort Pierce Utilities Authority (FPUA), the types and amounts of insurance conforming to the minimum requirements set forth herein.

Workers' Compensation/Employers' Liability - Such insurance shall be no more restrictive than that provided by the Florida Workers Compensation Act. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The Workers' Compensation policy must be endorsed to waive the insurer's right to subrogate against FPUA, and its members, officials, officers and employees.

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	$ 500,000	(Each Accident)
	$ 500,000	(Disease-Each Employee)
	$1,000,000	(Disease-Policy Limit)

Commercial General Liability - The limits are to be applicable only to work performed under the Contract and shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 25 03) to a Commercial General Liability policy. FPUA (and if required the project engineer) and its board members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or Contractors).

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Each Occurrence	$1,000,000
Personal and Advertising Injury	$1,000,000
General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000

Contractor shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Work. The insurance shall be on a form no more restrictive than, and shall cover those sources of liability which would be covered by Coverage A of, the latest occurrence form edition of the Commercial General Liability Coverage Form (ISO Form CG 00 01), or of the occurrence Products/Completed Operations Liability Coverage Form (ISO Form CG 00 37), as filed for use in the State of Florida by ISO, without restrictive endorsements other than mandatory endorsements under an ISO filing.

Automobile Liability - Such insurance shall cover all owned, non-owned, and hired autos used in connection with the performance of the work, and shall not be subject to any aggregate limit.

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	$500,000

Property Insurance - If the Contract includes construction of or additions to above-ground buildings or structures, or installation of machinery or equipment, the Contractor shall provide Builder's Risk insurance or an Installation Floater. Such insurance shall be provided on an all risk basis. The minimum amount of insurance shall be 100% of the installed replacement value of the installation.

Professional Liability - If the Contract includes a requirement for professional liability insurance, such insurance shall be on a form acceptable to FPUA and shall cover the Contractor for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in the agreement. Coverage must either be on an occurrence basis; or, if on a claims made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

Each Occurrence/Annual Aggregate	$1,000,000 Project Specific

Miscellaneous Provisions - The insurance provided by Contractor shall apply on a primary and non-contributory basis to any insurance or self-insurance maintained by FPUA. Any insurance, or self-insurance, maintained by FPUA shall be excess of the insurance provided by Contractor.

The insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, FPUA may permit the application of a deductible or permit Contractor to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. In such instances, Contractor shall pay on behalf of FPUA or FPUA's board members, officials, officers and employees any deductible or self-insured retention applicable to a claim.

Compliance with these insurance requirements shall not limit the liability of Contractor or the remedies available to FPUA under this Agreement or otherwise. If Contractor obtains insurance of the types required herein with higher limits than the requirements herein, those higher limits shall apply.

Evidence of Insurance - Contractor shall not commence work until the required insurance is in force and evidence of insurance acceptable to FPUA has been provided and approved by FPUA. **An appropriate Certificate of Insurance (identifying the project) signed by an authorized representative of the insurer(s), with copies of the actual additional insured endorsement and notice of cancellation endorsement as issued on the policies, shall be satisfactory evidence of insurance.** With respect to Property Insurance, Contractor shall provide a Certificate of Property Insurance form or other evidence satisfactory to FPUA.

Until such insurance is no longer required by this Agreement, Contractor shall provide FPUA with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance. Contractor shall, within thirty (30) days of a written request from FPUA, provide FPUA with a ~~certified~~ copy of the policy or policies providing the coverage required herein. Contractor or its agent may redact or omit provisions of the policy that are not relevant to the insurance required herein. Polices will be provided in the event there is a request for verification of coverage or there is a claim.

Policies shall be endorsed to provide FPUA with 30 days' notice of cancellation.

Certificates of Insurance must be completed as follows:

Additional Insured:
Fort Pierce Utilities Authority and its board members, officials, officers, agents and employees

Certificate Holder
Fort Pierce Utilities Authority
Attn: Risk Management
PO Box 3191
Fort Pierce FL 34948-3191

Certificates may be emailed to: risk@fpua.com

(Rev. 02/2019)

D-5

BOARD SUBMISSION FORM

Fort Pierce Utilities Authority
"Committed to Quality"
206 South Sixth Street (34950)
PO Box 3191 | Fort Pierce, FL 34948-3191
Phone: 772.466.1600

Department: 74 - Gas Operations

Board Meeting Date: June 6, 2023

Item: X Regular Agenda ____ Consent Agenda

Subject: Builder/Developer Agreement installing natural gas to Cabo Rio in Lakewood Park

Recommendation:
Staff recommends Board approval of the Cabo Rio Builder/Developer Agreement.

Reviewed By Attorney: x Yes ____ No

Funds Available From: ____ No Funds Needed x Budgeted

Approvals:

System Director: Craig Crawford

Director of Financial Services: Barbara A. Mika

Director of Utilities: Javier Cisneros

Fort Pierce Utilities Authority

Memorandum

To:	Javier Cisneros, P.E., Director of Utilities
Through:	Craig Crawford, Director of Electric & Gas Systems
From:	Fred Gaddis, Gas Ops Superintendent
Date:	May 11, 2023
Subject:	Builder/Developer Agreement installing natural gas to Cabo Rio in Lakewood Park

RECOMMENDATION:

Staff recommends Board approval of the Cabo Rio Land Holdings LLC Builder/Developer Natural Gas Agreement for Installation of Gas Distribution System to the Cabo Rio Community in Lakewood Park.

SUMMARY/SUPPORTING INFORMATION:

Staff has been working with Cabo Rio Land Holdings LLC over the last couple of months to provide natural gas service to their facility on Indrio Road. The contract before you is to serve the Cabo Rio RV Park with natural gas. The cost of the infrastructure is approximately $60,000.00, with FPUA crews doing the installation. Based on the usage anticipated for the facility, our pay back for the capital cost is just a little over 2 years. We are not asking for any aid to construction from Cabo Rio Land Holdings. They will have 146 meters installed when completed. The services will be for a pool, restaurant, spa, and others are for the RV lots, which will have barbecues, fire pits and tiki torches. They will also have a few cabins that will be available to rent out.

ALTERNATIVES:

Revise Builder/Developer Agreement at Board's direction.

ATTACHMENTS:

Cabo Rio signed Builder/Developer Agreement

BUILDER/DEVELOPER NATURAL GAS AGREEMENT

THIS BUILDER/DEVELOPER NATURAL GAS AGREEMENT ("Agreement") is made and entered into effective this __12___ day of ___April____ , 2023 (the "Effective Date"), by and between Fort Pierce Utilities Authority ("FPUA") and Cabo Rio Land Holdings LLC, a Florida Corporation ("Developer") (FPUA and Developer may sometimes be collectively referred to as the "Party" or "Parties").

WITNESSETH

WHEREAS, Developer intends to develop a community known as Cabo Rio in St. Lucie County, Florida (the "Community").

WHEREAS, upon that certain parcel of real property located within the Community and more particularly described in Exhibit "A", which is attached hereto and incorporated herein by this reference (the "Property"), Developer intends to develop one or more phases of the Community, which phase or phases shall consist of approximately One Hundred Forty Six (146) total residences (each, a "Home" and collectively, the "Homes") together with other improvements and facilities associated therewith (collectively, the "Project"), in which phase or phases Developer desires to make natural gas service available to all or certain Homes pursuant to the terms and conditions hereof.

