

## REPORT SUMMARY SHEET

**BOARD MEETING DATE:** 5/21/2018

**TITLE AND BRIEF DESCRIPTION:** Fiber Contract

**ACTION DESIRED:** Approval

**BACKGROUND:** The Eldon School District will be working with WANRack to install 2.57 miles of dark fiber. This contract is contingent on E-Rate Funding.

**RECOMMENDATION:** Approval as presented.

**SUPERINTENDENT'S APPROVAL:**                     *Matt Darr*                      
For the purpose of submitting report

# WANRack

Date: 2.26.18

E-Rate: 80%

School District: Eldon School District

# of Sites: 3

**Description:**

Fiber Optic WAN with 2.57 miles of fiber construction connecting 3 sites  
 Same price - 1 or 100 Gig over 24 dedicated home run fibers to Hub  
 Free upgrades to 100 gig and beyond per site

Option #1				
All MRC with no upfront required				
	Initial Contract Options		Future Renewal pricing	
	10 Year	5 Year	after 10 Year contract	after 5 Year contract
Post E-Rate, Per Location *	\$220	\$290	\$110	\$145
Post E-Rate *	\$659	\$869	\$330	\$435
Pre E-Rate *	\$3,296	\$4,347	\$1,648	\$2,174
E-Rate Discount	80%	80%	80%	80%

\*All Pricing is Per Month

Option #2				
All MRC w/upfront special construction option E-Rate 2.0				
Upfront Special Construction Cost	Pre-Erate	Post E-rate	Per Year	
	\$98,000	\$19,600	or	\$4,900
	<small>*one time cost only</small>	<small>*one time cost only</small>		<small>*4 year lease</small>
	Initial Contract Options		Future Renewal Pricing	
	10 Year	5 Year	after 10 Year contract	after 5 Year contract
Post E-Rate, Per Location *	\$99	\$131	\$49	\$66
Post E-Rate *	\$296	\$393	\$148	\$197
Pre E-Rate *	\$1,480	\$1,967	\$740	\$984
E-Rate Discount	80%	80%	80%	80%

\*All Pricing is Per Month

This is a turn-key quote with all construction, electronics and maintenance included.  
 All Rates quoted are Monthly Recurring Charges (MRC)  
 Further savings may be captured by removing outlying schools.  
 E-Rate Discount is assumed

## WIDE AREA NETWORK LEASING AND SERVICES AGREEMENT

This Wide Area Network Leasing and Services Agreement is entered into this 14 day of March 2018, between Eldon R-1 School District (the "Lessee") and WANRack, LLC ("WANRACK") a Delaware LLC.

WHEREAS, WANRACK is in the business of leasing Wide Area Network facilities ("WAN Facilities") and providing telecommunications and Internet access services ("WAN Services"); and

WHEREAS, the Lessee desires for WANRACK to provide leased WAN Facilities and WAN Services to the Lessee.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Term and Termination.

a. **Term.** The term of this Agreement ("Term") will commence with the date on which WANRACK first provides the WAN Services hereunder and continue for a period of five (5) years with a five (5) year voluntary renewal. WANRACK will confirm the commencement date and expiration date of the Term, upon completion of installation, by providing Lessee with a commencement letter, which letter shall serve as final confirmation that the WAN Facilities have been installed. The second voluntary five-year term shall commence upon the expiration of first five (5) year term if both parties have consented in writing to the continuation of this Agreement for the second voluntary five year term prior to the expiration of the initial term. If there has been no mutual consent for continuation, then the Agreement will terminate upon the expiration date of the first five (5) year term.

b. **Termination.** Either party may terminate this Agreement prior to expiration of the Term only For Cause by giving written notice to the other party, and this Agreement will be terminated immediately upon such notice. As applied to the Lessee, "For Cause" means (i) the Lessee's failure or refusal to make any payment due to WANRACK hereunder within 10 days after the Lessee receives written notice from WANRACK of such failure or refusal, or (ii) the Lessee's continuing failure or refusal to perform any other material obligation under this Agreement within thirty (30) days after Lessee receives written notice from WANRACK of such failure or refusal. As applied to WANRACK, "for cause" means (i) WANRACK's continuing failure or refusal to perform any material obligation under this Agreement, within thirty (30) days after WANRACK receives written notice from Lessee of such failure or refusal, or (ii) willful misconduct, embezzlement, or other illegal or unethical acts by WANRACK.

