

Collocation Agreement

This Collocation Agreement ("Agreement") is made this ____ day of _____, 2011 ("Effective Date") between **THE SCHOOL BOARD OF LAKE COUNTY, FLORIDA** ("School Board") 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 School will from time to time allow City to place equipment in one or more facilities owned, controlled or managed by School Board for the principal purposes of City's operating, monitoring, maintaining and/or repairing City's telecommunications network.

WHEREAS, School Board owns, controls or manages various facilities located throughout Lake County, Florida; and

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

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

WHEREAS, City wishes to avoid some of the costs associated with developing some of its own sites for some of its remote, edge and/or redundant equipment locations by leasing collocation space from School Board; and

WHEREAS, School Board is willing to make space available in some of its facilities located throughout Lake County, Florida ("Collocation Sites") for City to place some of its remote, edge and/or redundant network equipment; and

WHEREAS, City and School Board both acknowledge their respective intents to fairly and equitably exchange consideration with each other;

NOW THEREFORE, the Parties agree as follows:

1.0 SITES AT WHICH EQUIPMENT IS TO BE COLLOCATED

1.1 Sites. The locations and general characteristics of the Collocation Sites are provided in Exhibit A to this Agreement

1.2 Additional Sites and/or Space. To the extent that City and School Board reach agreement, additional Collocation Sites may be added or removed by the Parties' amending the various exhibits to this Agreement per the provisions of Section 6.6 below.

2.0 PLACING EQUIPMENT AT SITE

2.1 City to Notify School Board Prior to Placing Equipment. Except for emergency situations, no less than ten days prior to placing any equipment in a Collocation Site, City shall provide a written list to School Board of such equipment ("Equipment Placement List"). The Equipment Placement List shall state the date upon which it is being submitted to School Board and City contact information for School Board 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 School Board to: (i) assess any safety concerns; (ii) assess whether or not the Collocation Site is dimensionally and/or structurally adequate for the proposed equipment; (iii) assess availability of adequate electrical power at Collocation Site; (iv) maintain accurate inventory records of all City equipment placed at the Collocation Site; and, (v) the time period within which City proposes to place the equipment in the Collocation Site.

2.2 School Board 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, School Board shall provide written notice to City either: (i) approving City's placing all the stated equipment in the Collocation Site; (ii) approving City's placing some of the stated equipment in the Collocation Site; or, (iii) denying City's placing any of the stated equipment in the Collocation Site.

- 2.3 City to Confirm School Board of Placed Equipment.** No later than seven days after placing any equipment in a Collocation Site, City shall provide written confirmation to School Board 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 the Collocation Site 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.
- 2.4 City to Notify School Board Prior to Removing Equipment.** Except for emergency situations, prior to removing any equipment from any Collocation Site, City shall provide a written list to School Board of such equipment (“Equipment Removal Notice”). The Equipment Removal Notice shall state the date upon which it is being submitted to School Board and City contact information for School Board 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 School Board to reliably identify it and the date upon which City intends to remove it.
- 2.5 School Board to Acknowledge Equipment Removal.** No later than seven days after City completes removal of any equipment from any Collocation Site, School Board shall return to City a photocopy of City’s Equipment Removal Notice, signed by School Board and acknowledging City’s removal of the equipment.
- 2.6 Arranging Placement or Removal of Equipment.** All equipment placements into or removals from any Collocation Site shall be coordinated by City and School Board staff and, except for emergency situations, shall occur during the normal business hours stated in Exhibit A to this Agreement.
- 2.7 Emergency Placement or Removal of Equipment.** In emergency situations, City and School Board staff shall coordinate equipment placements into or removals from any Collocation Site. In the event of any emergency placement or removal of equipment, City shall provide an Equipment Placement List or an Equipment Removal List to School Board no later than the next business day. City shall be liable to School Board for any fees or charges for access to the Collocation Site outside of the normal business hours stated in Exhibit A to this Agreement.

