



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

	<u>Fiscal Years</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	\$	—	—	—	—	—
Operating Costs	\$	\$0	\$0	\$0	\$0	\$0
External Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Program Income (County)	—	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—	—
<b>NET FISCAL IMPACT</b>	<del>\$</del>	\$0	\$0	\$0	\$0	\$0
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	—	—	—	—	—	—

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_

Budget Account No.: Fund \_\_\_ Department \_\_\_ Unit \_\_\_ Object \_\_\_

Reporting Category \_\_\_

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

**C. Departmental Fiscal Review:**

**III. REVIEW COMMENTS**

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

*No fiscal impact*  
*me* 8/26/09  
 OFMB *8/26/09*  
*8/25/09*

*John J. Javoy* 8/26/09  
 Contract Dev. and Control  
*8/26/09*  
*These agreements comply with our review requirements.*

**B. Legal Sufficiency:**

*Paul F. [Signature]* 8/17/09  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

Continued from Page 1...

The Digital Divide program provides no-cost, refurbished computers and training to families, along with wireless Internet access. This agreement with FPL and the related Interlocal Agreement with the City of West Palm Beach represent an expansion of the program. Expanded wireless network coverage will involve mounting Wi-Fi antennas on poles owned by FPL.

The Quantum Foundation has awarded two grants to support the initiative in the City of West Palm Beach. Part of that funding is for the purchase of the required wireless antenna. With the FPL agreement in place, ISS will mount these antennas in the identified neighborhoods. FPL will charge a monthly electric fee of \$5 for each antennae mounted, as well as an annual \$110 fee for each pole attachment. The initial term of the agreement with FPL is for four years and thereafter the agreement will be automatically renewed for an additional one year term unless either party provides written notice of termination. The agreement with West Palm Beach is for one year and will thereafter automatically renew for an additional year unless either party provides written notice of termination.

The Interlocal Agreement with the City of West Palm Beach provides a vehicle for the City and CRA to reimburse the County for these fees, making this a truly collaborative effort by organizations to work together for the benefit of the community.

**ATTACHMENT TO STREET LIGHT BRACKETS: PILOT AGREEMENT  
BETWEEN  
COUNTY OF PALM BEACH  
and  
FLORIDA POWER & LIGHT COMPANY**

*ATT. # 1*

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**ATTACHMENT TO STREET LIGHTS: PILOT AGREEMENT  
BETWEEN  
COUNTY OF PALM BEACH  
and  
FLORIDA POWER & LIGHT COMPANY**

THIS AGREEMENT, made this \_\_\_\_ day of August, 2009, between the County of Palm Beach, a political subdivision of the State of Florida with an address of 301 North Olive Avenue, West Palm Beach, Florida 33401 (hereinafter referred to as "*Licensee*") and Florida Power & Light Company, Inc., a corporation organized and existing under the laws of Florida with a main office at 9250 W. Flagler Street, Miami, Florida 33174 (hereinafter referred to as "*FPL*").

**WITNESSETH:**

WHEREAS the Licensee desires to attach wireless radio equipment (which include internet or "*WiFi*") requiring electric service to the FPL Street Light Brackets for the purpose of construction, operation, and maintenance of a digital communications radio network for the primary purpose of providing wireless public dispatch communications for Licensee's police department, fire department, emergency medical services and / or possible shared use with FPL or other public purposes, and may additionally be used to provide Internet service to the public. (hereinafter referred to as "*Licensee's System*" or "*System*"), and

WHEREAS, FPL is interested in evaluating the technology as a pilot installation under a controlled setting and under terms and conditions which will allow, FPL to learn in factual detail Licensee's experiences in installing, operating and maintaining this technology and to observe field or central office operations using this technology, and, if such experiences are positive, to, at the option of FPL, avail itself of the use of such attached facilities for FPL's purposes, and

WHEREAS, FPL is willing to permit, to the extent it may lawfully do so, the attachment of said System to its existing Street Light Brackets, and to no other FPL facilities, where, in FPL's judgment, such use will not interfere with FPL's own system integrity or service requirements, including, without limitation, considerations of economy, safety, regulation and reliability,

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

**ARTICLE I – DEFINITIONS**

- 1.1. Attachment means the physical attachment of the Licensee's Device to a FPL Street Light Bracket. Under this Agreement, Attachments may be made only to FPL owned Street Light Brackets that serve FPL-owned, individually-controlled 120V luminaries which are accessible to FPL's vehicles.
- 1.2. Licensee means the County of Palm Beach, which is the owner of the wireless equipment.

- 1.3. Licensee's Device or Device means the Licensee's wireless router unit which consists of the Tropos radio, antenna, electric cable, and supporting hardware required by the Licensee and approved by FPL to attach to FPL Street Light Brackets. The radios to be installed by Licensee under the terms of this Agreement will be of a size and weight substantially similar to that depicted and set forth on Exhibit C. Licensee will not install or attempt to install a future generation of the Tropos radio more than twenty (20%) percent larger than the dimensions of the radios shown and described in Exhibit C without prior approval by FPL. Unless otherwise approved by FPL, all other Licensee equipment and hardware are excluded from this definition and shall not be allowed on the FPL Street Light Facilities or other FPL Facilities.
- 1.4. NESC is the National Electrical Safety Code.
- 1.5. Rearrangement/Rearrange means any activity or work which is necessary when there is a change in the FPL Street Light Facilities or FPL service requirements or to ensure that Licensee's Attachments do not adversely affect FPL's Street Light Facilities or service. "Rearrangement" includes but is not limited to relocation, adjustment, modification, conversion, permanent or temporary support, protection, design or redesign, abandonment, and removal or reconstruction of Licensee's Device(s).
- 1.6. Street Light Bracket means a long slender bracket extending from a Street Light or Distribution Pole that serves as a single structural member supporting the FPL luminary or lamp.
- 1.7. Street Light Facility Capacity means the maximum allowable stress, strain or force the Pole or Street Light Bracket can be subjected to, as determined by FPL's standards and the guidelines within the NESC.
- 1.8. Street Light Facility or Facility means equipment used by FPL for the purpose of street lighting, including, Poles, wires, cables, luminaries or lamps, Street Light Brackets or other appurtenances, and associated equipment which is located on Licensee's right-of-way, but excluding FPL transmission poles.
- 1.9. Pole means a long slender usually cylindrical, piece of wood or concrete connected to, or part of, a single foundation embedded in the ground that serves as a single structural member supporting the FPL Street Light and Street Light Bracket and which is located on road right-of-way owned by the local, county, state, or federal government. These poles are used for the purpose of lighting streets and may also be used for the distribution of electric service. Pole as used herein does not include decorative street light poles or street light poles which are not constructed of wood or concrete, and Licensee shall not attach to any brackets that are located on transmission Poles.
- 1.10. Unauthorized Attachment means an Attachment to any FPL property not expressly permitted by this Agreement or without notification of Attachment or FPL's



authorization, or without or in violation of any necessary local, state or federal permit, consent, or requirement.

