

**Submitted for:** Information Systems Services

1. Third Amendment to Agreement R2014-0851 with FLR (3 originals)
2. Copy of Agreement R2014-0851
3. Copy of First Amendment R2016-0116
4. Copy of Second Amendment R2017-0761
5. Term Extension Letter, dated October 16, 2018
6. ISS Network Agreements with External Agencies Utilizing FLR Services

Date \_\_\_\_\_

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact

<b>Fiscal Years</b>	<b><u>2019</u></b>	<b><u>2020</u></b>	<b><u>2021</u></b>	<b><u>2022</u></b>	<b><u>2023</u></b>
Capital Expenditures	\$0	0	0	0	0
Operating Costs	\$36,000	\$72,000	\$72,000	\$72,000	\$72,000
External Revenues	\$0	\$0	\$0	\$0	\$0
Program Inc (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
<b>NET FISCAL IMPACT</b>	<b>\$36,000</b>	<b>\$72,000</b>	<b>\$72,000</b>	<b>\$72,000</b>	<b>\$72,000</b>

# Additional FTE

Positions (Cumulative)	0	0	0	0	0
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Is Item Included in Current Budget                      Yes X                      No

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

Expenditure Budget Number: Fund 0001 Dept 490 Unit 1303 Object 4101

\*The Third Amendment effective date is April 1, 2019.

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

The FY 2019 expense of \$36,000 is calculated as 6 months @ \$6,000 per month.

This Amendment represents a net increase in annual expense of \$72,000.


### C. Department Fiscal Review:

### III. REVIEW COMMENTS

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


 3/8/19  
 OFMB

& Control Comments:

  
Contract Administration  
3/12/19 (TW)

**B. Legal Sufficiency:**

RLC: 3/13/19  
Assistant County Attorney

**C: Other Department Review:**

Department Director

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

## **Background and Justification:**

*Continued from Page 1...*

FLR is an independent research and education network owned and operated on behalf of the FLR partner institutions and affiliates of the FLR, and a not-for-profit limited liability corporation. Created to facilitate advanced research, education, and 21st century economic initiatives in the State of Florida, utilizing next generation network technologies, protocols, and services, FLR provides opportunities for Florida university faculty members, researchers, and students to collaborate with colleagues in-state, across the country, and around the world.

In 2008, the Board of County Commissioners approved an agreement for Palm Beach County to connect to the FLR. This was one of the earliest such agreements between the FLR and a county government. This agreement was renewed in June 2014.

Numerous benefits have resulted from this intergovernmental shared services model. This agreement provides the County with faster broadband services for Internet access and greatly reduces annual operating costs every year. A further benefit from our connection to the FLR is access to the Northwest Regional Data Center (NWRDC), a major disaster recovery site adjacent to the Florida State University campus in Tallahassee. In 2009, Palm Beach County entered into an agreement for server rack space in the NWRDC which enables ISS, the Clerk & Comptroller's Office and the School District to backup selected data at a significant savings over utilizing a commercial facility. The Clerk's Office, in particular, relies upon this facility for their disaster recovery program. Additionally, the FLR network connects Palm Beach County and Orange County and enables us to house our 311 backup system in Orange County's Data Center.

Perhaps the greatest advantage has been gained by our agreement with the FLR which designates Palm Beach County ISS as an aggregator of FLR services with rights to resell connectivity to other public sector agencies. As a reseller of FLR network services, ISS has become an Internet Service Provider (ISP) for numerous other local government, education, and non-profit organizations. Most of the larger cities in Palm Beach County are now interconnected as well as important non-profit organizations such as the Scripps Research Institute and the Max Planck Florida Institute. The County's role as a service provider is formalized under service agreements with each agency based on an approved rate plan. These shared services agreements likewise improve internet service and reduce costs for all participating agencies. A list of all external agencies connected to the FLR through ISS Network Services Agreements is included as Attachment 6.

*Agreement with Palm Beach County and Florida LambdaRail, LLC**Re: Affiliate Connection Agreement***Third Amendment**

This Third Amendment to the Affiliate Connection Agreement ("Third Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Florida LambdaRail, LLC ("FLR"), a limited liability company and Palm Beach County ("COUNTY") a political subdivision of the State of Florida.

**WHEREAS**, the COUNTY and FLR have entered into that certain Florida LambdaRail Affiliate Connection Agreement ("Agreement") R2014-0851 dated June 3, 2014 and,

**WHEREAS**, the COUNTY and FLR previously amended the Agreement by virtue of a First Amendment R2016-0116 dated January 26, 2016 for Use of FLR High-Speed Fiber Optic Network and,

**WHEREAS**, the COUNTY and FLR previously amended the Agreement by virtue of a Second Amendment R2017-0761 dated June 6, 2017 (i) to provide for the COUNTY to become an Associate Participant in FLR, (ii) to upgrade COUNTY's bandwidth capacity on COUNTY's primary diverse paths from West Palm Beach, FL to 10GBPS each, (iii) to include an additional 5GBPS bandwidth capacity specifically between West Palm Beach, FL and Tallahassee, FL, and (iv) to increase COUNTY's Committed Data Rate for Internet access to 3Gbps.

**WHEREAS**, the COUNTY and FLR acknowledge and agree additional services may be requested at any time and shall be based on the current price schedule,

**WHEREAS**, the COUNTY and FLR desire to further amend the Agreement to increase the COUNTY's Committed Data Rate for Internet access from 4.5Gbps to 6Gbps as particularly provided herein below in this Third Amendment,

**NOW, THEREFORE**, in mutual consideration of the provisions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals; Defined Terms. The recitals set forth hereinabove are true and correct in all respects and are herein by reference as full as if set forth herein verbatim. Wherever defined terms or words of art, as indicated by capitalization thereof, are used herein, such defined terms or words of art, if not defined herein, shall have the meanings as ascribed to such terms in the Agreement.
2. Billing for Services Provided Prior to Execution of Third Amendment. Prior to the execution of this Third Amendment, FLR has, at the request of the COUNTY, furnished services described in Schedule 1, attached hereto and made a part hereof. COUNTY shall pay the charges for such services upon receipt of an invoice therefor from FLR in the same manner as if the services had been provided after the execution of this Third Amendment. COUNTY shall also pay for services rendered by FLR to COUNTY after the date of this Third Amendment, upon receipt of an invoice therefor from FLR, in accordance with the rates set forth on Schedule 1.

*Agreement with Palm Beach County and Florida LambdaRail, LLC*

*Re: Affiliate Connection Agreement*

3. Counterpart Execution. This Third Amendment may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement.
4. Facsimile Copies. Facsimile or electronically transmitted copies of this Third Amendment and the signatures thereon shall have the same force and effect as if the same were original documents. Facsimile or electronically transmitted signatures are acceptable and shall be deemed to be original signatures.
5. Full Force and Effect. Except as expressly modified by this Third Amendment, the Agreement, as previously modified by the First and Second Amendment and shall be and remain unchanged and in full force and effect.

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*Agreement with Palm Beach County and Florida LambdaRail, LLC*

*Re: Affiliate Connection Agreement*

IN WITNESS WHEREOF, the COUNTY and FLR have each caused this Amendment to be executed by its duly authorized official as of the date first set forth above.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

Palm Beach County, By Its  
Board of County Commissioners

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

By: \_\_\_\_\_  
Mack Bernard, Mayor

(SEAL)

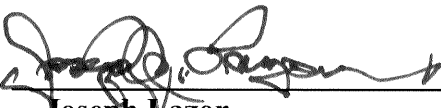
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS


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

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

Florida LambdaRail, LLC

By: \_\_\_\_\_  
Joseph Lazor,  
Chief Executive Officer

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
R. Mason Blake, Esq.,  
General Counsel for FLR

SCHEDULE 1

FEES AND CHARGES  
FOR NETWORK CONNECTIVITY AND SERVICES  
FLR THIRD AMENDMENT TO CONNECTION  
AGREEMENT PALM BEACH COUNTY  
GOVERNMENT, FLORIDA

1x1 Gbps, 2x10 Gbps & 2x100 Mbps NETWORK  
CONNECTIONS  
4.5 Gbps Upgrade to 6 Gbps - R & E/INTERNET SERVICES

