



**AGENDA ITEM EXECUTIVE SUMMARY**

Title: Recommendation to Approve Intergovernmental Agreement with District 303 for Fiber Services

Presenter: Tom Bruhl

*Please check appropriate box:*

<input type="checkbox"/>	Government Operations	<input checked="" type="checkbox"/>	Government Services 04.25.16
<input type="checkbox"/>	Planning & Development		City Council
<input type="checkbox"/>	Public Hearing		

Estimated Cost:	\$NA	Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

**Executive Summary:**

The City and D303 have worked together since 2000 to interconnect all D303 facilities and had an Intergovernmental Agreement (IGA) covering these services that expired. The City commissioned Utility Financial Solutions to perform a rate study for the fiber system in 2015. That study was the basis for a revision to the cost sharing structure between D303 and the City.

After investigating alternative solutions, D303 has elected to seek a new IGA with the City for fiber services. The 10 year agreement includes D303 paying a fair share of the total system maintenance costs and limits City risk to the extent possible. D303 and City legal counsels have reviewed and approved the document. The D303 School Board recently approved the agreement.

**Attachments:** *(please list)*

\*Intergovernmental Agreement

**Recommendation / Suggested Action** *(briefly explain):*

Recommendation to approve Intergovernmental Agreement with School District 303 for Fiber Optic Services.

*For office use only:* Agenda Item Number: 4.g

**INTERGOVERNMENTAL COOPERATION AGREEMENT**  
**BY AND BETWEEN**  
**THE BOARD OF EDUCATION OF ST. CHARLES COMMUNITY UNIT SCHOOL**  
**DISTRICT NO. 303**  
**AND**  
**THE CITY OF ST. CHARLES**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into on the 11th day of APRIL, 2016, by and between the Board of Education of St. Charles Community Unit School District No. 303, Kane County, Illinois (“Board” or “District”) and the City of St. Charles (“City”).

WHEREAS, the City, a home rule Municipal Corporation (“City”), owns and operates an electrical transmission and distribution utility and has undertaken various telecommunications activities in support thereof; and

WHEREAS, St. Charles School District No. 303, a K-12 public school system operating under the School Code (105-ILCS 5/1-1 et seq.) with its principal offices located in St. Charles, Illinois; and

WHEREAS, Article VII, Section 10 of the Constitution of the State of Illinois, and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) provides that units of local government and school districts may contract among themselves to obtain or share Services and to exercise powers and functions; and

WHEREAS, the City has constructed and maintains a Fiber Optic Telecommunications System connecting its operations center with various operating facilities and office locations, and provides data transmission and Internet access services for its own use; and

WHEREAS the City and District desire that the nature of the fiber network architecture to be dark fiber maintained by the City with optical switch equipment owned, maintained, and operated by District; and

WHEREAS the City is willing to assist the District in developing an independent telecommunications capability through the sharing of equipment and costs;

NOW THEREFORE, it is hereby agreed to by the City and the District as follows:

I. **Scope of Agreement** The District desires to have a fiber connection between and among its Administration Office, all of its educational facilities, and the Kane County Circuit Clerks building on Randall Road. The City has developed a backbone system between City facilities and has numerous extensions to other City facilities, District facilities, and Kane County facilities. The backbone system and extension system related to District facilities is shown in Exhibit A (“Backbone”). The City will lease fibers within the Backbone and the extensions to the District to connect their facilities. The existing lit fiber system that the City

provides to the District will be converted to a dark fiber lease structure based on the schedule in section II.

II. **Conversion** The City will provide design and technician assistance to facilitate conversion to a dark fiber system. The proposed conversion schedule is as follows:

Within 90 days of this Agreement and payment by District to City for the installation costs as provided in Section III, the City will do the following:

- Replacement of extension to St. Charles East High School with 96 fiber count and 96 patch panel inside East High School; and,
- Replacement of extension into the District's Administrative Office with 96 fiber count from manhole in Indiana Street and 96 patch panel inside the Administrative Office.

The patch panels described in this Section II will be considered part of the City maintained Telecommunications System and will act as the maintenance demark.

Within 180 days of execution of this Agreement and payment by District to City for the installation costs as provided in Section III, the City will do the following::

- Conversion of all District facilities to dark fiber per schematic shown in Exhibit A.

