

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: December 21, 2010

☒ **Consent**

☐ **Regular**

☐ **Public Hearing**

☐ **Workshop**

Department:

Submitted by: Information Systems Services

Submitted for: Information Systems Services

I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to approve:** an Interlocal Agreement with the West Palm Beach Housing Authority for Payment of Antenna Attachment and Service Fees to Florida Power & Light to provide Wireless Internet Access.

Summary: Palm Beach County has negotiated an Agreement with FPL (R2009-1437) that allows the Information System Services (ISS) Department to mount wireless antennas on FPL streetlight poles. These antennas will provide wireless Internet access in high poverty neighborhoods as part of the "Digital Divide" projects sponsored by the Palm Beach Broadband Coalition. ISS will mount the antennas and provide Internet access through the County's Regional Network, similar to the service provided to the public at Palm Beach International Airport and other County facilities. Under this Interlocal Agreement, the West Palm Beach Housing Authority will be responsible for reimbursing the County for the FPL annual pole attachment fee of \$117 per pole and the associated power costs of \$5 per month per pole. Palm Beach County is not responsible for any costs of this project beyond the in-kind services provided by ISS. This agreement with West Palm Beach Housing Authority is for one year with automatic renewals thereafter for an additional year unless either party provides written notice of termination. District 2 (PK)

Background and Justification: The Palm Beach Broadband Coalition, consisting of Palm Beach County Government, the School District of Palm Beach County, Palm Beach State College, FAU, South Florida Water Management District and The Palm Beach County Education Commission are collaborating to address the provide high speed wireless Internet access for selected high poverty neighborhoods in Palm Beach County. The first phase of our Digital Divide project in the Pleasant City neighborhood of West Palm Beach has been successful in providing computer literacy to families participating in this project.

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Attachments:

1. Interlocal Agreement with the West Palm Beach Housing Authority for Payment of Attachment and Service Fees to Florida Power & Light (3 copies)

Recommended by: Steve Bordon
Department Director

12-12-2010
Date

Approved by: [Signature]
County Administrator

12/16/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	<u>*\$4,731</u>	<u>\$5,331</u>	<u>\$5,331</u>	<u>\$5,331</u>	<u>\$5,331</u>
External Revenues	<u>*(4,731)</u>	<u>(5,331)</u>	<u>(5,331)</u>	<u>(5,331)</u>	<u>(5,331)</u>
Program Inc (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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Additional FTE

Positions (Cumulative)

Is Item Included in Current Budget

Yes X No

Budget Acct Number(s): Fund 0001 Dept. 490 Unit 1303 Object 4301

B. Recommended Sources of Funds / Summary of Fiscal Impact

**Estimate assumes start date of February 1, 2011 annual FPL fee (\$117.70 * 30) + Electric (\$5*30*8). ISS will invoice the City of West Palm Beach Housing Authority for actual FPL expenses.*

C. Department Fiscal Review:

III. REVIEW COMMENTS

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

12/13/10 OFMB 12/14/2010

Don J. Jacoby 12/14/10
Contract Administration

B. Legal Sufficiency:

Paul R. f⁵ 12/15/10
Assistant County Attorney

This Contract complies with our contract review requirements.

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 the West Palm Beach Housing Authority represents 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.

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

***Agreement With Palm Beach County and the West Palm Beach Housing Authority
Re: Payment of FPL Pole Attachment and Electrical Fees for Housing Authority Project***

Matter No.

