Collocation Agreement

This Collocation Agreement ("Agreement") is made by and between **LIFESTREAM BEHAVIORAL CENTER, INC.** (“LifeStream”) and **THE CITY OF LEESBURG, FLORIDA** (“City”) each of whom is referred to in this Agreement individually as a “Party” and severally as the “Parties.” This Agreement provides the general terms and conditions under which LifeStream will allow City to place equipment in a dedicated portion of a LifeStream facility for the principal purposes of City’s operating, monitoring, maintaining and/or repairing City’s telecommunications network.

WHERAS, LifeStream is constructing a facility in Clermont, Florida; and

WHERAS, City owns and operates a telecommunications network throughout Lake County, Florida; and

WHERAS, the architecture of City’s telecommunications network specifies core, remote, edge & redundant network sites and customer locations; and

WHERAS, City wishes to avoid some of the costs associated with developing its own site in Clermont for some of its remote, edge and/or redundant equipment locations by using dedicated space in LifeStream’s new Clermont facility; and

WHERAS, LifeStream is willing to make dedicated space available in its new Clermont facility for City to place some of its remote, edge and/or redundant network equipment; and

WHERAS, City and LifeStream both acknowledge their respective intents to fairly and equitably exchange consideration with each other;

NOW THEREFORE, the Parties agree as follows:

1.0 DEDICATED SPACE

1.1 LifeStream shall make available for City’s exclusive use a room in its newly constructed facility in Clermont (“Space”).

1.2 The location and general characteristics of the Space are provided in Exhibit A to this Agreement.

1.3 LifeStream shall provide three keys to City by which City will be able to access Space.

1.4 City shall have access to Space twenty-four hours a day, seven days a week.

1.5 If LifeStream or any person(s) acting on LifeStream’s behalf or at LifeStream’s direction require access to Space, LifeStream shall provide sufficient advance notice to City that City can arrange for its own representative to be present should City so desire. If LifeStream or any person(s) acting on LifeStream’s behalf or at LifeStream’s direction require emergency access to Space, such emergency access shall be granted without regard to availability of City personnel for escort purposes. If such emergency access is granted, LifeStream shall make available to City a list of all persons to whom such emergency access to Space was made available and for what purpose.

1.6 City shall be responsible to keep Space free from clutter and debris.

2.0 PLACING EQUIPMENT IN SPACE

2.1 **City to Notify LifeStream Prior to Placing Equipment**. Except for emergency situations, no less than ten days prior to placing any equipment in Space, City shall provide a written list to LifeStream of such equipment (“Equipment Placement List”). The Equipment Placement List shall state the date upon which it is being submitted to LifeStream and City contact information for LifeStream response. The Equipment Placement List shall provide the following information for each piece of equipment: (a) manufacturer; (b) model; (c) City inventory number/reference; (d) physical dimensions; (e) weight; (f) electrical power requirements; (g) heat produced during normal operation; and, (h) approximate value in dollars. In addition to the information noted in the preceding sentence, the Equipment Placement List shall provide sufficient detail for LifeStream to: (i) assess any safety concerns; (ii) assess whether or not the Space is

© 2014 The City of Leesburg, Florida & Lifestream Behavioral Center, Inc.
All rights reserved

Proprietary and confidential only to the extent allowed by law

dimensionally and/or structurally adequate for the proposed equipment; (iii) assess availability of adequate electrical power at Space; (iv) maintain accurate inventory records of all City equipment placed at Space; and, (v) the time period within which City proposes to place the equipment in Space.

2.2 **LifeStream to Respond to City's Notice.** No later than seven days after City provides an Equipment Placement List noted in Section 2.1 of this Agreement, LifeStream shall provide written notice to City either: (i) approving City's placing all the stated equipment in Space; (ii) approving City's placing some of the stated equipment in Space; or, (iii) denying City's placing any of the stated equipment in Space.

2.3 **City to Only Place Equipment Approved by LifeStream.** City shall only place in Space equipment that has been approved for placement by LifeStream.

2.4 **City to Confirm LifeStream of Placed Equipment**. No later than seven days after placing any equipment in Space, City shall provide written confirmation to LifeStream that the equipment approved for placement per Section 2.2 of this Agreement was in fact so placed ("Equipment Placement Report"). The Equipment Placement Report shall state the date upon which the equipment was placed and the specific location within Space in which the equipment was placed (e.g., cage number, rack number, shelf number, etc). The Equipment Placement Report shall include one or more photographs, in either hard copy form or electronic form, of each piece of equipment in its final location.

