

MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF CORAL GABLES
AND LARCO, INC. OF CORAL GABLES DBA RIVIERA DAY SCHOOL

FOR

FIBER I-NET OPERATIONS

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered this 16
day of ~~February~~^{March}, 2009, between the CITY OF CORAL GABLES ("CITY") and
LARQ, Inc. of Coral Gables dba RIVIERA SCHOOL ("SCHOOL").

WHEREAS, the CITY and SCHOOL are mutually interested in collaborating in education, government, research, and other non-commercial related activities; and

WHEREAS, the CITY and SCHOOL are entering into this MOU in light of the separate Cable Franchise Agreement with MediaOne of South Florida, Inc. ("Comcast") and a Letter of Understanding which also created an I-Net Agreement entered into on May 2, 2006, which are attached hereto as Composite Exhibit "A" and incorporated herein by reference; and

WHEREAS, the CITY and SCHOOL intend to use the I-Net Operations for educational purposes and the SCHOOL agrees that it will comply with the terms and conditions of the I-Net Agreement and will do nothing to jeopardize the I-Net Agreement between the CITY and COMCAST.

NOW THEREFORE, in consideration of the mutual terms, conditions and covenants herein contained, the parties hereby agree as follows:

ARTICLE I. TERM

- 1.01 The term of this MOU is for a period of three (3) years^{from the date internet service begins} and may not be terminated by the SCHOOL until the cost of the internet equipment, connection, installation and maintenance is paid in full as stated herein under Article II, Sections 2.04 or 2.05. *Pro 3/14/09*

ARTICLE II. CONSTRUCTION AND COSTS

- 2.01 The CITY shall be responsible for the equipment, connection, installation and maintenance of the I-Net provided by COMCAST in the sites located on the SCHOOL property.
- 2.02 The SCHOOL shall be responsible for submitting a service change request for any additional special network communication services that require changes in the connection.
- 2.03 The SCHOOL shall provide adequate facilities to install the network equipment and the fiber cabling necessary for the CITY to provide its services, including, but not limited to, keeping adequate power and environmental conditions for the equipment to operate, keeping the facilities secured and prevent access and actions by unauthorized persons that may affect the equipment, fiber cabling and the service.
- 2.04 For Basic Internet Connection, the SCHOOL shall pay the CITY a rate of Three Hundred Sixty Five Dollars and 00/100 (\$365.00) per month or Four Thousand Three Hundred Eighty Dollars and 00/100 (\$4,380.00) per year for a total of Thirteen Thousand One Hundred Forty Dollars and 00/100 (\$13,140.00) to compensate for equipment, connection, installation and regularly scheduled maintenance.

- 2.05 For Deluxe Internet Connection, the SCHOOL shall pay the CITY a rate of Five Hundred Thirty Two Dollars and 00/100 (\$532.00) per month or Six Thousand Three Hundred Eighty Four Dollars and 00/100 (\$6,384.00) per year for a total of Nineteen Thousand One Hundred Fifty Two Dollars and 00/100 (\$19,152.00) to compensate for equipment, connection, installation and regularly scheduled maintenance.

ARTICLE III. I-NET CONNECTION

- 3.01 All SCHOOL internet connections shall be through a shared network with an access speed of 10 Mbps (megabits per second) and is aggregated to a one (1) Gbps (gigabits per second) shared network backbone that is connected at a speed of 10 Mbps. It shall maintain as follows:
- 3.01.1 interconnectivity between networks;
 - 3.01.2 research network connectivity;
 - 3.01.3 back-up infrastructure for emergency use;
 - 3.01.4 allocated shared systems to facilitate the exchange of information;
 - 3.01.5 access to information for specific institutions, departments, and/or divisions of the CITY and SCHOOL;
 - 3.01.6 participation in the CITY'S goal for wireless internet; and
 - 3.01.7 opportunities for collaborative grants and proposals.
- 3.02 The Basic Internet Connection is provided through an ISP (Internet Service Provider) interconnected with Comcast's fiber optic cable at a speed of 10 Mbps for connection which may decrease when other Customers are connected to the same shared network.
- 3.03 The Deluxe Internet Connection is provided through an ISP (Internet Service Provider) interconnected with Comcast's fiber optic cable at a speed of 10 Mbps for connection which may decrease when other Customers are connected to the same shared network. It further offers a fail-over system designed to detect internet connectivity. When the primary connection system is lost, the system will automatically route all traffic to a DSL service provider. The design provides for system redundancy and high survivability should the primary connection be lost. The SCHOOL is responsible for procuring and maintaining DSL service from a provider in order to implement this connection.
- 3.04 The CITY shall provide no greater than eight (8) static IP addresses which shall be assigned, maintained and managed by the CITY. The CITY, in its sole discretion, may reassign the IP addresses if there are changes in the network that may require the reassignment. Any changes or reassignments shall be notified to the SCHOOL, in writing, at least thirty (30) days in advance.

ARTICLE IV. TITLE TO I-NET EQUIPMENT

- 4.01 Title of all equipment purchased with funds supporting the program conducted under this MOU shall be held by the CITY and/or COMCAST.

ARTICLE V. ACCESS

- 5.01 The SCHOOL shall provide the CITY access to the equipment on site twenty-four (24) hours a day, seven (7) days per week, and three hundred sixty five (365) days a year in order to provide service for mission critical applications.
- 5.02 The CITY shall notify the SCHOOL, in writing, of all regularly scheduled maintenance within a reasonable period of time prior to the maintenance.