III. **Conversion and Installation Costs** The City will provide the District with technician assistance to facilitate conversion to a dark fiber system. The estimated cost to upgrade the two main nodes of East High School and the District's Administrative Office, and to re-splice fiber and move fiber terminations to facilitate the modification of the system to a completely dark fiber lease is \$24,100. After ratification of this agreement, the City and District will complete the conversion work and a bill for the actual costs incurred by City shall be forwarded to the District.

Additionally, District shall pay City for its labor and material costs incurred in the extension of such system to future District facilities or for additional extensions that may be developed to provide redundant communication paths. The District may request additional facilities connected under this agreement by paying the actual cost incurred by City for the connection, and agreeing to amend the annual maintenance charges due to the City.

IV. **Maintenance Expenses** City shall have the responsibility to maintain and repair the Backbone of the City Fiber Optic Telecommunications System, provided, however; that District shall pay City the sum of \$376 per month (\$4,510 annually) for each pair of fibers connected at any District facility. Maintenance, as defined below, of the extensions to District facilities will be performed by the City. During the first year of the Agreement, there will be 21 pairs of fibers connected at District facilities, meaning the total maintenance charge will be \$94,710.00 during the first year of the Agreement. Additionally, for its share of maintenance expenses District shall pay City \$0.08 per foot per year for each pair of fibers which are extensions off of the City Backbone to District facilities for the first year of this Agreement. The basis for footage will be established via an optical time-domain reflectometer ("OTDR") or other method agreed upon by the parties. The basis for the maintenance costs for the first year of this Agreement is a 2015 Rate Study conducted by a consultant, namely Utility Financial Solutions (UFS). The basis for maintenance related costs will be reviewed by the parties once per year (on

the anniversary date of the Agreement) and revised as appropriate by increases in costs, such as labor rates and inflation, by mutual agreement. Cost revisions may also reflect changes in the number and type of connections on the system. Any cost revisions that occur during the year will be reflected on the next annual payment. During the first year of the Agreement, there will be 242,910 feet of connections, meaning that this charge will be \$19,432.80.

Generally maintenance shall be defined as JULIE locations for underground fiber, and labor and material projects that do not relate to new fiber placement and where labor is less than 16 man hours and material costs are less than \$1,000. The City shall assist the District in repairs related to acts of God; however, repairs that exceed the maintenance threshold above shall be considered capital work as defined below. Repairs related to third party incidents are addressed in this agreement in Section X (B) (3).

This basic maintenance rate, with no capital replacement contribution, is originally calculated at \$0.08 per fiber pair per foot. As the District has selected this rate, such will require the District to budget for and construct end of life replacement of all fiber extensions to District facilities and to fund any relocations related to public improvement work that creates conflict with the existing fiber extensions. Additionally, the City shall be held harmless from any and all liabilities related to end of life fiber extension failures or fiber/communication problems related to multiple repair splices in the existing extensions.

Capital work shall be defined as any new fiber placement, either as an addition or replacement of existing. The City may provide a quotation for capital projects but is not obligated to provide such.

With regard to relocations related to public improvement projects, Backbone relocations will be performed by City without any additional payments from District. For relocations of extensions to District facilities off of the Backbone, and understanding that relocation work is dictated by other parties, the City agrees to provide as much advanced notice as possible of work to be performed and requirement of an assessment payable by the District. City may provide an estimate for the engineering and construction of the relocation, which would be payable upon completion and reconciliation of actual costs incurred. District may choose to engineer and/or construct the projects themselves with coordination with City with regard to material and installation standards and cutovers, with a final City acceptance inspection. City shall not be responsible for maintaining fiber that does not meet the material and installation standards of the City. Should the City or District receive information regarding potential capital work the District is responsible for, City or District shall make all efforts to provide notice to the other party as early as possible.

Every two years, the City and District will equally share the cost of having a rate consultant refresh the UFS study numbers. The City will use their standard procurement processes to obtain quotations for the consultant refresh work. The City will manage the contract with the consultant, and 50% reimbursement of the final contract cost will be billed to the District in the following year.

The addition or subtraction of total connected facilities will impact the annual maintenance costs. Additional non-District connections will be made at the sole discretion of the City. The District may subtract connections to its facilities, and will no longer be charged any maintenance costs for connections that are no longer in use.

As an option, the City may choose to co-locate equipment, as provided for in Section VIII below, within and on District facilities. The intent of this clause is to create an option for the City when developing communication infrastructure related to Automated Meter Reading or other City automation, communication, or radio needs. When requested, the City will design, construct, and maintain the improvement, and the District will be responsible to reasonably approve the plans. City will reimburse District for labor expenses incurred as part of supervising City personnel inside District facilities for City desired work related to City co-location of switches and ancillary equipment within or on District facilities.