2.5 **City to Notify LifeStream Prior to Removing Equipment**. Except for emergency situations, prior to removing any equipment from Space, City shall provide a written list to LifeStream of such equipment ("Equipment Removal Notice"). The Equipment Removal Notice shall state the date upon which it is being submitted to LifeStream and City contact information for LifeStream response. For each piece of equipment to be removed, the Equipment Removal Notice shall state the date of the Equipment Placement List under which the equipment was originally placed, enough information about the piece of equipment for LifeStream to reliably identify it and the date upon which City intends to remove it.

2.6 **LifeStream to Acknowledge Equipment Removal**. No later than seven days after City completes removal of any equipment from Space, LifeStream shall return to City a photocopy of City's Equipment Removal Notice, signed by LifeStream and acknowledging City's removal of the equipment.

2.7 **Arranging Placement or Removal of Equipment.** All equipment placements into or removals from Space shall be coordinated by City and LifeStream staff and, except for emergency situations, shall occur during the normal business hours stated in Exhibit B to this Agreement.

2.8 **Emergency Placement or Removal of Equipment.** In emergency situations, City and LifeStream staff shall coordinate equipment placements into or removals from Space. In the event of any emergency placement or removal of equipment, City shall provide an Equipment Placement List or an Equipment Removal List to LifeStream no later than the first business day following the emergency placement or removal. City shall be liable to LifeStream for any fees or charges for access to Space outside of the normal business hours stated in Exhibit B to this Agreement.

3.0 BILLING AND PAYMENT

3.1 **Prices.** The fees that City shall pay to LifeStream under this Agreement are stated in Exhibit C to this Agreement.

3.2 **Payment of Invoices and Disputes**. LifeStream shall deliver an invoice each month to City, and payment shall be due no later than the date stated on the face of the invoice (the "Due Date"). If City reasonably disputes any amount on an invoice, City shall pay the undisputed amount by the Due Date and submit written notice to LifeStream of the disputed amount (with details of the nature of the dispute and invoice(s) disputed). Disputes must be submitted within 90 days from the date of the invoice. If the dispute is resolved against City, City shall pay such amounts no later than the Due Date of the next invoice issued by LifeStream following dispute resolution.

3.3 **Taxes and Fees**. The Parties acknowledge that City is exempt from Florida sales and use tax per the Consumer's Certificate of Exemption provided in Exhibit D of this Agreement.

3.4 **Regulatory and Legal Changes**. If changes in applicable law, regulation, rule or order materially affect either Party's ability to lawfully fulfill any of its obligations under this Agreement, the Parties agree to

© 2014 The City of Leesburg, Florida & Lifestream Behavioral Center, Inc.
All rights reserved

Proprietary and confidential only to the extent allowed by law

negotiate and execute appropriate changes to this Agreement. If changes in applicable law, regulation, rule or order make either Party's continued fulfillment of its obligations under this Agreement commercially unfeasible, the affected Party may (i) propose an appropriate amendment per the provisions of section 6.6 of this Agreement; or, (ii) terminate this Agreement by providing ninety days advance written notice to the other Party of its intent to terminate this Agreement.

4.0 DEFAULT

4.1 **Defaulting Party Defined**. If City fails to make any payment when due and such failure continues for five business days after written notice from LifeStream, City shall be considered to be in default of its obligations under this Agreement. If either Party fails to observe or perform any other material term of this Agreement and such failure continues for thirty days after written notice from the other Party, then that Party shall be in default of its obligations under this Agreement.

4.2 **Non-defaulting Party's Privileges**. The non-defaulting Party may: (i) terminate this Agreement in whole or in part, and/or subject to Sections 5.1 and 5.3 of this Agreement, pursue any remedies it may have at law or in equity.

5.0 LIABILITIES AND SERVICE LEVELS

5.1 **No Special Damages**. Neither Party shall be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement.

5.2 **Damages.** The Parties each acknowledge their respective responsibility for any damages directly caused by or directly arising from any malfunction of their equipment or other of their property located at Space. The Parties understand and agree that each Party's sole remedy against the other for any loss or damage that is directly caused by or directly arising from any malfunction of its equipment or other of its property located at Space shall be limited to recovery of actual damages in an amount equivalent to the amount of actual and direct damages that are proven.

5.3 **Disclaimer of Warranties.** LIFESTREAM MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

5.4 **Indemnification.** To the extent permitted by §768.28, Fla. Stat. but not beyond the limitations set forth therein each Party shall indemnify the other and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished pursuant to this Agreement; any failure of performance of the indemnifying Party under this Agreement; or the negligence of the indemnifying Party in the performance of its duties under this Agreement, or any act or omission on the part of the indemnifying Party, its agents, employees, or servants.