WHEREAS, in connection with Developer's development of the Project, FPUA and Developer have agreed that FPUA will install a natural gas distribution system within the Project for the provision of natural gas service, pursuant to the terms and conditions hereinafter set forth.

WHEREAS, FPUA is a public utility whose obligation and authority to serve natural gas customers is regulated by the Florida Public Service Commission or its successors (the "FPSC"). The FPSC also has jurisdiction over FPUA's service, safety and related matters. The Project is located within FPUA's service territory.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, FPUA and Developer hereby agree as follows.

1. **Installation of Gas Distribution System**.

1.1. Installation. In reliance of Developer's agreements, representations and warranties set forth herein, FPUA agrees to install a natural gas distribution system within the Project in accordance with the design, plans and specifications agreed to by the Parties (the "System Plans"), which System Plans shall include all distribution lines, meters and ancillary improvements and facilities (collectively, the "Gas Distribution System") as FPUA deems reasonably necessary to provide natural gas service up to the meter of each Home constructed during the term of this Agreement as a Gas Compliant Unit ("GCU", as defined below) in conformity with Section 2. If agreed to by the Parties on or prior to the Effective Date, the System Plans shall be that which is set forth in Exhibit "B", attached hereto and incorporated herein by this reference. If the System Plans have not been agreed to by the Parties at or prior to the Effective Date, then prior to commencing installation of the Gas Distribution System, FPUA shall provide FPUA's proposed System Plans for Developer's review and approval, which approval shall not be unreasonably withheld,

conditioned or delayed. Unless otherwise expressly set forth in this Agreement, the Gas Distribution System does not include any Internal Piping (as defined herein) and FPUA has no obligation to install or maintain such Internal Piping under the terms of this Agreement or otherwise. Further, FPUA shall not be obligated to install a Gas Distribution System or to provide natural gas service in any phase of the Community other than those in the Project, absent written agreement by both Parties.

1.2. Location. If the location of the Gas Distribution System has been determined by the Effective Date, then Exhibit "B" shall also include the location of the Gas Distribution System. Except to the extent already included in a recorded plat for the Project or otherwise agreed to herein as part of Exhibit "B", the location of the gas lines and all infrastructure and improvements relating to the Gas Distribution System shall be identified by Seller within a commercially reasonable time after the Effective Date, and written notice of such proposed location shall be provided to FPUA ("Proposed Location Notice"). It shall be Developer's responsibility for ensuring that the proposed location of the Gas Distribution System within the boundaries of the Property (whether such location is platted, incorporated into Exhibit "B" or otherwise determined in accordance with this Section 1.2) complies with all Laws (defined below) and does not interfere with the rights of any third parties of which Developer has actual knowledge or under any instrument recorded in the public records of the county in which the Project is located. Upon completion of installation of each three thousand (3,000) linear feet of the Gas Distribution System (each being a "Completed Portion"), FPUA shall commence restoration of those portions of the Project disturbed by FPUA during installation of the Completed Portion and shall continue diligently such restoration work until complete. Restoration work shall be completed so that the surface of the land shall be restored to substantially the same condition existing immediately prior to commencement of the installation of the Completed Portion or, if it is not reasonably practicable to restore the surface to such condition, then FPUA shall restore the surface to a condition such that Developer can proceed with development of the Project. In no event shall FPUA be required to replace, replant or restore any vegetation, or landscaping or natural areas in accordance with the foregoing.

1.3. FPUA Access to the Project; Associated Easements.

1.3.1. Developer represents that it owns and has legal title to the real property on which the Project will be constructed, including without limitation, the location of the Gas Distribution System pursuant to Section 1.2 above. Developer further represents that it has the authority to develop the Project, and to enter into and effectuate all of its obligations under this Agreement. Developer agrees to provide or cause to be provided to FPUA and its employees, contractors, subcontractors and agents adequate physical and legal access to all areas of the Project where the Gas Distribution System is to be installed or as are reasonably necessary for FPUA and its employees, contractors, subcontractors, and agents to install, operate, maintain and replace the Gas Distribution System (the "Easement"). If the Easement is not already provided to FPUA pursuant to a recorded plat, then Developer shall execute and deliver an easement agreement granting the Easement in favor of FPUA, in such form reasonably requested by FPUA ("Easement Agreement"), not later than fifteen (15) days after Developer approves the location of all or any portion of the Gas Distribution System (in accordance with Section 1.2 hereof).

1.3.2. If a plat for the Project has been recorded as of the Effective Date, then simultaneous with the execution hereof, Developer will provide a copy of said recorded plat to FPUA. If a plat for the Project has not yet been recorded as of the Effective Date, then Developer will provide FPUA a copy of any proposed plat of the Project at least ten (10) days prior to submission of the Plat for approval by the appropriate governing authorities. Said proposed plat shall be subject to FPUA's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted if not denied in writing within ten (10) days after FPUA's receipt thereof. The plat or proposed plat must depict the streets, lots and easements to be located within Project, and the location of the Easement in which the Gas Distribution System is or will be located (the "Plat") according to this Agreement. Once the Plat has received all necessary governmental approvals, Developer shall have the Plat recorded in the public records of the county in which the Project is located, and will provide FPUA a copy of the recorded Plat within ten (10) days after recording. If Developer grants the Easement to FPUA via a general-purpose utility easement dedicated in the Plat for the provision of all utilities (the "General Utility Easement"), Developer is deemed by this Agreement to have represented and warranted to FPUA that FPUA is entitled to use such General Utility Easement for the installation, operation, maintenance, repair and replacement of the Gas Distribution System within the Project. Except for easements that Developer has the sole power and authority to grant or that is expressly set forth in Section 1.3.4 below, Developer hereby represents that no additional easements are necessary from Developer or any third party for FPUA to install, operate, maintain, repair and replace the Gas Distribution System within the Project. If FPUA reasonably determines at any time that additional easements within the Project are required in connection with the Gas Distribution System, Developer shall promptly grant or, if Developer does not own the property on which the proposed additional easement will be located, cause to be granted such easements to FPUA.

1.3.3. Developer represents and warrants that the location of the Easement as determined in accordance with Section 1.2 above: (i) has been approved (or will be approved prior to Seller's delivery of the Proposed Location Notice pursuant to Section 1.2) by all applicable regulatory governmental entities to the extent required, and (ii) is in compliance (or will be in compliance prior to Seller's delivery of the Proposed Location Notice pursuant to Section 1.2) with all rules, ordinances, statutes, and government mandates with regard to utility easements.

1.3.4. Notwithstanding the above, FPUA hereby acknowledges that, to the extent required in connection with FPUA's installation, operation, maintenance, repair and replacement of the Gas Distribution System within the Project, FPUA will be responsible for obtaining any authorizations that may be required by the county in which the Project is located (or any other governmental entity) if FPUA must encroach into any public rights of way or other easements from governmental entities in the Project. Developer will, upon FPUA's request, cooperate with and assist FPUA in obtaining the foregoing easements, including executing such applications or other documents or agreements as may be required by such county or other governmental entity.

