

**MEMORANDUM OF UNDERSTANDING
SMART NEIGHBORHOOD INITIATIVE**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made by and between **ST. LUCIE COUNTY**, a political subdivision of the State of Florida (the County), **CITY OF FORT PIERCE**, a Florida Municipal Corporation (the City), **FORT PIERCE UTILITIES AUTHORITY**, a municipal authority created by the Charter of the City of Fort Pierce, FL (FPUA), and **ALLEGANY FRANCISCAN MINISTRIES, INC.**, a Florida Not For Profit Corporation (AFMFL).

WHEREAS, the parties seek to create a Smart Neighborhood Initiative to promote revitalization for long-term business growth and job creation by providing high speed communication connectivity to enhance the quality of life in our community; and

WHEREAS, AFMFL through its Common Good Initiative is working with the community residents and stakeholders of Lincoln Park and Fort Pierce to develop strategies that support quality jobs and livable wages, safe and healthy neighborhoods and build community capacity and make investments that lead to positive outcomes for the people and businesses in the neighborhood; and

WHEREAS, Smart Cities are connected urban environments that support the use of wireless devices and networks to collect real-time data, automate services, improve response times, and measure performance in an effort to promote more efficient governance, maintain sustainable, innovative, and thriving communities; and

WHEREAS, in recognition of society's evolution towards a digital, connected, and increasingly urbanized society, communities like the City are embracing the "Smart City" concept as a means to apply technology and data analytics to identify and tackle urban issues; and

WHEREAS, the implementation of such Smart City technologies and services will create a "Smart Neighborhood" and provide long-term residential and business internet access which will enhance the quality of life and desire to live and work in the City; and

WHEREAS, FPUA currently offers such communication services and technologies through FPUAnet that can help achieve these goals; and

WHEREAS, the availability of internet connectivity is one of the most important utilities to business tenants, and the Smart Neighborhood Initiative will empower landlords to promote their buildings' internet connectivity and infrastructure to tenants and prospective tenants, and FPUA can provide connectivity help ensure any new and existing business venture or re-development is tech-forward and ready for the next generation of business tenants.

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

1. **PROJECT SCOPE AND WIRELESS SERVICES**

The parties agree to work together on the Smart Neighborhood Initiative as the first step in creating a Smart Community and evolving the City of Fort Pierce into a Smart City. The Smart Neighborhood Initiative will provide a high speed fiber optic loop (the "Fiber Loop") and wireless connectivity to the "Project Area," which is bordered by Avenue D to the north, Orange Avenue to the south, 7th Street to the east, and 25th Street to the west, as outlined in "Exhibit A."

2. **PROJECT TIMELINE**

This Smart Neighborhood Initiative is anticipated to be a three-year project commitment that will be accomplished in three phases.

Phase 1 - Fiber Loop Installation

- Completion of an engineering design study and review (Engineering Study).
- Installation of the Fiber Loop infrastructure for the Project Area.
- The target for completion of Phase 1 is within 18 months of the Effective Date.

Phase 2 - Business Corridor Wireless

- Installation of wireless connectivity infrastructure in the business corridor around the perimeter of the Project Area.
- The target for completion of Phase 2 is within 24 months of the Effective Date.
- Following completion of Phase 2, FPUA agrees to provide Business Wireless internet access at low or no cost within the coverage area. FPUA may in its sole discretion set Business Wireless rates that are at or below the market rate for such services in the local area.

Phase 3 - Residential Wireless

- Installation of wireless connectivity infrastructure for residential service within the remainder of the Project Area.
- The target for completion of Phase 3 is within 36 months of the Effective Date.
- Following completion of Phase 3, FPUA agrees to provide Residential Wireless internet access at low or no cost within the coverage area. FPUA may in its sole discretion set Residential Wireless rates that are at or below the market rate for such services in the local area.