5.5 **Limitation of Liability and Remedies.** City understands and agrees that LifeStream's liability and City's sole remedy against LifeStream for any loss or damage that arises directly or indirectly out of, or resulting from impairment of, any service provided by LifeStream pursuant to this Agreement, or any mistake, omission, interruption, delay, error, or defect in the provision of services, or for loss or damage caused by delayed performance, negligent performance or nonperformance regardless of City's form of action shall be limited to recovery of actual damages in an amount equivalent to the lesser of:

A. The amount of actual and direct damages that are proven; or

B. The fees incurred by City for the period of time during which such mistake, omission, interruption, delay, error, defect, or failure of service occurred.

© 2014 The City of Leesburg, Florida & Lifestream Behavioral Center, Inc.
All rights reserved

Proprietary and confidential only to the extent allowed by law

6.0 GENERAL TERMS

6.1 **Force Majeure.** Neither Party shall be responsible for failure or delay of performance of its obligations under this Agreement if caused by: an act of war, hostility, sabotage, or terrorism; act of God; electrical, Internet, or telecommunication outage that is not caused by the obligated Party; government restrictions; or other event outside the reasonable control of the obligated Party ("Force Majeure Event"). Any change in applicable laws, rules or regulations (state or federal) whose practical effect is (i) to prohibit City from offering telecommunications services or (ii) to make City's offering of such services economically unfeasible shall also be considered a Force Majeure Event. Both Parties will use reasonable efforts to mitigate the effect of any Force Majeure Event. In the event Space is unavailable for use by City as a result of a Force Majeure Event, City shall not be obligated to pay LifeStream the fee(s) normally due to LifeStream for the duration of the Force Majeure Event. Force Majeure Events shall not, apart from LifeStream's gross negligence or willful misconduct, make LifeStream a defaulting party per Section 4.1 of this Agreement.

6.2 **Assignment and Resale**. City may not assign its rights or obligations under this Agreement without the prior written consent of LifeStream, which will not be unreasonably withheld. This Agreement shall apply to any permitted transferees or assignees. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

6.3 **Notices**. Any notices provided by one Party to the other Party pursuant to this Agreement shall be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided) or sent by U.S. Postal Service or First Class International Post, addressed as follows:

IF TO CITY:
City of Leesburg
501 W. Meadow Street
P.O. Box 490630
Leesburg, FL 34749
Attn: Communications Manager
Facsimile: (352) 435-9451
Email: communications.manager@leesburgflorida.gov

IF TO CUSTOMER:
LifeStream Behavioral Center, Inc.
515 W. Main Street (34748)
P.O. Box 491000
Leesburg, Florida 34749-1000
Attn: Jon Cherry
Facsimile: (352) 360-6595
Email: JCHERRY@LSBC.NET

Either Party may change its notice address upon written notice to the other Party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent.

6.4 **Intellectual Property and Publicity**. Neither Party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other Party or its affiliates without the express prior written authorization of the other Party. Neither Party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the Parties in writing.

6.5 **Governing Law**. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without regard to its choice of law rules. Venue for any claim or cause of action related to this Agreement shall lie only in Lake County, Florida

6.6 **Amending the Agreement.** This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party.

6.7 **No Waiver.** No failure by either Party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

6.8 **Relationship**. The relationship between the Parties under this Agreement is not that of partners, agents, or joint venturers.

6.9 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

6.10 **Attorneys' Fees**. In the event litigation is required by either Party to enforce the terms of this Agreement, the prevailing Party of such action shall, in addition to all other relief granted or awarded, be entitled to judgment for reasonable attorney's fees, incurred by reason of such action and all costs of arbitration or suit

© 2014 The City of Leesburg, Florida & Lifestream Behavioral Center, Inc.
All rights reserved

Proprietary and confidential only to the extent allowed by law

and those incurred in preparation thereof at both the trial and appellate levels, and in bankruptcy proceedings.

6.11 **Term of Agreement.** This Agreement shall come into force upon LifeStream's receipt of an occupancy permit for the facility within which Space is located, and shall terminate at the end of the one-hundred, twentieth following month, unless otherwise terminated. Any benefit, right or obligation arising from and enforceable under this Agreement shall survive the provision or use of Space under this Agreement.

6.12 **Severability.** If a court of competent jurisdiction finds or holds any part of this Agreement to be unenforceable, then only the unenforceable provision or section shall be affected and the remaining portions of this Agreement shall continue in full force and effect.