1.3.5. Once the Easement is granted by Developer, Developer reserves the right to relocate the Easement or any portion thereof (the "Relocated Easement") if Developer deems such relocation to be reasonably necessary for the development of the Project, provided,

however, that such relocation does not adversely affect or increase the cost of the design, installation, operation, maintenance or repair of the Gas Distribution System. If FPUA has not installed the portion of the Gas Distribution System proposed to be installed in the Relocated Easement, but has commenced the design and engineering thereof prior to the date FPUA receives written notice from Developer of its desire to relocate the Easement or portion thereof, Developer shall be required (prior to relocating the Easement or portion thereof) to reimburse FPUA for FPUA's actual, out-of-pocket expenses incurred in redesigning and/or reengineering the applicable portion of the Gas Distribution System and all costs of the Gas Distribution System or the installation thereof in excess of the costs that would have been incurred had the Gas Distribution System as originally designed been installed, all as reasonably determined by FPUA in good faith. If Developer desires to relocate the Easement or any portion thereof after the Gas Distribution System has been installed, Developer must first, (i) obtain FPUA's prior written consent (which consent shall not be unreasonably withheld or delayed); (ii) reimburse FPUA for all actual costs incurred by FPUA in redesigning, reengineering, relocating and reinstalling the Gas Distribution System, including, but not limited to the cost of all materials and labor therefore, all as reasonably determined by FPUA in good faith; and (iii) record an instrument of record evidencing the legal description for the Relocated Easement to FPUA. All payments due from Developer hereunder shall be paid within fifteen (15) days after the date of FPUA's invoice therefore.

1.4. Coordination of Installation. FPUA agrees to use commercially reasonable efforts to cooperate with Developer and its Authorized Builders with respect to the construction of the Gas Distribution System and to endeavor to minimize interference with or delay to Developer's construction and development of the Project. If not provided to FPUA on or prior to the Effective Date, Developer will provide FPUA a true and correct copy of Developer's anticipated construction schedule for the Project (the "Developer's Construction Schedule") promptly upon completion of the schedule and will notify FPUA immediately of any modifications thereto. Developer acknowledges that FPUA will rely upon the Developer's Construction Schedule for purposes of coordinating its acquisition of materials, mobilization of equipment and labor at the worksite and installation of the Gas Distribution System.

1.5. Insurance. Upon request, each Party will provide proof of insurance coverage, in the form maintained by the issuing Party in its ordinary course of business, and will name the non-requesting Party as an additional insured on such insurance policy.

1.6. Ownership of Gas Distribution System; Maintenance and Alteration. Notwithstanding any provision contained herein to the contrary, the Gas Distribution System shall remain the exclusive property of FPUA at all times, whether during the term of this Agreement or following its termination. FPUA shall have the sole obligation and responsibility for the maintenance of the Gas Distribution System and no other party, including Developer, shall make any attempt or take any action to maintain, repair, replace or alter any portion of the Gas Distribution System. FPUA's operation of the System is not governed by the terms of this Agreement; rather, the FPUA shall at all times operate and maintain the Gas Distribution System in accordance with the requirements of applicable statutes, laws, rules, regulations and ordinances. In the event the Gas Distribution System is no longer required to serve the Project or any part thereof, FPUA may at its election remove readily removable components of the Gas Distribution System, purge and cap any components to be left in place, and restore any disrupted surface areas of the Project.

1.7. Supply Date. At least thirty (30) days prior to the date on which Developer anticipates receiving a certificate of occupancy for the first completed GCU (defined below), Developer shall deliver written notice to FPUA advising FPUA of the date on which Developer anticipates receiving such CO (the "CO Notice"). Subject to the timely delivery of the CO Notice, and any delay caused by Force Majeure (as defined in Section 8 below) or the actions or inactions of Developer, FPUA agrees that the Gas Distribution System shall be complete and operational to provide natural gas service to the first completed GCU at least ten (10) calendar days prior to the issuance of the certificate of occupancy for said GCU, failing which FPUA shall make natural gas available to the Project by commercially reasonable alternative supply methods until the Gas Distribution System is complete and operational. Developer agrees to make available to FPUA, at no charge, a suitable area in the Project for the equipment necessary for such alternative supply method.

2. **Minimum Gas Compliant Units; Internal and External Piping**

2.1. Minimum GCU.

2.1.1. Developer acknowledges that FPUA will make a substantial economic investment in order to construct the Gas Distribution System and that FPUA is willing to undertake such investment given FPUA's anticipated usage of the Gas Distribution System by current and future owners, occupants or residents in the Project. In consideration for the substantial investment made by FPUA in constructing the Gas Distribution System and the mutual covenants contained herein, Developer agrees that at least One Hundred Forty-Six (146) Homes shall each be a Gas Compliant Unit (a "GCU"). In order to be a GCU, a Home must have installed therein each of the following appliances: tiki torch(es), bbq, & fire pit. All pool/spa heaters will use gas. Gas grill and gas fireplace will be offered as an option(s). (each of the foregoing, an "Appliance"). In addition, Developer also agrees that all model and speculative residential units in the Project that are not included in the Minimum Required GCU shall have installed therein at least the following Appliances: tiki torch(es), bbq, & fire pit. Each residential unit constructed in compliance with the foregoing two (2) sentences shall be referred to herein as a "Gas Compliant Unit" or "GCU." Each residence in the Project that is not a GCU shall be referred to herein as a "Non-GCU", and collectively as "Non-GCUs").

The parties hereby agree that no residences in the Project may be Non-GCUs without Developer's (or Authorized Builder's) payment of an Omission Fee for each such Non-GCU, as more particularly set forth in this Section 2.1. Within fifteen (15) days after the issuance of a certificate of occupancy for each and every Non-GCU in the Project (each being referred to herein as an "Omitted GCU"), Developer (or Authorized Builder) shall pay FPUA an omission fee ("Omission Fee") equal to the Omission Rate (as hereinafter defined). The Omission Rate shall equal $500.00.

2.1.2. Notwithstanding the above, if after 5 years from the Effective Date (the "Trigger Date"), certificates of occupancy have not been issued for the Minimum Required GCUs, then Developer shall pay FPUA, on or before fifteen days after the Trigger Date, a collective Omission Fee as determined by the following formula (the "Project Collective Omission Fee"):

(i) The Minimum Required GCUs, minus

(ii) The number of constructed GCUs for which certificates of occupancy have been obtained, minus

(iii) All Omitted GCUs for which Developer has already paid FPUA the Omission Fee pursuant to this section above, multiplied by

(iv) The Omission Fee at the Omission Rate.

2.1.3. The Omission Fee and Project Collective Omission Fee shall not be an obligation running with each and every Home conveyed to an individual purchaser thereof, but shall be an obligation of Developer and any successor developers as permitted under Section 4 below that runs with title to all portions of the Property owned by Developer unless and until the Project Collective Omission Fee is paid as provided hereinabove, at which time FPUA, at Developer's request, shall provide a satisfaction and release of the Omission Fee obligation set forth herein. FPUA shall have the right to offset any amounts owed to Developer pursuant to this Agreement with any amounts owed to FPUA as a result of Developer's failure to pay FPUA the Omission Fee or any other amount owed to FPUA pursuant to this Agreement or otherwise.

2.2. Installation and Ownership of Appliances and Internal Piping. Developer shall provide or cause to be provided all labor, materials, equipment and supervision to install (at no cost to FPUA) (i) each Appliance and (ii) all internal piping, venting and other equipment (the "Internal Piping") necessary to service the Appliances installed in each GCU and to connect same to the external gas meter installed by FPUA at an external location (reasonably selected by FPUA) at each GCU. The Internal Piping and the Appliances shall be the exclusive property of the owner of such GCU. The owner of each GCU shall at all times during and following the termination of this Agreement be responsible for the service, maintenance, repair and replacement of the Internal Piping and the Appliances.