3. **PROJECT ADMINISTRATION AND OWNERSHIP**

FPUA will be the administrator for the Smart Neighborhood Initiative, and shall have the authority to initiate and carryout the tasks necessary to complete the project in a timely and efficient manner without the need for further approval by the parties or a party. The forgoing notwithstanding, nothing in this MOU shall prevent or restrict the City or County from carrying out their respective duties and regulatory responsibilities as required by law or ordinance, and FPUA shall be responsible for obtaining the necessary permits, approvals

and acceptance from applicable local, state and federal governmental authorities with jurisdiction over Project Area. As administrator of the project, FPUA will coordinate all aspects of the project including the system design, development, installation and deployment of the infrastructure and equipment, coordination of funding expenditures, and the operational rollout of the system(s). FPUA shall have the authority to award contracts for the design, construction, permitting and installation of the infrastructure and system(s). FPUA shall invoice the parties to this MOU for payment or reimbursement according to the project funding obligations and milestones outlined in this MOU, and the parties agree to pay such invoices within forty-five (45) days of the receipt of the invoice. Any funds paid by the parties and received by FPUA shall be used exclusively for the Smart Neighborhood Initiative, and in the event this MOU is terminated as described herein prior to completion of Phase 3, or if the project otherwise fails to be completed for any reason, FPUA shall refund the remaining funds to the parties pro-rata based on the parties' actual payment contributions, less FPUA's reasonable administrative costs directly related to the project. At all times, during construction and after the project is complete FPUA shall retain sole ownership of the infrastructure and related systems that are the subject of this MOU, and shall be responsible for the operations and maintenance of such systems.

4. **PROJECT FUNDING SOURCES AND MILESTONES**

Phase 1 - Fiber Loop Installation:	\$ 600,000
Phase 2 - Business Corridor Wi-Fi:	\$ 300,000
Phase 3 - Residential Area Wi-Fi:	\$ 300,000
Bandwidth Requirements:	<u>\$ 50,000</u>
Total Project Cost:	\$1,250,000

- **FPUA \$600,000** (48% of total)
 - 2019 \$50,000 Start of Phase 1 - Engineering Study
 - 2020 \$200,000 Phase 1 - Fiber Loop Installation
 - 2021 \$200,000 Start of Phase 2 – Business Corridor Wi-Fi
 - 2022 \$150,000 Start of Phase 3 – Residential Wi-Fi
- **AFMFL \$400,000** (32% of total)
 - 2019 \$200,000 Upon completion of the Engineering Study
 - 2020 \$200,000 Start of Phase 2 – Business Corridor Wi-Fi
- **City \$200,000** (16% of total)
 - 2019 \$200,000 Upon completion of the Engineering Study
- **County \$50,000** (4% of total)
 - 2019: \$50,000 Upon completion of the Engineering Study or October 1, 2019, whichever is later

5. **TERM**

The parties agree that this MOU shall become effective, and their obligations for funding and otherwise as described herein shall begin, on the date of final approval and execution of this MOU by all parties (the Effective Date). This MOU shall remain in effect through the completion of Phase 3 which is anticipated to be completed within thirty-six (36) months from the Effective Date. This agreement may be terminated (i) by mutual agreement of all parties, (ii) by any party following the completion of the Engineering Study if the Total Project Cost is estimated to exceed the amount in Section 4 above, unless one or more of the parties agree to increase their funding obligation to meet the additional cost, or (iii) by any party if the project fails to go forward within twenty-four (24) months following the Effective Date. For the purposes of this paragraph "go forward" shall be defined as any of the following: (i) the issuance of any permit required for the project, (ii) the start of Fiber Loop installation, or (iii) the expenditure by FPUA of more than \$50,000 towards the project.

6. **ENTIRE AGREEMENT**

This MOU and the attachments hereto represents the entire understanding and agreement between the parties with respect to the subject matter, and supersedes any prior discussions, negotiations, understandings, and representations, whether oral or written, made by the parties. The provisions of this MOU may not be amended, altered or changed except in a writing signed by the parties.

7. **ASSIGNMENT**

Except as described herein, no party may assign their rights or obligations under this MOU without the written consent of the other parties which shall not be unreasonably withheld. Any attempted assignment without the prior written consent of all parties shall be ineffective and shall have no force or effect.

8. **FURTHER ASSURANCES; FORCE MAJEURE**

The parties hereby agree from time to time to execute and deliver such further and other transfers, assignment and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the terms of this MOU. No party shall be held responsible for any delay or failure in performance under this MOU to the extent that such delay is caused by events or circumstances beyond the party's reasonable control.

