

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 1, 2013

☒ Consent

☐ Regular

☐ Ordinance

☐ Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) Approve a standard Equipment Use Agreement; and

B) Authorize the County Administrator or his designee to execute and administer the Equipment Use Agreement.

Summary: The County receives a number of requests for use of County owned equipment, particularly radio equipment for special events, equipment testing/trials and for short-term continuous use. This Equipment Use Agreement (Agreement) provides the standard terms under which governmental and non-governmental entities may receive approval to use County owned equipment and identifies alternate insurance and indemnification provisions for use when the applicant is a governmental entity or a non-governmental entity. The Agreement also requires special conditions to be included that will be developed as a result of the specifics of the request including the proposed use and related technical details and the risk level to the County resulting from potential loss or damage to the equipment and/or other liability. The special conditions will be developed jointly by the Facilities Development & Operations (FDO) and Risk Management Departments. The delegation of authority through the County Administrator to the Director of FDO includes the authority to develop and execute these standard Agreements with special conditions. From time to time, the nature of the request will require further modifications to the insurance, indemnification and risk of loss provisions of the Agreement and the authority to make such changes is also delegated. However, changes to these provisions will require Risk Management to co-approve the Agreement. All Agreements, whether they deviate from the standard or not, will require the approval of the County Attorney's Office. (FDO Admin) Countywide (MJ)

Background and Justification: The Equipment Use Agreement establishes the standard terms and conditions under which governmental and non-governmental entities may request use of County owned equipment.

Attachments:

Equipment Use Agreement

Recommended By: Army Wolf 9/6/13 sc
Department Director Date
Approved By: [Signature] 9/16/13
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>_____*</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

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

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

* There is no fiscal impact with this item.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

_____ 9/12/2013
OFMB _____ 9/11/2013

_____ 9/16/13
Contract Development and Control

B. Legal Sufficiency:

_____ 9/16/13
Assistant County Attorney

C. Other Department Review:

Department Director

STANDARD EQUIPMENT USE AGREEMENT

THIS EQUIPMENT USE AGREEMENT is made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida ("County") and _____, hereinafter referred to as "User".

In consideration of the covenants and agreements hereinafter set forth the County hereby grants User the use of equipment as set forth herein.

SECTION ONE: EQUIPMENT USE AND TERM

County hereby agrees to provide for the use of the equipment identified on the attached Exhibit "A", incorporated herein by reference (the "Equipment"). This Equipment Use Agreement is subject to the Special Conditions of Use as set forth in Exhibit "B", attached hereto and incorporated by reference.

This Agreement commences on _____ and ends on the earlier of _____, or upon County notice of termination as set forth herein (the "Term"). The User shall discontinue use/return the Equipment at the conclusion of the Term.

The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public, and that the County may have occasions when the Equipment is required for County purposes. Therefore, the parties agree that, in the event the Equipment is needed by the County during the Term, or if either party desires to terminate the Agreement, for any reason whatsoever, either party may immediately terminate this Agreement and the User shall immediately discontinue use/return the Equipment to the County following the notice of termination.

SECTION TWO: COSTS

The User will not incur a fee for use or rental of the Equipment during the Term of this Agreement. However, User may incur other costs and expenses as further set forth in this Agreement or the Special Conditions of Use.

SECTION THREE: RISK OF LOSS AND DAMAGE

User shall be responsible for risk of loss and damage to the Equipment to the extent set forth in the attached Special Conditions of Use.

SECTION FOUR: INSURANCE AND INDEMNIFICATION

User shall provide the insurance and indemnity requirements as set forth in the attached Special Conditions of Use. Proof of insurance is required prior to delivery of the Equipment.

SECTION FIVE: NOTICES

All notices to the County concerning this Equipment Use Agreement shall be directed to the Business & Community Agreements Manager, Facilities Development & Operations, 2633 Vista Parkway, West Palm Beach, FL 33411-5603, (561) 233-0206 (Fax) with a copy to Palm Beach County, Attn: County Attorney, 301 North Olive Avenue, 6th Floor, West Palm Beach, FL 33401, (561) 355-6461(fax). All notices to the User shall be directed to _____ at (____)_____ (fax). For purposes of this Agreement, notice shall be in writing, and may be provided by U.S. Mail, hand delivery, other delivery service, or by facsimile.

SECTION SIX: PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

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

SECTION SEVEN: NO THIRD PARTY BENEFICIARY

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or User.

SECTION EIGHT: NON-DISCRIMINATION

User assures and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression, during their performance of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, County and User have executed this Equipment Use Agreement, on the day and year first above written.

