

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 11, 2020 Consent [X] Regular []
Public Hearing []
Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Termination Agreement and Mutual Release (Agreement) with Midas SouthEast, LLC (Midas).

Summary: On June 18, 2019, the Board of County Commissioners approved the Water Utilities Department Continuing Construction Contract for the Lift Station Rehabilitation 2018 (Contract) (R2019-0852) with Midas to provide construction services over a 24-month term in the amount of \$5,367,566.88, with the option of one (1) 12-month renewal. Since the Contract approval date, no Work Authorizations have been issued due to Midas' inability to provide the County with documents required to become a registered vendor with the County. On October 29, 2019, Midas provided correspondence to WUD requesting voluntary termination of the Contract due to Midas not being able to secure the acceptable documentation and perform the construction services pursuant to the terms of the Contract. The County has mutually agreed to release the bond related to the Contract. In addition, Midas agrees not to submit a bid, proposal, or any other response to any Initiation for Bids, Request for Proposals, or other procurement issued by the County for two (2) years following the effective date of this Agreement. (WUD Project No. 18-032R) Countywide (MJ).

Background and Justification: WUD owns and operates over 1,000 wastewater lift stations as part of the wastewater collection system. WUD's Capital Improvements Plan calls for the annual rehabilitation of up to 20 lift stations.

Attachments:

1. Three (3) Originals of Termination Agreement and Mutual Release

Recommended By: Jim Stelso 1-14-2020
Department Director Date

Approved By: Del J. Blum 1/23/2020
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____


Is Item Included in Current Budget? Yes X No _____

Does this item include the use of federal funds? Yes _____ No X

Reporting Category N/A


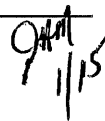
B. Recommended Sources of Funds/Summary of Fiscal Impact:

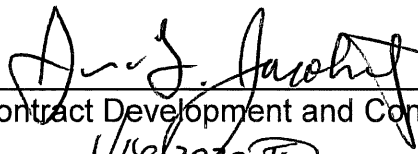

No fiscal impact.

C. Department Fiscal Review:  _____

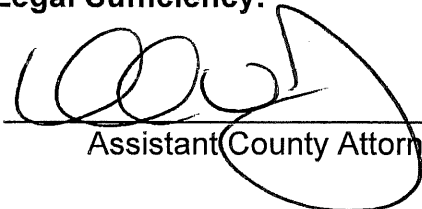
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 1/15/2020
 OFMB 

 1/17/2020
 Contract Development and Control 
 1/16/2020 TD

B. Legal Sufficiency:

 1/21/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

TERMINATION AGREEMENT AND MUTUAL RELEASE

This Termination Agreement and Mutual Release (“Agreement”) is made and entered into _____, effective the Effective Date below, by and between Palm Beach County, a political subdivision of the State of Florida (“County”), and Midas Southeast, LLC, a limited liability company eligible to do business in the State of Florida (“Midas”) (each referred to as a “Party” and collectively referred to as the “Parties”).

WHEREAS, County and Midas entered into a contract dated June 18, 2019 (County Resolution No. R2019-0852) (the “Construction Contract”) to provide continuing construction services related to lift station rehabilitation (“Services”); and

WHEREAS, Midas has been unable to provide certain required federal documentation and has not performed any Services under the Construction Contract; and

WHEREAS, the County has been inconvenienced by Midas’ failure to provide the required documentation and failure to perform Services under the Construction Contract; and

WHEREAS, Midas has requested that the County terminate the Construction Contract and the County is agreeable to that request subject to Midas’ covenant not to bid on any County contracts for a period of two (2) years.

NOW THEREFORE, with the intent to be legally bound hereby, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Termination of Construction Contract. The Construction Contract is hereby terminated. Neither party is under any further obligation to perform any of the obligations set forth in the Construction Contract, unless such obligation specifically survives the termination of the Construction Contract, or by its nature is meant to survive a termination.

2. Covenant Not to Bid. Midas voluntarily agrees not to submit a bid, proposal, or any other response to any Invitation for Bids, Request for Proposals, or any other procurement issued by the County for two (2) years following the Effective Date of this Agreement. This covenant not to bid shall apply to Midas, and any associated business entity, including, but not limited to, TV Diversified, LLC, or any other entity in which the principals of Midas have greater than a 5% ownership interest. The parties agree and acknowledge that this covenant not to bid is a material and integral part of this Agreement, and that the County would not have entered into this Agreement absent the covenant. Any violation of this covenant permits the County to void this Agreement and seek any available legal remedies.

3. Mutual Releases. The Parties do hereby remise, release, and forever discharge, and by these presents, do for their heirs, affiliates, agents, partnerships, servants, employees, representatives, parents, attorneys, predecessors, successors, and any other related or affiliated entities, remise, release, and forever discharge each of the other Parties and their respective past, present, and future insurers, reinsurers, agents, consultants, lawyers, employees, successors, officers, directors, and any and all other persons, firms, or corporations with whom any of the

former have been, are now, or hereafter may be affiliated, together with any and all other persons, firms or corporations, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, liens, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Parties now have, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which relate to the Construction Contract.

4. **Effective Date.** The Effective Date of this Agreement shall be the date that the last of the Parties executes this Agreement.

5. **Counterparts/Facsimile Signatures.** This Agreement may be executed in any number of counterparts; each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of the Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages.

6. **Reliance on Own Judgment.** The Parties acknowledge herein that they have relied wholly upon their own judgment, belief and knowledge as to the nature, extent and duration of the issues, claims, defenses, rights and obligations, and causes of action, released herein, and have not been influenced to any extent whatsoever in making this Agreement by any representations or statements made by persons, firms, or corporations who are hereby released, or by any person or persons representing them.

7. **Authority to Execute.** In making this Agreement, each of the Parties covenant and warrant, which representations, covenants and warranties shall survive the execution of this Agreement, that:

- a. They have all the required power, capacity and authority to enter into and execute this Agreement, including the releases provided herein;
- b. The execution of this Agreement is and was free and voluntary;
- c. All recitals herein are true and correct; and
- d. They have not assigned or transferred to any person any matter released under this Agreement or any part or portion of any matter released under this Agreement.

8. **Legal Representation.** The Parties each acknowledge that they were fully and competently represented by legal counsel of their own choosing in negotiating and preparing this Agreement and certify to all others that they have had the opportunity to consult an attorney, and appreciate the legal significance and consequences of signing this Agreement as set forth herein. Therefore, the rule regarding construing ambiguities against the drafter of the agreement does not apply as it relates to this Agreement. Each of the Parties hereto has contributed equally to the drafting of this Agreement. Other than the recitals, each of the terms of this Agreement is contractual, not a mere recital, and is the result of even-handed negotiations among and between

the Parties.

9. **Entire Agreement; No Waiver.** This Agreement constitutes the entire understanding between the Parties relating to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understanding of the Parties. No waiver of any of the provisions of this Agreement shall be deemed, nor shall such waiver constitute, a waiver of any other provision, whether or not similar, nor shall an amendment of this Agreement be binding unless executed in writing by all the Parties. The Parties expressly agree that the provisions of this section precluding modification of this Agreement may not be waived orally or by course of conduct, notwithstanding any law to the contrary.

10. **Partial Invalidity.** If any term of this Agreement or the application of any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

11. **Captions.** The captions appearing at the commencement of the sections of this Agreement are descriptive only and for convenience and shall not define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, and the venue and jurisdiction for any action to enforce this Agreement shall be in the County or Circuit Court in and for Palm Beach County, Florida.

13. **Plural / Singular; Masculine / Feminine.** Whenever and wherever the context of this Agreement requires, any references to the singular shall be read, construed, and interpreted to mean the plural and vice-versa; any reference to the masculine gender shall be read, construed and interpreted to mean the feminine gender and vice-versa; and any references to the neuter gender shall be read, construed and interpreted to mean the masculine or feminine gender and vice-versa, whichever is applicable.

14. **Palm Beach County Office of the Inspector General.** Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed Palm Beach County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with Palm Beach County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

WITNESSES:

Midas Southeast, LLC

Joey Gross
Print Name: Joey Gross

By: *P. Chicome*
Print Name: Pierre-Luc Chicome

Melissa Rousseau
Print Name: Melissa Rousseau

Title: CFO
Date: Dec 18, 2019

ATTEST:

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: *Jim Stiles*
Director of Water Utilities *p.e.*