6.13 **Entire Agreement**. This Agreement constitutes the entire and final agreement and understanding between the Parties with respect to LifeStream's provision of and City's use of Space and supersedes all prior agreements, understandings, proposals, or representations relating to Space, which are of no further force or effect.

REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

© 2014 The City of Leesburg, Florida & Lifestream Behavioral Center, Inc.
All rights reserved

Proprietary and confidential only to the extent allowed by law

CITY OF LEESBURG, FLORIDA
("City")

By _____

Name _____

Title _____

LIFESTREAM BEHAVIORAL CENTER, INC.
("LifeStream")

By Jonathan M. Cherry

Name Jonathan M. Cherry

Title President/CEO

ATTESTED:

_____
(signed)

Its City Clerk

APPROVED AS TO FORM AND CONTENT:

_____
(signed)

Its City Attorney

© 2014 The City of Leesburg, Florida & Lifestream Behavioral Center, Inc.
All rights reserved

Proprietary and confidential only to the extent allowed by law

EXHIBIT A
to
Collocation Agreement

SPACE

SITE:	
STREET ADDRESS:	2140 North Wickham Drive
CITY:	Clermont, Florida 34711
LOCATION IN BUILDING:	See attached Floor Plan
DIMENSIONS OF ROOM:	11’8” X 9’3” (116 sq.ft.)
BACKUP ELECTRIC POWER:	N/A
FIRE SUPPRESSION SYSTEM:	N/A
PHYSICAL SECURITY:	Mechanical Lock
NORMAL BUSINESS DAYS:	MONDAY – FRIDAY
NORMAL BUSINESS HOURS:	8:30 A.M. – 5:00 P.M.
LANDLINE TELEPHONE CONTACT:	(352) 394-5922