c. **Effect of Termination.** If this Agreement is terminated by WANRACK For Cause, WANRACK will be entitled to recover as damages all fees that would have been payable to WANRACK under this Agreement for its full Term. In the event the Lessee terminates this Agreement for any or no reason prior to the maturity date, the Lessee agrees to pay a Deferred Capital Fee as detailed in Schedule A (other fees) in addition to any outstanding and remaining monthly recurring charges for the current fiscal year. The Deferred Capital Fee represents a recoupment of costs for WANRack for the construction, operating costs, maintenance costs, and other expenses related to the Lessee's network.

d. Upon the termination or expiration of this Agreement for any or no reason, WANRACK will have the right to remove any WAN Facilities located at facilities under the Lessee's control, and the parties agree to cooperate in effecting any such removal by WANRACK, as WANRACK may reasonably direct. Notwithstanding the foregoing, following such termination or expiration, WANRACK may elect to leave in place any WAN Facilities located at facilities and properties under the Lessee's control, and to use such WAN Facilities for other customers. In the

event that WANRACK elects to so leave in place any WAN Facilities, the Lessee agrees to provide WANRACK with continued access to Lessee facilities for maintenance purposes.

## 2. **Obligations of WANRACK.**

a. **Services and Facilities.** WANRACK agrees to lease the WAN Facilities to the Lessee, and to provide the WAN Services to the Lessee, in accordance with the terms of this Agreement, as more fully described in Schedule A attached hereto. Any changes in the WAN Facilities or the WAN Services, or any additional services to be provided by WANRACK to the Lessee, will be set forth in a change order or other document signed by both the Lessee and WANRACK.

b. **E-Rate Program.** If requested by the Lessee, WANRACK will work together with the Lessee to participate in the Schools and Libraries Program of the Universal Service Fund (the "E-Rate Program"), and in particular the parties will cooperate in maximizing the discounts available to the Lessee under the E-Rate Program in respect of the WAN Facilities and the WAN Services. However, notwithstanding the foregoing, the participation of the Lessee in the E-Rate Program is not a condition to either party's obligations under this Agreement.

c. **Delivery and Installation.** WANRACK will deliver, install, configure, and maintain the WAN Facilities, and the parties agree to coordinate and cooperate to schedule, facilitate, and carry out all delivery, installation, configuration, and maintenance activities. Without limiting the generality of the foregoing, the parties agree as follows:

i. **Staging, Storage, and Access.** During the installation of the WAN Facilities, the Lessee agrees to provide WANRACK with (i) suitable staging and storage areas at Lessee facilities for relevant equipment, materials, and components and (ii) such access to Lessee facilities as may be necessary to efficiently carry-out the installation, as reasonably determined by WANRACK, provided that such access must be scheduled with the Lessee in advance and, unless otherwise agreed by the Lessee, must occur between 7:00 a.m. and 10:00 p.m. Monday through Saturday, excluding national holidays. Lessee personnel may accompany WANRACK personnel during any installation work at any Lessee facility.

ii. **Site Preparation.** Prior to the installation of WAN Facilities, the Lessee will clean and otherwise prepare all installation sites and will continue to maintain those sites (but not, for clarity, the WAN Facilities) following such installation.

iii. **Debris Removal; Restoration.** WANRACK will remove from installation sites all debris resulting from the installation of WAN Facilities, including as appropriate by moving such debris to trash receptacles maintained by the Lessee. The Lessee will be responsible for trash removal from such receptacles. WANRACK will restore all landscaping disturbed the WANRACK's installation, maintenance, or removal activities. The Lessee will be responsible for landscape watering, including at restored landscaping sites.

iv. **Planning.** Appropriate representatives of WANRACK and the Lessee will meet approximately one month prior to the installation of the WAN Facilities, and otherwise as necessary, to formulate and finalize the installation methodology and configuration design for the WAN Facilities. The parties agree to work cooperatively and reasonably in this process.

v. **Timeline.** WANRACK and the Lessee agree to the installation and configuration timeline set forth in Schedule A attached hereto. The Lessee agrees to all

reasonable extensions of the installation timeline necessitated by the actions or inactions of the Lessee or otherwise resulting from circumstances beyond WANRACK's control.

vi. **Special Needs.** If additional labor or materials are needed to install or maintain the WAN Facilities due to unusual site requirements or other special needs or characteristics of the Lessee or its facilities, as reasonably determined by WANRACK, the Lessee will reimburse WANRACK for any corresponding extra costs incurred by WANRACK to address those requirements, needs, or characteristics.

vii. **Non-WAN Facilities.** The Lessee is responsible for the installation, configuration, and maintenance of all facilities and components that are not WAN Facilities. At the Lessee's request, WANRACK may install, configure, and maintain such facilities and components, subject to WANRACK's standard charges, terms, and conditions.

viii. **Deviations.** If, prior to or during the installation process, WANRACK, in its reasonable judgment, deems it necessary or prudent to deviate from the final installation methodology and design in a material way, it will present such deviation to the Lessee for its approval, which the Lessee may not unreasonably withhold or delay; provided, however, that WANRACK reserves the right to make, without such approval, changes in fiber routing, conversion from underground to overhead configuration to avoid obstructions, and other immaterial modifications to the final installation methodology and design.

ix. **Substitute Materials.** In the event any materials or components of or relating to the WAN Facilities are not available for timely delivery and installation, WANRACK may substitute materials or components of equivalent or superior functionality and performance.

d. **Manuals.** Where relevant, WANRACK will furnish to the Lessee with applicable manuals and instruction documentation provided by manufacturers and vendors.

e. **Maintenance.** WANRACK is responsible for maintaining the WAN Facilities. The Lessee agrees to provide WANRACK with such access to its facilities as may be necessary to efficiently carry out its maintenance activities, as reasonably determined by WANRACK, provided that, when practicable, (i) such access must be scheduled with the Lessee in advance and (ii) unless otherwise agreed by the Lessee, must occur between 7:00 a.m. and 10:00 p.m. Monday through Saturday, excluding national holidays. Lessee personnel may accompany WANRACK personnel during any maintenance work at any Lessee facility.

f. **Representations.** WANRACK represents and warrants to Lessee that: (i) it will comply with all applicable laws in installing the WAN Facilities and providing the WAN Services; (ii) this Agreement has been duly authorized, executed, and delivered by WANRACK, and (iii) the execution, delivery, and performance of this Agreement do not and will not conflict with, breach, or otherwise violate any of the organizational or governing documents of WANRACK or any agreement or instrument to which WANRACK is a party or by which WANRACK is bound

g. **Condition of WAN Facilities and WAN Services.** WANRACK makes no representation or warranty whatsoever regarding facilities and components that are not WAN Facilities, or regarding services that are not WAN Services. At the Lessee's request, WANRACK agrees to work on behalf of the Lessee to resolve warranty claims and other problems regarding such facilities and services, for a reasonable fee. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WANRACK DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE WAN SERVICES AND THE WAN FACILITIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND LESSEE ACKNOWLEDGES THAT THE WAN FACILITIES AND WAN SERVICES ARE PROVIDED AS-IS, EXCEPT AS EXPRESSLY PROVIDED HEREIN.

3. **Compensation to WANRACK.** The Lessee will pay for the leased WAN Facilities and the WAN Services in the amounts set forth on Schedule A attached hereto, and otherwise in accordance with Schedule A and this Section.

a. **Due Dates.** All fees will be paid no later than 30 days following the payment date specified on Schedule A, or if Schedule A does not specify a payment date, then no later than 30 days following the receipt by the Lessee of an invoice from WANRACK. In the event that any fees are payable on a monthly basis (or otherwise on a regular schedule), the fee for any partial month (or other relevant period) will be pro-rated accordingly.

b. **Late Payments.** Late payments will incur a late payment charge of (i) 1.5% for every month or partial month that the payment is late or (ii) if less, the maximum late payment charge permissible under applicable law.

c. **Changes in WAN Facilities and WAN Services.** If the WAN Facilities or WAN Services are changed, or WANRACK provides any additional services to the Lessee, the parties, acting reasonably, will agree on an appropriate adjustment or supplement to the fees.

d. **Taxes and Additional Charges.** All applicable federal, state, local use, excise, sales or privilege taxes, occupation taxes, duties, regulatory fees or similar liabilities charged to or against WANRACK or the Lessee because of the services furnished by WANRACK shall be assessed to and paid by the Lessee. The Lessee shall be required to provide documentation evidencing its' exemption from any such taxes or fees.

4. **Obligations and Representations of Lessee.**

a. **Security.** The Lessee is solely responsible for providing security services in respect of the WAN Facilities located at or on Lessee facilities or properties. The Lessee will provide such security services in a commercially reasonable manner, in light of all security considerations applicable to the relevant facility or property.

b. **Lessee Personnel.** The Lessee will ensure that its personnel and contractors, at all times, (i) are educated and trained in the proper use and operation of the WAN Facilities for the WAN Services (ii) follow applicable operations and instruction manuals.

c. **Electrical Circuits and Energy.** The Lessee will provide all electrical circuits and all electrical energy required for the installation and operation of the WAN Facilities at the sole cost of the Lessee.

d. **Insurance.** The Lessee will procure and maintain insurance policies covering all loss and damage in respect of the WAN Facilities located at facilities under the Lessee's control, including without limitation all materials and components located at Lessee facilities prior to, during, or after the installation process, with appropriate coverage limits and other terms and conditions. The Lessee will cause such insurance policies (i) to name WANRACK as an additional insured, (ii) to be endorsed to require at least 30 days notice to WANRACK prior to the effective date of any termination or cancellation of coverage, and (iii) to provide that in the event of any payment of any loss or damage thereunder, the insurers will have no rights of recovery against WANRACK. Upon request by WANRACK, the Lessee agrees to provide proof of insurance meeting the requirements of this Section.

e. **Representations.** The Lessee represents and warrants to WANRACK that: (i) the WAN Facilities and the WAN Services meet the Lessee's requirements; (ii) the Lessee will operate and use the WAN Facilities and the WAN Services in compliance with all applicable law; (iii) this Agreement has been duly authorized, executed, and delivered by the Lessee; and (iv) the execution, delivery, and performance of this Agreement does not and will not conflict with, breach, or otherwise

violate any of the organizational or governing documents of the Lessee or any agreement or instrument to which the Lessee is a party or by which the Lessee is bound.

**5. Ownership of WAN Facilities; Confidentiality.**

a. **Ownership.** The parties acknowledge and agree that the WAN Facilities are owned by WANRACK and will continue to be owned by WANRACK following the expiration or termination of this Agreement. The Lessee has no option or other right to purchase or otherwise acquire the WAN Facilities from WANRACK. The Lessee acknowledges and agrees that: (i) WANRACK may use the WAN Facilities for other customers, (ii) the Lessee may not make any alterations or attachments to the WAN Facilities without WANRACK's prior written consent, (iii) WANRACK has no maintenance or other obligations whatsoever with respect to any alterations or attachments made to the WAN Facilities by the Lessee, (iv) if WANRACK provides any maintenance or other services in respect of any such alterations or attachments, WANRACK will provide such services subject to its standard charges, terms, and conditions, (v) WANRACK is not responsible for any malfunction, non-performance, or performance degradation of the WAN Facilities, or any inability of WANRACK to satisfy its obligations under this Agreement, caused by, or resulting directly or indirectly from, any alteration or attachment made to the WAN Facilities by the Lessee, or any other action by the Lessee, and (vi) the Lessee is solely responsible for, and agrees to indemnify WANRACK against, all claims and damages caused by, or resulting directly or indirectly from, any alteration or attachment made to the WAN Facilities by the Lessee.

b. **Confidentiality.** Each party acknowledges (a) that it will have access to confidential information of the other party, (b) that such information constitutes valuable, special, and unique property of the other party, and (c) that no right or license is granted to such party with respect to such information, except as specifically set forth in this Agreement. Each party agrees that it will not at any time, in any manner whatsoever, whether directly or indirectly, disclose to any person or entity, or use, any confidential information of the other party, except as required by law or as necessary for the performance or enforcement of this Agreement. For purposes of this Agreement, the term "confidential information" means all non-public and proprietary information of or concerning one party that is disclosed or made available to the other party (including its employees or other representatives), including, without limitation, the terms of and prices under this Agreement and any non-public information concerning a party's business, operations, plans, processes, products (including related manuals and support materials), systems, marketing information, diagnostics, specifications, know-how, personnel, patrons, students, or data of any kind. The parties agree that the terms of this Agreement shall constitute "confidential information". Each party will ensure that its employees and other representatives comply with the confidentiality obligations under this Agreement. Each party agrees that it will not copy the confidential information of the other party other than on an "as necessary" basis in connection with the performance or enforcement of this Agreement. Upon the request of other party, or upon the termination or expiration of this Agreement, each party agrees to return or destroy any confidential information of the other party in its possession. Furthermore, the Lessee agrees to promptly notify WANRACK for any open records/public information request that it may receive concerning this Agreement, pricing or any confidential information and allow WANRACK opportunity to analyze and oppose release of requested information as may be provided by law. The parties acknowledge that remedies at law may be inadequate to protect against any actual or threatened breach of the confidentiality obligations under this Agreement, and, without prejudice to any other rights and remedies otherwise available, agree to the granting of injunctive relief without proof of actual damages. The parties agree that the foregoing obligations regarding confidentiality will survive the termination or expiration of this Agreement.