Item	Current Annual Recurring Cost	Increase After Upgrade	New Annual Recurring Cost
Associate Participant Fee	\$15,000		\$15,000
1-1G Connection to NWRDC (Tallahassee)	\$13,284		\$13,284
- FLRNET IP Transport (1x1G) - Tallahassee	\$12,000		
- FLR Port (1)	\$ 1,284		
2-10 Gbps redundant connections to FLR (West Palm Beach)	\$103,155		\$103,155
- 2x10 (WPB)	\$77,000		
- L3 Fiber Termination	\$ 6,000		
- Maintenance	\$ 8,160		
- FLR Ports (2)	\$ 5,995		
- L3 Cross Connections	\$ 6,000		
2-100 Mbps connections to FLR-Orlando and FLR-Miami for access to Level3 SIP Services	\$ 22,948		\$ 22,948
- FLRNET IP Transport (1x100M) - Orlando	\$ 8,000		
- FLR Port (1)	\$ 1,284		
- FLRNET IP Transport (1x100M) - Miami	\$ 8,000		
- FLR Port (1)	\$ 1,284		
- NOTA Cross Connect (1)	\$ 4,380		
R&E/Commercial Internet (4.5Gbps to 6Gbps @ \$4/meg)	\$216,000	\$72,000	\$ 288,000
Total Annual Recurring Components	\$370,387	\$72,000	\$ 442,387

Payment Schedule	1st Quarter	2nd Quarter	3rd Quarter	4th quarter	Annual Total
	\$ 110,597	\$ 110,597	\$ 110,597	\$ 110,596	\$ 442,387

**\*Notes:**

1. The above costs are based upon FLR Affiliate prices approved by the FLR Board of Directors. These prices are reviewed periodically and the fees and charges are subject to adjustments as needed from time to time by the Board of Directors. Notice of changes shall be provided in writing to Affiliate at least sixty (60) days prior to the effective date of the change; provided, however, that (i) such change shall only be effective at the start of the fiscal year of FLR, and (ii) changes shall occur not more than once per year.
2. Affiliate obtaining commodity internet services are provided settlement-free peering exchange of traffic between FLR and commercial Internet peering partners. Access to the commercial Internet is based upon a Committed Data Rate (CDR) and includes settlement free peers at no additional cost. User currently has a CDR of 4,500 Mbps @ \$4 per meg per month and has requested to increase their CDR to 6,000 Mbps @ \$4 per meg per month.
3. In consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to modify the Agreement to include the additional Annual Recurring costs for an increase in commodity internet services as outlined above in this Third Amendment.



R20140851 JUN 03 2014

**FLORIDA LAMBDARAIL  
AFFILIATE CONNECTION AGREEMENT**

THIS AFFILIATE CONNECTION AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between FLORIDA LAMBDARAIL, LLC, a Florida limited liability company (hereinafter referred to as "FLR"), and PALM BEACH COUNTY, FLORIDA, a political subdivision organized under the laws of the State of Florida (hereinafter referred to as "Affiliate"), effective as of last date signed.

**RECITALS**

A. FLR and the Affiliate entered into that certain Affiliate Connection Agreement dated the 15<sup>th</sup> day of April, 2008, a Supplement thereto on the 13<sup>th</sup> day of September, 2011, and two (2) Supplemental Service Order Requests thereto on the 15<sup>th</sup> day of November, 2011 and one (1) Supplemental Service Order Request thereto on the 20<sup>th</sup> day of March, 2012 (hereinafter collectively referred to as the "Original Agreement").

B. FLR and the Affiliate wish to terminate the Original Agreement as provided hereinbelow and enter into this Agreement effective immediately upon the termination of the Original Agreement.

C. FLR has constructed a high-bandwidth optical network (hereinafter referred to as the "Network") to link Florida's research institutions and provide a network to support large-scale research, education outreach, public/private partnerships and information technology infrastructure.

D. Affiliate desires to connect to the Network and obtain the Network Services (as defined hereinbelow) as an Affiliate participant of FLR, and FLR has agreed to furnish such connection and Network Services to Affiliate as an Affiliate participant, on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto set forth their mutual understandings and agreement as follows:

1. Recitals. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as fully as if set forth herein verbatim.
2. Termination of Original Agreement. The Original Agreement shall be terminated, effective the 15<sup>th</sup> day of April, 2014, without any further action being required by the parties. The term of this Agreement shall commence on the 16<sup>th</sup> day of April, 2014, immediately upon the termination of the Original Agreement and shall continue as provided in paragraph 5 hereinbelow.
3. Payments due FLR under the Original Agreement. Upon termination of the Original Agreement, Affiliate shall pay to the FLR, no later than the 30<sup>th</sup> day of June, 2014, all sums due the FLR under the Original Agreement (R-2008-0674 & R-2008-0675, as amended) through the date of termination.
4. Approval of Affiliate. By its execution hereof, FLR acknowledges and agrees that Affiliate has been approved by the Board of Directors of FLR as an Affiliate participant of FLR.
5. Term of Agreement. Unless sooner terminated as provided hereinbelow, the term of this Agreement and Affiliate's status as an Affiliate participant of FLR shall be for a period of four (4) years. Affiliate shall have the option to extend the term of this Agreement for four successive extension terms of one (1) year each as long as Affiliate is not in default under this Agreement, either at the time of exercise or at the time the extended term commences. Affiliate shall exercise such option by delivering written notification thereof to FLR at least thirty (30) days prior to the expiration of the term, as the same may have been previously extended. During any such extension term either party may give written notice of termination of this Agreement as provided for in paragraph 22 hereinbelow.

6. Connection to Network; Network Services. FLR agrees to provide Affiliate with a connection to the Network and to provide Affiliate with the following service (herein referred to as the "Network Services"):

- (a) access to national research networks (e.g., Internet2) for eligible Affiliate network users, such as the Palm Beach County educational institutions, libraries, museums, hospitals;
- (b) access to commercial Internet services;
- (c) provisioning of virtual private networks (VPNs) to enable remote access and private data communications over the state-wide infrastructure; and
- (d) peering with other participants in the Network.

7. Connection Locations. FLR has provided Affiliate with connections to the Network in accordance with that certain Florida LambdaRail Affiliate Installation Agreement dated the 15<sup>th</sup> day of April, 2008 (hereinafter referred to as the "Installation Agreement").

8. Network Management. Affiliate agrees to exercise normal prudent network management and implement normal prudent controls so as to ensure FLR's production services are not disrupted. To the extent permitted by Section 768.28, Florida Statutes, Affiliate covenants and agrees to indemnify, hold harmless and defend FLR from and against any and all claims, liabilities, losses, costs, damages and expenses which FLR may sustain, suffer or incur as a result of Affiliate's failure to exercise normal prudent network management and implement normal prudent controls as required by the immediately preceding sentence.

9. Affiliate Responsibilities. Affiliate shall be responsible for all financial, contractual and physical arrangements related to establishing and maintaining its connections to the Network, including without limitation furnishing its own router and interface hardware and local loops. Affiliate shall also be responsible for complying in every respect with the responsibilities set forth in the FLR Service Level Understanding (SLU) attached hereto as Exhibit "A" and made a part hereof.

10. Charges for Connection to Network and Network Services. The charges described hereinbelow for connection to the Network and the Network Services shall be based upon the FLR price schedule applicable to Affiliate participants as approved by the Board of Directors of FLR from time to time. Affiliate acknowledges and agrees that such price schedule will be periodically reviewed and adjusted by the Board of Directors of FLR. Notice of changes shall be provided in writing to Affiliate at least sixty (60) days prior to the effective date of the change; provided, however, that (i) such change shall only be effective at the start of the fiscal year of FLR, and (ii) changes shall occur not more than once per year.

Affiliate covenants and agrees to pay the following charges and fees for connection to the Network and the Network Services:

- (a) Recurring Costs. Affiliate shall pay to FLR an annual recurring services fee (hereinafter referred to as the "Services Fee") for FLR services, which are integrated, into a single package as set forth in Exhibit "B". These services include use of the FLR Ethernet-based IP transport facility, access to the commercial Internet, and network connectivity and support functions required to maintain the Affiliate's connection to the FLR infrastructure for each connection location identified in the Installation Agreement. Additional services may be requested at any time and shall be based upon the current price schedule. This Services Fee is effective the date the Affiliate initiates use of the FLR services and shall be due and payable on a quarterly basis. Advanced annual payments are also acceptable. Additional or decreased services may be requested at any time utilizing the FLR "S-Ticket" as set forth in the FLR Service Level Understanding (SLU) attached hereto as Exhibit "A", and shall be based upon current prices. For any decrease in service, Affiliate must give not less than thirty (30) days prior written notice for a stated time period; and (ii) Affiliate is not in default under this Agreement at the time the requested time period commences.

