

**FIRST AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING  
FOR THE  
DOWNTOWN FORT PIERCE  
SMART CITY INITIATIVE**

**THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING FOR THE DOWNTOWN FORT PIERCE SMART CITY INITIATIVE** (the “**First Amendment**”) is entered into by and between the **FORT PIERCE UTILITIES AUTHORITY**, a municipal utility authority created by the charter of the City of Fort Pierce (“**FPUA**”), and the **CITY OF FORT PIERCE**, a Florida municipal corporation (the “**City of Fort Pierce**”) and the **FORT PIERCE REDEVELOPMENT AGENCY**, a community redevelopment agency established pursuant to Florida Statutes Chapter 163 (the “**FPRA**”) (collectively, the **City of Fort Pierce** and the **FPRA** shall be referred to herein as the “**City**”).

**RECITALS**

**WHEREAS**, a Smart City is a connected urban environment that uses wireless services and networked systems to improve connectivity, enhance public access to information, improve communications capabilities, and automate public services to promote a more efficient, sustainable and innovative community environment; and

**WHEREAS**, in recognition of society’s evolution towards an increasingly connected and urbanized society, communities are embracing the use of technology and these “Smart City” concepts to improve the quality of life of their citizens; and

**WHEREAS**, the City has authorized and encouraged FPUA to provide communications and internet services to Fort Pierce and the surrounding community, and

**WHEREAS**, the City and FPUA desire to work together and utilize the FPUAnet communication services to implement a Smart City Initiative in downtown Fort Pierce that will have long-term economic benefits, improve public engagement, increase access to information, provide enhanced communications and wireless connectivity to the people who work, live and vacation in downtown Fort Pierce; and

**WHEREAS**, in furtherance of these efforts, the City and FPUA previously entered into an Interlocal Agreement for the Downtown Fort Pierce Smart City Initiative effective May 3, 2021 (“2021 Agreement”); the terms of which were subsequently amended pursuant to an Amended and Restated Memorandum of Understanding effective July 11, 2023 (“2023 Agreement”); and

**WHEREAS**, pursuant to the 2021 Agreement, the City agreed to provide up to \$250,000 (two-hundred fifty thousand dollars) toward this Downtown Smart City initiative, which would be funded through the use of the remaining excess funds from the sale of certain tax credits related to the FPUA voluntary cleanup and remediation of the former H.D. King Power Plant site; and

**WHEREAS**, the 2023 Agreement replaced the 2021 Agreement and revised the project scope, timeline, and costs; and

**WHEREAS**, the parties desire to amend the 2023 Agreement to further revise the project scope to remove the requirements for smart kiosks and expand the areas to which FPUAnet conduit and fiber optic infrastructure will be installed, extend wi-fi services, establish a timeline for the additional installation and services, and set the costs.

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

1. Paragraph 1 of the 2023 Agreement is hereby amended so that underlines are additions and strikethroughs are deletions as follows:

### **PROJECT SCOPE**

The Downtown Smart City Initiative is the next step toward implementing a city-wide plan to expand FPUAnet's infrastructure and communications technology, and improve access to the internet in the downtown Fort Pierce community.

The Downtown Smart City Initiative will include the following basic elements:

- (i) Extension of the FPUAnet conduit and fiber optic infrastructure within the areas shown in Exhibit A. and installation of the networking and power supply needed for the smart kiosks and free public Wi-Fi necessary to implement the project.
- ~~(ii) Installation of four smart kiosks featuring touchscreens and cameras by a third-party vendor contracted by the FPUA ("Kiosk Contract"). The smart kiosks will display user-friendly information about the Fort Pierce area, and include wayfinding maps. The smart kiosks will be built with safety glass that is weather resistant. The smart kiosks will be installed at locations shown in Exhibit B.~~
- (iii) Installation of fiber optic infrastructure and wireless equipment to offer free public Wi-Fi within the areas shown in Exhibit A and the additional areas as depicted on Exhibit C.
- (iv) ~~The initial term of software licensing fees under the Kiosk Contract, and the recurring fees during the initial term of the Kiosk Contract for the maintenance, upgrades, and broadband services to offer with unlimited data access for the smart kiosks, with free public Wi-Fi is included at no additional cost to the City beyond the \$20,000 one-time payment noted below in Section 3, Project Timeline and Costs. The cost of this service is being subsidized through a revenue share with the kiosk vendor based on advertising sales that will be managed by the selected kiosk vendor in accordance with the terms of the Kiosk Contract.~~