## **ARTICLE II – TERM AND RIGHT TO ATTACH**

- 2.1. Term. This Agreement is for an initial pilot term of four (4) years commencing with the date first written above and ending on midnight immediately preceding the four (4) year anniversary of said date. Provided the Licensee is not in default under the terms of this Agreement or if FPL determines that the pilot program was successful and that FPL's system integrity was not adversely affected by such Attachment, this Agreement shall be continuously self-renewing by an additional one (1) year term unless either party provides written notice to the other party no later than sixty (60) days prior to the expiration of the then effective term that it wishes to terminate this Agreement for any or no cause. Individual permits issued under this Agreement may automatically expire as provided in Exhibit A attached hereto.
- 2.2. Limitations to Attachment.
  - a. Nature of Licensee's Service. The Licensee may attach its Devices for the sole purpose of providing wireless communications. Any other use of the Licensee's Devices shall permit FPL to terminate this Agreement.
  - b. Street Light Facilities. The Licensee may attach Licensee's Devices only to existing or future FPL Street Light Brackets, which are on road right-of-way owned or controlled by the local, county, state, or federal government. The Licensee may not attach to the FPL Street Light Facilities that are not on road right-of-way owned or controlled by the local, county, state, or federal government. The Licensee may not attach its Devices to any other FPL property. Under no condition will FPL modify or make-ready an existing Street Light Facility to accommodate Licensee.
  - c. Orientation of Installation. The Licensee's Device may be installed with the antenna pointed upward or downward as required for optimal operation of the device.
- 2.3. Inspection and Capacity. Prior to applying for permission to attach to any FPL Street Light Bracket, the Licensee shall inspect each Street Light Facility to which it wishes to attach and shall confirm that each such Street Light Facility includes an individually-controlled 120V luminary, and is located on a local, county, state or federal government road right-of-way. For each type or configuration of Street Light Facility on which Licensee desires to attach, Licensee shall prepare an initial worst case scenario capacity study, including wind-loading, and calculations according to FPL requirements specified in Exhibit D. The Licensee shall attach to its permit application its worst-case scenario capacity calculations, including wind-loading, for each type or configuration of Street Light Facility to which it desires to attach. If the Street Light Facility capacity is

inadequate to support the additional facilities in accordance with the specifications in Exhibit D and Article III below, the Licensee will not attach to that Facility.

- 2.4. Florida Power & Light Company Permit. After inspection and prior to attaching to any FPL Street Light Bracket, the Licensee shall apply for a written permit pursuant to an application in the form of Exhibit A. By identifying a Street Light Facility in Exhibit A, the Licensee is representing that it has performed an inspection of the Street Light Facility and that it has confirmed that the Street Light Facility is FPL's, includes an individually-controlled 120V luminary and is located on a road right-of-way owned by a local, county, state or federal government, and the Licensee is consenting to FPL relying upon such representations.
- 2.5. Pilot Experiences. During the initial four (4) year pilot term, Licensee and FPL agree that the attached technology is considered a pilot installation and that the Licensee shall share with FPL factual details, and where possible actual data, of Licensee's experiences in installing, operating and maintaining this technology and shall allow FPL at mutually convenient and agreed upon times to observe field or central office operations using this technology. Licensee and FPL further agree that it is their intent that FPL, at the option of FPL, may avail itself of the use of this technology for FPL purposes at no additional cost to FPL, provided that such use does not interfere with Licensee's use during the term of this Agreement or any extension thereof.

### **ARTICLE III - ATTACHMENT AND MAINTENANCE**

- 3.1. Licensee's Attachments.
  - a. Safe Condition and Non-interference. The Licensee, at its own expense, shall make and maintain its Attachments to the Street Light Bracket in safe condition and in thorough repair, both in a manner suitable to FPL and so that the Attachments do not conflict with the use of Facilities by FPL or other licensees. The Licensee shall exercise special precautions to avoid damage to property of FPL and to attachments of others supported on any FPL property and shall immediately report any damage to FPL and to any other owners of damaged facilities or attachments. FPL shall have no installation, maintenance, repair or other responsibility for Licensee's Devices.
  - b. Worker Qualification. The Licensee may make, remove and maintain its Attachments to the FPL Street Light Facilities only by qualified journeyman employees of Licensee or engaging a qualified electrical contractor journeyman. This qualification shall include similar work performed in the past, such as street light repair in the power zone of an electric utility's distribution facilities. Licensee shall have sole responsibility for determining whether its employee or contractor is qualified.
- 3.2. Licensee's Duty to Warn. Licensee agrees to warn its employees, agents, contractors, and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by FPL are charged with high voltage electricity and to inform such persons as to

safety and precautionary measures which they must use when working on or near FPL property and other facilities.

3.3. Licensee's Permits/Franchises. The Licensee, at its own expense, shall obtain and shall ensure that any communications provider utilizing Licensee's Devices to provide Licensee's communications services as set forth above obtains, all necessary permits, franchises and other authorization of any kind whatsoever from local, state and federal governments and agencies prior to Attachment of Licensee's Devices to the FPL Street Light Brackets. Licensee shall provide an affidavit to FPL with the first Exhibit A for that authorization area stating that it has received all such authorizations.