Access to the commercial Internet is based upon an initial bandwidth commitment. Excess usage over the bandwidth commitment, if not corrected within 90 days following written notification thereof, shall incur cost for any use in excess of 110% of the bandwidth commitment and shall be based on the FLR current standard rate per megabit. Excessive usage shall be calculated on a 95th percentile confidence interval (CI) based on 5-minute averages (monthly usage divided into 5-minute intervals). The top 5% of these intervals shall be discarded and the next highest interval, inbound or outbound shall be used as the Affiliate's total bandwidth usage for the month. Billing for the excess bandwidth usage shall be included in the quarterly invoice of recurring costs.

As part of the FLR network services, for amounts of commercial Internet bandwidth of 100 Mbps or less, 100 Mbps of bandwidth to access the Internet2 network shall be made available at no additional cost to eligible users of the Affiliate's network. Parties who are otherwise connected to the Network that are eligible to access the Internet2 Network at no additional cost are educational institutions (non-profit and for-profit K-20, technical, and trade schools), museums, art galleries, libraries, or hospitals that require routine collaboration on instructional, clinical, and/or research projects, services, and content with Internet2 participants. In order to take advantage of access to the Internet2 network, eligible users must either be an Internet2 member or an Internet2 sponsored participant. FLR shall provide Internet2 sponsorship for eligible users as part of the Internet2 Secondary Educational Group Participant (SEGP) program at no additional cost to the Affiliate or eligible users.

Based upon the current price schedule applicable to Affiliate participants of FLR, the amounts due hereunder for the above-described charges and fees, subject to adjustment by the Board of Directors of FLR from time to time as provided for hereinabove, shall be as set forth in Exhibit "B", attached hereto and made a part hereof.

11. Status as Affiliate. Affiliate acknowledges and agrees that Affiliate's status as an Affiliate participant of FLR (a) does not create any equity interest in FLR and (b) does not bestow any voting rights upon Affiliate. Affiliate shall solely be entitled to connect to the Network pursuant to the terms and conditions of this Agreement.

12. Resale of FLR Services. Affiliate shall not resell FLR Network services in any manner not approved of in this Agreement or without the written consent of the Board of Directors of FLR, which consent may be withheld in FLR's sole and complete discretion.

13. Use of FLR Services by County Agencies. As an Affiliate, Affiliate will have a direct connection to the Network and shall be authorized to provide access to, or services across the Network through Affiliate's network to certain governmental, educational and medical agencies and institutions within Palm Beach County (hereinafter referred to as the "County Agencies") that have been approved by FLR. FLR agrees that the Network Services provided hereunder to Affiliate may be utilized by County Agencies at no additional cost to Affiliate and shall not be considered a resale of FLR services for the purposes of this Agreement. County Agencies shall not be construed or deemed to be Affiliate participants of FLR. County Agencies are not Owners, do not own an equity interest in the LLC, have no representation on the Board, and have no voting rights. Affiliate shall be solely responsible for County Agencies' connections to Affiliate's network, and FLR shall have no obligation whatsoever in connection therewith.

14. Use of Affiliate's Network as a Network Aggregator. The parties understand and agree that Affiliate will also utilize its connection to the Network as a "Network Aggregator". As a Network Aggregator, Affiliate shall be authorized to provide connectivity to the FLR Network through its fiber network to any of the municipalities incorporated within Palm Beach County or any other person or entity (hereinafter referred to as "Third Party Connections") which meet the criteria for non-equity participants in FLR (such criteria being that a potential non-equity participant must meet one of the following conditions: (i) the potential participant is an educational institution (i.e., private, non-profit educational institution, Florida public university, community college, for-profit college, or public/private school); (ii) the potential participant is in collaboration with other FLR non-profit participants in support of research, education, or 21st century economy initiatives; (iii) the potential participant is teaming with an FLR Equity Partner or

Affiliate in research or 21st century economy activities; (iv) the potential participant facilitates connecting other State of Florida government entities that do not conflict with the purpose of FLR; and (v) providing such service does not jeopardize the FLR's non-profit status) and have been approved by FLR. Each Third Party Connection shall be less than 100 Mbps and delivered via Affiliate's fiber network to the FLR location identified in the Installation Agreement. The Third Party Connection shall not be construed or deemed Affiliate participants of FLR. Third Party Connections are not Owners, do not own an equity interest in the LLC, have no representation on the FLR Board of Directors, and have no voting rights. Affiliate agrees not to allow any Third Party Connections to its network that will utilize FLR Network Services unless each such Third Party Connection is to a municipality located within Palm Beach County or otherwise approved by FLR. Affiliate shall be solely responsible for Third Party Connections to Affiliate's network, and FLR shall have no obligation whatsoever in connection therewith.

Affiliate shall be obligated to collect an annual downstream subscriber fee from each Third Party Connection who utilizes the Network Services provided hereunder to Affiliate in the amount of One Thousand Two Hundred Dollars (\$1,200.00) per year, and remit such fee collected to FLR as set forth in the FLR Third Party Downstream Subscriber Fee attached hereto as Exhibit "C" and made a part hereof. As with the FLR fees and charges for network connectivity, the downstream subscriber fee shall be based upon the FLR prices applicable to Third Party Connections as approved by the Board of Directors of FLR and shall be prorated at \$100 per month and invoiced quarterly, in arrears. Such prices will be periodically reviewed and adjusted by the Board of Directors of FLR. Notice of changes shall be provided in writing to Affiliate at least sixty (60) days prior to the effective date of the change; provided, however, that (i) such change shall only be effective at the start of the fiscal year of FLR, and (ii) changes shall occur not more than once per year.

All Third Party Connections in service as of the effective date of this agreement are hereby accepted by FLR as valid and active for the purposes of this agreement.

15. Use of Affiliate's Network for Last Mile Connectivity to the FLR Network. The parties understand and agree that Affiliate will also utilize its connection to the Network to deliver last mile connectivity to the Network to other affiliate participants of FLR (hereinafter referred to as "Affiliate Connectors"). Affiliate shall be authorized to provide connectivity to the FLR Network to Affiliate Connectors through a connection to its fiber network. Each Affiliate Connector shall be 100 Mbps or greater and delivered via Affiliate's fiber network to the FLR location identified in the Installation Agreement. Both parties understand and agree that such connectivity shall be in accordance to provisions established under different and separate agreements between Affiliate and applicable Affiliate Connectors. FLR and Affiliate Connectors shall have separate agreement for the provision of the FLR Network Services. In the event this Agreement shall terminate, the Affiliate agrees to continue its service with Affiliate Connectors in accordance to the provisions established under the separate agreement for last mile connectivity between Affiliate and Affiliate Connectors. Affiliate shall be solely responsible for Affiliate Connectors' connection to Affiliate's network, and FLR shall have no obligation whatsoever in connection therewith.

16. Collocation of Network Equipment. FLR and Affiliate understand and agree that Affiliate shall share vertical rack space (with power) at the FLR location identified in the Installation Agreement for the purpose of collocating equipment. The FLR agrees to provide an installed and grounded 19" inch wide, 5-U (8.75") of vertical rack space, with 10 amps of DC power, fuse panels and cross connects as required. Affiliate shall be responsible for pre-configuring their equipment prior to installation by the FLR engineering staff. Installation shall be according to FLR standards. Affiliate shall be solely responsible for maintaining the configuration and code levels of their equipment. FLR shall provide Affiliate an "out of band" Ethernet port and IP address to reach their equipment in case of loss of management through normal channels.

Affiliate understands and agrees access to the collocation space shall be coordinated, authorized and approved by FLR. All access to the collocation space shall be through Level3 Tech Escort Services. Adding new or swapping modules in existing equipment may be performed by Affiliate with a Level3 Tech Escort. All other changes shall be completed by FLR and/or Level3 as required. Affiliate shall be responsible for the cost of all Level3 Tech Escort services conducted on their behalf and based upon

hereinabove. If Affiliate in good faith disputes any portion of a charge, Affiliate shall provide written notice to FLR of the billing dispute within 30 days thereafter.

21. Assignment. Neither party may assign this Agreement or any of the Capacity without the prior written consent of FLR.

22. Termination of Service. Affiliate shall have the right to terminate this Agreement prior to the expiration of the term hereof in the event it determines it will be unable to make the payments due hereunder. FLR may suspend or terminate, in whole or in part, the Capacity or this Agreement without any liability therefor (a) in the event that Affiliate fails to make payment hereunder if such failure is not corrected by Affiliate within 30 days following written notification thereof; (b) for any other material breach by Affiliate if such breach is not corrected by Affiliate within 30 days following written notification thereof; (c) for any use of the Capacity by Affiliate which FLR determines to be harmful to the Network or other users of the Network or violates any law or regulation; or (d) in the event any law, rule, regulation or judgment of any court or governmental or quasi-governmental agency prevents FLR from providing the Capacity or any portion thereof. Termination or suspension by FLR or early termination by Affiliate shall not relieve Affiliate of liability incurred prior to such termination or suspension.

