

SITE LEASE AND NATURAL GAS SUPPLY AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2022, by and between the EMERALD COAST UTILITIES AUTHORITY, an independent special district created by the Laws of Florida (hereinafter "ECUA"), with administrative offices located at 9255 Sturdevant street, Pensacola, Florida 32514, and the CITY OF PENSACOLA, FLORIDA, a municipal corporation of the State of Florida which does business as Pensacola Energy (hereinafter "PE"), with administrative offices located at 222 West Main Street, Pensacola, Florida 32502 (collectively hereinafter the "Parties").

WITNESSETH:

WHEREAS, ECUA has allowed PE to construct and operate a compressed natural gas (hereinafter "CNG") fueling and refueling station as further described herein at 6672 Pine Forest Road, Pensacola, Florida 32526 (hereinafter the "Site"); and

WHEREAS, PE desires to extend the existing lease of the public portion of the Site (hereinafter the "Public Site") and retain ownership of the public fueling station equipment (hereinafter the "Public Fueling Station") for the purpose of continuing public sales.

WHEREAS, ECUA desires for PE to continue to operate the ECUA refueling station (hereinafter the "Refueling Station") and to continue to purchase CNG from PE and refill ECUA vehicles with CNG at a predetermined formula as further specified herein throughout the term of this Agreement; and

WHEREAS, PE would continue to offer CNG fueling services at the Public Site to entities other than ECUA as provided for herein;

NOW THEREFORE, in consideration of payments herein reserved to be paid by the Parties, and in consideration of the covenants herein to be kept and performed by the Parties, ECUA does hereby lease and demise unto PE the Public Site and authorize PE to operate the Refueling Station equipment under the following terms and conditions:

1. The recitals set forth in the preamble to this Agreement are true and correct and are incorporated in this Agreement as fully as if set forth herein.

2. Term. This Agreement shall commence upon execution of this Agreement by both Parties and shall expire July 31, 2024. Upon expiration of this Agreement, and absent a subsequent agreement or extension, PE shall vacate the Public Site and the Public Fueling Station shall become ECUA property.

3. Public Facilities to be Included. The Public Fueling Station which includes a canopy, fast fill dispensers, related Fuel Master Software and a card reader management system.

4. Public Facilities Operation. The Public Fueling Station shall be maintained for operations and operated by PE or PE's designee so that both ECUA and third parties may fuel vehicles at the Public Site throughout the term of this Agreement.

5. Consideration.

a.) In return for PE's ownership of the Public Fueling Station, PE will continue to provide a discounted transportation fuel rate of \$1.99 (versus the current ordinance amount of \$2.73) in the rate calculation; an incentive provided for ECUA to continue to convert the fleet to CNG.

b.) PE will continue to operate and provide preventative maintenance of the Refueling Station. ECUA may pay to PE a monthly Transportation Charge to include large maintenance or major component replacements for the equipment yard or time fill area which will be determined and agreed to by the Parties in writing. If full payment or early payment is made, the Transportation Charge would no longer be assessed monthly.

c.) ECUA shall pay to PE for all CNG obtained by ECUA from PE at a rate calculated as follows (hereinafter "Fuel Payment"):

The Fuel Payment will be based on the monthly NYMEX Commodity Index Price of natural gas (including fuel compression charge) per thousand cubic feet (Mcf) plus a discounted transportation fuel rate of \$1.99 plus 10% as it equates to the gasoline gallon equivalent (GGE).¹

¹ By way of explanation, the monthly calculation for the Fuel Payment is as follows: the current Commodity Index Price including fuel compression charge for one Mcf of natural gas + \$1.99 = subtotal, then ÷ 8.093 (GGE) + 10% per gallon rate for CNG. Thus, if the current Commodity Index Price including fuel compression charge is \$4.25 per Mcf, then the computation would be as follows:

$$\$4.25 + \$1.99 = \$6.24$$

$$\$6.24 \div 8.093 = \$0.7710$$

$$\$0.7710 \times 1.10 = \$0.848 \text{ per GGE of CNG.}$$

This \$0.848 per GGE charge would then be multiplied by the volume of CNG received (in GGE), with the total being rounded to the nearest cent.

However, upon mutual agreement of the Parties, the Fuel Payment may be changed so as to be based upon an annual or quarterly index price.

ECUA will remit Fuel Payment to PE monthly, within thirty (30) days of PE's monthly billing to ECUA for such CNG.

d.) Additionally, in return for PE's use of the Public Site in order to distribute CNG at the Public Site to third parties, PE will reimburse ECUA a flat rate of \$1,700.00 per month as shown on Exhibit A calculated as a portion of the electric costs.

e.) If this Agreement is terminated because of ECUA's breach of this Agreement, ECUA shall remain liable to PE for any balance of the Transportation Charge calculated for the remaining full term of the Agreement. All monthly payments made by ECUA to PE as required herein shall be applied to and credited toward the total amount owed to PE by ECUA.

6. Pump Calibration. All pumps dispensing CNG at the facility will be calibrated according to industry best practices.

7. Billing Disputes. In the event either Party disputes any portion of any bill or payment, then that Party shall have the right, upon written notice to the other Party, to withhold payment of the disputed portion of the statement for up to fourteen (14) business days. If the Parties are unable to resolve the dispute within that time, the Party allegedly owing payment shall pay the disputed portion of the statement into an escrow account until the dispute is resolved.

8. Force Majeure. Force majeure circumstances may arise which may render PE unable to perform the services herein described. It is therefore understood and agreed by the Parties hereto that in the event of a failure, curtailment or interruption of such supply or in the event of shortage or interruption of gas due to an event of force majeure, such as an act of God, the elements, labor troubles, fires, accidents, breakage, necessary repairs, or other causes of contingencies beyond PE's control, PE cannot and does not guarantee a constant supply of gas and it shall not be held liable in damages or otherwise for any such interruption or curtailment of supply or services. However, redundant fueling sites are available at the ECUA Site at 3320 Copter Road, Pensacola, FL or City Garage, 2759 N. Palafox St, Pensacola, FL at the same prices identified in subparagraph 5(c), above.

9. Use of the Site. PE shall use the Site for operating the Public Fueling Station and the Refueling Station to service the needs of ECUA, PE, and third parties. ECUA shall give

ingress and egress to PE or PE's authorized representatives for the purpose of operating and maintaining the Public Fueling Station and the CNG Refueling equipment. PE shall obtain all licenses in order to conduct that business and shall comply with all laws, statutes, ordinances, orders, rules, regulations, and requirements.

10. Repairs and Maintenance at the Site. All preventative repairs and routine maintenance to the Refueling Station and Public Fueling Station equipment shall be at PE's sole cost and expense, unless such repairs are necessitated by an act or omission of ECUA or ECUA employees, agents, contractors, and/or invitees, or any person claiming through or under ECUA, in which circumstance repairs shall be at ECUA's sole expense. Provided, however, that repairs necessitated by third party customers at the Site shall not be ECUA's responsibility. If ECUA shall be obligated to repair or restore the Site, ECUA shall commence such repair or restoration within ninety (90) days after such obligations shall occur, and in a manner and to a condition at least equal to that which existed prior to damage or destruction. Prior to commencing repairs, ECUA shall obtain written PE approval for the specific repairs, which shall not be unreasonably withheld. If ECUA fails to commence repairs as of the time required, PE may in PE's sole discretion, repair the Site, and ECUA shall reimburse PE for any cost or expense incurred by PE for repair or replacement of any item under ECUA's obligation. In the event of such failure to repair by ECUA, ECUA shall remain obligated to make all ECUA payments pursuant to Section 5 of this Agreement.

In the event that the repairs to the Site are PE's responsibility, PE shall commence such repair or restoration within ninety (90) days after the event/damage necessitating the repairs occurs, and shall repair and restore the Site in a manner and to a condition at least equal to that which existed prior to damage or destruction.

Indemnification. PE and ECUA agree to indemnify each other to the extent and only to the extent of the limits set forth in 768.28(5), F.S. and then only for the negligent or wrongful act or omission of any officer or employee acting within the scope of the officer's or employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant. Further, except as specifically provided herein, PE and ECUA do not waive any defense of sovereign immunity. It is further understood and agreed by the parties to this agreement that no officer or employee may be held personally liable except as provided by 768.28(9), F.S.

11. Assignment. The rights of the Parties under this Agreement are not assignable.

12. Events of Default. The occurrence of any one or more of the following events is deemed an "Event of Default":

a) If ECUA defaults in the due and punctual payment of the Transportation Fee, or other sum payable by ECUA, as and when due and payable in accordance with the Agreement provisions, and such default continues for more than five (5) days after written notice of default from PE.

b) If either Party defaults in the due performance or observance of any covenant or condition of this Agreement, and the default continues for more than fifteen (15) days after written notice of default from the other Party.

c) Either Party petitions for bankruptcy or reorganization or admits inability to pay debts, has receiver or trustee, is reorganized, dissolved, or involved in bankruptcy proceedings, or otherwise invokes protections under insolvency laws.

18. Quiet Enjoyment. PE will peaceably and quietly hold and enjoy the Public Site for the demised term without hindrance or interruption by ECUA or any other person or persons lawfully or equitably claiming by, through or under ECUA.

19. Accord and Satisfaction. No payment of the Transportation Fee received by PE of a lesser amount than stipulated to in this Agreement shall be deemed to be other than on account of the earliest stipulated fee. Nor shall any endorsement or statement on any check or letter accompanying any payment received by PE be deemed an accord and satisfaction.

20. Waiver. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

21. Amendment and Modification. Any amendments or modification to this Agreement must be in writing and executed by both Parties.

22. Governing Law and Venue. This Agreement is governed by the laws of the State of Florida, and the Parties stipulate venue for any matter which is the subject of this Agreement shall be in Escambia County, Florida.

23. Entirety of Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the Parties and supersedes all prior written and verbal agreements, representations, promises, or understandings between the Parties.

24. Severability. If any provision of this Agreement is found to be invalid or unenforceable with the respect to either Party, the remainder of this Agreement or the application of such provisions to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. Survival. Any other provisions of this Agreement to the contrary notwithstanding, the provisions of Paragraph 11 shall survive the expiration or termination of this Agreement.

26. Notices. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given or filed with a Party hereto shall be deemed sufficiently given or filed for all purposes of this Agreement if and when sent by registered mail, return receipt requested, transmitted by a facsimile machine with confirmation of delivery, or by personal hand delivery:

To ECUA: Executive Director
 Emerald Coast Utilities Authority
 9255 Sturdevant Street
 Pensacola, Florida 32514

To PE: Pensacola Energy Director
 Pensacola Energy
 1625 Atwood Drive
 Pensacola, Florida 32514

The addresses to which any notice, demand, direction, or other instrument authorized to be given or filed may be changed from time to time by a written notice to that effect delivered to all the Parties, which change shall be effective immediately or such other time as provided in the notice. Until notice of a change of address is received, a Party may rely upon the last address received.

29. Relationship of Parties. Nothing in this Agreement nor any act of the Parties shall be deemed or construed by the Parties hereto or by any third party to create a relationship of principal and agent, joint venture, business affiliation, or of any association whatsoever between ECUA and PE.

30. Public Records. The Parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. In the event a Party fails to abide by Chapter 119, the other Party may, without prejudice to any other right or remedy and after giving the violating Party seven (7) days written notice, during which period that Party still fails to allow access to such documents, terminate this Agreement.

31. Recording. This Agreement shall be recorded by PE in the official records of the Escambia County Clerk of the Court.

32. Good Faith. All duties and obligations under this Agreement, and all attempts to enforce rights under this Agreement shall be governed by reasonable commercial standards of good faith.

33. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed and sealed the day and year first above written.

**EMERALD COAST UTILITIES
AUTHORITY**

CITY OF PENSACOLA, FLORIDA

J. Bruce Woody
Executive Director

Mayor, D.C. Reeves

Attest:

Attest:

Secretary

City Clerk, Ericka L. Burnett

Witness:

Approved as to Substance:

Department Director

Legal in form and execution:

City Attorney

EXHIBIT A

ALLOCATION OF ELECTRICAL COSTS

Pine Forest			
2021-2022	Total GGE for Site	Sales at Dispenser	% Public Sales
Sep	73,667	13,600	
Oct	70,164	13,152	
Nov	66,523	11,405	
Dec	70,442	11,520	
Jan	66,530	13,290	
Feb	60,115	10,437	
Mar	75,548	13,977	
Apr	70,174	12,689	
May	72,833	13,091	
Jun	77,079	14,817	
Jul	71,513	14,341	
Aug	78,761	15,454	
	853,348	157,772	18.5%
2021-2022	Electrical Costs	@ 18.5%	
Sep	\$6,530.63		
Oct	\$6,180.49		
Nov	\$6,151.37		
Dec	\$6,230.51		
Jan	\$8,309.31		
Feb	\$7,835.55		
Mar	\$7,959.49		
Apr	\$8,413.28		
May	\$8,120.01		
Jun	\$8,532.47		
Jul	\$8,309.81		
Aug	\$8,443.58		
	\$91,016.50	\$16,838	
Public Fueling Station portion of total electrical costs =			\$1,700