2.3. Ownership of External Piping. All piping, meters, vents and other equipment installed by FPUA between the main line of the Gas Distribution System and the external meter installed by FPUA at each GCU (including such meter) (the "External Piping") shall be the exclusive property of FPUA. FPUA shall at all times maintain the External Piping, including the meter, in accordance with the requirements of all applicable governmental agencies.

3. **Payment to Developer for each GCU**.

3.1 Developer may be entitled to an energy conservation allowance for each Qualified GCU (as hereinafter defined) (the "GCU Payment") constructed in the Project that meets the requirements of the Energy Conservation Cost Recovery Plan (the "Plan"), as may be amended from time to time. A summary of the allowances presently available under the Plan is attached hereto as Exhibit "C". A GCU shall be deemed a Qualified GCU only after: (i) the GCU is sold to a third party and is occupied by a rate paying customer (homeowner or tenant); (ii) FPUA activates and commences supplying natural gas service to the GCU; and (iii) FPUA receives a Compliance Affidavit in the form attached hereto as Exhibit "D" executed by Developer with respect to such GCU. Only one GCU Payment shall be made for each Qualified GCU.

3.2 FPUA shall pay Developer or Authorized Builder the applicable amount set forth in the Plan for each Qualified GCU on a quarterly basis for the term of this Agreement pursuant to the following schedule:

3.2.1 For Qualified GCUs that received natural gas service from FPUA for the first time between January 1 and March 31 of a year, the GCU Payment shall be made on April 25 of such year;

3.2.2 For Qualified GCUs that received natural gas service from FPUA for the first time between April 1 and June 30 of a year, the GCU Payment shall be made on July 25 of such year;

3.2.3 For Qualified GCUs that received natural gas service from FPUA for the first time between July 1 and September 30 of a year, the GCU Payment shall be made on October 25 of such year.

3.2.4 For Qualified GCUs that received natural gas service from FPUA for the first time between October 1 and December 31 of a year, the GCU Payment shall be made on January 25 of the next year.

3.23 During the term of this Agreement, FPUA shall have the right to inspect any residences for which a claim for allowance has been made, at reasonable times and upon notice to Developer.

4. **Successors, Assigns and Assignment.**

4.1. This Agreement and all of the provisions hereof shall run with the land and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and permitted assigns. Neither this Agreement nor any rights, benefits or obligations set forth herein may be assigned by either of the parties hereto, except as specifically authorized by this Section 4 or otherwise agreed to by the Parties in writing.

4.2. FPUA may assign this Agreement and any or all rights or obligations hereunder to any affiliate of FPUA or in connection with any sale of all or substantially all of FPUA's assets or any other transaction in which FPUA's business is sold, or any merger, consolidation or similar transaction to which FPUA is a party.

4.3. Developer may assign this Agreement and all rights and all obligations hereunder in connection with a sale of all of the Project then owned by Developer to a successor developer to a successor developer who expressly agrees to assume this Agreement and all obligations of Developer hereunder, whether arising before or after the assignment, pursuant to an Assignment and Assumption Agreement, in form and substance acceptable to FPUA in its reasonable discretion, executed by Developer and the successor developer and delivered to FPUA. Upon a permitted assignment under the preceding sentence, Developer shall remain responsible and liable, jointly with assignee, for any obligations first arising or coming due prior to such assignment with respect to this Agreement, but Developer shall not have any responsibility or liability with respect to any obligations first arising or coming due after such assignment with respect to this Agreement, and FPUA shall look solely to the successor developer for all matters arising under this Agreement after such assignment.

Developer may develop and sell to home builders ("Authorized Builders") single family residential lots within the Project for the construction of homes therein, in which event Developer desires to assign to such Authorized Builders its rights, obligations and responsibilities hereunder with respect to lots within the Project purchased by such Authorized Builders.

Developer shall have the right to assign its rights and obligations hereunder to an Authorized Builder if such Authorized Builder expressly assumes all of the obligations and responsibilities of Developer hereunder (to the reasonable satisfaction of FPUA) as to the land conveyed to said Authorized Builder, and a written assignment and assumption agreement is provided to FPUA. Notwithstanding, nothing herein shall relieve Developer of its payment of the Project Collective Omission Fee to the extent the Minimum Required GCUs are not constructed on the Project as contemplated hereunder.

5. **Force Majeure**. Neither Party shall be liable to the other for any failure to perform pursuant to the terms and conditions of this Agreement to the extent such performance was prevented by an event of Force Majeure (defined below); provided that Force Majeure shall not apply to Developer's obligation to pay the Omission Fee when due in accordance with Section 2.1.2 above. The term "Force Majeure" shall mean an acts of God, strikes, lockouts, or other industrial disturbance, acts of the public enemy, wars, riots, epidemics, industrial disturbances that affect the Parties or its customers, breakage or non-foreseeable accident to machinery or lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the Party whose performance is affected and which, in each of the above cases, by the exercise of due diligence such Party is unable to prevent or overcome utilizing commercially reasonable efforts; such term shall likewise include the inability of a Party to acquire, or delays on the part of such Party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, materials or supplies which are required to enable such Party to fulfill its obligations hereunder. The Party whose performance is excused by an event of Force Majeure shall promptly notify the other Party in writing of such occurrence and its estimated duration, shall promptly remedy such Force Majeure if and to the extent reasonably possible and shall resume such performance as soon as possible; provided, however, that neither Party shall be required to settle any labor dispute against its will.

6. **Compliance with Law**. Each Party shall comply with all applicable statutes, laws, rules, regulations, ordinances, orders, permits and governmental approvals (collectively, the "Laws") in the exercise of the rights and obligations of each Party under this Agreement, and neither Party shall be obligated hereunder to undertake any action that would result in the violation of any one or more Laws.

7. **Notices**. Any notices sent by either party to the other pursuant to this Agreement shall be sent by either U.S. mail, postage prepaid, return requested, or by receipted overnight national delivery service (e.g., Federal Express, UPS, etc.), and shall, if not sooner received, be deemed received three (3) business days after deposit in the United States Mail, or one business day after receipt by any overnight national delivery service, as aforesaid. All notices shall be addressed to each party at the following address, or such other address as either party may hereafter designate to the other party in writing:

If to Developer: CABO RIO LAND HOLDINGS LLC
4995 Conley PL
Fort Pierce, Fl 34951
Attn: James A. Chalmers
Phone No. 772-971-7531

If to FPUA: Fort Pierce Utilities Authority
P. O. Box 3191
Fort Pierce, Florida 34948-3191
Attn:
Fax No. 772.468.2413
Phone No. 772.466.1600

8. **Governing Law: Venue; Waiver of Jury Trial; Attorneys' Fees**. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida. To the extent permitted by law, each of the parties hereto hereby irrevocably submits to the jurisdiction of state courts in or for St Lucie County, Florida, over any suit, action or other proceeding brought by any party arising out of or relating to this Agreement or the transactions contemplated hereby, and each of the Parties hereby irrevocably agrees that all claims with respect to any such suit, action or other proceeding shall be heard and determined in such courts and waives any objection that such forum is inconvenient. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN. In the event that any party is required to commence or defend any action or proceeding against the other in order to enforce the provisions hereof or to challenge the provision hereof, the prevailing Party in such action shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all costs incurred in connection therewith, including reasonable attorneys' and paralegals' fees, costs, and expenses incurred pretrial, at trial, on appeal and in bankruptcy.