Affiliate may terminate this Agreement with respect to FLR Network services without liability therefor in the event a material breach by FLR in the performance of its obligations hereunder is not cured by FLR within 30 days following written notification thereof. Affiliate may terminate this Agreement for any reason upon providing FLR with ninety (90) days prior written notice of cancellation. FLR shall make no further commitments hereunder. Affiliate shall be liable to FLR for the cost of all authorized services provided and work completed prior to date of termination.

23. Parties Responsibilities. Each party shall be responsible for its own acts, omissions, and the results thereof.

24. Nondisclosure. Unless otherwise required by law, neither FLR nor Affiliate shall disclose to third parties the rates and fees due hereunder, or any information that is identified as confidential by one of the parties hereto (hereinafter referred to as the "Disclosing Party"), without the prior, written consent of the Disclosing Party. For the purposes of this Agreement, the information disclosed hereunder by the Disclosing Party to the other party hereto (hereinafter referred to as the "Receiving Party") will not be treated as confidential if it (a) is or becomes public knowledge without the fault or action of the Receiving Party, (b) is received by the Receiving Party from a third party, (c) is independently developed by the Receiving Party without access to the information hereunder, (d) is or becomes available to the Receiving Party on an unrestricted basis from the Disclosing Party, or (e) is required to be disclosed by law or court order. The obligation of each party receiving confidential information shall extend for the term of this Agreement as stated above. This section is not intended to prevent required disclosure pursuant the provisions of Chapter 119, Florida Statutes.

25. Compliance with Laws and Regulations. In performing their obligations under this Agreement, the parties shall abide by all laws, statutes, ordinances, rules and regulations pertaining to or regulating the performance required by this Agreement. Any violation of such laws, statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party, provided that a written notice of violation and a reasonable opportunity to cure has been first given.

26. Nondiscrimination. FLR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

27. Access and Audits. FLR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The Affiliate shall have access to such books, records, and documents as

may be requested pursuant in this paragraph 27, to the extent relevant to this Agreement, FLR's performance under this Agreement or FLR's relationship with Affiliate for the purpose of inspection or audit during normal business hours, at FLR's place of business.

Affiliate has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of FLR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

28. Availability of Funds. The Affiliate's performance and obligation to pay under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

29. Notices. Services provided to and through Affiliate by FLR will require Affiliate's Internet technology staff to interface with FLR. Affiliate and FLR will advise each other from time to time of the members of their Internet technology staff, together with appropriate contact information, in connection with any technical or network administration issue. Contact information for service interruption and technical assistance is provided for in Exhibit "A". Any notices or other communications related to matters other than technical matters, network administration and service interruptions which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by a nationally recognized courier service (such as Federal Express or UPS) or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

To Affiliate:	Robert Weisman, County Administrator c/o Steve Bordelon, Information Systems Services Director Palm Beach County Board of County Commissioners 301 North Olive Avenue, 8 <sup>th</sup> Floor West Palm Beach, FL 33401 (Telephone: 561-355-2394)
With a copy to:	County Attorney's Office Palm Beach County Board of County Commissioners 301 North Olive Avenue, Suite 601 West Palm Beach, FL 33401 (Telephone: 561-355-2225)
To FLR:	Florida LambdaRail, LLC 1607 Village Square Blvd., Suite 4 Tallahassee, Florida 32309-2772 Attn: Chief Executive Officer
With a copy to:	Dean Mead et al. 8240 Devereux Drive, Suite 100 Viera, Florida 32940 Attn: R. Mason Blake, Esq

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the date the same is deposited in the United States mail in the manner specified hereinabove. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon actual receipt of the

some by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

30. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held either in Palm Beach County or Leon County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

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 Affiliate and/or FLR.

31. Miscellaneous. As used herein, the term "Effective Date" shall be the date on which the last one of FLR and Affiliate have signed this Agreement and communicated the same to the other party. If this Agreement is not accepted and executed by Affiliate on or before September 1, 2014 this Agreement shall thereupon be null, void, and of no further force or effect.

This Agreement or any provision hereof may be amended or waived only by written agreement signed by both parties. This writing constitutes the entire agreement between the parties and supersedes and merges all prior oral or written agreements, representations, statements, proposals and undertakings between the parties regarding the subject matter hereof. Nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the parties. Except as set forth in Section 19 above with regard to the provider of services or facilities employed by FLR to provide the Capacity, no provision in this Agreement shall provide to any person not a party to this Agreement any remedy, claim or cause of action, or create any third-party beneficiary rights against either party. In the event that any one or more of the provisions in this Agreement shall for any reason be held to have no force and effect, this Agreement shall, if possible, be interpreted in a manner so as to effectuate the intention of the parties. Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive. All disputes related to this Agreement shall in the first instance be referred to the appropriate executives of each party for resolution. This Agreement is the subject of negotiation between the parties and should not be interpreted more favorably toward one party over the other.

[signatures are on the following page]

In recognition of their agreements hereunder, the parties have executed this Agreement as of the date first above written.

Approved as to form and legality  
By R. Mason Blake, Esq.  
General Counsel for FLR, April 21,  
2014

FLORIDA LAMBDARAIL, LLC, a Florida  
limited liability company

By: [Signature]  
Name: JOSEPH A. LAZOR  
Title: CHIEF EXECUTIVE OFFICER  
Date: MAY 5, 2014

ATTEST:

Sharon R. Bock, Clerk & Comptroller

320140851 JUN 03 2014  
Palm Beach County, Florida, By its  
Board of County Commissioners

By: [Signature]  
Deputy Clerk

By: [Signature]  
Priscilla A. Taylor, Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: [Signature]  
County Attorney

By: [Signature]  
Steve Bordelon, Director, ISS





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Florida's Research and Education Network

**Revised: 10/08/2013**

EXHIBIT A

Florida LambdaRail, LLC  
Service Level Understanding (SLU)

The purpose for this document is to characterize the availability and problem-recovery/ response-interval participants utilizing the FLR networking infrastructure and services may expect. The targeted availability and problem recovery response for the FLR services offered to its participants are noted below. All times listed are in accordance with Affiliate's local time.

I. FLR Services offered:

A. FLRNet Service (Internet, Internet2, Peering, L2/3 VPN)

**Availability:** The design goal for the FLRNet service is five 9's (99.999%)

FLR Internet service is provided by FLR contract with two Tier1 Internet Service Providers (ISPs), each with their own redundant connection to FLRNet. A redundant path for enhanced access to the National LambdaRail (NLR) and Internet2 (I2) is provided via a 10GE NLR interface to Houston, Texas as the results of a mutual backup arrangement with LEARN/LONI/ONENET.

To ensure highly available FLRNet services each FLRNet 7609 core site backbone is dual connected to other FLRNet core router sites to protect against single wave failures. The CISCO 7609s utilized include redundant supervisor and power supplies. In other words, the FLRNet is redundant outside of a full switch outage.

Because of local fiber access issues observed over the first few months of FLR operations it is advised that each FLR participant connect to FLRNet services with both Primary and Secondary connections to protect against a single local access failure.

**Node-to-Node Latency:** As measured by FLR performance measurement nodes, the maximum average latency shall not exceed 40ms.

**Problem analysis:** The FLR Engineering team is dispatched immediately upon report of problem from the user community or the FLR Network Management System (see below for details on accessing the NMS and NOC.)

**Problem resolution:** Problem resolution goal for FLRNet is four hours or less after problem analysis. Problem resolution of Internet2 or Internet will depend on upstream providers' response. Problem response may depend on Members local loop provider.

Equipment that supports the FLRNet, (Cisco 7609s) is under Smartnet contract with Cisco. Contract response for the 7609 is 24/7 by 4 hours on-site. The backbone of FLRNet utilizes FLRWave service.

B. FLRWave Services - Gigabit Ethernet (GE), OC48, 10GE, OC192

**Availability:** The design goal of FLRWave services is 99.99%

The design goal for FLRWaves provided over the FLR infrastructure is four 9's availability. For waves that extend outside Florida utilizing NLR may only expect two 9's availability. If your application requires a higher level of availability, an additional wave can be provided via alternate physical path at additional cost.

**Problem analysis:** The FLR Engineering team is dispatched immediately upon notification of an outage by its NMS systems or by the participant.