ARTICLE V. PERMITTED USES

- 6.01 The SCHOOL shall not undertake use of the I-Net which does not comply with the I-Net Agreement between the CITY and COMCAST.
- 6.02 Should the CITY or the SCHOOL violate the use of the I-Net pursuant to the I-Net Agreement, that party alone shall be responsible for any penalties or damages pursuant to the terms and condition of the I-Net Agreement.
- 6.03 The SCHOOL agrees that the I-Net will only be used for noncommercial purposes and that it may not be used for commercial purposes. The SCHOOL shall not sell, lease, or otherwise provide outside services to other individuals or business entity (ies).
- 6.04 Individual programs of work will be jointly planned and conducted between SCHOOL and CITY and any benefits thereof shall be mutually exchanged by the SCHOOL and CITY, while the sponsoring institution of each program shall maintain primary ownership of any relevant data.
- 6.05 The CITY shall be provided the appropriate credit in any publications and presentations for its contribution to the program in form and content approved, in writing, by the CITY.
- 6.06 The SCHOOL is solely responsible for all usage and applications performed through the Internet connections provided by the CITY, i.e. the content and nature of all internet browsing, electronic mail communications, unauthorized access, and other security threats.

ARTICLE VII. OPERATION & MAINTENANCE

- 7.01 The SCHOOL and CITY understands and acknowledges that CITY relies on Comcast to perform pursuant to the I-Net Agreement and, if Comcast fails to do so, the CITY will not be liable for any loss of communications, consequential damages, or any other matter resulting from such non-performance.
- 7.02 CITY is responsible for maintaining and operating all I-Net equipment and such I-Net equipment will conform to the standards established pursuant to this MOU.
- 7.03 The CITY and SCHOOL is responsible for all other equipment not contemplated by this MOU.
- 7.04 All maintenance on I-Net equipment including hardware and software will be coordinated with all parties to insure minimal disruption of services.

- 7.05 If an I-Net outage occurs during normal business hours, it is to be reported to the IT Department's Help Desk via telephone contact.
- 7.06 The CITY will provide all parties with an emergency contact number to report I-Net outages that occur during non-business hours, i.e. evenings, weekends, and holidays).
- 7.07 The CITY will respond to reported I-Net outages in a timely manner and will report said outages to COMCAST and work with COMCAST to restore services in a timely manner.

ARTICLE VIII. DAMAGE, DESTRUCTION, OR TAKING OF PROPERTY

- 8.01 Any damage to the I-Net or its equipment due to cutting or destruction shall be replaced or repaired pursuant to the terms of the I-Net Agreement between the CITY and COMCAST, where such costs are not recoverable from a third party.
- 8.02 Should it be determined that the SCHOOL is at fault for any damage or destruction to the I-Net, the SCHOOL shall be responsible for the costs thereof, including labor costs.
- 8.03 The SCHOOL and CITY shall be responsible for its own costs for replacing or repairing any part of its equipment beyond that which is covered under this MOU.

ARTICLE IX. TERMINATION

- 9.01 The SCHOOL may withdraw from this MOU upon providing the CITY with one hundred eighty (180) days written notice of its withdrawal and upon payment of the full amount pursuant to Article II herein.
- 9.02 The CITY may withdraw from this MOU at its sole discretion if it is in the CITY's best interest.
- 9.03 Should the SCHOOL choose to withdraw from this MOU, it will agree, in writing, that it may no longer use the I-Net, that its I-Net sites will no longer be maintained by the CITY as provided herein, and that it may not recover any costs associated with the installation and/or maintenance of its I-Net sites from the CITY up to the date of withdrawal.

ARTICLE X. INDEMNIFICATION

- 10.01 The CITY and SCHOOL shall indemnify and hold harmless each party hereof, including its representatives, officers, agents, employees, the administration and elected and appointed officials against any and all loss, damages, liability, claims, suits, costs, expenses and judgments, whatsoever, including reasonable attorney's fees, arising from the negligent or willful acts, errors, or omissions of its officers, agents, employees, or subcontractors, in the performance of services, activities, or work conducted pursuant to this MOU.
- 10.02 The CITY and SCHOOL shall indemnify and hold harmless each party hereof, including its representatives, officers, agents, employees, the administration and elected and appointed officials against any and all loss, damages, liability, claims,

suits, costs, expenses and judgments, whatsoever, including reasonable attorney's fees, arising from any and all persons, firms, or corporations employed or contracted by the CITY or SCHOOL in connection with activities or services under this MOU.

10.03 The foregoing provisions shall survive the termination of this MOU.

ARTICLE XI. MISCELLANEOUS PROVISIONS

11.01 The CITY and SCHOOL agree that they will not assign or transfer any portion of or interest in this MOU directly or indirectly. Any attempt assign or transfer any portion of this MOU shall be null and void and any assignee or transferee shall acquire no right or interest by reason of such attempted assignment or transfer.

11.02 If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

11.03 This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing.


11.04 This agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations or policies of the CITY now in effect and those hereinafter adopted.

11.05 The location for settlement of any claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the CITY and SCHOOL have executed this MOU the day and year set forth hereinabove.

RIVIERA DAY SCHOOL


By  _____

APPROVED AS TO FORM

LOURDES ALFONSIN
ASST. CITY ATTORNEY


CITY OF CORAL GABLES

By  _____
Maria Alberro Jimenez
Interim City Manager

APPROVED AS TO FORM:

By  _____
Elizabeth M. Hernandez
City Attorney

ATTEST:

By  _____
Walter Foeman
City Clerk

3/26/09