2. Paragraph 2 of the 2023 Agreement is hereby amended so that underlines are additions and strikethroughs are deletions as follows:

**PROJECT ADMINISTRATION AND OWNERSHIP**

FPUA will manage and administer all aspects of the Smart City Initiative design and buildout, and will initiate and carryout all tasks necessary for completion of the project. The City will have input on the project throughout its implementation, and will retain oversight for any permitting for the Smart City installations. FPUA staff will work with the City for the issuance of any necessary permits. As administrator of the project, FPUA will coordinate all aspects of the project, including the system design and deployment, and the necessary infrastructure upgrades for installation of the equipment and networking systems that are required. FPUA will also be responsible for coordination and sourcing of all materials and equipment needed for the project, including ~~the smart kiosk and~~ wireless access points, and the award of any contracts for the design, installation and maintenance of the Smart City infrastructure and equipment.

~~Once completed FPUA will be the primary contact with and responsible for coordinating all maintenance and support of the smart kiosks through the contracted vendor, except that the selected vendor will retain ownership of the kiosks. FPUA will provide the necessary broadband access and data services under the terms of this agreement for the intial term of the Kiosk Contract. FPUA will also be responsible for working with the vendor on the mapping and software integration, as well as any needed software updates, maintenance, and repairs.~~

~~Consistent with its public purpose of supporting the Smart City initiative and providing a public service to pedestrians through the display of information specific to the surrounding area, advertisements that are offensive by reasonable local community standards, that interfere with and divert resources from the Smart City initiative, that detract from the stated purposes by creating substantial controversy, and/or that pose significant risks of harm, inconvenience, or annoyance to pedestrians and surrounding businesses are prohibited. The ad approval process will be delineated in the Kiosk Contract with input from the City. The City and FPUA will be provided free marketing space on the smart kiosks for advertising and informational displays as agreed upon by the FPUA and the Kiosk Vendor with input from the City. The spots will be shared equally between the City and FPUA, and either party may allow the other to use its allotted space more frequently when requested for special events or as need arises.~~

3. Paragraph 2 of the 2023 Agreement is hereby amended so that underlines are additions and strikethroughs are deletions as follows:

**PROJECT TIMELINE AND COSTS**

This Smart City Initiative will begin following the execution of this Agreement by all parties, and is expected to be completed by the first quarter of 2024. The total project cost to the City shall not exceed \$250,000 (two hundred fifty thousand dollars and no cents) which shall be funded through the use of certain excess funds from the sale of the tax credits related to the cleanup of the former H.D. King Power Plant site, which shall be paid to FPUA by the City in accordance with the following phases and milestones. The cost for each phase is estimated. The funding can be reallocated to another phase based on actual construction and material costs.

- **Phase 1 – Engineering & Design**
  - Estimated Cost: \$10,000 (payment received by FPUA from the City of Fort Pierce on 9/14/2021).
  - Completed: July 2021
  
- **Phase 2 – Fiber & Conduit Infrastructure Installation**
  - Estimated Cost: \$130,000 (payment received by FPUA from the City on November 10, 2023)
  - Completed: May 2023
  - Payment due upon execution of this Agreement
  
- ~~**Phase 3 – Installation & Configuration of 4 Smart Kiosks**~~
  - ~~○ Estimated Cost: \$65,000~~
  - ~~○ Timeline for completion: Febaury 2024~~
  - ~~○ Payment due upon FPUA signing contracts with selected vendors for the system design specifications and required equipment, which includes the kiosks and smart streetlights, with copy of bid or agreement for services.~~
  
- **Phase 3 – Additional Fiber & Conduit Infrastructure Installation in Zone 2, as depicted on Exhibit C**
  - Estimated Cost: \$120,000
    - City Funded Portion: \$45,000
    - FPUA Funded Portion: \$75,000
  - Timeline for completion: September 2024
  - Payment from City due upon execution of this Agreement
  
- **Phase 4: Selection & Installation of Wireless Equipment to provide Free Public Wi-Fi**
  - Estimated Cost: \$25,000 (Payment received by FPUA from City on November 10, 2023).
  - ~~○ Timeline for completion: August 2023~~
  - Completed: September 2023
  - ~~○ Payment due upon iexecution of this Agreement~~