Interlocal Agreement

This Interlocal Agreement ("Agreement") regarding the payment of Florida Power & Light ("FPL") attachment and service fees for the West Palm Beach Housing Authority Project is entered into this _____ day of _____, 2010, by and with the West Palm Beach Housing Authority, a public body corporate and politic of the State of Florida (the "Housing Authority") 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 Housing Authority and County recognize the need to provide WiFi Internet access to certain residents of West Palm Beach in conjunction with the efforts of both Palm Beach Broadband and the Pleasant City Digital Divide Project that provides refurbished computers, training and WiFi access to eligible students and their household family members; and

WHEREAS, the County has agreed to participate in this project by installing, on FPL street light poles, WiFi antenna in Housing Authority managed areas to provide wireless Internet access; and

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WHEREAS, the Housing Authority, as sponsor 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 provided for in the Street Light Bracket Attachment Agreement existing between FPL and the County, which is attached hereto as Exhibit "A", as well as a monthly electrical service fee currently estimated to be \$5.00, as provided for by the Wireless Electric Service Agreement between FPL and the County, which is attached hereto as Exhibit "B", 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 Housing Authority for FPL street light bracket antenna attachment fees and the Housing Authority shall be responsible for payment of these fees. Such fees shall be for authorized attachments in accordance with Section 4.1 (a) and (b) of the Street Light Bracket Attachment Agreement and in accordance with the Wireless Internet Electric Service Agreement.

Section 2 Approval

The Housing Authority approves the payment of the charges for up to thirty (30) WiFi antennae. 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 become effective upon its execution by both parties. Additional antenna installations within the Housing Authority District shall require the prior written approval of the Housing Authority's Executive Director.

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Section 3 Term

The term of this Agreement, unless terminated as provided herein, is for 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 9 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 FPL and street light personnel regarding the planning and placement of each antenna. The Housing Authority shall be consulted and informed of the placement on Housing Authority managed areas. The installation shall begin at the Housing Authority property known as the Twin Lakes Development. Completion of installation at the Twin Lakes Development shall be accomplished before additional antenna are placed on other Housing Authority owned and managed properties. The Housing Authority shall meet and confer with the County concerning continuing installation after the Twin Lakes installation has been completed.

Section 5 Indemnification and Insurance

The Housing Authority 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. This Interlocal 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 Housing Authority and the County.

Without waiving the right to sovereign immunity as provided by Section 768.28, The Housing Authority acknowledges to be either insured or self-insured for General Liability, Professional

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Liability, and workers' compensation coverage under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the Legislature.

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 original installation costs, this Interlocal Agreement is automatically terminated unless the governing bodies of the Housing Authority and County authorize its continuation and associated funding to repair or restore the affected area(s).

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 Nondiscrimination

The parties warrant and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

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Section 9 Disclosure and Ownership of Documents

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the County or at its expense will be kept confidential by the Consultant and will not be disclosed to any other party, directly or indirectly, without the County's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data bases, reports and other data developed, or purchased, under this Interlocal Agreement for or at the County's expense shall be and remain the County's property and may be reproduced and reused at the discretion of the County.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Interlocal Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General Ordinance 2009-049, as may be amended.

Section 10 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 HOUSING AUTHORITY:

Laurel Robinson, Executive Director
West Palm Beach Housing Authority
1715 Division Avenue
West Palm Beach, Florida 33407
Telephone: 561.655.8530

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With a copy to: Charlotte Burnett, Attorney
West Palm Beach Housing Authority
1715 Division Avenue
West Palm Beach, Florida 33407
Telephone: 561.655.8530

To COUNTY: Robert Weisman, County Administrator
Palm Beach County Board of County Commissioners
301 N. Olive Avenue, 11th Floor
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: 561-355-2734

With a copy to: Steve Bordelon, Director ISS
Palm Beach County Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, FL 33401
Telephone: 561-355-2394

Section 9 Entire Agreement

This Agreement represents the entire agreement between the Housing Authority 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 Housing Authority and the County and their respective successors and assigns.

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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 Severability

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

Section 15 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 Housing Authority. In the event funds to finance this Agreement become unavailable, the Housing Authority may terminate this Agreement upon no less than thirty (30) days notice to the County. The Housing Authority 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: _____
Karen T. Marcus, Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: Paul F. [Signature]
County Attorney

By: Steve Bordelon [Signature]
Steve Bordelon Director, ISS

West Palm Beach Housing Authority

By: [Signature]
Laurel Robinson, Executive Director

**West Palm Beach Housing
Authority**

WITNESS:

By: [Signature]
Linda Odum, Deputy Director