3.4. Standards for Attachments to FPL Street Light Brackets.

- a. • Compliance with Local and National Codes. Licensee agrees to comply with all local and national codes, including the latest edition of the National Electrical Code (NEC) and rules of the Federal Communications Commission with respect to radio frequency emissions and the Licensee shall submit an affidavit that all the Licensee's Devices meet current local and national code requirements, including the requirements of the NEC, with every Exhibit B submitted to FPL.
- b. NESC, NEC, Regulatory and FPL Requirements. The Licensee agrees to install, construct and maintain its Devices on FPL Street Light Brackets by qualified journeyman employees or through the use of a licensed electrical contractor's journeyman employee paid under a contract executed by the Licensee and to do so in accordance with the requirements and specifications of the NESC, latest edition, or any applicable amendments, revisions, or subsequent editions of said NESC as well as the additional construction requirements set forth by regulatory agency or FPL in Exhibit D. The Licensee recognizes that by installing its Devices on FPL Street Light Brackets, its Devices will be installed within the power zone of the Pole. Therefore, all construction, operation, maintenance and removal of Licensee's Devices must, at a minimum, conform to the standards of the NESC for facilities in the power zone, including the requirement that the persons working within the power zone be qualified electrical journeyman linemen. If any part of the Licensee's Devices is found to have been installed in violation of the NESC, the NEC, Regulatory or FPL requirements (Exhibit D), the Licensee shall immediately make all corrections at the Licensee's expense, including Rearrangement of Facilities and of attachments of others and removal of an Attachment where necessary.
- c. Installation of Attachments. Licensee's Attachment of Licensee's Devices on each FPL Street Light Bracket shall be restricted to the Street Light Bracket itself and in accordance with any requirements laid out in this Agreement. If Licensee fails to install its Attachment as agreed, Licensee shall be responsible for all costs of modification or Rearrangement of Licensee's Devices. If FPL should require the Licensee to Rearrange its Attachment for FPL needs, Licensee shall assume the

added cost of such Rearrangement; provided however, FPL shall use reasonable efforts to afford Licensee an alternative Street Light Bracket location.

- d. Other Requirements. All installation work shall be done in accordance with local rules, regulations, statutes and ordinances. The Licensee agrees to participate in FPL's notification and scheduling processes for system and facility transfers. All Attachments shall be subject to rights under any other attachment agreement in effect now or at the time of Licensee's application for Attachment. Licensee agrees that this Attachment Agreement is non-exclusive and that attachments of third parties to FPL Street Light Brackets shall be on a "first-come, first-serve basis." If it is necessary to Rearrange attachments of any other licensee attached to the FPL Facility in order for the Licensee to attach its Devices, Licensee shall be responsible for coordinating such Rearrangement with the attached party and shall pay all costs of such Rearrangement. If a third party, acceptable to FPL, desires to attach to an FPL Street Light Facility to which the Licensee is already attached, Licensee shall cooperate with that third party in any Rearrangement of Licensee's Devices in order to accommodate the third party attachment in a manner that does not interfere with Licensee's signal and shall be solely responsible for reaching agreement with and obtaining reimbursement for Rearrangement of Licensee's Devices from that third party.
- e. Marking of Licensee's Devices. The Licensee agrees to install or mark the Devices at every location in a manner acceptable to FPL and consistent with guidelines adopted by the Florida Utility Coordinating Committee ("FUCC"), so that it can be easily identified from the ground and from other similar equipment on the Facility. In the absence of more stringent regulatory requirements, Licensee must clearly mark each Device with safety requirements for any workers working on, with and/or around Licensee's Devices to warn said worker of RF emissions. This will include, but is not limited to, the appropriate distance to maintain while Licensee's Device is energized and to de-energize Licensee's Device, if required, prior to working on, with and/or around Licensee's Device.
- f. Licensee's Notice of Attachment. Within thirty-one (31) days of attaching to FPL's Street Light Brackets, Licensee shall provide FPL with Notice of Attachment in the form of Exhibit B attached hereto. Failure to provide FPL with Exhibit B within thirty-one (31) days of construction will delay the post construction inspection and internal FPL recording of Licensee's attachments at the locations specified, and will prejudice other entities desiring to attach to FPL's facilities. For permits requiring greater than thirty-one (31) days of construction, Exhibit B shall be filed monthly as to the progress of construction. Failure to timely file an Exhibit B may result in rescission of a permit with respect to remaining attachments to be made under that permit or denial of new permits until such time as the filing is made. Recurring failure to timely file fifty percent (50%) or more Exhibit Bs shall be grounds for termination by FPL. Licensee will bear all costs for post-audit, back billings and administrative fees caused by Licensee's delinquency.

3.5. Rearrangement, Transfer of Licensee's Device.

- a. Timing. When it is necessary for the Licensee to Rearrange its Attachment on an existing Facility or transfer its Attachment to a replacement Facility, the Licensee will move, remove or transfer its Attachment as required within forty-five (45) days of notification. The Licensee will participate in FPL's notification process and conform to FPL's scheduling in order to accomplish this.
  - b. Failure of Licensee to Relocate, Rearrange or Transfer; Emergency Situations. After forty-five (45) days notice from FPL, if Licensee has failed to duly relocate, Rearrange or transfer Licensee's Device, or no notice in cases of emergency, FPL in the sole option of FPL, may Remove Licensee's Device. In the event Licensee's Device has been removed by FPL due to an emergency, FPL shall endeavor to provide verbal notice to Licensee within forty-eight (48) hours of such removal; provided, however, FPL shall have no duty or obligation to provide such notice. Licensee, on written demand, shall reimburse FPL for the expense thereby incurred. Nothing in this section 3.5(b) shall impose any duty on FPL or relieve the Licensee from maintaining adequate work forces readily at hand to handle the Rearrangement, repair, service and maintenance of the Device where the condition of Licensee's Device is hindering FPL's operations or from liability for failure to timely remove its Attachment from FPL Street Light Facilities or from its obligations under Article VI of this Agreement.
- 3.6. FPL Inspection. FPL reserves the right to inspect each new installation, upgrade or Rearrangement by the Licensee on FPL Street Light Facilities. FPL reserves the right to make surveys every five (5) years, or more frequently as conditions warrant, of the entire Licensee System on FPL's Street Light Facilities. Notwithstanding the foregoing, FPL shall have no duty under this Agreement to make such inspections or surveys. Such inspections or surveys made or not made shall not relieve the Licensee of any responsibility, obligation or liability assumed under this Agreement. All direct and indirect costs associated with these inspections shall be paid by the Licensee as stated in Article IV. In addition, if any Licensee violations are found, including violations of any code or FPL requirement, the Licensee shall make all corrections at the Licensee's expense, including Rearrangement of Facilities and of attachments of others.
- 3.7. FPL's Delivery of Electric Service. Licensee acknowledges that the primary role of the electric utility is to provide reliable electricity to its customers. FPL at its own discretion may de-energize Licensee's Device at any time to assure safety or reliability of electric service to FPL customers with no liability or consequences therefore accruing to FPL. Licensee also acknowledges that FPL provides no guarantee of continuous electric service to energize the Licensee's Devices. If the Licensee's Device is equipped with a battery backup system, there must be a toggle switch on the Device that will allow FPL to disconnect the battery backup disabling the device while working on a pole. Instructions describing disabling and enabling the battery backup shall be visible at the device level. Prior to contacting FPL regarding an outage of a Device, Licensee will inspect the Device to determine the source of the outage.