**Problem Resolution:**  
Repair is next business day pending Cisco delivery of non-common components. 24/7/4 Smartnet services

**EXHIBIT A**

**Florida LambdaRail, LLC  
Service Level Understanding (SLU)**

can be obtained at the request of the customer at additional cost.

Equipment that supports the FLRWave service (Cisco 15454s) is under a Cisco Smartnet contract 8/5 NBD (next business day.) The FLR NOC has spare hardware for the common parts that make up an FLRWave but not the transponders. The common parts can be delivered on-site to anywhere in the state in six hours for total node failure barring natural disaster (e.g. Hurricane). . FLR does not at present maintain spare ROADM, ADM or Transponders.

Cisco Smartnet service contract requires that we place order for replacement part prior to 3PM EST for next business day delivery.

**II. Service Requests:**

Requesting additional Internet bandwidth or updating any of the FLRNet suite of services is done via the web S-Ticket system. Internet2 service can typically be enabled within a week depending on the response of the Internet2 NOC. Internet service will be enabled within a week if the total FLR Internet utilization is within 80% of capacity otherwise FLR will provide the requested capacity within 17 business days.

**III. Change Management:**

FLR performs and schedule maintenance over two weekly standing change windows. Scheduled work takes place either Sunday morning 6AM-9AM or Tuesday 5AM-6AM. Urgent changes may take place any day from 5AM-6AM. Emergency maintenance: anytime. All changes are reviewed and tracked in a change management tracking system.

**IV. FLR NOC**

The FLR NOC is staffed for continuous, 24\*365 monitoring of the state of the optical network, and coordinates restoration of any failures that may surface during the operation of the network. The NOC is hosted at the University of Florida Computing and Network Services. Should the NOC become unavailable due to circumstances outside its control the FLR network design facilitates management (rapid NOC relocation) at any of the other FLRNet core sites and additional Optical sites designed for disaster recovery response.

The services of the NOC include coordination, communications and control between and among the FLR participants, vendors and other upstream service providers.

**V. Participants' Responsibilities**

**A. Provides FLR field engineering staff to assist in network operations:**

FLR field engineers should be derived, where possible, from participant's network engineering groups to assist with all portions of FLR network operations, from provisioning to troubleshooting.

**B. Provides end-user support and local problem diagnosis and resolution:**

Using detailed tools provided to local engineering staff by the FLR NOC, the first level of troubleshooting of any end-user problems should be performed by the local staff. If the problem is not local to the participant, the FLR NOC will be contacted to report a problem and begin the next level of troubleshooting. If the problem is determined to be at another FLR participant's site, staff from that facility will work with the FLR NOC to diagnose and resolve the problem.

**C. Facilitates, supports participant's research use of the FLR:**

In coordination with FLR Experimental Support personnel, designated local staff will facilitate and support participant's interest in the use of FLR for research or teaching purposes.

**EXHIBIT A**

**Florida LambdaRail, LLC  
Service Level Understanding (SLU)**

**VI. The FLR NOC can be contacted via the Web, Telephone and email:**

WEB: <http://noc.flrnet.org/sticket>

Phone: 352.294.FLR1 (3571)

Email: [noc@flrnet.org](mailto:noc@flrnet.org)

**FLR Service Ticket ("S-Ticket")**

The FLR "S-Ticket" is the one stop system for reporting problems, requesting net service, or a change in existing service. Once you submit a ticket, you will receive confirmation and progress emails.

**Problem Escalation Contacts:**

FLR Dispatch, Ralph Brigham, [noc@flrnet.org](mailto:noc@flrnet.org)

FLR CTO, Director of Engineering, [Dave.Pokorney@flrnet.org](mailto:Dave.Pokorney@flrnet.org)

FLR COO, [Veronica.Sargeant@flrnet.org](mailto:Veronica.Sargeant@flrnet.org)

FLR CEO, [Joseph.Lazor@flrnet.org](mailto:Joseph.Lazor@flrnet.org)

EXHIBIT B

FEEES AND CHARGES  
FOR NETWORK CONNECTIVITY AND SERVICES

FLR AFFILIATE CONNECTION AGREEMENT  
PALM BEACH COUNTY GOVERNMENT, FLORIDA

4\*1 Gbps NETWORK CONNECTION & 1 Gbps USE OF FLRNET ONLY  
540Mbps – R&E/INTERNET SERVICES

PALM BEACH COUNTY GOVERNMENT	
Recurring Cost <sup>1</sup>	\$ 150,776

Payment Schedule	
1st Payment	\$ 37,694
2nd Payment	\$ 37,694
3rd Payment	\$ 37,694
4th Payment	\$ 37,694
Annual Total	\$ 150,776

Notes:

1. The above costs are based upon the Affiliate price schedule approved by the FLR Board of Directors. This price schedule is reviewed periodically and the fees and charges are subject to adjustments as needed from time to time by the Board of Directors. Notice of changes shall be provided in writing to Affiliate at least sixty (60) days prior to the effective date of the change; provided, however, that (1) such change shall only be effective at the start of the fiscal year of FLR, and (ii) changes shall occur not more than once per year.
2. Affiliate shall gain access to the FLR network via a direct connection to the FLR point of presence in West Palm Beach, FL obtained thru a provider of their choice as agreed upon in a separate agreement with that provider. The cost to establish these connections shall be negotiated and established under a separate contract between Affiliate and the provider and is not included in the charges listed above.  
  
Affiliate shall have four (4) 1G redundant direct connections to the network infrastructure located in West Palm Beach, FL and one 1G FLRNet-only direct connection to the network infrastructure to the Terremark NAP in Miami, FL.
3. Affiliate is responsible for all of their cost incurred for establishing and maintaining a connection to the network. With the exception of cross-connect fees for connecting the Affiliate and FLR networks, Affiliate’s costs to establish these connections are not included in the costs listed above.
4. The recurring cost consists of several FLR services integrated into a single package. These services include co-location, cross connect, and port charges, and support functions required to maintain the Affiliate’s connection to the FLR infrastructure, use (up to 5 Gbps) of the FLR Ethernet-based IP transport facility, and access to the commercial Internet (540 Mbps). This cost is due and payable on a quarterly basis and is effective the date the Affiliate initiates use of the FLR services. Annual advance payments are also accepted. Additional FLR network services may be requested at any time and shall be based upon the current price schedule.
5. FLR participants obtaining Internet services are provided settlement-free peering exchange of traffic between FLR and commercial Internet peering partners. Access to the commercial Internet is based upon a Committed Data Rate (CDR) and includes settlement free peers at no additional cost. Affiliate has an initial CDR of 540 Mbps per month

**EXHIBIT B**

**FEES AND CHARGES  
FOR NETWORK CONNECTIVITY AND SERVICES**

**FLR AFFILIATE CONNECTION AGREEMENT  
PALM BEACH COUNTY GOVERNMENT, FLORIDA**

**4\*1 Gbps NETWORK CONNECTION & 1 Gbps USE OF FLRNET ONLY  
540Mbps – R&E/INTERNET SERVICES**

Affiliate is encouraged to implement inbound and outbound rate limits to protect against inbound overuse and high bit rate outbound denial of service. If excess usage over the CDR is not corrected within 90 days following written notification thereof, Affiliate shall be charged \$9 per megabit for any use in excess of 110% of the bandwidth commitment. Excessive usage over the bandwidth commitment shall be calculated on a 95th percentile confidence interval (CI) based on 5-minute averages (monthly usage divided into 5 minute intervals). The top 5% of these intervals shall be discarded and the next highest interval, inbound or outbound shall be used as the Affiliate's total bandwidth usage for the month. Billing for the excess bandwidth usage shall be included in the quarterly invoice of recurring costs.

6. For amounts of commercial Internet bandwidth of 100 Mbps or less, 100 Mbps of bandwidth to access the Internet2 network shall be made available at no additional cost to eligible users of the Affiliate's network. Parties who are otherwise connected to the Network that are eligible to access the Internet2 Network at no additional cost are educational institutions (non-profit and for-profit K-20, technical, and trade schools), museums, art galleries, libraries, or hospitals that require routine collaboration on instructional, clinical, and/or research projects, services, and content with Internet2 participants. In order to take advantage of access to the Internet2 network, eligible users must either be an Internet2 member or an Internet2 sponsored participant. FLR shall provide Internet2 sponsorship for eligible users as part of the Internet2 Secondary Educational Group Participant (SEGP) program at no additional cost to the Affiliate or eligible users.

Additional access to the Internet2 network may be requested at any time and shall be based upon the current price schedule, which is a 4-unit cost model. Internet2 access above 100 Mbps up to 250 Mbps is equivalent to 1 unit; above 250 Mbps up to 500 Mbps is equivalent to 2 units; above 500 Mbps up to 750 Mbps is equivalent to 3 units; 750 Mbps up to 1 Gbps is equivalent to 4 units. Affiliate shall be charged \$14,211 per unit due and payable in advance on an annual basis.

