

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: October 27, 2020 [ ] Consent [x] Regular  
[ ] Public Hearing [ ] Workshop

Department: Information Systems Services  
Submitted by: Information Systems Services  
Submitted for: Information Systems Services

I. EXECUTIVE BRIEF

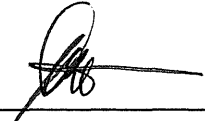
**Motion and Title:** Staff recommends motion to approve: Donation Agreement with Florida Power and Light Company providing one thousand utility poles for usage within the School Board COVID Broadband Project.

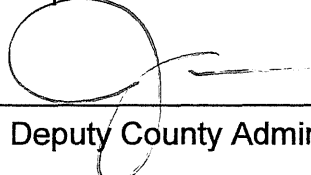
**Summary:** Palm Beach County has an existing Interlocal Agreement with the School District for antenna placement on School Board communications towers (R2020-1261) for distance learning. Florida Power and Light Company desires to donate one thousand wooden utility poles, Class IV, 35 feet or taller to the County for the purpose of facilitating the School Board's objectives relating to distance learning. Staff recommends approval of the Donation Agreement to receive and accept the utility poles. Countywide (DB)

**Background and Policy:** This Donation Agreement provides for Palm Beach County's receipt and acceptance of one thousand wooden Class IV utility poles for the purpose of facilitating the School Board's objectives relating to distance learning.

**Attachments:**

- 1. Donation Agreement with the Florida Power and Light Company (3 originals)
- 2. Donation Acceptance letter

Recommended by:  \_\_\_\_\_  
Department Director Date 10/19/2020

Approved by:  \_\_\_\_\_  
Deputy County Administrator Date 10/20/20

**II. FISCAL IMPACT ANALYSIS**

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

<b>Fiscal Years</b>	<u><b>2020</b></u>	<u><b>2021</b></u>	<u><b>2022</b></u>	<u><b>2023</b></u>	<u><b>2024</b></u>
Capital Expenditures	\$0	0	0	0	0
Operating Costs	\$0	0	0	0	0
External Revenues	(\$)	(\$)	(\$)	(\$)	(\$)
Program Inc (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
<b>NET FISCAL IMPACT</b>	<b><u>(\$)</u></b>	<b><u>(\$)</u></b>	<b><u>(\$)</u></b>	<b><u>(\$)</u></b>	<b><u>(\$)</u></b>
# Additional FTE Positions (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included in Current Budget                      Yes X                      No     

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

Revenue Budget Number:                      Fund                      Dept                      Unit                      RevSrc

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

Acceptance of this donation is included within the projected expenditures of the COVID School Board Broadband Project and therefore this item presents no additional fiscal impact to the County.

**C. Department Fiscal Review:**                     *agud* 10/19/20                      \_\_\_\_\_

**III. REVIEW COMMENTS**

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

                    *Steph Mester* 10/19/2020                      \_\_\_\_\_  
*PO 10/19*                      OFMB *AP* 10/19

                    *J. J. Javelent* 10/19/2020                      \_\_\_\_\_  
 Contract Administration  
 10-19-20 TW

**B. Legal Sufficiency:**

                    *RLC* 10/20/20                      \_\_\_\_\_  
 Assistant County Attorney

**C: Other Department Review:**

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

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

## DONATION AGREEMENT

THIS DONATION AGREEMENT ("*Agreement*") is made and entered into as of \_\_\_\_\_, 2020 ("*Effective Date*") between FLORIDA POWER & LIGHT COMPANY, a Florida corporation (hereinafter "*Donor*"), with offices at 700 Universe Blvd., Juno Beach, FL 33408, and PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, BY AND THROUGH ITS BOARD OF COUNTY COMMISSIONERS, with offices at 301 North Olive Avenue, West Palm Beach, Florida 33401 (hereinafter "*Donee*"). The Donee and Donor are hereinafter sometimes collectively referred to as the "*Parties*" and individually referred to as a "*Party*."

WHEREAS, Donor desires to donate to Donee a total of One Thousand (1,000) Class IV, 35 feet in length, or taller, wooden utility poles for the express purpose that the poles will be used by Donee to provide internet access to "gaps" in Palm Beach County where Wi-Fi is not currently available, (alternatively hereinafter referred to as the "*Digital Divide Donation*", or "*donated poles*"),

WHEREAS, Donee desires to receive and accept the donated poles from Donor on the date hereof, delivery to take place at a time and date agreeable to all parties, subject to availability of poles and transportation, and the Donee agrees to assume immediately as of the Effective Date and delivery of the donated poles by Donor, whichever is later, all liabilities and obligations related thereto as the individual donated poles are received by Donee, all as more particularly set forth in this Agreement,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties here agree to the following:

1. At no time and under no circumstance after the Effective Date shall Donor ever be considered to be the legal or constructive owner, or the legal or constructive operator of any donated poles once the donated poles are actually received by Donee, in whole or in part, notwithstanding the donation.
2. Donee hereby assumes and agrees to discharge and satisfy in full any and all claims, causes of action, damages, assessments, costs, fines, penalties, losses, awards, judgments, expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings) with respect to the Digital Divide Donation or the donated poles, arising after the Effective Date and delivery of the donated poles (collectively, the "*Assumed Liabilities*"). Donee further agrees: (A) that upon execution of Agreement, Donee is not only gaining full ownership of the donated poles, but assumes full responsibility and costs associated with ownership of the donated poles, including, but not limited to, ongoing maintenance, inspections, repairs, and/or replacement of all or any portion of the donated poles; and (B) to be solely responsible for making sure the donated poles are safe and in accordance with an applicable laws, rules and regulations, as the same may change from time to time, and remain safe for their intended purpose.
3. DONEE FURTHER ACKNOWLEDGES TO WAIVE, RELEASE AND DISCHARGE ANY AND ALL LIABILITIES ARISING AFTER THE EFFECTIVE DATE AND DELIVERY, AND ACCEPTANCE OF THE DONATED POLES, WHETHER KNOWN OR UNKNOWN AGAINST DONOR AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS,

AGENTS, REPRESENTATIVES, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "*DONOR ENTITIES*") RELATING TO OR IN CONNECTION WITH (A) THE CONDITION OF THE DONATED POLES, WHETHER SUCH CLAIMS BE IN CONTRACT, TORT OR IN EQUITY AND (B) ANY DAMAGE TO PROPERTY OR INJURY TO PERSON OR DEATH ARISING OUT OF ANY DEFECT OR USE OF THE DONATED POLES.

4. DONEE ACKNOWLEDGES THAT DONOR DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES. DONEE ACKNOWLEDGES AND AGREES THAT DONOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATION, PROMISES, COVENANTS, AGREEMENTS GUARANTIES OR WARRANTY (INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE), OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE QUALITY, CONDITION, STRENGTH OR DURABILITY OF THE DONATED POLES, (B) THE SUITABILITY OR USEFULNESS OF THE DONATED POLES, (C) THE DONATED POLE(S) COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE, RULE, REGULATION OR ORDER.
5. NEITHER DONOR OR ANY DONOR ENTITY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, DIRECT OR INDIRECT DAMAGES UNDER THIS AGREEMENT OR THE TRANSACTION, INCLUDING LOSS OF USE, COST OF CAPITAL, LOSS OF GOODWILL, LOST REVENUES OR LOSS OF PROFIT, AND DONEE HEREBY RELEASES DONOR AND EACH OF THE DONOR ENTITIES FROM ANY SUCH LIABILITY, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM FPL OR ANY OF THE DONOR ENTITIES' SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT.
6. Donee further acknowledges that the above limitations and disclaimers of liability and warranty constitute part of the basis upon which Donor agreed to donate the poles described above to Donee.
7. Those provisions of the Agreement which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the Agreement.
8. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
9. The Parties acknowledge and agree that this Agreement may be executed in multiple

counterparts, and transmitted via telecopy or .pdf e-mail file, and all such counterparts (whether transmitted via telecopy, .pdf e-mail file or otherwise), when executed and taken together, shall constitute integral parts of one and the same Agreement between the Parties.

10. The Parties represent and warrant to each other that: (A) each has the power and authority necessary to execute this Agreement and to consummate all transactions contemplated herein; and (B) this Agreement constitutes the legal, valid, and binding obligation of the Parties, enforceable in accordance with its terms. The Parties agree that signature on page 4 of the Agreement confirms and agrees to all terms on pages 1, 2 and 3.
11. This Agreement shall be governed by the laws of the State of Florida. Any proceeding arising out of or relating to this Agreement or the conveyance of the donated poles may be brought in the courts of the State of Florida, located in Palm Beach County, Florida. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THEIR RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, RELATING TO, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS RECEIPT OF THE DONATED POLES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS TRANSACTION.
12. This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the Parties. Each Party acknowledges that it has actively participated in the negotiation and preparation of this Agreement, and that accordingly this Agreement and any uncertainty or ambiguity contained therein shall not be construed against any one Party as drafter.
13. Donee agrees to not initiate, intervene, or comment in any legal or regulatory proceeding in opposition to Donor with respect to the Digital Divide Donation or any donated poles so long as Donor is not in default of any obligations of this Agreement. Further, nothing herein shall alter, modify, limit, or restrict the Donee with regard to actions taken in their regulatory or legislative capacity.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

**ATTEST:**

**Sharon R. Bock, Clerk & Comptroller**

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

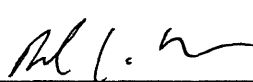
By: \_\_\_\_\_  
Deputy Clerk

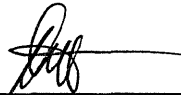
By: \_\_\_\_\_  
Mayor

(SEAL)

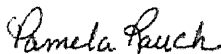
**APPROVED AS TO LEGAL  
SUFFICIENCY**

**APPROVED AS TO TERMS AND  
CONDITIONS**

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

By:  \_\_\_\_\_  
Archie Satchell, CIO, ISS

**FLORIDA POWER & LIGHT COMPANY, a Florida corporation**

By:  \_\_\_\_\_

Printed name: Pamela Rauch

Title: VP External Affairs & Economic Development