9. **Indemnity**.

9.1. FPUA shall hold harmless, indemnify and defend each of Developer and its employees, contractors, subcontractors and agents (collectively, the "Developer Indemnified Parties") from and against any and all claims, damages, losses, liabilities, obligations, penalties, actions, judgments, suits, costs, disbursements and expenses (including, without limitation, reasonable attorneys' and paralegals' fees and expenses incurred whether suit be brought or not, at trial, on appeal or in bankruptcy) (collectively, "Claims") that may be incurred by or asserted against any Developer Indemnified Party directly as a result of the breach by FPUA of this Agreement or the willful misconduct or negligent acts or omissions of FPUA or any of its employees, contractors, subcontractors and agents in connection with the installation, operation, maintenance or repair of the Gas Distribution System in the Project, except that FPUA shall not be responsible for any Claims, or portion thereof, arising out of, related or attributable to any acts or omissions, whether willful or negligent, of any other party, including without limitation, any Developer Indemnified Party, any homebuilder, other contractor or subcontractor, vendor,

supplier, homeowner, tenant, resident, guest, licensee or invitee, home or property owners' association, management company or property manager.

9.2. Developer shall hold harmless, indemnify and defend each of FPUA and its employees, contractors, subcontractors and agents (collectively, the "FPUA Indemnified Parties") from and against any and all Claims that may be incurred by or asserted against any FPUA Indemnified Party with respect to the Project, the Property, the Gas Distribution System or otherwise as a result of the willful misconduct or negligent acts or omissions of (i) Developer or any of its employees, contractors, subcontractors and agents, or (iii) any home or property owners' association, management company or property manager controlled by Developer or any of its affiliates.

9.3. In addition, Developer shall hold harmless, indemnify and defend FPUA Indemnified Parties from and against any and all Claims that may be asserted against any FPUA Indemnified Party under Environmental Laws (defined below) arising from, out of, in connection with, or as a consequence, directly or indirectly, of the presence of any hazardous substance, hazardous waste, toxic chemical, petroleum (including crude oil or any fraction or byproduct thereof), asbestos, polychlorinated biphenyls, or any other contaminant ("Hazardous Materials") on, in, or beneath the Property, or that may have migrated from the Property to any adjacent lands, air or water, which Hazardous Materials: (i) were present on, in, or beneath the Property prior to the installation of the Gas Distribution System, (ii) were not first introduced to the Property by any material placed on, in, or beneath the Property by FPUA, and (iii) notice of which was not provided to FPUA by Developer prior to the installation of the Gas Distribution System.

9.3.1. The term "Environmental Laws" shall mean and include any and all federal, state or local laws (whether under common law, statute, rule, regulation, ordinance or otherwise) or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning the protection of human health or the environment, Hazardous Materials or any activity involving Hazardous Materials.

10. **Limitation on Liability**. Notwithstanding any provision in this Agreement to the contrary, including Section 9, neither FPUA nor Developer shall be liable to the other Party or any third party for any special, indirect, incidental or consequential damages or loss of any kind, including, without limitation, damages for personal injury, loss of profits or savings, loss of use, or any other damages, whether based on strict liability, or negligence, whether resulting from installation, use or maintenance of the Gas Distribution System, breach of this Agreement or otherwise, except for direct, actual damages.

11. **Remedies; Limitations**. In the event of a breach of this Agreement, the non-breaching Party shall, except to the extent specifically limited by this Agreement, have all rights and remedies available at law and at equity against the breaching Party. In all cases arising under this Agreement, FPUA's liability shall be limited to an amount equivalent to the value of the Gas Distribution System; provided, however, that this limitation shall not expand FPUA's liability beyond that provided by its tariffs or other applicable law.

12. **Miscellaneous**. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes any and all prior negotiations, understandings or agreements with respect to this subject matter. This Agreement may be amended only by written instrument signed by both of the Parties. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or

remedy by either party shall constitute a waiver of, or shall preclude any other or further exercise of, the same or any other right, power or remedy. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Florida law, but if any provision of this Agreement or the application thereof to any Party or circumstance is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Agreement is declared severable. Nothing contained herein shall be construed as a joint venture, partnership or any other similar relationship between FPUA and Developer. The captions, headings, titles, and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions of this Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties, and their respective successors and assigns, and no assignment shall relieve either Party of such Party's obligations hereunder without written consent of the other Party. This Agreement shall be subject to all applicable laws, rules, orders, permits, and regulations of any federal, state, or local governmental authority having jurisdiction over the Parties, their facilities, the Property, the Project, or the transactions contemplated. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one in the same instrument. Electronic signatures, including signature pages transmitted via facsimile and/or email, shall be binding upon all parties and deemed as originals.

13. **Recording**. Upon request by FPUA, Developer will execute a memorandum of this Agreement in, in a form reasonably requested by FPUA, which may be recorded by FPUA among the Public Records of the county and/or city in which the Project is located.

14. **Exclusivity**. Developer agrees that FPUA has an exclusive right to provide natural gas services to the Project and that Developer and any successor in interest, including without limitation any home or property owner's association, landowner, builder or developer will not grant, or allow others to grant any approval, easement or right-of-way for purposes of allowing a party other than FPUA to deliver natural gas service. Developer certifies that, other than this Agreement, there is no existing commitment, grant of rights, contract, agreement or arrangement with any third party for the provision of natural gas service to the Project, the Property or any portion thereof.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Contract the day and year set forth below.

Signed, sealed and delivered in the presence of:

James A. Chalmers

BY: _____
Signature/Officer of Firm (Manual)

James A Chalmers
Name (Typed or Printed)

TITLE: Owner

STATE OF: Florida

COUNTY OF: St. Lucie

The foregoing instrument was acknowledged before me this 10 day of April, 2023, by

James Chalmers, Owner, of Cabo Rio LLC
Officer of Firm — Title — Name of Firm

a Florida corporation, on behalf of the corporation.
State

He/She is personally known to me or has produced FL DL C456-441-78-097-0 as identification.

Notary Public State of Florida
Michael Addeo
My Commission HH 048876
Expires 10/04/2024

Michael Addeo
Notary Public

My commission expires: 10-4-2024

ATTEST:

_____
Secretary

(FPUA Seal)

FORT PIERCE UTILITIES AUTHORITY

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM & CORRECTNESS:

BY: _____
Fort Pierce Utilities Authority Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

13 34 39 FROM NE COR OF SW 1/4 RUN WLY 70 FT,TH SLY 20 FT TO SLY R/W INDRIO RD,TH WLY ALG R/W LI 1257.74 FT TO POB,TH SLY 1310 FT,TH WLY 1256.40 FT TO PT ON ELY R/W LI OF KINGS HWY,TH NLY ON R/W LI 499.55 FT,TH ELY 628.75 FT,TH NLY 571 FT,TH ELY 178.45 FT,TH NLY 237.75 FT TO SLY R/W LI OF INDRIO RD,TH ELY ALG R/W LI 821.30 FT,TH SLY 695 FT,TH ELY 330 FT,TH NLY 695 FT TO SLY R/W LI OF INDRIO RD,TH ELY ON R/W LI 556.3 FT TO POB (25.05 AC)

EXHIBIT "B"
SYSTEM PLAN

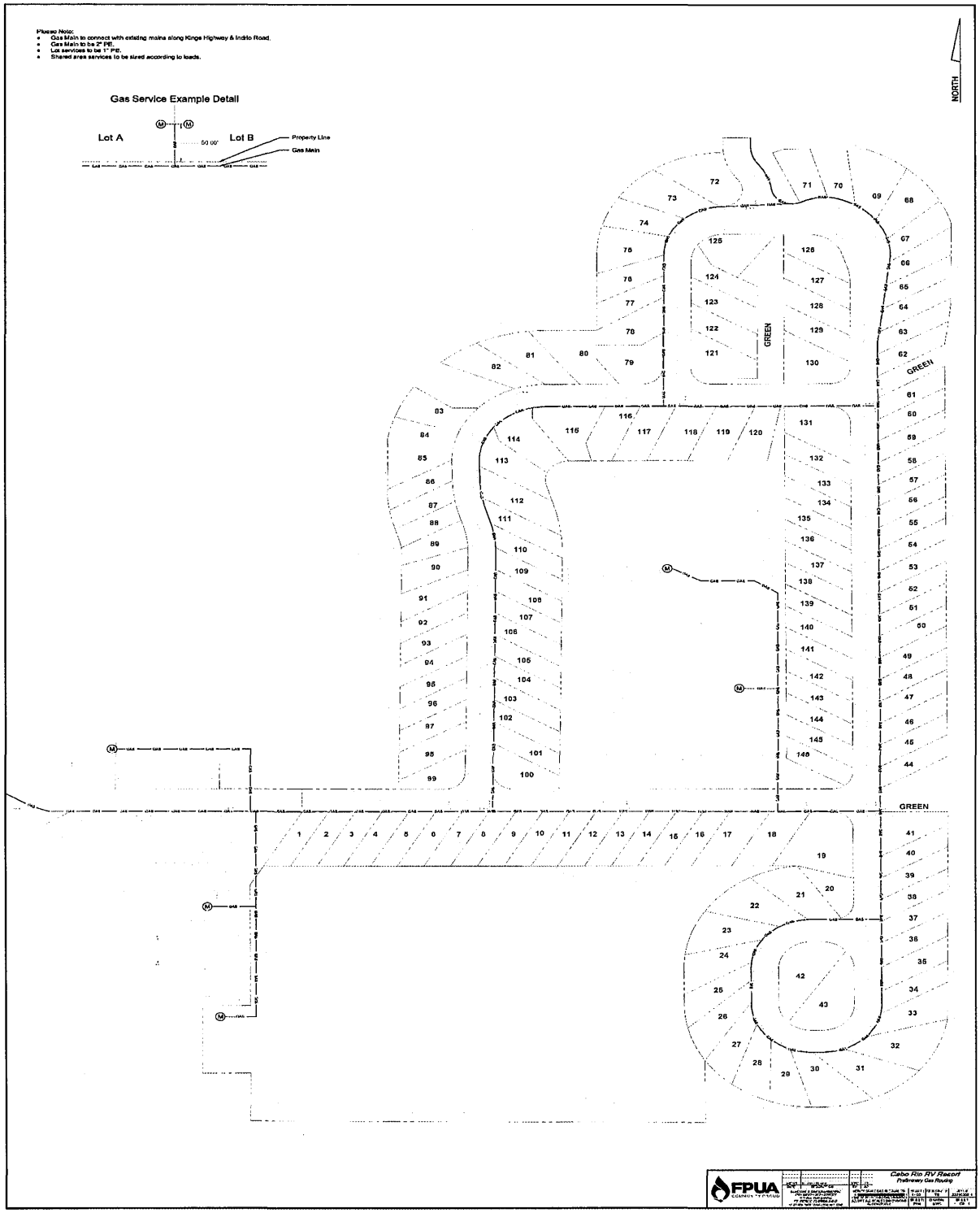

EXHIBIT "C"
GCU PAYMENT REBATE AMOUNTS

The FPUA will disburse to the Developer GCU Payment for Qualified GCUs based on the following schedule (which shall be subject to change from time to time based upon new rebate schedules approved by FPUA. During the term of this Agreement, FPUA shall have the right to inspect any residences for which a claim for allowance has been made, at reasonable times and upon notice to Developer.

Schedule of Rebate Allowances:

*Conservation Rebate Allowance	
Gas Water Heater	$350.00 ea
Gas Tank-less Water Heater	$550.00 ea
Gas Furnace	$500.00 ea
Gas Cooktop/Range	$150.00 ea
Gas Dryer	$100.00 ea

EXHIBIT "D"
COMPLIANCE AFFIDAVIT TBD

_____ ("Developer") is requesting a GCU Payment pursuant to that certain Developer Agreement dated as of _____, 20__ (the "Agreement") between Developer and Fort Pierce Utilities Authority ("FPUA"). Capitalized terms use, but not defined, herein shall have their meanings as set forth in the Agreement.

Criteria:

- **A list of Qualified GCUs and the applicable Appliances shall be completed and forwarded to FPUA for the GCU Payment being claimed.**
- **Payment will be made in accordance with the terms of the Agreement.**

Payment is requested for the GCU located at: _____

Gas Water Heater	$_____
Gas Tank-less Water Heater	$_____
Gas Cook top/Range	$_____
Gas Dryer	$_____
Gas Furnace	$_____

(Attach a list of the Appliances that have been installed and activated for gas service)

Total GCU Payment Amount $ _____

Date: _____

Requested by: _____
Print Name: _____
Title: _____

Conservation Rebate Allowance[1]:

Gas Water Heater	$350.00 each
Gas Tank-less Water Heater	$550.00 each
Gas Cooking	$150.00 each
Gas Dryer	$100.00 each
Gas Furnace	$500.00 each

[1] Rebate allowances are subject to change from time to time based upon new rebate schedules approved by the Florida Public Service Commission.

EXHIBIT "E"
FORM OF MEMORANDUM

This instrument prepared by and return to:

Fort Pierce Utilities Authority
P.O. Box 3191
Fort Pierce, FL 34948-3191
Attn: Fred Gaddis, Gas Operations Superintendent
Fax No. 772.468.2413
Phone No. 772.466.1600 x 4701

MEMORANDUM OF AGREEMENT

This is a Memorandum of Agreement (the "**Memorandum**") by and between Cabo Rio Land Holdings LLC, a Florida Corporation, whose address is 4995 Conley PL. Fort Pierce, FL 34951 ("**Developer**"), and **Fort Pierce Utilities Authority** ("**FPUA**"), located at 206 South 6th Street, Fort Pierce, Florida, 34950, upon the following terms:

Date of Developer Agreement (the "**Agreement**"): _____April 12th_____, 2023

Description of real property which is the subject of said Agreement (the "**Property**"):

See Exhibit "A" attached hereto.