7. FLR agrees to allow the Affiliate to serve as a FLR Network Aggregator. As a FLR Network Aggregator, Affiliate shall be authorized to provide access to, or services across the Network through its fiber network to certain governmental, educational, research, medical, and other agencies and institutions which meet the criteria for non-equity participants in FLR (as described in paragraph 14 herein above), that have been approved by FLR ("Third Party Connections"). Each Third Party Connection shall access the FLR network at less than 100 Mbps. Affiliate shall be solely responsible for each Third Party Connection to its network and the FLR shall have no obligations whatsoever.

Affiliate shall be obligated to collect an annual downstream subscriber fee of \$1,200 per year from each Third Party Connection who utilizes the Network Services provided hereunder to Affiliate and remit such fee to FLR, in accordance with Exhibit C.

**EXHIBIT C**

**FLR AFFILIATE CONNECTION AGREEMENT  
PALM BEACH COUNTY GOVERNMENT, FLORIDA**

**THIRD PARTY CONNECTIONS  
DOWNSTREAM SUBSCRIBER FEE**

Under the Affiliate Connection Agreement, FLR agrees the Affiliate may utilize its connection to the Network as a "Network Aggregator," in accordance with Exhibit B. As a Network Aggregator, Affiliate shall be authorized to provide Third Party Connections that have been approved by FLR. Each Third Party Connection shall be less than 100 Mbps and delivered via Affiliate's fiber network to the FLR network.

The Affiliate Connection Agreement also provides that Affiliate shall be responsible for notifying FLR of any Third Party Connection and will be responsible for payment of the annual downstream subscriber fee for each Third Party Connection.

1. The initial annual downstream subscriber fee from each Third Party Connection shall be One Thousand Two Hundred Dollars (\$1,200.00) per year, which amount shall be prorated at \$100 per month in which each Third Party Connection is active, and invoice as provided in # 4 below
2. Notice of all proposed Third Party Connections shall be made to the Chief Financial Officer (CFO) of FLR via email. The type of agency (educational, medical, non-profit, etc.) being connected to the Affiliate's Network shall be disclosed to the FLR CFO in this transmittal. The CFO of FLR shall notify Affiliate, by email within 10 (ten) days if FLR has any objection to the proposed new Third Party Connection. FLR's decision as to the acceptability of a proposed new Third Party Connector shall be final.
3. The Affiliate shall also notify the CFO of FLR (and supply FLR with supporting information) if Affiliate believes the proposed new Third Party Connection should be exempted from the standard Third Party Connection fee of One Hundred Dollars (\$100.00) per month from the date of the activation of the Third Party Connection. FLR will consider the facts presented by Affiliate and rule on the exemption request within 10 (ten) days via email to Affiliate.
4. The Affiliate and FLR will review the Third Party Connection list once each year on/around Affiliate's eleventh (11<sup>th</sup>) Fiscal Month and reconcile the payment amounts applicable to that Fiscal Year. FLR will present invoice to Affiliate for the agreed upon annual Third Party Connection fees by the tenth (10<sup>th</sup>) day of Affiliate's twelfth (12<sup>th</sup>) Month of each fiscal year to enable Affiliate to process payment within that Fiscal Year.
5. The annual downstream subscriber fee shall be subject to periodic review and adjustment by the Board of Directors of FLR as provided in the Agreement.

R 2016 40116

**FIRST AMENDMENT**  
**TO AGREEMENT BETWEEN FLORIDA LAMBDA RAIL, LLC (FLR)**  
**And**  
**PALM BEACH COUNTY (COUNTY) for**  
**USE of FLR HIGH-SPEED, FIBER OPTIC NETWORK**

**THIS FIRST AMENDMENT** is made and entered into this JAN 26 2016 day of \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida (the "COUNTY") and Florida LambdaRail, LLC ("FLR").

**WHEREAS**, the parties have entered into that certain Contract dated June 3, 2014, (R-2014-0851) hereinafter referred to as the "CONTRACT", under which FLR is to provide access to their high-speed, fiber optic data network to the COUNTY, as more specifically set forth in the EXHIBIT A of the agreement, "SERVICE LEVEL UNDERSTANDING", EXHIBIT B, "FLR AFFILIATE CONNECTION AGREEMENT", and EXHIBIT C, "THIRD PARTY CONNECTIONS DOWNSTREAM SUBSCRIBER FEE", and;

**WHEREAS**, FLR and the COUNTY agree that the COUNTY requests a reduction to the standard Downstream Connection Fees paid by COUNTY on behalf of agencies connected to the FLR network and;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. **CONTRACT, EXHIBIT B, Section 7, Paragraph 2**, is amended to substitute the following in its entirety:  
  
Affiliate shall be obligated to collect an annual downstream subscriber fee in accordance with TABLE 1 in EXHIBIT C as amended from each Third Party Connection who utilizes the Network Services provided hereunder to Affiliate and remit such fee to FLR, in accordance with EXHIBIT C.
2. **CONTRACT, EXHIBIT C, Section 1**, is amended to substitute the following in its entirety:  
  
The initial annual downstream subscriber fee from each Third Party Connection shall be in accordance with TABLE 1, which shall be prorated at 1/12 the annual fee applicable per month in which each Third Party Connection is active and shall be invoiced as specified in # 4 below.



3. CONTRACT, EXHIBIT C, is amended to add the following TABLE 1 as Section 6:

TABLE 1 – Downstream Subscriber Billing Matrix	
Number of Downstream Subscribers	Monthly Recurring Charge / Subscriber
1 – 20	\$100.00 per Month
21 – 30	\$75.00 per Month
Greater than 30	\$50.00 per Month

4. CONTRACT, is amended to add Section 7 below:

Palm Beach County has already attained or exceeded 21 Downstream Connections as of September 30, 2015, therefore, effective October 1, 2015, Palm Beach County shall pay FLR \$75.00 per Third Party Connection per month until such time as Palm Beach County exceeds 30 connections, at which time the effective rate will be \$50.00 per Third Party Connection per month.

5. All other provisions of said CONTRACT, as amended, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

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IN WITNESS THEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this First Amendment on behalf of the COUNTY and FLR has set its hand the day and year above written.

R2016-0116

JAN 26 2016

ATTEST:  
Sharon R. Bock, Clerk and Comptroller

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY:

Deputy Clerk

BY:

Mary Lou Berger  
Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS:

BY:

County Attorney

BY:

Director, ISS

Florida Lambda Rail, LLC, a Florida limited liability company by,

NAME:

Joseph A. Lazor

TITLE:

Chief Executive Officer

DATE:

12-01-2015

WITNESS:

SIGNATURE:

Veronica Sargeant

PRINTED NAME:

VERONICA SARGEANT

DATE:

12-1-15

R201740761  
SECOND AMENDMENT TO  
AFFILIATE CONNECTION AGREEMENT

ATTACHMENT 4

THIS SECOND AMENDMENT TO AFFILIATE CONNECTION AGREEMENT (hereinafter referred to as this "Second Amendment") is made and entered into the ~~day of 6-2017~~ <sup>day of 6-2017</sup> 2017 by and between FLORIDA LAMBDARAIL, LLC, a Florida limited liability company (hereinafter referred to as "FLR"), and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "Affiliate").