- **Phase 4B: Installation of Wireless Equipment to provide Free Public Wi-Fi at River Walk Center and surrounding areas, as depicted on Exhibit C**
  - Estimated Cost: \$20,000
  - Timeline for completion: March 2025
  - Payment due upon execution of this Agreement
- **Phase 5: ~~Electricity Charges, Bandwidth~~ Broadband Service & Maintenance Costs for 10 years**
  - Estimated Cost: \$20,000
  - Timeline for completion: TBD
  - Payment due upon all assets being active, project is certified and City right-of-way permit is closed out.

4. Paragraph 4 of the 2023 Agreement is hereby amended so that underlines are additions and strikethroughs are deletions as follows:

**JOINT USE ACCESS AND INDEMNIFICATION**

- (A) The City agrees to permit FPUA access and use of City facilities (including in, over and under City rights-of-way) in the project area including its underground conduits, access points, junction and control boxes, and any other facilities needed for installation of the infrastructure and network connections. Following installation of the equipment the right of access and use granted to FPUA under this Agreement shall continue regardless of any termination of this Agreement. FPUA shall at its own cost and expense install and maintain the network and equipment infrastructure in safe condition and good working order, such that it will not interfere with the City’s use of the facilities. FPUA’s use of the facilities is subordinate to the City’s use of its rights-of-way, access and use of its facilities, and nothing in this agreement is intended to affect the City’s rights, access and use of the facilities. The City reserves the right to enforce any rules and regulations it deems necessary for public safety and welfare. Nothing contained herein shall limit the City’s right to permit access and use of the facilities by any other party or entity that is not a party to this agreement, provided such use does not interfere with FPUA’s planned use of those facilities.
- ~~(B) At the locations set forth in Exhibit B, the City will give best efforts to issue a Right of Way permit for the design, installation, operation, repair, and maintenance and related infrastructure of an Interactive Community Kiosk System subject to the established approval process.~~
- ~~(C) At the locations set forth in Exhibit B, the City will give best efforts to refrain from approving placement of any permanent structure or obstruction including landscaping, other business ventures, vendor kiosk, or the like within a five (5) foot radius that may impede access or visibility of the smart kiosks.~~
- ~~(D) The City will consider the approval of an off-premises advertising permit for the contracted kiosk vendor.~~

~~(B)(E)~~ FPUA agrees to indemnify and hold harmless the City 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 FPUA and persons employed by or used by FPUA in the course of performing its obligations hereunder. Provided, however, that regardless of whether any such obligations are based on a tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of FPUA under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section 768.28, Florida Statutes, as that section existed at the inception of the 2021 Agreement ~~is Contract~~.

~~(C)(F)~~ The City agrees to 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 the City and persons employed by or used by the City. Provided, however, that regardless of whether any such obligations are based on a tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the City under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section 768.28, Florida Statutes, as that section existed at the inception of the 2021 Agreement ~~is Contract~~.

5. All other terms and conditions of the 2023 Agreement not hereby amended are to remain in full force and effect.

[signatures appear on the following page]

**IN WITNESS WHEREOF**, the parties have executed this First Amendment to the Amended and Restated Memorandum of Understanding as of the dates written below:

ATTEST:

**CITY OF FORT PIERCE, FLORIDA**, a Florida  
municipal corporation

\_\_\_\_\_  
Linda Cox  
City Clerk

BY: \_\_\_\_\_  
Linda Hudson, Mayor

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS:

BY: \_\_\_\_\_

Sara Hedges, City Attorney

ATTEST:

**FORT PIERCE REDEVELOPMENT AGENCY**, a  
community redevelopment agency  
established pursuant to Florida Statutes  
Chapter 163

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Linda Cox  
City Clerk

BY: \_\_\_\_\_  
Linda Hudson, Chair

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS:

BY: \_\_\_\_\_

Sara Hedges, City Attorney

ATTEST:

\_\_\_\_\_  
Secretary

**FORT PIERCE UTILITIES AUTHORITY**, a  
municipal utility authority created by the  
charter of the City of Fort Pierce

BY: \_\_\_\_\_  
Frank H. Fee IV, Chair

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS:

BY: \_\_\_\_\_  
Fort Pierce Utilities Authority Attorney