The City will be responsible for managing optical losses. Optical losses shall be limited to the dB losses per mile of fiber, 0.3 dB per splice, and 0.75 dB per mated pair patch panel termination. Should the losses on any line exceed the limit, the City will promptly engineer and construct repairs to the line. City will be responsible for backbone repairs, and resplicing/reterminating on extensions should those elements be determined to be the cause of the problem. District will be responsible for fiber extension replacement should the unacceptable losses be related to dB losses per mile in the fiber itself or due to the number of splices and terminations. Should any fiber pair that is currently within allowable losses cease to be adequate for District broadband, and replacement of the Backbone elements and elimination of splices is reasonably expected to rectify the deficiency, the City and District may enter into an agreement to make such modifications on a case by case basis.

The City has an agreement for pole attachments with ComEd for extensions outside of the Corporate Boundaries of St. Charles. The City shall pass through such costs to the District as part of the annual billing.

For tree trimming projects, the City and District may enter into agreement for the City to contract for tree trimming service and pass through costs to the District.

Additionally, the District will reimburse the City for any administrative expenses related to financial or other form completion that the District desires. An example of such is completion of forms and documents for District E-Rate reimbursement.

The District and the City can agree to share installation costs on modifications or enhancements to the "Backbone" that would be mutually beneficial.

The City anticipates normal replacement of fiber after 20 years of service. If not replaced for other reasons prior to 20 years, City will budget, plan, and schedule fiber backbone replacements after a run has been in service for 20 years. Replacement will be completed before a run reaches 22 years in-service.

The maintenance fee for the first year of this Agreement will be due within 30 days of the execution of this Agreement. Thereafter, maintenance fees will be billed annually and shall be due on July 1 of each year.

V. **Network Architecture**. The extensions from the existing backbone to the District facilities are currently of radial design. For cable cuts or problems, City will make reasonable efforts to restore service. Availability of City staff to address fiber extension restoration after normal business hours, or during City emergencies, may not be acceptable to the District. The District, at District expense, may request installation of redundant fiber feeds and/or development of a mutually acceptable contractor that can be deployed when City staff is not available. Should a contractor be necessary to provide restoration services, the contractor costs shall be borne by the District.

Normal business hours for City Meter & Communications staff shall generally be 7 a.m. to 3 p.m. on non-holiday weekdays.

For fiber communication issues, the District will notify the City of the problem. The City will make reasonable efforts to respond and perform diagnostic testing up to the patch panel at the District facility. If the problem is on the part of the system that the City is responsible for maintaining, the City will make reasonable efforts to restore service. If City staff is not available, the use of a mutually acceptable contractor for restoration services can be requested by District, and District will be responsible for the cost. Should the problem be inside the District facility, and beyond the patch panel demarcation point, City staff time shall be billable to the District if such happens more than two times a year. Before the City upgrades the Backbone in a manner that is reasonably expected to cause the District to incur additional expense, the City shall provide the District with one year's written notice of such upgrade.

Note that the first patch panel at each District facility will be considered part of the City maintained telecommunications system and will act as the maintenance demark.

VI. **Taxes** In addition to the charges stated herein, the District will be billed for and shall be responsible for payment of any and all applicable taxes and fees imposed by authorized local, state and federal governmental jurisdictions with respect to the services provided hereunder.

VII. **Term and Termination** This Agreement shall remain in effect for a term of ten years. Notwithstanding such ten-year term, District may elect to terminate this Agreement at any time without cause, provided that District shall thereupon forfeit any sums theretofore paid to City hereunder. After the expiration of such ten-year term, City may elect to terminate this Agreement without cause. If District shall default and fail to cure as provided in Section X.C. hereunder, then City may terminate this Agreement for cause and District shall forfeit all payments theretofore made to City hereunder. Upon termination of this agreement, City reserves the right to remove, or abandon in place, all City owned or maintained equipment from District facilities as City deems appropriate, and District agrees to provide City access to said facilities as required by City.

Upon termination, fiber extensions that are solely used by the District will become District responsibility, including the responsibility to either establish and pay for pole attachments or remove fiber from ComEd poles. Should the District and ComEd not be able to come to agreement, and ComEd insists on removal of the fiber, the cost for removal shall be borne by the District. For fiber extensions shared with City or other parties, ownership of said fiber runs will revert to City.