9. **BINDING EFFECT; NO THIRD PARTY RIGHTS**

This MOU shall be binding upon, and inure to the benefit of, and be enforceable by and against the parties and their respective legal representatives, successors and permitted assigns. Nothing in this agreement is intended to affect, create or provide any right, interest or benefit to any person or entity that is not a party hereto, and nothing in this agreement shall be construed to create any third-party rights or benefits.

10. **NOTICES**

All notices, requests, consents and other communications required or permitted under this MOU shall be in writing and delivered via hand delivery, sent by messenger or common courier service, sent by email, or by U.S. mail (postage paid), with proof of delivery confirmation, addressed to:

TO ST. LUCIE COUNTY

St. Lucie County Administrator
2300 Virginia Avenue
Administration Annex
Fort Pierce, FL 34982

WITH A COPY TO:

St. Lucie County Attorney
2300 Virginia Avenue
Administration Annex
Fort Pierce, FL 34982

TO THE CITY OF FORT PIERCE

City of Fort Pierce City Manager
100 North U.S. Highway One
Fort Pierce, FL 34950

WITH A COPY TO:

City Attorney
100 North U.S. Highway One
Fort Pierce, FL 34950

TO FORT PIERCE UTILITIES AUTHORITY

Fort Pierce Utilities Authority Director
206 South 6th Street
Fort Pierce, FL 34950

WITH A COPY TO:

Fort Pierce Utilities Authority Attorney
206 South 6th Street
Fort Pierce, FL 34950

TO ALLEGANY FRANCISCAN MINISTRIES

Allegany Franciscan Ministries- PB Region
301 Clematis St. #3000
West Palm Beach, FL 33401

WITH A COPY TO:

Allegany Franciscan Ministries-Central
33920 U.S. Highway 19 North, Ste.269
Palm Harbor, FL 34684

or to such other address as the party may designate by notice complying with the terms of this section. Each such notice shall be deemed delivered on the date the party received the notice as shown by the proof of delivery. Whenever any party hereto is required to give its approval or disapproval to any matter contained herein, such approval or disapproval shall be given within twenty (20) calendar days from receipt of written requests for approval or approval shall be deemed to be granted by that party.

11. **HEADINGS**

The headings contained in this MOU are for convenience of reference only and shall not limit or otherwise affect the meaning or interpretation of its terms.

12. **INTERPRETATION; WAIVER**

If any provision of this MOU is found to be illegal, void or unenforceable, the remaining provisions shall remain in force and shall be interpreted to give full effect to the parties' intent. Any failure or delay by a party to exercise any right, remedy, power or privilege under this MOU shall not operate as a waiver thereof, nor shall it be construed as a waiver

of any continuing or succeeding breach, or of any other right, remedy, power or privilege. Any waiver must be in writing signed by a person authorized to bind the party.

13. **INDEPENDENT CONTRACTORS**

The parties agree that they are independent entities and that no party shall be deemed to be an agent, member, employee, partner, joint venturer or legal representative of any other party. Except as expressly provided herein, no party shall have the authority to assume or create any obligation or commitment on behalf of any other party whatsoever. To the extent that any party is performing services hereunder, such services shall be considered to be that of an independent contractor and that party shall have sole independent control, supervision and responsibility over its employees, agents, subcontractors or legal representatives.

14. **GOVERNING LAW; VENUE**

This MOU and all transactions contemplated herein shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without regard to any conflict of law principles. Venue for any action related to this MOU shall be in the State and Federal Courts in Fort Pierce, Florida.

[signatures appear on the following page]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the dates written below:

ATTEST:

Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA**

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM AND
CORRECTNESS:

BY: _____
County Attorney

ATTEST:

City Clerk

CITY OF FORT PIERCE

BY: _____
Mayor

DATE: _____

APPROVED AS TO FORM AND
CORRECTNESS:

BY: _____
City Attorney

[additional signatures on the following page]

ATTEST:

Secretary

FORT PIERCE UTILITIES AUTHORITY

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM AND
CORRECTNESS:

BY: _____
Fort Pierce Utilities Authority Attorney

ATTEST:

Secretary/Director

ALLEGANY FRANCISCAN MINISTRIES, INC.

BY: _____
President, CEO

DATE: _____

(SEAL)

Exhibit A

The Project Area is bordered by Avenue D to the north, Orange Avenue to the south, 7th Street to the east, and 25th Street to the west as shown in orange on the map below:

