

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 2/27/07 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department Submitted by: Palm Beach County ISS
Submitted for: County Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: approve: Agreement for Inter-Agency Cooperation in Establishing a Wide Area Wireless Communications System.

Summary: This Cooperative Agreement formally organizes a group to function as a steering committee under the umbrella name of *Palm Beach Wireless*. This group will be comprised of the Chief Executive Officers and Chief Information (Technology) Officers, or their designees, from Palm Beach County, Palm Beach Community College, Florida Atlantic University, the School District of Palm Beach County, the South Florida Water Management District, and the Palm Beach County Education Council.

With the Board of County Commissioners' concurrence, Commissioner Mary McCarty established a task force to pursue and promote wireless technology in Palm Beach County. The Task Force and its subcommittees have been meeting since June 2006 and are now poised to expand membership and continue researching best practices and approaches for initiating a public/private partnership to implement a wireless network capable of providing high speed bandwidth for data, voice, and video applications.

After the formation of the Steering Committee, a Request for Information (RFI) will be issued to assist in determining the economic feasibility of a wireless network in Palm Beach County. The County's Information Systems Services Department (ISS) provides the majority of the staff support for the task force and subcommittee activities. The proposed Cooperative Agreement will establish a formal structure to support the wireless initiatives. (Countywide PK)

Background: The Wireless Task Force organized by Commissioner McCarty held its first meeting on June 21, 2006. Since that date, Task Force members have focused on compiling an inventory of government-owned telecommunications assets, identifying shareholders and community participants, researching similar initiatives in other jurisdictions, and establishing a governance structure. Next steps include expanding the Task Force membership, continuing to research best practices, establishing a vision for a public WiFi network, preparing a business case for a WiFi network system, and developing an RFI to determine costs, sort out ownership and management issues, and identify potential commercial partners for this venture. If a decision is made to proceed, a full-time project manager will be hired and formal proposals will be solicited from vendors specializing in wireless technology.

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Attachments:

- 1) Cooperative Agreement

Recommended by: Steve Bordelon 2/14/07
Department Director Date

Approved by: [Signature] 2/27/07
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes No

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

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

The Steering Committee decided that we would not engage iCoast to manage the project, thus the reference to the County's \$40,000 share of the \$200,000 contract was deleted. The only "cost" involved relates to the staff time which is expected to be of minimal fiscal impact; therefore, there is no incremental cost associated with this agenda item.

C. Department Fiscal Review: Robert C. Basal 2/15/07

III. REVIEW COMMENTS

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

Ann Smith 2-15-07
OFMB
ack 2-14-07 CN 2/14/07

Don J. French 2/16/07
Contract Development & Control

This Contract complies with our contract review requirements.

B. Approved as to Form and Legal Sufficiency:

Paul F. J. 2/20/07
Assistant County Attorney

At the time of CDE's review, the contract was not executed.

C. Other Department Review:

Department Director

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A countywide wireless network will provide benefits to Palm Beach County citizens, governments, educational institutions, health care agencies, businesses, and visitors. It has particularly important applications in the realms of public safety, economic development, education, and bridging "The Digital Divide." Similar efforts are underway in dozens of communities throughout the United States, including Broward and Dade Counties.

As one of the six members of the Steering Committee, ISS will seek to assure that Palm Beach County's self interests and rights are protected with regards to ownership, management and control of the County's network assets. Palm Beach County telecommunications assets are substantial and valuable. These assets include the County's fiber optic network, antennae sites, rights-of-way, pole connection agreements, and licensed radio spectrum.

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (Agreement) is made and entered into as of this ____ day of _____, 2007, by and between

PALM BEACH COUNTY, FLORIDA

(hereinafter referred to as "PBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
301 N. Olive Ave., West Palm Beach, Florida 33401;

THE SCHOOL BOARD OF PALM BEACH COUNTY

(hereinafter referred to as "SBPBC"),
a corporate body politic of the State of Florida,
whose principal place of business is
3340 Forest Hill Boulevard, West Palm Beach, Florida 33406

PALM BEACH COMMUNITY COLLEGE

(hereinafter referred to as "PBCC"),
a body corporate and educational institution of the State of Florida,
whose principal place of business is
4200 Congress Avenue, Lake Worth, Florida 33461

FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES

(hereinafter referred to as "FAU" or "Florida Atlantic University"),
a public body corporate and educational institution of the State of Florida,
whose principal place of business is
777 Glades Road, Boca Raton, Florida 33431

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

(hereinafter referred to as "SFWMD")
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
3301 Gun Club Road, West Palm Beach, Florida 33416-4680

PALM BEACH COUNTY EDUCATION COMMISSION

(hereinafter referred to as "PBCEC")
a body corporate and non-profit institution of the State of Florida,
whose principal place of business is
2324 S. Congress Avenue, Suite 2G, West Palm Beach, Florida 33406

WHEREAS, Palm Beach County, the School Board of Palm Beach County, Florida Atlantic University, Palm Beach Community College, South Florida Water Management District and the Palm Beach County Education Commission joined together to form **Palm Beach**

Wireless in June 2006 (hereinafter collectively referred to as either Palm Beach Wireless or “the Parties”); and

WHEREAS, Palm Beach Wireless will be established as a not-for-profit corporation to provide coordination and access to information and resources that can enhance the quality of life in our community; and

WHEREAS, Palm Beach Wireless provides collaboration between Palm Beach County and the community’s higher education institutions, school system, human services agencies and local government; and

WHEREAS, this effort provides expanded opportunities for all agencies to improve their ability to serve the community, for each institution to build alliances, and to facilitate better utilization of limited resources.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals**. The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement**. The term of this Agreement shall commence on the last date of execution by the Parties as specified above (the Effective Date) and shall continue for a period of twelve (12) months from that date, with automatic renewals on an annual basis until terminated.

2.02 **Organizational Membership**. The group functions under the umbrella name of Palm Beach Wireless comprised of the Chief Executive Officers and Chief Information (Technology) Officers or their designees, from Palm Beach County (PBC), Palm Beach Community College (PBCC), Florida Atlantic University (FAU), School Board of Palm Beach County (SBPBC), South Florida Water Management District (SFWMD), the Palm Beach County Education Commission, Inc. (PBCEC) and other designees as assembled.

2.03 **Roles and responsibilities**. Palm Beach Wireless is charged with:

- The responsibility for establishing and maintaining a vision;
- Establishing a governance structure which includes various Task Forces to augment the efforts of the Steering Committee. These Task Forces will function as subcommittees of the Steering Committee;

- Implementing a charter which delineates the operations of the Task Force, including rules for proxy attendance, meeting quorum, voting outcomes (majority vs. super-majority), agenda preparation, minutes, public notice requirements for meetings, etc.;
- Overseeing the activities of the various Task Forces;
- Planning and prioritizing the direction of the Palm Beach Wireless project;
- Directing the project management function and monitoring overall progress of the Palm Beach Wireless initiatives;
- Reviewing and approving all solicitation documents, e.g., Request for Information (RFI), Request for Proposals (RFP), Invitation to Negotiate (ITN), etc.), submitted by interested vendors;
- Finalizing evaluations of solicitation responses and assessing overall feasibility of wireless communications for the Palm Beach region;
- Presenting recommendations for next steps; and
- Collectively providing the necessary resources for the operation of the organization.

Each participating member of **Palm Beach Wireless** will use the consortium process to communicate new initiatives for public access to information and resources through a technology infrastructure to other consortium members.

Each participating member of **Palm Beach Wireless** agrees to actively participate in the program committees. **Palm Beach Wireless** will establish initiatives and priorities on an annual basis and encourage member organizations to promote its programs broadly.

A Steering Committee shall be established under this agreement and shall consist of voting members of the Palm Beach Wireless, including Palm Beach County, Florida Atlantic University, Palm Beach Community College, School Board of Palm Beach County, and the South Florida Water Management District. The Palm Beach County Education Commission, Inc. will be represented as a non-voting member.

Support for the activities of **Palm Beach Wireless** will be accomplished through task forces and subcommittees with membership from the member organizations.

2.04 Responsibilities of the Parties. Subject to Section 3.01 below, the Parties agree to be responsible for their own acts of negligence, or their respective agent's acts of negligence when acting within the scope of their employment.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement, specifically including without limitation Section 2.04 above, is intended to serve as (i) a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable; (ii) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (iii) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of the Florida Statutes.

3.02 **No Third Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third party by this Agreement. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Non-Discrimination.** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** Any Party to this Agreement may elect to terminate their participation with or without cause during the term hereof upon thirty (30) days written notice to the other Parties of their desire to opt out of the Agreement. Opting out by any Party shall not terminate this agreement, providing a minimum of two or more entities remain parties to the Agreement.

3.05 **Records.** The Parties shall maintain their own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. The Parties shall each be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.06 **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.08 **Preparation of Agreement.** The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

3.09 **Waiver.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a

material term hereof. Failure by any of the Parties to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** The Parties shall comply with all applicable federal and state laws, codes, rules and regulations in performing the duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Fifteenth Judicial Circuit of Palm Beach County, Florida.

3.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

3.13 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by the Parties without the prior written consent of the other Parties. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from Palm Beach Wireless.

3.14 **Force Majeure.** The Parties shall not be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of the Parties, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of the Parties be deemed Force Majeure.

3.15 **Place of Performance.** All obligations of Palm Beach Wireless under the terms of this Agreement are reasonably susceptible of being performed in Palm Beach County, Florida and shall be performable in Palm Beach County, Florida.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To Palm Beach County: Mary McCarty, County Commissioner
Palm Beach County Government
301 N. Olive Ave.
West Palm Beach, FL 33401

With a Copy to: Steve Bordelon, Director of Information Systems Services
Palm Beach County Government
301 N. Olive Ave.
West Palm Beach, FL 33401

With a Copy to: Addie L. Greene, Chair, Palm Beach County Commission
Palm Beach County Government
301 N. Olive Ave.
West Palm Beach, FL 33401

To PBCC: Dennis Gallon, Ph. D., President
Palm Beach Community College
4200 Congress Ave.
Lake Worth, FL 3346

With a Copy to: Susan Baumel, Chair, Board of Trustees
Palm Beach Community College
4200 Congress Ave.
Lake Worth, FL 33461

With a Copy to: Anthony Parziale, Chief Information Officer
Palm Beach Community College
4200 Congress Ave.
Lake Worth, FL 33461

To FAU: Frank Brogan, President
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431

With a Copy to: General Counsel
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431

With a Copy to: Jeff Schilit, Ph. D., Associate Provost and CIO
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431

To SBPBC: Art Johnson, Ph. D., Superintendent
The School District of Palm Beach County
3300 Forest Hill Blvd.
West Palm Beach, FL 33406

With a Copy to: William Graham, Chair, Palm Beach County School Board
The School District of Palm Beach County
3300 Forest Hill Blvd.
West Palm Beach, FL 33406

With a Copy to: Rich Contartesi, Director, Educational Technology
The School District of Palm Beach County
3300 Forest Hill Blvd.
West Palm Beach, FL 33406

With a Copy to: Linda Mainord, Chief Information Officer
The School District of Palm Beach County
3300 Forest Hill Blvd.
West Palm Beach, FL 33406

To SFWMD: Kevin McCarty, Chair, Governing Board
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

With a Copy to: Tom Olliff, Assistant Executive Director
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

With a Copy to: Enrique Garcia, Chief Information Officer
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

To PBCEC, Inc.: Jody Gleason, Executive Director
Palm Beach County Education Commission, Inc.
2324 S. Congress Avenue, Suite 2G
West Palm Beach, FL 33406

With a Copy to: Chair, Palm Beach County Education Commission, Inc.
Palm Beach County Education Commission, Inc.
2324 S. Congress Avenue, Suite 2G
West Palm Beach, FL 33406

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Authority.** Each person signing this Agreement on behalf of the Parties individually warrants that he or she has full legal power to execute this Agreement on behalf of the respective party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

3.20 **Effective Date.** This Agreement shall be in full force and effect upon the approval of the various Parties and proper execution hereof.

IN WITNESS WHEREOF, the Parties, or their duly authorized representatives hereby execute this Agreement as set forth below with a separate page for each signatory.

FOR PALM BEACH COUNTY

(Corporate Seal)

ATTEST:

Palm Beach County

By: _____
Addie L. Greene, Chairperson

Date: _____

FOR PALM BEACH COMMUNITY COLLEGE

(Corporate Seal)

ATTEST:

PALM BEACH COMMUNITY COLLEGE

By: _____
Dennis Gallon, Ph. D., President

Date: _____

By: _____
David Talley, Chair, Board of Trustees

Date: _____

FOR FLORIDA ATLANTIC UNIVERSITY

(Corporate Seal)

ATTEST:

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES

By: _____
Frank Brogan, President

Date: _____

FOR THE SCHOOL DISTRICT OF PALM BEACH COUNTY

(Corporate Seal)

ATTEST:

SCHOOL DISTRICT OF PALM BEACH COUNTY

By: _____
Art Johnson, Superintendent

Date: _____

FOR THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

(Corporate Seal)

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ATTEST:

By: _____
Kevin McCarty, Chair, Governing Board

Date: _____

FOR THE PALM BEACH COUNTY EDUCATION COMMISSION

(Corporate Seal)

PALM BEACH COUNTY EDUCATION COMMISSION, INC.

ATTEST:

By: _____
Patrick Franklin, Chair.

Date: _____