## ARTICLE IV - LICENSE AND REMOVAL FEES, BILLING

### 4.1. Attachment Fees.

- a. Wireless Attachment Fee. For the convenience of the use of FPL's facility, access to a vital network of consistent facilities operated by a single owner and the ease of installation and normal operation of the Licensee's Device, Licensee shall pay FPL annually in advance an "**Attachment Fee**" or "**Annual Fee**". The initial Annual Fee is One Hundred Seventeen DOLLARS and Seventy CENTS (\$117.70) and shall be paid on the Effective Date of this Agreement, effective as of January 1, 2009. Thereafter, the Attachment Fee shall be adjusted annually as set forth in Subparagraph 4.1(b) below, and paid on or before the anniversary of the Effective Date, effective as of January 1<sup>st</sup> of each year of the Term for the use of each FPL owned Street Light Bracket to which the Licensee's Device has been directly attached pursuant to this Agreement. The annual rate shall apply to all Attachments existing as of the effective date of that rate, regardless of the date of Attachment. Licensee expressly acknowledges and agrees that the contract rates have been specifically negotiated solely for the attachment of Licensee's Devices for providing services for Licensee's police department, fire department, emergency medical services, other County services and / or possible shared use with FPL or other public purposes, and may additionally be used to provide Internet service to the public.
- b. Fee Adjustment and Billing. The Annual Fee shall be increased effective January 1st of each year based on the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index of all items, for the South Region Statistical Area which occurred during the 12 months ended on the previous [December 31<sup>st</sup>.] If the Consumer Price Index does not increase, the fee shall remain the same. An Attachment to any FPL Street Light Bracket without notification of Attachment or without FPL's authorization shall be deemed to have been made on the effective date of this Agreement or the date of the last survey, whichever is more recent, but in no event longer than five (5) years. FPL's acceptance of payment for unauthorized Attachment shall not constitute a waiver of any other rights or remedies under this Agreement or at law. Payment shall be made within thirty-five (35) days of the date of invoice and under the terms and conditions provided in this Article IV.
- c. Unauthorized Attachment Fee. Licensee shall pay FPL an Unauthorized Attachment Fee in the amount of two and one-half (2 1/2) times the Attachment rate applicable during the year in which the Unauthorized Attachment to an FPL Streetlight Facility was discovered. It is agreed that this Unauthorized Attachment fee constitutes liquidated damages and that it shall be paid from the date of discovery back to the date of the last physical survey of all Attachments to any FPL Streetlight Facilities or the effective date of this Agreement, whichever is more recent, but in no event longer than five (5) years. If an Unauthorized

Attachment is identified by survey, the "last survey" shall mean the survey immediately prior to the survey that identified the Unauthorized Attachment. FPL's acceptance of the payment of the Unauthorized Attachment fee or consent to waive payment of all or a part of the Unauthorized Attachment fee shall not constitute a waiver of any of FPL's other rights or remedies under this Agreement or at law. Licensee shall have the burden of proving that an Attachment is an authorized Attachment by providing FPL with a copy of the FPL Attachment Permit.

4.2. Removal Fees.

- a. Bracket and Licensee Device Removal Fee. Licensee shall pay FPL a fee of sixty-five dollars (\$65.00) for each Attachment that is removed by FPL.
- b. Change in Fees. Beginning on January 1, of each year, and for each year thereafter, the fees for FPL removal of Licensee's Attachment may be adjusted to reflect any change in all direct and indirect costs of FPL associated with performing such work. FPL shall notify the Licensee in writing no less than sixty (60) days prior to implementing a change in removal fees.

4.3. Licensee's Rearrangement Costs. If FPL rearranges or relocates its Street Light Facilities or changes the existing Street Light line alignment, Licensee shall remove, Rearrange or relocate its Facilities at its own expense. If such Rearrangement is reimbursable by the third party, Licensee is responsible for dealing directly with and obtaining its own reimbursement from such third party. Additionally, Licensee is responsible for coordinating the relocation of its Attachments with the relocation schedule of the third party. FPL shall not be responsible for delay claims caused by failure of Licensee to meet the relocation schedule of a third party. Payment for Rearrangement work will be made by the Licensee as stated in Article IV, sections 4.4 and 4.5 below.

4.4. Billing.

- a. Rearrangement/Removal Work. Upon completion of any removal work by FPL, FPL shall present Licensee with an invoice for the then current removal fee times the number of Attachments removed by FPL which invoice shall be paid within thirty-five (35) days by Licensee. Upon completion of any Rearrangement, other than removal, FPL shall furnish the Licensee with a final and complete billing of all costs incurred in the Rearrangement.
- b. Inspecting, etc. In addition to the above charges, FPL shall bill the Licensee for the direct and indirect costs incurred for inspections, surveys, expenses and other charges (excluding Attachment fees) under this Agreement, as incurred. Payment shall be made within thirty-five (35) days of the date of invoice and under the terms and conditions provided in this Article IV.

- 4.5. Payment and Late Charges. The Licensee shall have thirty-five (35) days from the date of any invoice to object in detail to same, other than invoices for removal of the Licensee's Device. The parties in good faith shall attempt to resolve any objection to the invoiced amount within thirty (30) days of Licensee's notice of dispute. If Agreement cannot be reached, Licensee shall pay FPL the invoiced amount immediately upon acknowledgment that Agreement cannot be reached or upon the termination of the thirty (30) day resolution period, whichever is earlier. Upon resolution of the objection to the invoiced amount, FPL shall refund any amount due Licensee within fifteen (15) days with interest on any late refund being due at twelve percent (12%) per annum. Failure to provide FPL with written notice of dispute within thirty-five (35) days of the date of invoice shall constitute approval by the Licensee of the statement or invoice. If payment is not mailed within thirty-five (35) days of the date of the statement or invoice, then a late payment charge may be assessed in the amount of one percent (1%) of the amount due per month calculated on a daily basis or, if less, the highest amount then permitted by Florida Law Section 218.735(9) of the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.
- 4.6. Effect of Non Payment. Licensee's failure to pay any non-disputed invoice after thirty (30) days written notice of non-payment to Licensee by FPL shall constitute a default going to the essence of this Agreement and shall entitle FPL to cancel this Agreement.