WITNESS

USER

By: _____
Signature

(Print Name and Title)

By: _____
Signature

(Print Name and Title)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**PALM BEACH COUNTY, a political subdivision
of the State of Florida**

By: _____
County Attorney

By: _____
Audrey Wolf, Director
Facilities Development & Operations

**PALM BEACH COUNTY
RISK MANAGEMENT DEPARTMENT**

By: _____

EXHIBIT "A"

Equipment Inventory

EQUIPMENT TYPE AND/OR SERIAL NO.	ASSET NUMBER	REPLACEMENT COST

Equipment Acknowledgement and Receipt (if applicable)

(A copy of the Equipment Inventory is to be signed by User at delivery of equipment)

User hereby acknowledges receipt and possession of the equipment identified on this Exhibit "A".

By: _____
Signature of User Representative

Date

EXHIBIT "B"
SPECIAL CONDITIONS OF EQUIPMENT USE AGREEMENT

1. Installation and Removal Costs *(To be inserted in Special Conditions when applicable)*

User agrees to pay County \$_____ to compensate County for the installation and removal costs associated with the Equipment use which sum shall be paid prior to, or simultaneously with, the installation of the Equipment. User will not be entitled to a refund on all or any portion of the installation and removal costs, regardless of the actual Term of the Equipment Use Agreement, whether modified as a result of County's termination or need for the Equipment, Equipment loss or damage or User receipt of replacement Equipment.

User hereby authorizes _____ as authorized User representative for receipt of County Equipment.

2. Risk of Loss and Damage *(Insert provision A in Special Conditions, or see section B)*

A. User is solely responsible for the performance and the operation of the Equipment and any damages or liability resulting from the use thereof. Should the County or User identify any malfunctioning Equipment, the User shall notify County and return the malfunctioning equipment to the County. In the case of stolen or lost Equipment, the User shall notify the County of the same, in writing or via e-mail, and shall include within such notice the serial number of the Equipment that is lost or stolen.

User assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of User under this Agreement. In the event of loss or damage of any kind whatsoever to the Equipment, User shall, at County's option: (i) reimburse the County for the entire cost and expense of the repair of the Equipment; or (ii) pay to the County the full replacement cost of the Equipment without deduction for depreciation. User shall provide County with the reimbursement of repair costs and/or the replacement cost, if applicable, within fourteen (14) calendar days of User's receipt of an invoice from the County regarding the same.

B. Alternative provisions for risk of loss and damage may be determined by agreement of the Risk Management and Facilities Development & Operations Departments, with approval of the County Attorney's Office.

3. Insurance and Indemnity *(For government entity insert section A or B. For other entities, see section C)*

A. Florida Government Entity: User acknowledges without waiving the right to sovereign immunity as provided by Florida Statutes 768.28, that User is self-insured for general liability and automobile liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may

change and be set forth by the legislature. In the event that User maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Florida Statutes 768.28, User shall maintain said insurance policy at limits not less than \$500,000 each occurrence. User shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. The additional insured endorsement shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its officers, employees and agents. The additional insured endorsement shall provide coverage on a primary basis. Compliance with the foregoing insurance requirements shall not relieve User of its liability and obligations under this Agreement. User's self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

Each party shall be liable for its own actions and negligence and to the extent permitted by law; User shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the User's acts, errors or omissions in connection with this Agreement. In the event the County shall be made a party to any litigation commenced against User or by User against any third party, then User shall protect and hold the County harmless in connection with such litigation and any appeals thereof. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's own negligent, willful or intentional acts or omissions. This Section shall survive termination of this Equipment Use Agreement.

or

B. Federal Government Entity: The parties acknowledge that Title 31, United State Code, Section 1341 and Title 41, United States Code, Section 11 prohibit Federal agencies from entering any agreement that requires a Federal user to indemnify and/or hold harmless another party where the amount of the government's liability is indefinite, indeterminate or potentially unlimited. The Licensee is a self-insured Federal entity supported by the U.S. Government. Under the Federal Tort Claims Act, Title 28 U.S.C 1346 et seq., the U.S. Government accepts liability for the loss or destruction of property or personal injury or death caused by the negligent or wrongful acts or omissions of any employee of the government while acting within the scope of his or her office.

or

C. Other Entity: The insurance and indemnification clauses for non-government entities shall be determined by agreement of the Risk Management and Facilities Development & Operations Departments, with approval of the County Attorney's Office.

4. Other: Additional Special Conditions may be determined and required by County at time of Agreement.