



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

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**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Dylan Reingold, County Attorney *DR*

**DATE:** December 3, 2018

**SUBJECT:** Fiber Optic Agreements

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**BACKGROUND.**

On May 19, 2015, the School Board of Indian River County, the City of Vero Beach and Indian River County (the "Parties") entered into a Revised and Restated Joint Fiber Optics Project Interlocal Agreement (the "Consortium Agreement"), which governs how the Parties utilize and share fiber.

As the Indian River County Board of County Commissioners (the "Board") is aware, the closing for the sale of the City of Vero Beach electric utility to FPL is scheduled for December 17, 2018. As part of that sale, FPL needs to resolve issues relating to the fiber that is owned by and utilized by the Parties. Thus the Parties along with FPL have negotiated three agreements, 1) Substation License and Access Agreement, 2) Linear Facilities Pole Attachment Agreement, and 3) Fiber License Agreement, which addressing the issues. Additionally, the Parties have negotiated a First Amendment to the Consortium Agreement clarifying issues pertaining to which Party is responsible for payments to FPL under the Linear Facilities Pole Attachment Agreement,

Under the Substation License and Access Agreement, FPL will pay to remove the Parties' communication equipment from the substations, which will no longer be owned by the City of Vero Beach. FPL will be removing such equipment within five years. During that time period, the Parties will have access to the substations free of charge no more than two trips per month. Additionally, the Parties will not be required to pay any access fees required for work, which includes without limitation, resolving fiber outages and performing conductivity tests for fiber issues, to be performed on the fibers. Otherwise, the Parties will be required to pay \$100 per hour for access.

Under the Linear Facilities Pole Attachment Agreement, the Parties will not pay any fees for attachments to what will be FPL poles for five years. Beginning on January 1, 2024, the annual attachment fee will be \$16.93 per distribution pole per year, \$104.06 per transmission pole with under-built distribution and \$208.12 for OPGW attachments per transmission structure per year, such rate being effective on January 1, 2024. The

rate will be subject to an annual adjustment.

Finally, the Fiber License Agreement will allow FPL to license certain fiber optic strands previously used by the City of Vero Beach in the operation of its electric system. This will consist of: (a) not less than 24 fiber optic strands previously used by the City of Vero Beach for protection of the substations; and (b) not less than 20 fiber optic strands previously used by the City of Vero Beach for supervisory control and data acquisition (SCADA) functions necessary in the operation of the substations and other electric utility assets. Additionally, 2 spare fiber optic strands shall be reserved for FPL's use. FPL will pay a license fee of \$4.54 per fiber optic strand per mile per month, up to \$23,847.00 per month.

Since the ownership of the fiber routes that will be used by FPL is currently unknown, the Parties will be developing a route diagram. Thus, in the Fiber License Agreement, FPL and the Parties have agreed that they will work together once the survey is complete to resolve any operational issues, which include, but are not limited to, (i) operational repair; (ii) fiber outages; (iii) emergency repairs; and (iv) if reasonably necessary, the right of FPL to perform repair work under the reasonable supervision of the appropriate Party.

Finally, the First Amendment to the Consortium Agreement clarifies that any pole attachment fees, costs of corrections or other charges owed to FPL as set forth in the Linear Facilities Pole Attachment Agreement shall be paid by the Party or Parties who own the wireline that is attached to the FPL pole, pursuant to their percentage of fiber ownership, regardless of the percentage of the Parties' usage of the fiber.

#### **FUNDING.**

Any money received from FPL due to the Fiber License Agreement will be deposited into account 001038-362010 General Fund/Miscellaneous/Rents & Royalties. After the five year moratorium on pole attachment fees under the Linear Facilities Pole Attachment Agreement, any fees owed to FPL would be paid out of 00423437-033490 MSTU Fund/Telecommunications/Other Contractual Services.

#### **RECOMMENDATION.**

The County Attorney's Office recommends that the Indian River County Board of County Commissioners approve the Substation License and Access Agreement, Linear Facilities Pole Attachment Agreement, Fiber License Agreement, and First Amendment to Revised and Restated Joint Fiber Optics Project Interlocal Agreement and authorize the chair to execute the documents. The County Attorney's Office also recommends that the County Attorney be authorized to make any non-substantive changes to these agreements prior to execution.

#### **ATTACHMENTS.**

Substation License and Access Agreement

Linear Facilities Pole Attachment Agreement

Fiber License Agreement

First Amendment to Revised and Restated Joint Fiber Optics Project Interlocal Agreement