The purpose of this Memorandum is to give record notice of the Agreement and that rights and obligations between the parties are created thereby. The Agreement and all the provisions thereof run with the land and are binding upon and inure to the benefit of each of the parties and their respective successors and permitted assigns, specifically including any successor developer of all or any portion of the Property and any purchaser of more than one (1) Home within the Community. A summary of the key provisions within the Agreement are as follows:

1) Developer is required to provide certain utility easements ("**Utility Easements**") in favor of FPUA on the Property;

2) FPUA is required to install a Natural Gas distribution system within the Utility Easement Area and FPUA shall have the sole obligation and responsibility for the maintenance of the Gas Distribution System; no other party, including Developer, shall make any attempt or take any action to maintain, repair, replace or alter any portion of the Gas Distribution System;

3) Developer is obligated to construct at least One Hundred Forty-Six (146) residences (the "**Minimum Required GCUs**) that each qualify as a "**GCU**", defined as a residence that has installed therein: tiki torch(es), bbq, & fire pit. If Developer constructs the Minimum Required GCU's, then upon written request from Developer to FPUA, FPUA shall deliver a recordable satisfaction and release of the Omission Fee obligation set forth in the Agreement and evidenced by this Memorandum. If Developer fails to construct

the Minimum Required GCUs on the Property, Developer is obligated to pay FPUA an omission fee of $500.00 (The "**Omission Fee**") for each residence representing the difference between the Minimum Required GCUs and the actual number of GCUs constructed on the Property.

If Certificates of Occupancy for the Minimum Required GCUs are not issued before the earlier of (a) the date on which a Certificate of Occupancy is issued for [tenth (10th)] from last Residence in the Project or (the "Trigger Date"), then Developer shall, within fifteen (15) days after the Trigger Date pay FPUA the Omission Fee for each Home representing the difference between the Minimum Required GCUs and the actual number of GCUs for which Certificates of Occupancy have been issued as of the Trigger Date. After the issuance of the Certificate of Occupancy on the last Home in the Project, and to the extent actually paid by Developer, FPUA shall reimburse the Omission Fee to Developer for each Certificate of Occupancy issued for a GCU between the Trigger Date and the date that a Certificate of Occupancy is issued on the last Residence in the Project.

4) The Omission Fee shall not be an obligation running with each and every Residence conveyed to an individual purchaser thereof, but shall be an obligation of any successor developers as permitted by the Agreement and shall be an obligation that runs with title to the last ten (10) Residences in the Project owned by Developer, unless and until the Omission Fee is paid as provided hereinabove, at which time FPUA shall, upon receipt of written request from Seller, provide a recordable satisfaction and release of the Omission Fee obligation set forth in the Agreement and evidenced by this Memorandum.

5) The rights of the parties to assign any portion of the Agreement are limited by the terms of the Agreement.

6) This Memorandum gives public record notice of the existence and general terms of the Agreement; all the terms of said Agreement are incorporated herein by this reference. Any and all persons or parties with any interest in the Property/Community, other than an individual homebuyer of a Home within the Community, shall be deemed to have received constructive notice of all the terms and conditions of the Agreement.

7) Each capitalized term used and not otherwise defined herein shall be deemed to have the meaning ascribed to it in the Agreement.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals to this Contract the day and year set forth below.

Signed, sealed and delivered in the presence of:

James A. Chalmers

BY: _____
Signature/Officer of Firm (Manual)

James Chalmers
Name (Typed or Printed)

TITLE: Owner

STATE OF: Florida

COUNTY OF: St. Lucie

The foregoing instrument was acknowledged before me this 10 day of April, 2023, by James Chalmers, Owner, of Cabo Rio LLC
Officer of Firm, Title, Name of Firm
a Florida corporation, on behalf of the corporation.
State

He/She is personally known to me or has produced FL DL C456-441-78-097-0 as identification.

Notary Public State of Florida
Michael Addeo
My Commission HH 048876
Expires 10/04/2024

Michael Addeo Michael Addeo
Notary Public

My commission expires: 10-4-2024

ATTEST:

FORT PIERCE UTILITIES AUTHORITY

_____
Secretary

BY: _____
Chairman

(FPUA Seal)

DATE: _____

APPROVED AS TO FORM & CORRECTNESS:

BY: _____
Fort Pierce Utilities Authority Attorney

D-6

Fort Pierce Utilities Authority

206 South Sixth Street (34950) | PO Box 3191, Fort Pierce, FL 34948-3191 | Phone: 772.466.1600

Board Submission Form

6/14/2023

Department: 35 - Facilities

Board Meeting Date: 06/20/2023

Item Type: Contract Agreement

Subject: MISC. TREE TRIMMING Amendment No. 3 (Vendor 5/22 & 6/2, 6/13)

Recommendation:

POA No. 17-42: Approve Amendment No. 3 to the Tree Trimming and Removal Contract with Brooker Equipment, LLC dba Sampson Tree Service of Port St. Lucie, Florida, for the Assignment and Assumption of Contract to Brooker Equipment, LLC.

Reviewed By Attorney: NA (FPUA Standard Contract)

Funds Available From: ___ No Funds Needed X Budgeted ___ Contingency

Approvals:

System Director:	RETHERFORD, DANIEL PAUL	May 1 2023 3:38PM
Director of Finance:	MIKA, BARBARA A.	May 23 2023 11:44AM
Director of Utilities:	CISNEROS, JAVIER	May 24 2023 10:16AM

Fort Pierce Utilities Authority

Memorandum

TO: Javier Cisneros, P.E., Director of Utilities

THROUGH: Daniel Paul Retherford, Director of Utility Support Services

FROM: Eric R. Winterstein, Cfm, Facilities And Fleet Super

DATE: June 14, 2023

SUBJECT: **MISC. TREE TRIMMING Amendment No. 3 (Vendor 5/22 & 6/2, 6/13)**

PRESENTER(S): Eric Winterstein

RECOMMENDATION:

POA No. 17-42: Approve Amendment No. 3 to the Tree Trimming and Removal Contract with Brooker Equipment, LLC dba Sampson Tree Service of Port St. Lucie, Florida, for the Assignment and Assumption of Contract to Brooker Equipment, LLC.

SUMMARY/SUPPORTING INFORMATION

The existing miscellaneous tree trimming contract with Sampson Tree Service has been in place since 2017. Brooker Equipment, LLC (Sampson) purchased Sampson Tree Service this year (2023). Sampson has provided FPUA with unique and cost-effective solutions for tree and vegetation removal on multiple projects at FPUA facilities, on an as needed basis. Staff would like to continue tree trimming services under our existing contract, as assigned to Brooker Equipment, LLC dba Sampson Tree Service.

ALTERNATIVES (IF ANY):

Do not approve, this is not recommended as failure to approve the amendment to the existing miscellaneous tree trimming contract could affect the overhead power lines at various FPUA facilities.

ATTACHMENTS:

FPUA Contract Amendment No. 3 - Assumption of Contract

ASSIGNMENT AND ASSUMPTION OF AND AMENDMENT 3 TO TREE TRIMMING AND REMOVAL CONTRACT POA NO. 17-42

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND THIRD AMENDMENT ("Assignment") is made and entered into between the Fort Pierce Utilities Authority ("FPUA"), Sampson Tree Service Co., a Florida Corporation with its principal place of business at 2170 SW Conant Ave ("Assignor), and Brooker Equipment LLC dba Sampson Tree Service, A Florida Limited Liability Company with its principal address at 2170 SW Conant Avenue, Port St. Lucie, Florida 34953 ("Assignee").