RECITALS:

- A. FLR and Affiliate entered into that certain Affiliate Connection Agreement dated June 3, 2014 (Affiliate's reference No. R2014-0851) (hereinafter referred to as the "Agreement").
- B. FLR and Affiliate previously amended the Agreement by virtue of and pursuant to that certain First Amendment to Agreement between Florida LambdaRail, LLC (FLR) and Palm Beach County (County) for Use of FLR High-Speed, Fiber Optic Network dated January 26, 2016 (Affiliate's reference No. R2016-0116) (hereinafter referred to as the "First Amendment").
- C. FLR and Affiliate acknowledge and agree additional FLR services may be requested at any time and shall be based upon the current price schedule.
- D. FLR and Affiliate desire to further amend the Agreement (i) to provide for Affiliate to become an Associate Participant in FLR, (ii) to upgrade their bandwidth capacity on their primary and diverse paths from West Palm Beach, FL to 10Gbps each, (iii) to include an additional 5Gbps bandwidth capacity specifically between West Palm Beach, FL and Tallahassee, FL, and (iv) to increase their Committed Data Rate for Internet access to 3Gbps, all as more particularly provided for hereinbelow in this Second Amendment.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals; Defined Terms. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as fully as if set forth herein verbatim. Whenever defined terms or words of art, as indicated by the initial capitalization thereof, are used herein, such defined terms or words of art, if not defined herein, shall have the meanings ascribed to such terms in the Agreement.
2. Paragraph 15. Paragraph 15 of the Agreement is hereby revised to read in its entirety as follows:
  15. Use of Affiliate's Network for Last Mile Connectivity to the FLR Network. The parties understand and agree that Affiliate will also utilize its connection to the Network to deliver last mile connectivity to the Network to other affiliate participants of FLR (hereinafter referred to as "Affiliate Connectors"). Affiliate shall be authorized to provide connectivity to the FLR Network to Affiliate Connectors through a connection to its fiber network. Affiliate Connectors can be greater than 100 Mbps, and service to the Affiliate Connector shall be delivered via Affiliate's fiber network to the FLR Connection Point identified in the Installation Agreement. Both parties understand and agree that such connectivity shall be in accordance to provisions established under different and separate agreements between Affiliate and applicable Affiliate Connectors. FLR shall bill Affiliate for the provision of Network Services to each Affiliate Connector in accordance with the FLR Associate Participant Operating Guidelines referred to in paragraph 32 hereinbelow. In the event this Agreement shall terminate, Affiliate agrees to continue its service with Affiliate Connectors in accordance to the provisions established under the separate agreement for last mile connectivity between Affiliate and Affiliate Connectors. Affiliate shall be solely responsible for Affiliate Connectors' connection to Affiliate's network, and FLR shall have no obligation whatsoever in connection therewith.

3. Paragraph 32. The following new paragraph 32 is hereby added to the Agreement:

32. Associate Participant. Effective \_\_\_\_\_, 2017, Affiliate shall be and become an "Associate Participant" in FLR and shall have the rights, privileges and duties associated therewith. As consideration for becoming an Associate Participant, Affiliate acknowledges and agrees to pay an annual recurring Associate Participation Fee in the amount of \$15,000.00 per year, prorated for any partial year, in addition to any other fees and charges provided for in this Agreement. As a result of Associate's status as an Associate Participant, Affiliate Connectors receiving last mile connections from Affiliate may access the Network at greater than 99 Mbps without being required to pay a \$10,000.00 one-time installation and implementation fee or become an FLR Affiliate.

Affiliate as an Associate Participant shall comply with the Associate Participant Operating Guidelines, as the same are established and amended from time to time by the Board of Directors. Such Associate Participant Operating Guidelines include the following provisions:

(a) An Associate Participant is not an owner, does not own an equity interest in FLR and has no voting rights in FLR. Each Associate Participant must have and maintain at least one downstream connector (that is, an Associate must be qualified as a Network Aggregator in FLR).

(b) An Associate Participant connects directly to the FLR Network and is responsible for all arrangements for establishing and maintaining its connection, including, but not limited to, its own network equipment, hardware and local loops. An Associate Participant is also responsible for establishing and maintaining its own access security, including the security of user identification, password and other confidential information related to its participation.

4. Exhibit B. Exhibit B of the Agreement is hereby revised to read in its entirety as set forth in Schedule 1 of this Second Amendment.

5. Billing for Services Provided Prior to Execution of Second Amendment. Prior to the execution of this Second Amendment, FLR has, at the request of Affiliate, furnished the services described in **Schedule 2**, attached hereto and made a part hereof. Affiliate shall pay the charges for such services upon the receipt of an invoice therefor from FLR in the same manner as if the services had been provided after the execution of this Second Amendment.

6. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. Facsimile Copies. Facsimile or electronically transmitted copies of this Second Amendment and the signatures thereon shall have the same force and effect as if the same were original documents. Facsimile or electronically transmitted signatures are acceptable and shall be deemed to be original signatures.

8. Full Force and Effect. Except as expressly modified by this Second Amendment, the Agreement, as previously modified by the First Amendment, shall be and remain unchanged and in full force and effect.

[The balance of this page is intentionally left blank.]

Signed, sealed and delivered  
in the presence of:

Veronica Sargeant  
Print Name: VERONICA SARGEANT  
George L. Taylor, Jr.  
Print Name: George L. Taylor, Jr.

ATTEST:

Sharon R. Bock, Clerk & Comptroller  
By: Nancy Finelli  
Deputy Clerk  
(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: Paul F. J.  
County Attorney

FLORIDA LAMBDARAIL, LLC, a Florida  
limited liability company

By: [Signature]  
Name: Steve Bordelon  
Title: Chief Executive Officer

R2017 07 61 JUN 06 2017

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

By: Paulette Burdick  
Paulette Burdick, Mayor

APPROVED AS TO TERMS AND CONDITIONS

By: Steve Bordelon  
Steve Bordelon, Director, ISS

SCHEDULE 1

FEEES AND CHARGES  
FOR NETWORK CONNECTIVITY AND SERVICES

FLR AFFILIATE CONNECTION AGREEMENT  
PALM BEACH COUNTY GOVERNMENT, FLORIDA

1\*5 Gbps, 2\*10 Gbps & 2\*100 Mbps NETWORK CONNECTIONS  
3 Gbps (3,000 Gbps) – R&E/INTERNET SERVICES

PALM BEACH COUNTY GOVERNMENT	
Recurring Cost <sup>1</sup>	\$ 390,100

Payment Schedule	
1st Payment	\$ 97,525
2nd Payment	\$ 97,525
3rd Payment	\$ 97,525
4th Payment	\$ 97,525
Annual Total	\$ 390,100

- Notes:
- The above costs are based upon the Affiliate price schedule approved by the FLR Board of Directors. This price schedule is reviewed periodically and the fees and charges are subject to adjustments as needed from time to time by the Board of Directors. Notice of changes shall be provided in writing to Affiliate at least sixty (60) days prior to the effective date of the change; provided, however, that (1) such change shall only be effective at the start of the fiscal year of FLR, and (ii) changes shall occur not more than once per year.
  - Affiliate shall gain access to the FLR network via a direct connection to the FLR point of presence in West Palm Beach, FL obtained thru a provider of their choice as agreed upon in a separate agreement with that provider. The cost to establish these connections shall be negotiated and established under a separate contract between Affiliate and the provider and is not included in the charges listed above.  
  
Affiliate shall have one (1) 5Gbps direct connection to the FLR Point-of-Presence located in the GoRack facility in Jacksonville, two (2) 10Gbps redundant direct connections to the network infrastructure located in West Palm Beach, FL, and two (2) 100Mbps direct connections (Orlando and Miami) for access to Level3 SIP services.
  - Affiliate is responsible for all of their cost incurred for establishing and maintaining a connection to the network. With the exception of cross-connect fees for connecting the Affiliate and FLR networks, Affiliate's costs to establish these connections are not included in the costs listed above.
  - The recurring cost consists of several FLR services integrated into a single package. These services include network connectivity (i.e., cross connects and port charges) and support functions required to maintain the Affiliate's connection to the FLR infrastructure, use of the FLR Ethernet-based IP transport facility, and access to the commercial Internet (3Gbps). This cost is due and payable in advance on a quarterly basis and is effective the date the Affiliate initiates use of the FLR services. Annual advance payments are also accepted. Additional FLR network services may be requested at any time and shall be based upon the current price schedule.
  - FLR participants obtaining Internet services are provided settlement-free peering exchange of traffic between FLR and commercial Internet peering partners. Access to the commercial Internet is based upon a Committed Data Rate (CDR) and includes settlement free peers at no additional cost. Affiliate has a CDR of 3 Gbps (3,000 Mbps) per month.

**SCHEDULE 1**

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**FOR NETWORK CONNECTIVITY AND SERVICES**

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**PALM BEACH COUNTY GOVERNMENT, FLORIDA**

**1\*5 Gbps, 2\*10 Gbps & 2\*100 Mbps NETWORK CONNECTIONS**

**3 Gbps (3,000 Gbps) – R&E/INTERNET SERVICES**

Affiliate is encouraged to implement inbound and outbound rate limits to protect against inbound overuse and high bit rate outbound denial of service. If excess usage over the CDR is not corrected within 90 days following written notification thereof, Affiliate shall be charged \$9 per megabit for any use in excess of 110% of the bandwidth commitment. Excessive usage over the bandwidth commitment shall be calculated on a 95th percentile confidence interval (CI) based on 5-minute averages (monthly usage divided into 5 minute intervals). The top 5% of these intervals shall be discarded and the next highest interval, inbound or outbound shall be used as the Affiliate’s total bandwidth usage for the month. Billing for the excess bandwidth usage shall be included in the quarterly invoice of recurring costs.