EXHIBIT A
to
Collocation Agreement

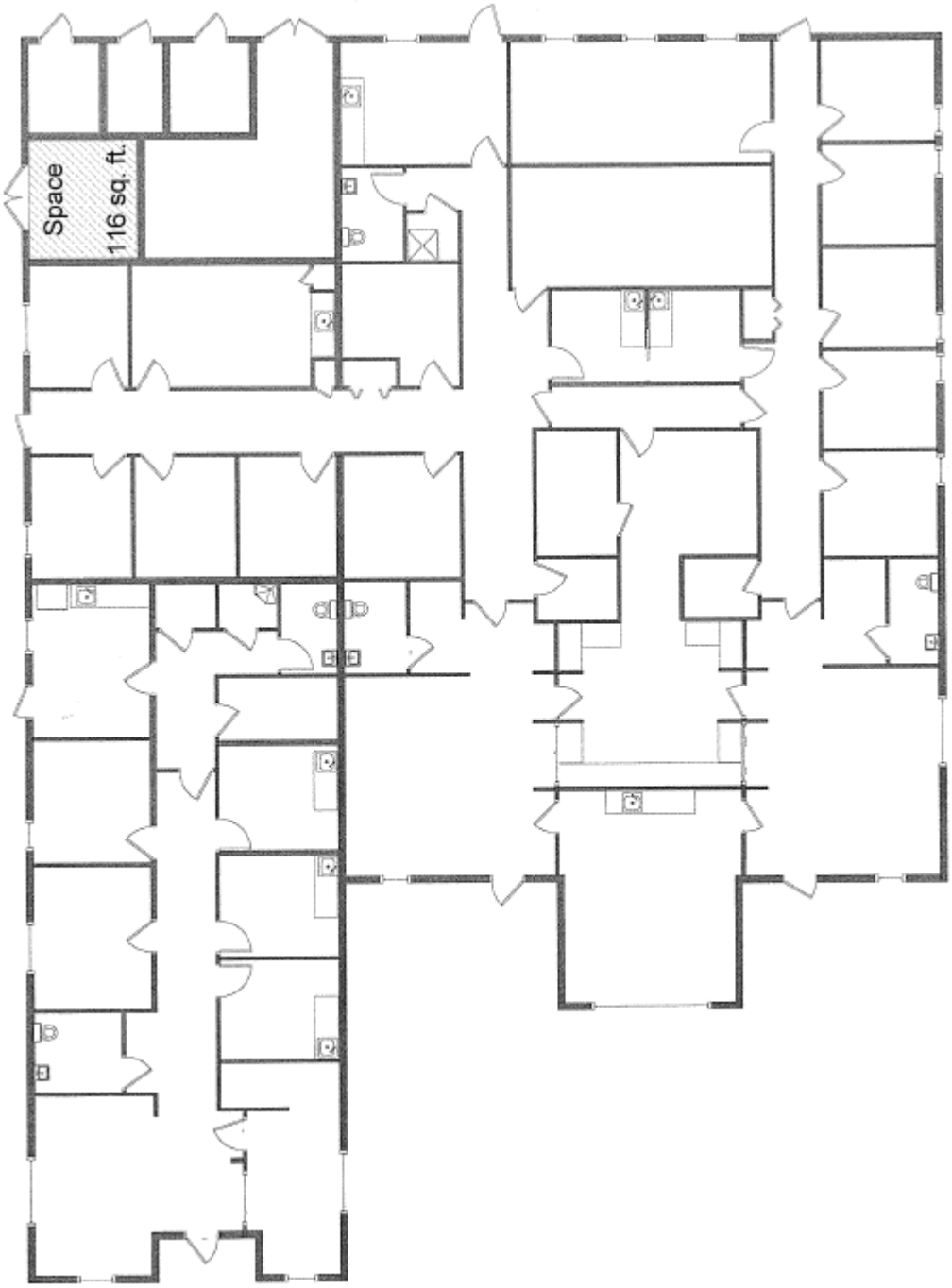

EXHIBIT B
to
Collocation Agreement

NORMAL BUSINESS HOURS
HOLIDAYS
EMERGENCY CONTACTS

1.0 NORMAL BUSINESS HOURS

8:30 a.m. – 5:00 p.m.

2.0 HOLIDAYS

none applicable

3.0 EMERGENCY CONTACTS

3.1 LifeStream.....352-315-7500

3.2 City.....352-435-9463

EXHIBIT C
to
Collocation Agreement

FEES

1.0 BASIC FEE

1.1 City shall pay to LifeStream a Basic Fee of $1,000 dollars per month.

1.2 Basic Fee shall become applicable upon LifeStream's receipt of an Occupancy Permit for the facility in which Space is located.

2.0 AFTER HOURS SUPPORT

If City requests and receives LifeStream support outside of the Normal Business Hours indicated in Exhibit B, the following fees shall apply:

LifeStream Personnel

Basic housekeeping support.....$15.00 per hour, 2 hours minimum

Basic building maintenance .....$25.00 per hour, 2 hours minimum

Contractors .....per contractor invoice, plus 15%

3.0 ADDITIONAL KEYS OR KEY REPLACEMENT

City shall pay $50.00 per additional key or for any replacement key.

REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

EXHIBIT D
to
Collocation Agreement

TAX EXEMPTION CERTIFICATE

0000057 06/08/12

FLORIDA DEPARTMENT OF REVENUE

Consumer's Certificate of Exemption

DR-14
R. 04/11

Issued Pursuant to Chapter 212, Florida Statutes

Certificate Number	Effective Date	Expiration Date	Exemption Category
85-8015934594C-5	07/31/2012	07/31/2017	MUNICIPAL GOVERNMENT

This certifies that

CITY OF LEESBURG
501 W MEADOW ST
LEESBURG FL 34748-5153

is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.

FLORIDA DEPARTMENT OF REVENUE

Important Information for Exempt Organizations

DR-14
R. 04/11

1. You must provide all vendors and suppliers with an exemption certificate before making tax-exempt purchases. See Rule 12A-1.038, Florida Administrative Code (F.A.C.).

2. Your *Consumer's Certificate of Exemption* is to be used solely by your organization for your organization's customary nonprofit activities.

3. Purchases made by an individual on behalf of the organization are taxable, even if the individual will be reimbursed by the organization.

4. This exemption applies only to purchases your organization makes. The sale or lease to others of tangible personal property, sleeping accommodations, or other real property is taxable. Your organization must register, and collect and remit sales and use tax on such taxable transactions. Note: Churches are exempt from this requirement except when they are the lessor of real property (Rule 12A-1.070, F.A.C.).

5. It is a criminal offense to fraudulently present this certificate to evade the payment of sales tax. Under no circumstances should this certificate be used for the personal benefit of any individual. Violators will be liable for payment of the sales tax plus a penalty of 200% of the tax, and may be subject to conviction of a third-degree felony. Any violation will require the revocation of this certificate.

6. If you have questions regarding your exemption certificate, please contact the Exemption Unit of Account Management at 800-352-3671. From the available options, select "Registration of Taxes," then "Registration Information," and finally "Exemption Certificates and Nonprofit Entities." The mailing address is PO Box 6480, Tallahassee, FL 32314-6480.