3.0 BILLING AND PAYMENT

- 3.1 Prices.** The fees that City shall pay to School Board under this Agreement are stated in Exhibit B to this Agreement.
- 3.2 Payment of Invoices and Disputes.** School Board 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 School Board 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 School Board 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 C of this Agreement.
- 3.4 Regulatory and Legal Changes.**
- 3.4.1 Negotiations Between the Parties.** 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 negotiate and execute appropriate changes to this Agreement.
- 3.4.2 Binding Arbitration.** If the Parties cannot reach agreement within thirty days (“Initial Negotiations”) after either Party’s delivering written notice to the other requesting such negotiation, the Parties shall submit the matter to binding arbitration. Each Party shall nominate one arbitrator by sending written notice to the other Party no more than thirty days after conclusion of Initial Negotiations. Such written notice shall include the nominated arbitrator’s name and contact information. The two nominated arbitrators shall select a third arbitrator no later than sixty days after conclusion of Initial Negotiations. Any decisions of the arbitrators shall be made by simple majority vote, and the three arbitrators shall provide written notification to the Parties of their final conclusion no later than ninety days after conclusion of Initial Negotiations.

3.4.3 Arbitrators to Seek Equitable Relief. In reaching their final conclusion, the arbitrators shall be generally charged with defining a solution that is equitable to each Party, with each Party gaining or losing a benefit relative to this Agreement approximately equivalent to that gained or lost by the other Party.

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 School Board, 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 any Collocation Site. 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 arises from any malfunction of its equipment or other of its property located at any Collocation Site 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. SCHOOL BOARD 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 School Board's liability and City's sole remedy against School Board for any loss or damage that arises directly or indirectly out of, or resulting from impairment of, any service provided by School Board 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.

6.0 GENERAL TERMS

- 6.1 Force Majeure.** Neither Party shall be responsible for failure or delay of performance 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 any Collocation Site is unavailable for use by City as a result of a Force Majeure Event, City shall not be obligated to pay School Board for the affected Collocation Site for the duration of the event. Force Majeure Events shall not, apart from School Board's gross negligence or willful misconduct, make School Board 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 School Board, 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: | IF TO CUSTOMER: |
|--|--------------------------------|
| City of Leesburg | School Board of Lake County |
| 501 W. Meadow Street | 814 W. Bryan Street |
| P.O. Box 490630 | Tavares, FL 32778 |
| Leesburg, FL 34749 | |
| Attn: Stan Carter | Attn: Glen Reubelt |
| Facsimile: (352) 728-2894 | Facsimile: (352) 742-1168 |
| Email: stan.carter@leesburgflorida.gov | Email: reubeltg@lake.k12.fl.us |
- 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. Jurisdiction 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 by the court, be entitled to judgment for reasonable attorney's fees, incurred by reason of such action and all costs of arbitration or suit 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 on July 1, 2011, and shall terminate at the end of June 30, 2016, unless otherwise terminated. Any benefit, right or obligation arising from and enforceable under this Agreement shall survive the provision or use of Collocation Site(s) 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 School Board's provision of and City's use of Collocaton Sites and supersedes all prior agreements, understandings, proposals, or representations relating to the Collocation Sites, which are of no further force or effect.

REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

CITY OF LEESBURG, FLORIDA
("City")

**THE SCHOOL BOARD OF LAKE COUNTY,
FLORIDA** ("Customer")

By _____

By _____

Name _____

Name _____

Title _____

Title _____

ATTESTED:

(signed)

Its City Clerk

APPROVED AS TO FORM AND CONTENT:

(signed)

Its City Attorney

EXHIBIT A
to
Collocation Agreement
Page 1 of 5

COLLOCATION SITE

SITE:	EUSTIS HIGH SCHOOL
STREET ADDRESS:	1300 EAST WASHINGTON
CITY:	EUSTIS
LOCATION IN BUILDING:	TBD
DIMENSIONS OF ROOM:	TBD
BACKUP ELECTRIC POWER:	NONE
FIRE SUPPRESSION SYSTEM:	NONE
PHYSICAL SECURITY:	LOCKED DOOR
NORMAL BUSINESS DAYS:	MONDAY – FRIDAY, EXCEPT FOR SCHOOL HOLIDAYS
NORMAL BUSINESS HOURS:	7:00 A.M. – 4:00 P.M.
LANDLINE TELEPHONE CONTACT:	TBD
AFTER HOURS EMERGENCY CONTACT:	TBD

EXHIBIT A
to
Collocation Agreement
Page 2 of 5

COLLOCATION SITE

SITE:	LAKE COUNTY AREA VOC-TECH CENTER
STREET ADDRESS:	2001 KURT STREET
CITY:	EUSTIS
LOCATION IN BUILDING:	TBD
DIMENSIONS OF ROOM:	TBD
BACKUP ELECTRIC POWER:	NONE
FIRE SUPPRESSION SYSTEM:	NONE
PHYSICAL SECURITY:	LOCKED DOOR
NORMAL BUSINESS DAYS:	MONDAY – FRIDAY, EXCEPT FOR SCHOOL HOLIDAYS
NORMAL BUSINESS HOURS:	7:00 A.M. – 4:00 P.M.
LANDLINE TELEPHONE CONTACT:	TBD
AFTER HOURS EMERGENCY CONTACT:	TBD