For amounts of commercial Internet bandwidth of 100 Mbps or less, 100 Mbps of bandwidth to access the Internet2 network shall be made available at no additional cost to eligible users of the Affiliate’s network. Parties who are otherwise connected to the Network that are eligible to access the Internet2 Network at no additional cost are educational institutions (non-profit and for-profit K-20, technical, and trade schools), museums, art galleries, libraries, or hospitals that require routine collaboration on instructional, clinical, and/or research projects, services, and content with Internet2 participants. In order to take advantage of access to the Internet2 network, eligible users must either be an Internet2 member or an Internet2 sponsored participant. FLR shall provide Internet2 sponsorship for eligible users as part of the Internet2 United States Unified Community Anchor Network (USUCAN) program (formerly know as the Secondary Educational Group Participant (SEGP) program) at no additional cost to the Affiliate or eligible users.

Additional access to the Internet2 network may be requested at any time and shall be based upon the current price schedule, which is a 4-unit cost model. Internet2 access above 100 Mbps up to 250 Mbps is equivalent to 1 unit; above 250 Mbps up to 500 Mbps is equivalent to 2 units; above 500 Mbps up to 750 Mbps is equivalent to 3 units; 750 Mbps up to 1 Gbps is equivalent to 4 units. Affiliate shall be charged \$9,377 per unit due and payable in advance on an annual basis.

6. FLR agrees to allow the Affiliate to serve as a FLR Network Aggregator. As a FLR Network Aggregator, Affiliate shall be authorized to provide access to, or services across the Network through its fiber network to certain governmental, educational, research, medical, and other agencies and institutions which meet the criteria for non-equity participants in FLR (as described in paragraph 14 herein above), that have been approved by FLR (“Third Party Connections”). Each Third Party Connection shall access the FLR network at less than 100 Mbps. Affiliate shall be solely responsible for each Third Party Connection to its network and the FLR shall have no obligations whatsoever.

Affiliate shall be obligated to collect an annual downstream subscriber fee in accordance with TABLE 1, EXHIBIT C as amended (January 26, 2016) from each Third Party Connection who utilizes the Network Services provided hereunder to Affiliate and remit such fee to FLR, in accordance with the EXHIBIT C.

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3 Gbps (3,000 Gbps) – R&E/INTERNET SERVICES

Associate Participant Fee		\$15,000
5Gbps connection to GoRack facility, (Jacksonville, FL)		\$32,997
FLRNet (5G)-Jax (GoRack)	\$30,000	
FLR Port(1)	\$2,997	
2-10Gbps redundant connections to FLR (West Palm Beach, FL)		\$103,155
2x10G (WPB)	\$77,000	
L3 Fiber Termination	\$6,000	
Maintenance	\$8,160	
FLR Ports (2)	\$5,995	
L3 Cross Connects (2)	\$6,000	
2-100Mbps connections to FLR-Orlando and FLR-Miami for access to Level3 SIP services		\$22,948
FLRNet IP Transport (1x100M)-Orlando	\$8,000	
FLR Port (1)	\$1,284	
FLRNet IP Transport (1x100M)-Miami	\$8,000	
FLR Port (1)	\$1,284	
NOTA Cross Connect (1)	\$4,380	
R&E/Commercial Internet (3G@\$6/meg)		\$216,000
Total - Annual Recurring Components		\$390,100
FLR Quarterly Invoice Amount		\$97,525



SCHEDULE 2

FEES AND CHARGES  
FOR NETWORK CONNECTIVITY AND SERVICES

FLR AFFILIATE CONNECTION AGREEMENT  
PALM BEACH COUNTY GOVERNMENT, FLORIDA

BILLING FOR SERVICES PROVIDED PRIOR TO EXECUTION OF SECOND AMENDMENT

Prior to the execution of this Second Amendment, FLR has, at the request of Affiliate, furnished certain services as described below. The \*Net Due FLR amount below is a one-time payment due to FLR for network services provided in advance of final approval of this Second Amendment and is separate and apart from Total Recurring Cost as set forth in Schedule 1 hereinabove.

Charges/Credits for services prior to 2nd amendment approval

*Commercial Internet*

Fees for 2 Gbp of commercial Internet services from February to May 2017 (3 months)	\$ 36,000
Fees for 3 Gbps of commercial Internet services from May to June 2017 (2 months)	36,000
Credit for payment of 810 Mbps per month of commercial Internet services from February to June 2017 (5 months)	<u>-24,300</u>
	\$ 47,700

*FLRNet*

Fees for 5 Gbps of FLRNet IP Transport services from June 2016 to June of 2017 (1 year)	32,997
Credit for overpayment 1Gbps of FLRNet IP transport to NOTA from April 2015 to April 2017 (2 years @ \$17,484/year)	<u>-34,968</u>
	-\$ 1,971

Total prior services net of credits \$ 45,729

**Additional Credits**

Credit for overpayment of Collocation from May 2014 to May 2017 (3 years @ \$4,243/year)	-\$ 12,729
	<u>-\$ 12,729</u>

Net Due FLR\* \$ 33,000

**Information Systems Services**

301 N. Olive Avenue, 8th Floor  
West Palm Beach, FL 33401  
(561) 355-2823

FAX: (561) 355-3482 (8th Floor)  
FAX: (561) 355-4120 (4th Floor)

[www.pbcgov.com](http://www.pbcgov.com)



**Palm Beach County  
Board of County  
Commissioners**

Melissa McKinlay, Mayor

Mack Bernard, Vice Mayor

Hal R. Valeche

Paulette Burdick

Dave Kerner

Steven L. Abrams

Mary Lou Berger

**County Administrator**

Verdenia C. Baker

"An Equal Opportunity  
Affirmative Action Employer"

Official Electronic Letterhead

Florida LambdaRail, LLC  
1607 Village Square Blvd., Suite 4  
Tallahassee, Florida 32309-2772  
Attn: Chief Executive Officer

In accordance with the Affiliate Connection Agreement between Florida LambdaRail, LLC and Palm Beach County, Florida, R2014-0851, executed on June 3, 2014, Section 5. Term of Agreement, please be advised that Palm Beach County is exercising the option to extend the term of the agreement.

The new term of the Agreement will be effective April 16, 2018, through April 15, 2019, with three remaining one-year renewal options.

Palm Beach County, Florida

By: Steve Bordelon

Name: Steve Bordelon

Title: CIO, ISS Department

Date: 10/16/2018

Florida LambdaRail, LLC, a Florida  
Limited liability company

By: Joseph A. Lazor

Name: Joseph A. Lazor

Title: Chief Executive Officer

Date: 10.16.2018

**ISS Network Service Agreements with External Agencies  
Utilizing FLR Services**

**Municipalities**

- |                       |                        |
|-----------------------|------------------------|
| 1. Atlantis           | 10. Lantana            |
| 2. Boynton Beach      | 11. Orange County      |
| 3. Delray Beach       | 12. Palm Beach         |
| 4. Greenacres         | 13. Palm Beach Gardens |
| 5. Juno Beach         | 14. Palm Springs       |
| 6. Jupiter            | 15. Riviera Beach      |
| 7. Lake Clarke Shores | 16. Royal Palm Beach   |
| 8. Lake Park          | 17. Wellington         |
| 9. Lake Worth         | 18. West Palm Beach    |

**Educational Institutions**

- 1. Early Learning Coalition
- 2. Florida Atlantic University
- 3. Lake Worth Christian School
- 4. Learning Excellence (Imagine) School
- 5. Oxbridge Academy
- 6. Palm Beach State College
- 7. School Board of Palm Beach County

**Non-Profit Organizations**

- |   |                                    |
|---|------------------------------------|
| 1. ARC of Palm Beach County               | 8. Kravis Center                   |
| 2. Boca Raton Regional Hospital           | 9. Lupus Foundation of America     |
| 3. Center for Family Services             | 10. Lutheran Services Florida      |
| 4. Career Source (Workforce Alliance)     | 11. Max Planck Florida Corporation |
| 5. Community of Hope                      | 12. Nonprofits First               |
| 6. Families First of PBC                  | 13. Prime Time                     |
| 7. Jewish Federation of Palm Beach County | 14. South Florida Fair             |

**Other Taxing Authorities**

- 1. Children’s Services Council
  - 2. East Central Regional Wastewater Treatment Facilities
  - 3. Health Care District
  - 4. Lake Worth Drainage District
  - 5. Loxahatchee River Environmental Control District
  - 6. Seacoast Utility Authority
  - 7. South Florida Water Management District
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