6. **Miscellaneous.**

a. **Independent Contractor.** The parties agree that WANRACK is an independent contractor with respect to the Lessee. Nothing contained herein may be construed as making the parties hereto partners or joint venturers or creating a principal and agent relationship. WANRACK has no authority to create any obligation or responsibility on behalf of, or in the name of, the Lessee, or otherwise to bind the Lessee in any way. Likewise, the Lessee has no authority to create any obligation or responsibility on behalf of, or in the name of, WANRACK, or otherwise to bind WANRACK in any way.

b. **Notice.** Any notice, demand, waiver, or consent under this Agreement must be in writing and delivered by facsimile (receipt confirmed), by prepaid registered or certified mail (with return receipt requested), or by a national overnight courier service, addressed as set forth below. All such notices, demands, waivers, and consents will be effective upon receipt or refusal of delivery, whichever occurs first. Either party may change its address or facsimile number by giving notice to the other party in accordance with this Section.

If to WANRACK:	WANRack, LLC 15700 College Blvd, Suite 200 Lenexa, KS 66227
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If to the Lessee:	Eldon R-1 School District Attn: Superintendent 112 South Pine Street Eldon, MO 65026
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c. **Force Majeure.** Neither party will be liable for the failure to fulfill its non-monetary obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; fiber cut caused by a third party without any negligence by WANRack and such third party is not a subcontractor, agent or representative of WANRack and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, cities, municipalities, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the WAN Facilities.

d. **Waiver of Jury Trial; Limitation on Damages.** Each party waives trial by jury with respect to any dispute regarding or arising under this Agreement. WANRACK will not be liable to the other party for any indirect or consequential damages, including but not limited to, lost profits or business revenue, lost business, failure to realize expected savings, lost or damaged data, other commercial or economic loss of any kind, whether such damages are foreseeable by either party. Each party agrees that, prior to taking any legal action, regardless of its form, relating to or arising under this Agreement, it will work in good faith with the other party in an effort to resolve the disputed matter.

e. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction (i) will be deemed modified to reflect the intent of the parties, determined by reference to the invalid or unenforceable term or provision, to the greatest permissible extent and (ii) will not affect the validity or enforceability of the remaining terms



and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or jurisdiction.

f. **Governing Law; Construction.** This Agreement shall be governed by the laws of the State of Kansas and venue for any lawsuit concerning this Agreement or the services provided hereunder shall be in the appropriate courts of Johnson County, Lenexa, Kansas. This Agreement is to be construed as the joint and equal work product of each party and may not be interpreted more or less favorably in respect of either party on account of its preparation or drafting.

g. **Assignment; Successors.** This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the parties to this Agreement; provided, however, that neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, which may not withhold or delay its consent unreasonably. Notwithstanding the preceding sentence, WANRACK may, without the Lessee's consent, (i) assign its rights and obligations under this Agreement to an affiliate, (ii) assign its right to receive payments under this Agreement to any creditor, and (iii) assign its rights and obligations under this Agreement to an entity acquiring all or substantially all of WANRACK's assets. Any purported assignment prohibited by this provision will be null and void.

h. **Waiver.** Any failure or delay by either party in exercising any right or remedy under this Agreement will not constitute a waiver of that right or remedy. Any waiver by either party of any right or remedy under this Agreement must be in writing and signed by the party waiving the right or remedy.


i. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof and supersedes any and all prior agreements or understandings, written or oral, including any documents exchanged between the parties during any request for proposal or bidding process. Any amendment to this Agreement must be in writing and signed by both parties.

j. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but which together will constitute but one and the same instrument. This Agreement may be delivered by facsimile transmission of signed signature pages, with executed originals to follow by overnight courier or certified mail (return receipt requested).