EXHIBIT A
to
Collocation Agreement
Page 3 of 5

COLLOCATION SITE

SITE:	MOUNT DORA HIGH SCHOOL
STREET ADDRESS:	700 NORTH HIGHLAND AVENUE
CITY:	MOUNT DORA
LOCATION IN BUILDING:	TBD
DIMENSIONS OF ROOM:	TBD
BACKUP ELECTRIC POWER:	NONE
FIRE SUPPRESSION SYSTEM:	NONE
PHYSICAL SECURITY:	LOCKED DOOR
NORMAL BUSINESS DAYS:	MONDAY – FRIDAY, EXCEPT FOR SCHOOL HOLIDAYS
NORMAL BUSINESS HOURS:	7:00 A.M. – 4:00 P.M.
LANDLINE TELEPHONE CONTACT:	TBD
AFTER HOURS EMERGENCY CONTACT:	TBD

EXHIBIT A
to
Collocation Agreement
Page 4 of 5

COLLOCATION SITE

SITE:	SOUTH LAKE HIGH SCHOOL
STREET ADDRESS:	15600 SILVER EAGLE ROAD
CITY:	GROVELAND
LOCATION IN BUILDING:	TBD
DIMENSIONS OF ROOM:	TBD
BACKUP ELECTRIC POWER:	NONE
FIRE SUPPRESSION SYSTEM:	NONE
PHYSICAL SECURITY:	LOCKED DOOR
NORMAL BUSINESS DAYS:	MONDAY – FRIDAY, EXCEPT FOR SCHOOL HOLIDAYS
NORMAL BUSINESS HOURS:	7:00 A.M. – 4:00 P.M.
LANDLINE TELEPHONE CONTACT:	TBD
AFTER HOURS EMERGENCY CONTACT:	TBD

EXHIBIT A
to
Collocation Agreement
Page 5 of 5

COLLOCATION SITE

SITE:	TAVARES MIDDLE SCHOOL
STREET ADDRESS:	13032 LANE PARK CUTOFF
CITY:	TAVARES
LOCATION IN BUILDING:	TBD
DIMENSIONS OF ROOM:	TBD
BACKUP ELECTRIC POWER:	NONE
FIRE SUPPRESSION SYSTEM:	NONE
PHYSICAL SECURITY:	LOCKED DOOR
NORMAL BUSINESS DAYS:	MONDAY – FRIDAY, EXCEPT FOR SCHOOL HOLIDAYS
NORMAL BUSINESS HOURS:	7:00 A.M. – 4:00 P.M.
LANDLINE TELEPHONE CONTACT:	TBD
AFTER HOURS EMERGENCY CONTACT:	TBD

EXHIBIT B
to
Collocation Agreement
FEEES

City shall pay to School Board one-thousand (1,000) dollars per month per Collocation Site identified in Exhibit A.

REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

EXHIBIT C
to
Collocation Agreement

TAX EXEMPTION CERTIFICATE

00038



Consumer's Certificate of Exemption

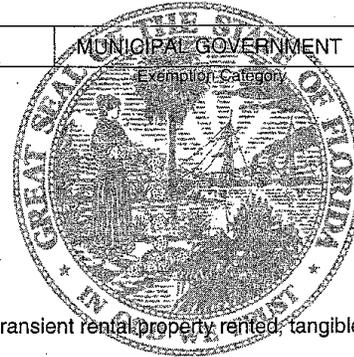
Issued Pursuant to Chapter 212, Florida Statutes

DR-14
R. 04/05
07/26/07

85-8012738357C-5	07/16/2007	07/31/2012	MUNICIPAL GOVERNMENT
Certificate Number	Effective Date	Expiration Date	Exemption Category

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.



Important Information for Exempt Organizations

DR-14
R. 04/05

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 (FAC).
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 by your organization 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, FAC).
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 necessitate the revocation of this certificate.
6. If you have questions regarding your exemption certificate, please contact the Exemption Unit of Central Registration at 850-487-4130. The mailing address is PO BOX 6480, Tallahassee, FL 32314-6480.