WHEREAS, the FPUA and Assignor entered into a contract for Tree Trimming and Removal effective July 6, 2017, which was subsequently amended by that First Amendment dated March 15, 2022 and that Second Amendment dated February 7, 2023 (as amended the "Agreement");

WHEREAS, Assignor wishes to assign all of its right, title, and interest as the Contractor under the Agreement, and Assignee wishes to accept such assignment of right, title and interest and to assume the Agreement upon the terms and conditions more particularly set forth herein; and

WHEREAS, in accordance with Section 13 of the Agreement, the FPUA desires to consent to the assignment and assumption of the Agreement to Assignee.

WHEREAS, the FPUA and Assignee desire to further amend the Agreement to extend the term of the Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Incorporation of Recitals and Defined Terms. The foregoing recitals are incorporated into this Assignment and made a part hereof as though set forth herein verbatim. Any term which is not specifically defined shall have the meaning ascribed to it in the Agreement.

2. Assignment. Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's rights and interest in the Agreement.

3. Acceptance of Assignment. Assignee hereby accepts the assignment of the Agreement and assumes all obligations of Assignor under the Agreement first arising from and after the date hereof; all with the full force and effect as if Assignee had signed the Agreement originally as the Contractor named therein. All of the terms and conditions of the Agreement shall inure to the benefit of, and be binding upon, Assignee.

4. Amendment. Section 9 of the Agreement is deleted in its entirety and replaced with the following Section 9:

Section 9

This Contract shall commence on July 6, 2017 and end on July 5, 202024. This Contract will remain in effect in the event of a natural disaster.

5. Effective Date. This Assignment is effective as of the date last signed below. Except as amended hereby, the terms and conditions of the Agreement remain in full force and effect. Any conflict between the provisions of this Assignment and the Agreement shall be resolved in favor of the provisions of this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the date set forth below.

FORT PIERCE UTILITIES AUTHORITY

_____
Chair

_____
Date

ATTEST:

_____
Secretary

APPROVED AS TO LEGAL FORM:

_____
FPUA General Counsel

BROOKER EQUIPMENT LLC dba SAMPSON TREE SERVICE

Kyle Brooker
Kyle Brooker
Printed Name

President
Title

6-13-23
Date

SAMPSON TREE SERVICE CO.

Rick Sampson
Printed Name

President
Title

6-13-23
Date

Fort Pierce Utilities Authority

206 South Sixth Street (34950) | PO Box 3191, Fort Pierce, FL 34948-3191 | Phone: 772.466.1600

Board Submission Form

6/13/2023

Department: 62 - Water Resources

Board Meeting Date: 06/20/2023

Item Type: Regular, Contract Agreement

Subject: SODIUM HYPOCHLORITE AMENDMENT NO. 2 AND RENEWAL 6 OF 6

Recommendation:

POA 17-64: Approve Amendment No. 2 to the Sodium Hypochlorite Contract with Allied Universal Corp., of Miami, Florida to 1) increase the not to exceed contract amount by $140,000 from $350,000 to $490,000 annually, and 2) extend for an additional 2 years, contingent upon receipt of the required Certificate(s) of Insurance.

Reviewed By Attorney: NA (FPUA Standard Contract)

Funds Available From: ___ No Funds Needed X Budgeted ___ Contingency

Approvals:

System Director: STEPHENS, BRIAN KEITH (Delegate) Jun 12 2023 1:05PM

Director of Finance:

Director of Utilities: CISNEROS, JAVIER Jun 13 2023 9:04AM

Fort Pierce Utilities Authority

Memorandum

TO: Javier Cisneros, P.E., Director of Utilities

THROUGH: Bowdoin G. Hutchinson, P.E., Director of W/WW Systems

FROM: Brian Keith Stephens, Wr Superintendent

DATE: June 13, 2023

SUBJECT: **SODIUM HYPOCHLORITE AMENDMENT NO. 2 AND RENEWAL 6 OF 6**

PRESENTER(S): Keith Stephens

RECOMMENDATION:

POA 17-64: Approve Amendment No. 2 to the Sodium Hypochlorite Contract with Allied Universal Corp., of Miami, Florida to 1) increase the not to exceed contract amount by $140,000 from $350,000 to $490,000 annually, and 2) extend for an additional 2 years, contingent upon receipt of the required Certificate(s) of Insurance.

SUMMARY/SUPPORTING INFORMATION

On July 5, 2017, the Board approved the Contract with Allied Universal Corp. for supplying Sodium Hypochlorite in an amount not to exceed $221,556 annually. On June, 21, 2022, the Board Approved Contract Amendment No. 1 to increase the not to exceed amount of $221,556 to $350.000 annually and to extend for an additional two years.

There are current inflationary pressures causing most chemicals to rise dramatically in price. Sodium Hypochlorite is affected by this. On May 21, 2021 FPUA's current vendor requested an increase of $0.05 per gallon, from $0.499 to $0.549 per gallon and on April 25, 2022 the current vendor requested another increase of $0.549 to $0.859. At this time FPUA's current vendor has proposed an increase from $0.859 to $1.36 per gallon for an increase of $0.501 per gallon. While this represents a 58 percent increase in price it is not out of line with the increases that FPUA has seen for other water/wastewater treatment chemicals and what other utilities are currently being charged.

ALTERNATIVES (IF ANY):

Do not approve and put back out for formal bid, this is not recommended as in light of the current market it is very unlikely that FPUA would be quoted a significantly lower price for Sodium Hypochlorite.

ATTACHMENTS:

FPUA Contract Amendment No. 2

AMENDMENT 2
TO SODIUM HYPOCHLORITE
POA NO. 17-64

THIS SECOND AMENDMENT ("Second Amendment") is made and entered into between the Fort Pierce Utilities Authority ("FPUA") and Allied Universal Corp., a Florida Corporation, with its principal address at 3901 NW 115 Avenue, Miami, Florida 33178 ("Contractor").

WHEREAS, the parties entered into a contract for [SODIUM HYPOCHLORITE effective July 6, 2017, which was subsequently extended to July 5, 2023 and amended by that First Amendment dated June 21, 2022 (as amended the "Agreement"); and

WHEREAS, the parties desire to further amend the Agreement to extend the term and increase the Contract amount.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. The second paragraph of Section 5 of the Agreement is deleted in its entirety and replaced with:

Total job price: Per unit price of $1.36 per gallon not to exceed $490,000.00 annually on the terms contained in Contractor's said proposal for the doing of said work and the said award therefore, and the Specifications herein specifically referred to and made a part of this Contract.

2. Section 9 of the Agreement is deleted in its entirety and replaced with the following Section 9:

This Contract shall commence upon July 6, 2017 and end on July 5, 2024 on terms and conditions that are mutually acceptable in writing to the parties. The Contract will remain in effect in the event of a natural disaster, pandemic or other emergency event(s).

3. This Second Amendment is effective as of the date last signed below. Except as amended hereby, the terms and conditions of the Agreement remain in full force and effect. Any conflict between the provisions of this Second Amendment and the Agreement shall be resolved in favor of the provisions of this Second Amendment.

[*remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment on the date set forth below.

FORT PIERCE UTILITIES AUTHORITY	**ALLIED UNIVERSAL CORP.**
_____	_____
Chair	Jim Palmer
_____	_____
Date	Printed Name
ATTEST:	President / CEO
	Title
_____	6/12/23
Secretary	Date

APPROVED AS TO LEGAL FORM:

_____

FPUA General Counsel