#### ARTICLE V - REMOVAL

- 5.1. Licensee's Expense. All removals of Licensee's Device from FPL Facilities shall be at the sole expense of the Licensee, not of FPL, regardless of whether removal is by FPL.
- 5.2. Notice by Licensee. The Licensee, after prior written notice to FPL, may remove its Device from any FPL Street Light Facility and shall give FPL written notice, in the form of Exhibit B, of actual removal within fifteen (15) working days after removal. Licensee shall exercise care and take precautions to avoid damage to the FPL Street Light Facilities and to the attachments of others and shall immediately report any damage to FPL and to the owners of the damaged facilities. **FAILURE TO FILE AN EXHIBIT B WITHIN FIFTEEN (15) DAYS AFTER REMOVALS WERE MADE MAY RESULT IN THE CONTINUATION OF ALL ATTACHMENT FEES UNTIL NOTICE HAS BEEN PROVIDED OR DENIAL OF NEW PERMITS. LICENSEE WILL BEAR ALL COSTS CAUSED BY LICENSEE'S DELINQUENCY.**
- 5.3. Immediate Removal for Licensee's Lack of Authorization. If any court, governmental or regulatory authority of competent jurisdiction for any reason, by a final order or decision, declares that Licensee has no right to attach to any FPL Street Light Facility, the permit covering the use of the FPL Street Light Facility shall immediately terminate and Licensee shall remove all of its Devices from the affected FPL Facility. Licensee shall hold harmless, defend and indemnify FPL, its parent, affiliates and their subsidiaries, as well as their respective employees, agents, directors and officers (collectively, the "*FPL Entities*") from and against all liabilities, cost and expense, including attorney's fees,



arising from or associated with Licensee's actual or alleged failure to obtain all necessary authorization. Removal by Licensee shall not affect FPL's termination rights under Section 7.1 of this Agreement.

- 5.4. Immediate Removal for Legal Action against FPL. Upon receipt from state, county or municipal authorities of a citation, notice of violation or other official notice that the use of an FPL Street Light Facility for an Attachment by the Licensee is forbidden, unauthorized or in violation of law, rule, regulation or ordinance, FPL may terminate the permit covering the use of the FPL Street Light Facility and Licensee shall remove all of its Devices from the affected FPL Facility. Removal by Licensee shall not affect FPL's termination rights under Section 7.1 of this Agreement. In the event that an enforcement action or legal proceeding is brought against FPL and/or Licensee in which it is asserted that the use of an FPL Street Light Facility for an Attachment by Licensee is forbidden, unauthorized or in violation of law, rule, regulation or ordinance, FPL and Licensee agree that FPL may immediately terminate the Attachment(s) identified without any liability to Licensee or third parties utilizing the Attachment(s) or Device(s). In no event shall FPL be required under the terms of this Agreement to secure any permit, franchise or other grant of governmental authority to allow the Licensee to attach its Devices to FPL's Street Light Facilities.
- 5.5. Removal after Elimination of FPL Facilities. If the FPL Street Light Facilities to which any Licensee Device is attached are to be eliminated for any reason whatsoever, including at the option of FPL or for reasons related to replacement or relocation, FPL shall endeavor to provide Licensee with forty-five (45) days notice prior to the date upon which FPL eliminates the FPL Street Light Facility or Facilities, and shall provide Licensee a minimum of 10 days prior written notice. Licensee may elect to reattach its Device to the Street Light Facility once it has been replaced or relocated. If at the expiration of such period or upon the date of removal of FPL's Street Light Facilities, which ever occurs first, Licensee has not removed all of Licensee's Devices from the FPL Facilities, FPL, at the sole option of FPL, may remove Licensee's Devices. Such removal by FPL shall be at the sole cost of Licensee and shall consist of removing the Licensee's Device from the FPL Street Light Bracket and placing the Licensee's Device at the base of the existing, new or relocated Street Light Facility. **FPL shall have no liability whatsoever for any damage to Licensee's Devices caused by FPL in the removal and leaving of Licensee's Devices at the base of a Street Light Facility. FPL shall be responsible for bodily injury or death caused by FPL in the removal process. Provided, however, FPL shall have no liability of any kind whatsoever for theft or damage to property or any land or injury or death to persons caused by third parties or FPL after FPL has removed Licensee's Device.**

#### ARTICLE VI –

#### RESERVATION OF RIGHTS, LIMITATION OF LIABILITY AND INSURANCE

- 6.1. Reservation of Rights and Release by the Licensee. FPL reserves to itself, its successors and assigns, the right to maintain and operate its Street Light Facilities in such manner as will best enable it to fulfill its own service, business, regulatory and safety requirements.

Licensee agrees and understands that FPL shall not be liable to the Licensee or any person utilizing or relying on Licensee's Device for any interruption to service of Licensee or for interference with the operation of the Devices of the Licensee or arising in any manner out of the use of FPL's Facilities by the Licensee, FPL, or others. Where possible, FPL shall provide Licensee with prior notice of planned interruption of service that will result in interference of Licensee's operations. The Licensee hereby releases and waives all rights against FPL for such interruptions or interference and shall indemnify and hold the FPL Entities harmless from any such claims by Licensee or by Licensee's customers or contractors.

6.2. No Consequential Damages. NEITHER PARTY SHALL BE LIABLE, EVEN IF GIVEN PRIOR NOTICE, TO THE OTHER PARTY OR ANY THIRD PERSON FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, WHETHER DUE OR CLAIMED TO BE DUE TO NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO DAMAGES IN THE NATURE OF LOST PROFITS OR REVENUES, LOSS OF USE OF FACILITIES OR EQUIPMENT, AND CLAIMS OF THIRD PARTIES OR INABILITY TO PERFORM CONTRACTS WITH THIRD PARTIES. FURTHERMORE, FPL MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE STREET LIGHT FACILITIES OR ANY PART THEREOF LICENSED HEREUNDER, AND DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF ADVISED THEREOF. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY FPL IN ANY CAPACITY, WITH RESPECT TO ANY LICENSE UNDER THIS AGREEMENT OR ANY GOODS OR SERVICES PROVIDED INCIDENT TO SUCH LICENSE, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

6.3. Indemnification of FPL.

Subject to the provisions of Section 768.28, Florida Statutes (the sovereign immunity waiver statute), Licensee shall indemnify, protect, defend and hold FPL free and unharmed from and against any and all claims, losses, liability, and expenses whatsoever which FPL may hereafter incur, suffer or be required to pay by reason of negligence on the part of Licensee in performing its obligations pursuant to this Agreement or Licensee's failure to abide by the provisions of this Agreement.