#### VIII. Use of District Property.

The extensions from the Backbone to the District facilities will be paid for by the District at time of installation and will remain under the ownership of the District. District shall provide City with a location at each District facility for installation of a fiber optic patch panel, which will serve as the point of demarcation of maintenance responsibility. The City will take responsibility for maintenance of the patch panels with the District acknowledgement that City may use such patch panels for extension of the Fiber Optic System to other City locations, and District agrees to permit City access to such patch panels during normal business hours upon reasonable advance notice from City or pursuant to such procedures as hereafter established by City and District. The City use of spare fibers within a District extension shall not trigger the recapture provisions below.

District also acknowledges the Backbone fiber communications system is and will remain the sole property of City. Monetary contributions, now or in the future, by the District do not indicate ownership of equipment or facilities unless explicitly stated as such. District also acknowledges that the Backbone system installed by City may be used to provide communication services to City facilities or facilities of others at City's sole discretion. All extension facilities paid for by District outside of the City are subject to possible recapture (not to exceed 50% of installation cost of the subject portion) if used to provide services to other than the City or District within the contract term.

#### IX. Insurance.

Each Party shall keep in force at all times during the term of this Agreement, General Liability Insurance, on an occurrence basis, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and the aggregate and at all times naming the other party to this Agreement, its individual board members, employees, and agents as additional insureds thereon. Each Party's insurance coverage shall include its indemnification obligation under Paragraph X(B) of this Agreement. In addition, within five (5) days of the last party to execute this Agreement, each Party shall furnish to the other a certificate of the insurance evidencing the insurance required under this Agreement. Upon request by a party hereto, District and City shall provide a copy of the insurance policy, and any endorsements thereto.

#### X. General Conditions

- A. Force Majeure Performance by either party shall be excused by an unforeseen occurrence beyond the control of a party which causes a delay or total or partial failure of performance by such party, including but not limited to (1) acts of God; (2)

acts of failure to act on the part of any governmental authority other than City or District (including but not limited to changes in or enactment of laws, rules, regulations, codes, or ordinances subsequent to the date of this Agreement); (3) acts of war or public disorders, civil violence or disobedience, blockages, strikes, lockouts, labor disputes, sabotage, insurrection or rebellion; (4) floods, hurricanes, earthquakes, tornadoes, or other similar calamities; (5) explosions or fires; (6) accidents in transportation; or (7) vandalism or cable cuts.

B. **Liability** To the extent permitted by law, each party shall otherwise indemnify and hold the other party harmless from and against any losses damages, costs or expenses to the extent such losses, damages costs or expenses are in consequence of a party's negligence or willful misconduct. Each party shall further indemnify and hold the other party harmless from, against, and in respect of and shall on demand reimburse the other for:

- 1) Any and all loss, liability or damage resulting from any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement contained herein; and
- 2) Any claims from third parties arising out of the acts or omissions of a party under this Agreement; and
- 3) Parties agree that repair and restoration of damages related to third party negligence, for example a vehicle accident, will be processed by the City to the third party. Should there be any additional consequential damages to the District, the District may, at its option, pursue additional claims/suits against the third party. For major damage claims defined as damage that exceeds \$10,000 in total City expenses related to complete restoration of the damage, the City will make normal efforts to recover such expenses from the third party. City and District will mutually agree to settlement amounts for major damage claims. The District will be responsible for reimbursing the City for any unrecovered damage claims and will make the City whole. Any further litigation against the third party would be District responsibility.

C. **Default.** A default shall be a failure to make a payment under this Agreement within 60 days of its due date or a failure by either party to perform any material obligation, duty, or responsibility under this Agreement. A default in a payment may be cured by making such payment plus interest at 7% per annum within 30 days. A party in default for failure to perform shall have 90 days from receipt of written notice from the other party to cure such default. A non-defaulting party may terminate this Agreement as provided in Section VII hereof, if such default is not cured within the period provided. No waiver of any default shall extend to or affect any subsequent default or impair any rights or remedies of the non-defaulting party. A non-defaulting party shall have available to it all remedies, legal and equitable, including without limitation those available in order to enforce payment of any amounts due hereunder or performance or observance of any other provision or condition hereof.

D. **Notices.** Any notices and communications required to be given under this Agreement shall be in writing and, except as otherwise expressly provided, shall be either (i) mailed by registered or certified mail, return receipt requested, postage prepaid, (ii) sent by electronic facsimile transmission, or (iii) personally delivered by hand against receipt therefor to the parties at the address set forth below, or such other address as any party may designate to the others by notice hereunder. All such notices shall be deemed to have been received on the date of personal delivery, electronic facsimile transmission, or, if mailed, on date of receipt.

To the City:                   City of St. Charles  
                                      2 East Main Street  
                                      St. Charles, IL 60174  
                                      Attn: City Administrator

To the District:               St. Charles Community Unit School District No. 303  
                                      201 S. 7<sup>th</sup> Street  
                                      St. Charles, IL 60174  
                                      Attn: Superintendent

E. **Compliance with Laws.** The Parties shall comply with all federal, state, county and municipal laws, rules and regulations that apply to the performance of each party's respective obligations under this Agreement.

F. **Complete Understanding.** This Agreement sets forth all the terms and conditions, and agreements and understandings between the Parties relative to the subject matter hereof.

G. **Amendments.** No modifications, amendments, or waiver of any provision hereto shall be valid and binding unless in writing and signed by all Parties.

H. **Binding Effect.** This Agreement shall be binding upon, apply and inure to the benefit of each Party and their respective legal representatives.

I. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, which may be withheld in its sole discretion.

J. **Governing Law.** This Agreement and the rights and responsibilities of the parties hereto shall be interpreted and enforced in accordance with the laws of the State of Illinois.

K. **Authority to Execute.** Each signatory hereto represents and warrants that he/she has the proper and necessary corporate authority to execute this Agreement and bind his/her entity to the terms and conditions of this Agreement.

L. **Waiver.** The failure of either party to demand strict performance of the terms and conditions of this Agreement on any one occasion shall not be deemed a waiver to demand strict performance on any future occasion.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Intergovernmental Agreement as of the dates written below.

Dated \_\_\_\_\_, \_\_\_\_\_

The City of St. Charles,

By \_\_\_\_\_

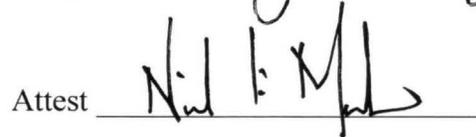
Attest \_\_\_\_\_

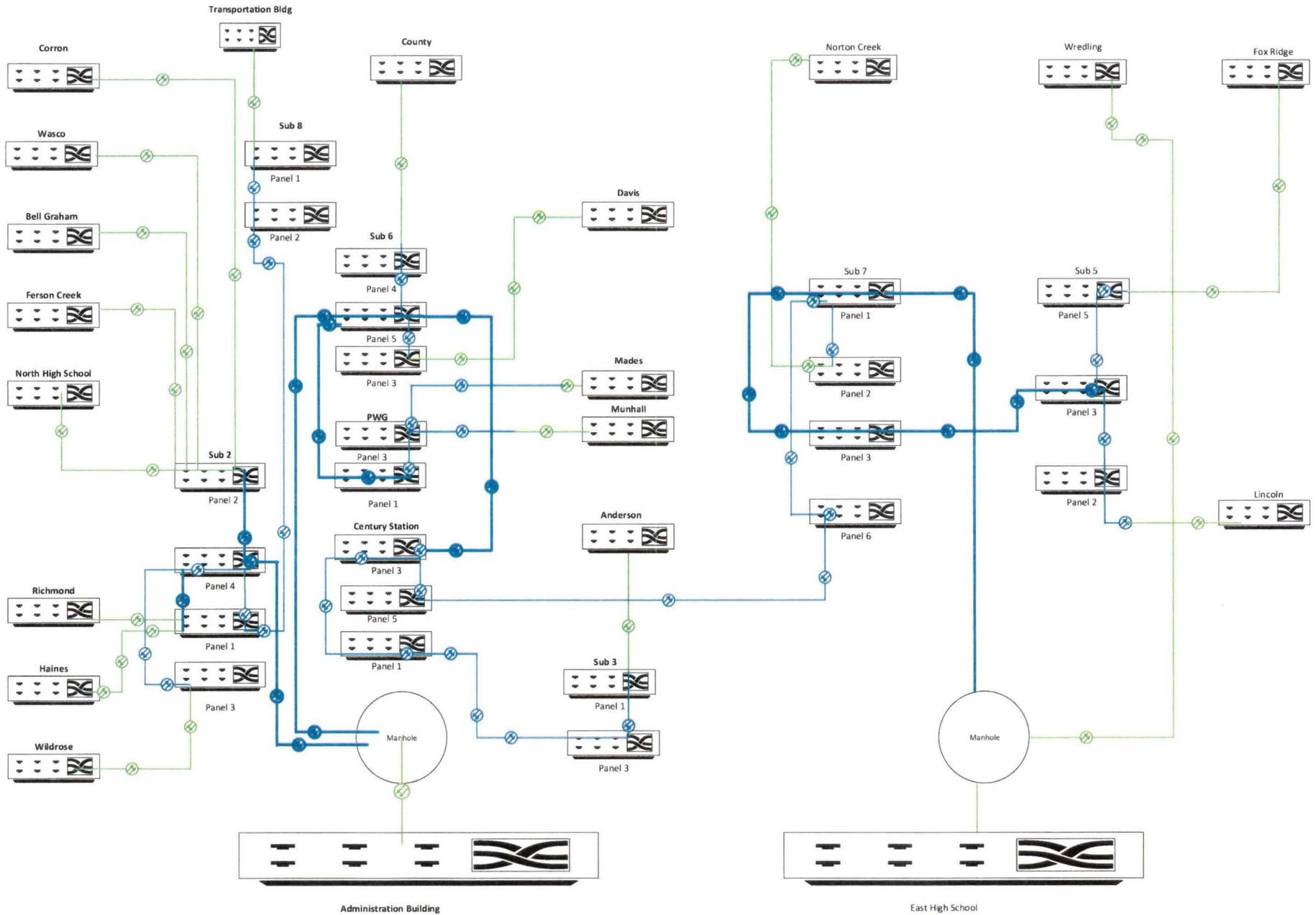
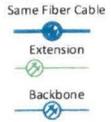
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Dated APRIL 11, 2016