The parties execute this Agreement effective as of the day and year first above written.

WANRACK, LLC

Eldon R-1 School District

By:   
Name: Rob Oyler  
Title: CEO

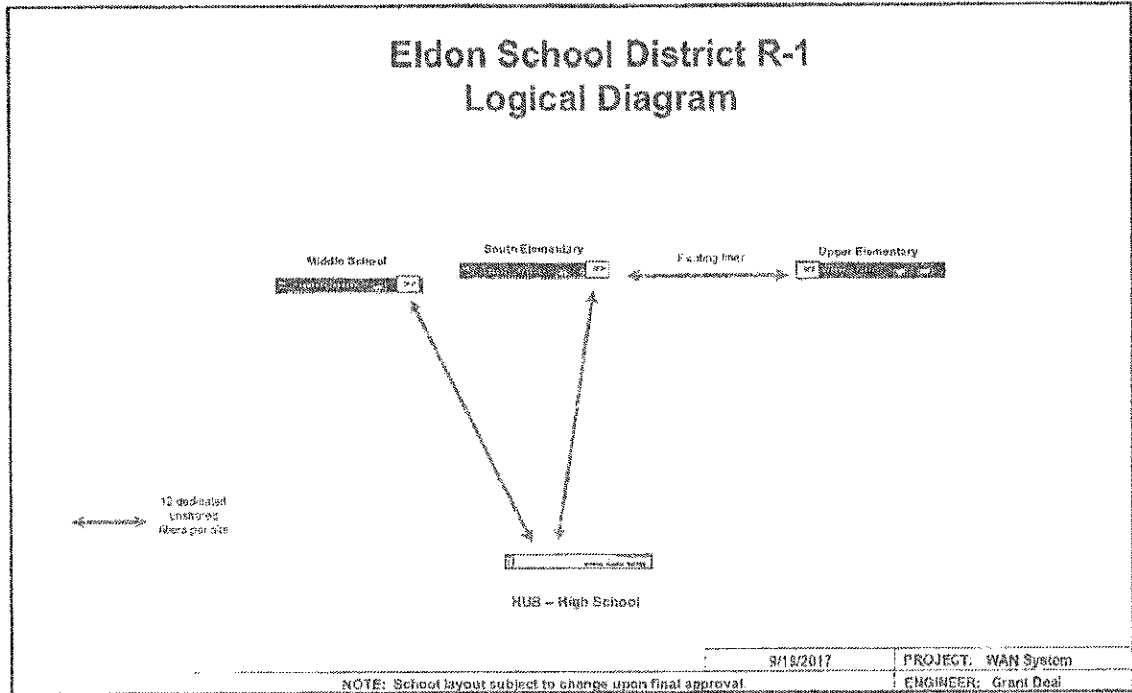
By:   
Name: Matt Davis  
Title: Superintendent

**Schedule A**

**WAN Facilities and WAN Services**

Lit leased service over fiber optic wide area network (WAN). Point to Point 10 Gig service from the Hub location located at 101 South Pine Street, Eldon, MO 65026 to the following edge sites:

1. South Elementary School – 1210 S Maple, Eldon, MO 65026
2. Eldon Middle School – 1400 N Grand Avenue, Eldon, MO 65026



**Installation Timeline**

Anticipated delivery of service shall occur approximately (90) days after the acquisition of all necessary permits, licenses pole attachment agreements and rights of way to complete the project.

**Fees and Payment Schedule**

1. **Installation or Other Up-Front Fees** – \$98,000.
2. **Monthly Fees** - Monthly lease payments of \$1,967 beginning upon the delivery of service and continuing for a term of 60 months.
3. **Other Fees** - All applicable federal, state, local use, excise, sales or privilege taxes, occupation taxes, duties, regulatory fees or similar liabilities shall be paid by the Lessee in addition to the regular charges under this Agreement unless exempt.

Other Fees

All applicable federal, state, local use, excise, sales or privilege taxes, occupation taxes, duties, regulatory fees or similar liabilities shall be paid by the Lessee in addition to the regular charges under this Agreement unless exempt and exemption certificate is received prior to first bill.