6.4 Insurance. Licensee self-insures and will provide FPL with separate, written confirmation of such self-insurance.

- 6.5. Contractor/User Indemnification. The Licensee further agrees to use its best efforts to include the following indemnification in all contracts with contractors hereinafter that perform work on or around the subject FPL facilities and users of the Licensee's Device:

"The Contractor/User hereby agrees to release, indemnify, defend, save and hold harmless Florida Power & Light Company, its parent, subsidiaries, affiliates and their respective officers, directors and employees (hereinafter referred to as "FPL Entities") and other owners of equipment attached to any FPL facility, from all claims, demands, liabilities and suits due to or caused by negligence of Contractor/User for bodily injuries or death to person(s), service interruptions or damage to property resulting in connection with the performance of work by Contractor/User, its subcontractor, agents or employees."

- 6.6. Contractor/User Insurance. The Licensee agrees to require its Contractors and Users of the Licensee's Device to secure insurance in the amounts set forth as follows:

i. Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including where applicable, the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act and Jones Act. Employers' Liability Insurance shall be provided with minimum a limit of Five Hundred Thousand Dollars (\$500,00.00) per accident.

ii. Comprehensive General Liability Insurance, including Broad Form Contractual Liability, with the following minimum limits of liability: Bodily Injury Liability and Property Damage Liability- One Million Dollars (\$1,000,000.00) combined single limit and Three Million Dollars (\$3,000,000.00) per occurrence aggregate.

iii. Comprehensive Automobile Liability Insurance with the following limits of liability, which shall apply to all owned, non-owned, leased and hired automobiles used by Licensee: Bodily Injury Liability and Property Damage Liability - One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) aggregate.

Such Contractor and User insurance shall designate the FPL Entities as additional insureds and to endorse the policy to be primary to any insurance obtained by the FPL Entities. The Licensee further agrees to verify with its Contractors that such insurance is in full force and effect. **The Contractor and User insurance shall include a provision that such policy may not be canceled or the coverage amounts reduced below the requirements set forth in this Section 6.6 without at least thirty (30) calendar days' prior written notice to FPL's Risk Management Department sent by standard United States mail, postage prepaid, first class, directed to: FPL Risk Management, P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0420. The insurance coverage required under this Section 6.6 must be with insurance companies with an A.M. Best Rating of A- or better and evidence of such insurance must be delivered to FPL Risk Management before any Attachments may occur.**

## ARTICLE VII - MISCELLANEOUS PROVISIONS

7.1 Default and Termination. Unless otherwise stated herein, FPL at its option may terminate this Agreement, in whole or part, or one or more permits:

(a) if upon written notice of material noncompliance or default, Licensee fails within thirty (30) days to comply with any of the provisions of this Agreement or cure any material default of its obligations under this Agreement; or

(b) immediately in the event the Florida Public Service Commission determines FPL was imprudent in entering into the Agreement; or

(c) in the event that the Florida Public Service Commission imputes additional revenues to FPL as a result of FPL entering into this Agreement or determines that the fees charged Licensee do not cover FPL's costs or results in electric customers cross-subsidization of non-regulated activities and Licensee fails to cure such imputation of revenues or cross-subsidization within thirty (30) days of written notice; or

(d) upon twenty-four (24) hours notice of a violation of a NESC, NEC, OSHA or FPL Safety requirements set forth in Exhibit D, which violation creates an unreasonable risk of bodily injury, death or serious property damage, if such is not cured within twenty-four (24) hours of receipt of notice of a violation; or

(e) in accordance with sections 4.5 and 4.6 herein, if Licensee has failed to pay any obligation hereunder;

(f) except as provided in section 5.4, upon thirty (30) days written notice, if Licensee is unable to secure or loses the necessary licenses, permits, or other required authorization from any federal or state regulatory body; or

(g) immediately, if Licensee files a voluntary petition in bankruptcy or an involuntary petition is filed against Licensee or Licensee becomes insolvent, shall generally not pay its debts as they become due, shall admit in writing its inability to pay debts, shall make a general assignment for the benefit of creditors or shall default under any unsecured loan or credit agreement.

Licensee may terminate this Agreement if upon written notice of noncompliance or default, FPL fails within thirty (30) days to comply with any of the provisions of this Agreement or cure any default of its obligations under this Agreement. Licensee at its option may further terminate this Agreement at any time when all Licensee's Attachments have been removed, any related damage claims received within ninety (90) days of removal have been finally resolved and all amounts due and payable by Licensee under this Agreement have been duly paid.

Notwithstanding any expiration of this Agreement, or the termination of this Agreement by FPL or by Licensee, all agreements and obligations of the Licensee under Section 3.2 and under Articles IV, V and VI shall survive such expiration or termination of this Agreement.

- 7.2. Non-waiver. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- 7.3. Non-exclusive Right. Nothing in this Agreement shall be construed to confer on the Licensee an exclusive right to make Attachments to FPL's Street Light Facilities in the area covered by this Agreement and any supplement thereto, and it is expressly understood that FPL has the unconditional right to permit any other person, firm or corporation to make Attachments to the same facilities, other than any Street Light Facilities abandoned by FPL and purchased by Licensee, in the area covered in this Agreement and supplements thereto.
- 7.4. No Property Right. No use, however extended, of FPL's Facilities, under this Agreement, shall create or vest in the Licensee any ownership or property rights in FPL's Street Light Facilities, but the Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel FPL to maintain any of FPL's Facilities for a period longer than demanded by FPL's own service requirements.
- 7.5. Assignment. The Licensee shall not assign or transfer the privileges hereby granted without the prior written consent of FPL.
- 7.6. Successors and Assigns. Subject to the provisions of Sections 7.5 above, this Agreement shall extend to and bind the successors and assigns of the parties hereto.
- 7.7. Notice under this Agreement. All notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission between the hours of 8:30 a.m. and 4 p.m. on business days, with facsimile transmitted confirmation of receipt, sent by overnight commercial air courier (such as Federal Express), or mailed, certified or registered, postage prepaid, return receipt requested, to the parties at the addresses or facsimile numbers hereinafter set forth:

To the Licensee:                    Steve Bordelon, ISS Director  
   8<sup>th</sup> Floor  
   301 North Olive Avenue  
   West Palm Beach, FL 33401

To FPL:                                    Thomas J. Kennedy, P.E.  
   Principal Regulatory Affairs Analyst DRS/AOB  
   Florida Power & Light Company

7200 NW 4th ST  
Plantation, FL 33317-2211  
FAX: 954-321-2135

Notices shall be deemed given upon receipt in the case of personal delivery, five (5) days after deposit in the mail, or the next day in the case of overnight courier. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

- 7.8. Severability. Should any part of any paragraph or provision of this Agreement (other than any of Sections 6.1 or 6.2) be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired.
- 7.9. Applicable Law. The validity, interpretation and enforcement of this Attachment Agreement shall be governed by the laws of Florida without regard to conflict of law principles. The parties hereby irrevocably submit in any suit, action or proceeding arising out of or relating to this Agreement or any transactions contemplated hereby, to the exclusive jurisdiction of any court of competent jurisdiction located in Palm Beach County, Florida, and waive any and all objections to such jurisdiction or venue that they may have under the laws of any state or country, including, without limitation, any argument that jurisdiction, situs and/or venue are inconvenient or otherwise improper. Each party further agrees that process may be served upon such party in any manner authorized under the laws of the United States or Florida, and waives any objections that such party may otherwise have to such process. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON OR ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED TRANSACTION OR INSTRUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), ACTIONS OR OMISSIONS OF ANY PARTY RELATED HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THE TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT.
- 7.10. *Intentionally Omitted*.
- 7.11. Authority to Execute. Each of the undersigned represents and warrants that he/she has full authority to execute this Agreement and the named party hereto.
- 7.12. No Offer. Submission of this Agreement for examination or signature does not constitute an offer by FPL of a license for any Attachment to the FPL Street Light Facilities. This Agreement shall be effective only upon execution by both parties.

IN WITNESS WHEREOF, the Parties have caused this Attachment to Street Lights Agreement to be duly executed the day and year first above written.

**LICENSOR:**

**FLORIDA POWER & LIGHT COMPANY**

By: David T. Bromley

Print Name: DAVID T. BROMLEY

Title: MGR - S&S&RIB. REGULATORY

**LICENSEE:**

<p>ATTEST:</p>  <p>_____ Sharon R. Bock, Clerk &amp; Comptroller</p>  <p>_____ Clerk</p>	<p><b>PALM BEACH COUNTY, FLORIDA</b></p>  <p>By: _____ John F. Koons, Chairman Board of County Commissioners</p>
<p>[SEAL]</p>  <p>APPROVED AS TO FORM AND LEGAL SUFFICIENCY</p>  <p>_____ County Attorney</p>	<p>APPROVED AS TO TERMS AND CONDITIONS BY <u>Steve Borden</u> ISS DIRECTOR</p>

Exhibit A

Application for Attachment Permit



Exhibit B

Notice of Attachment/Removal

Exhibit C  
Licensee's Device

Exhibit D  
FPL Requirements

*Agreement Between Palm Beach County, the City of West Palm Beach and the West Palm Beach Community  
Redevelopment Agency  
Re: Payment of FPL Pole Attachment Fees for Pleasant City*

Matter No. 07924

## **Interlocal Agreement**

This Interlocal Agreement ("Agreement") regarding the payment of Florida Power & Light ("FPL") attachment and service fees for the Pleasant City Digital Divide Project is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of West Palm Beach, a Florida municipal corporation (the "City"), the West Palm Beach Community Redevelopment Agency, a public body corporate and politic of the State of Florida (the "CRA"), and Palm Beach County, a political subdivision of the State of Florida (the "County").

### **WITNESSETH THAT:**

**WHEREAS**, Section 163.01 of the Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969", authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, Part I of Chapter 163 of the Florida Statutes permits public agencies as defined therein to enter into interlocal agreements with each other to exercise jointly any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, the City, CRA and County recognize the need to provide WiFi Internet access to certain residents of the Pleasant City area of West Palm Beach in conjunction with the efforts of both Palm Beach Broadband and the Pleasant City Digital Divide Project; and

**WHEREAS**, the Digital Divide Project in Pleasant City has numerous community organizations participating including the Urban League, the School District of Palm Beach County, the Quantum Foundation and the Education Commission of Palm Beach County; and

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**WHEREAS**, the County has agreed to participate by purchasing and installing, on FPL street light poles, not more than 30 WiFi antenna in the Pleasant City area to provide wireless Internet access; and,

**WHEREAS**, the CRA and City, as sponsors of this project, perceive this project to be of great value to its participating citizens; and

**WHEREAS**, FPL requires an annual Street Light Bracket Attachment fee currently \$117.70, as well as a monthly electrical service fee currently estimated to be \$5.00 for each street light antenna that must be billed directly to the WiFi antenna owner. These fees are in addition to the Street Light fees for which the City of West Palm Beach is and will continue to be directly responsible to FPL under a separate agreement between the City and FPL.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the parties do mutually agree as follows:

**AGREEMENT**

**Section 1     Purpose and Fee Approval**

The purpose of this Agreement is to implement a billing process whereby the County will invoice the CRA and City for FPL street light bracket antenna attachment fees. The CRA and City view these attachment fees as representation of their participation as Sponsors of the Digital Divide project. The CRA shall be responsible for payment of the fees for poles located within the boundaries of the Pleasant City Community Redevelopment District and the City shall be responsible for the payment of the fees for the remaining poles within Pleasant City. Such fees shall be for authorized attachments in accordance with Section 4.1 (a) and (b) of the Street Light Bracket Attachment Agreement between FPL and the County and in accordance with the Wireless Internet Electric Service Agreement between FPL and the County.

**Section 2     Approval**

The CRA and City approves the payment of the charges for up to thirty (30) WiFi antenna in Pleasant City. FPL will provide the County with a bill in two forms, a monthly electrical service bill for each street light used in the project and an annual attachment fee. This Agreement shall

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become effective upon its execution by both parties. Additional antenna installations within the Pleasant City CRA District shall require the prior written approval of the CRA's Executive Director and additional antenna installations within Pleasant City (but outside the Pleasant City CRA District) shall require the prior written approval of the City's Director of Support Services.

**Section 3    Term**

The term of this Agreement, unless terminated as provided herein, is a period of one year. This Agreement shall automatically be renewed annually unless either party gives written notice of termination of this Agreement as provided for in Section 13 herein.

**Section 4    County's Responsibilities for the Street Light Antenna**

The County shall be responsible for the routine, day-to-day management of the street light antenna. The County will work closely with the City's IT management staff and street light personnel regarding the planning and placement of each antenna.

**Section 5    Indemnification and Hold Harmless**

The City, CRA and the County recognize their respective liability for certain tortuous acts of its agents, officers, employees, and invitees, and agree to be responsible, respectively, for all claims, liability, losses, and/or causes of action that may arise from any negligent act or omission due to the acts of its agents, servants, or employees. Such liability is subject to the provisions of law, including the limits included in Section 768.28, Florida Statutes, which sets forth the partial waiver of sovereign immunity to which governmental entities are subject. It is expressly understood that this provision shall not be construed as a waiver of any right or defense that the parties have under Section 768.28 or any other statute. Each party agrees to maintain sufficient professional, general liability, and workers' compensation coverage, unless self-insured, regarding its respective liability throughout the term of this Agreement. This Agreement does not provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege, except the provisions hereof involving indemnification or limitation of liability of the City, CRA and the County.

**Section 6    Damage Caused by Disasters**

Should the Network be damaged or destroyed by a natural or man-made event to the extent that the cost to repair or replace the line, including utility pole replacement, exceeds 50% of the

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original installation costs, this Interlocal Agreement is automatically terminated unless the governing bodies of the CRA, City and County authorize its continuation and associated funding to repair or restore the affected area(s) (it is my understanding that none of the Auxiliary Routes are owned by the City/CRA)

**Section 7    Miscellaneous**

No provision in this Agreement shall provide to any person not a party to this Agreement any remedy, claim, or cause of action, or create any third-party beneficiary rights against either party. In the event that any one or more of the provisions in this Agreement shall for any reason be held to have no force and effect, this Agreement shall, if possible, be interpreted in a manner so as to effectuate the intention of the parties. Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive. All disputes related to this Agreement shall in the first instance be referred to the appropriate executives of each party for resolution. This Agreement is the subject of negotiation between the parties and should not be interpreted more favorably toward one party over the other.

**Section 8    Notice**

Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered either by hand or by certified mail, postage prepaid, and certified return receipt requested to the following addresses or such other addresses as the parties may provide to each other in writing:

To **CITY:**            City Administrator  
                          City of West Palm Beach  
                          401 Clematis Street, 2<sup>nd</sup> Floor  
                          West Palm Beach, Florida 33401  
                          Telephone: 561.822.1400

With a copy to:    City Attorney  
                          City of West Palm Beach  
                          401 Clematis Street, 5<sup>th</sup> Floor  
                          West Palm Beach, Florida 33401  
                          Telephone: 561.822.1350

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Re: Payment of FPL Pole Attachment Fees for Pleasant City***

With a copy to: Bill Swisher, Director of Support Services  
City of West Palm Beach  
401 Clematis Street, 3<sup>rd</sup> Floor  
West Palm Beach, Florida 33401  
Telephone: 561.822.1230

**To CRA:** CRA Executive Director  
West Palm Beach Community Redevelopment Agency  
401 Clematis Street, 2<sup>nd</sup> Floor  
West Palm Beach, Florida 33401  
Telephone: 561.822.1450

With a copy to: City Attorney  
City of West Palm Beach  
401 Clematis Street, 5<sup>th</sup> Floor  
West Palm Beach, Florida 33401  
Telephone: 561.822.1353

**To COUNTY:** Robert Weisman, County Administrator  
Palm Beach County Board of County Commissioners  
301 N. Olive Avenue, 11<sup>th</sup> FL  
West Palm Beach, FL 33401  
Telephone: 561-355-2712

With a copy to: Paul King, Assistant County Attorney  
County Attorney's Office  
Palm Beach County Board of County Commissioners  
301 N. Olive Avenue  
West Palm Beach, FL 33401  
Telephone: 561-355-2225

With a copy to: Steve Bodelon, Director ISS  
Palm Beach County Board of County Commissioners  
301 N. Olive Avenue



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*Re: Payment of FPL Pole Attachment Fees for Pleasant City*

West Palm Beach, FL 33401

Telephone: 561-355-2225

**Section 9 Entire Agreement**

This Agreement represents the entire agreement between the CRA, City and the County and supersedes all prior agreements or representations, whether written or oral, with respect to the subject matter hereof. No provision of this Agreement may be changed or amended except by written agreement signed by both Agencies. This Agreement shall be binding upon the CRA, City and the County and their respective successors and assigns.

**Section 10 Filing**

This Agreement will become effective upon filing a copy of the signed Agreement with the Palm Beach County Clerk & Comptroller's Office.

**Section 11 Participation**

This Agreement shall not be construed against the party who drafted the same as all parties to this Agreement have participated in drafting the same.

**Section 12 Venue for Dispute Resolution**

This Agreement shall be construed in accordance with the laws of the State of Florida. Should any litigation arise from this Agreement, venue shall lie in Palm Beach County, Florida.

**Section 13 Binding Agreement**

This Agreement is binding upon the parties hereto, their heirs, successors, and assigns.

**Section 14 Subject to Funding**

This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the CRA. In the event funds to finance this Agreement become unavailable, the City or CRA may terminate this Agreement upon no less than thirty (30) days notice to the County. The City or CRA, as applicable, shall be the sole and final authority as to the availability of funds.

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ATTEST:  
Sharon R. Bock, Clerk & Comptroller

Palm Beach County, Florida, By Its  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk  
(SEAL)

By: \_\_\_\_\_  
Jeff F. Koons, Chairperson

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By: Steve Bordon  
Director, ISS

ATTEST:

City of West Palm Beach

By: [Signature]  
City Clerk

By: [Signature]  
Lois J. Frankel, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature]  
Date: 6/25/09

ATTEST:

West Palm Beach Community  
Redevelopment Agency

By: [Signature]  
Secretary

By: [Signature]  
Lois J. Frankel, Chair

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature]  
Date: 6/25/09