Board of Education of St. Charles  
Community Unit School District 303,

By 

Attest 



**EXHIBIT A - TABLE OF PATCH LOCATIONS**

<b>Location</b>	<b>Patch Location</b>	<b>Work to be Done</b>	<b>Connector</b>
<b>Admin Bldg</b>	<b>Manhole by tennis courts and inside Admin</b>	<b>Splice fiber inside building and manhole on Indiana new 96 cable from manhole to bldg</b>	
Davis School	Sub 6	In Sub 6 patch fiber from panel 3 to panel 5	ST to SC
Richmond School	Sub 2	In Sub 2, patch fiber from panel 1 to panel 4	ST to SC
Haines	Sub 2	In Sub 2, patch fiber from panel 1 to panel 4	ST to SC
Transportation Bldg	Sub 8, Sub 2	in Sub 8, patch fiber from panel 1 to panel 2. In Sub 2, patch fiber from panel 1 to panel 4	ST to ST, ST to SC
Wasco	Sub 2	In Sub 2, patch fiber from panel 2 to panel 4	ST to SC
Bell Graham	Sub 2	In Sub 2, patch fiber from panel 2 to panel 4	ST to SC
Corron	Sub 2	In Sub 2, patch fiber from panel 2 to panel 4	ST to SC
Ferson Creek	Sub 2	In Sub 2, patch fiber from panel 2 to panel 4	ST to SC
North High	Sub 2	In Sub 2, patch fiber from panel 2 to panel 4	ST to SC
Wildrose	Sub 2	In Sub 2, patch fiber from panel 3 to panel 4	ST to SC
Anderson	Sub 3, Century Station, Sub 2	In Sub 3, patch fiber from panel 1 to panel 3. At Century Station patch fiber from panel 1 to panel 3. At Sub 6, patch fibers in panel 5	ST to SC, SC to SC, SC to SC
Munhall	PW Garage, Sub 6	In PW Garage, patch fiber from panel 3 to panel 1. At Sub 6 patch fibers in panel 5	ST to SC, SC to SC
Mades	Pw Garage, Sub 6	In PW Garage, patch fiber from panel 3 to panel 1. At Sub 6 patch fibers in panel 5	ST to SC, SC to SC
Admin to East High	Sub 7, Century Station, Sub 6	In Sub 7, patch fiber from panel 1 to panel 6. In Century Station, patch fiber from panel 5 to panel 3. In Sub 6, patch fibers in panel 5	ST to SC, SC to SC, SC to SC
County to Admin	Sub 6	patched already in Sub 6 from panel 4 to panel 5	
<b>East High School</b>		<b>Terminate all 48 Cables and Move panel to rack</b>	
Lincoln	Sub 5, Sub 7	In Sub 5, patch fiber from panel 2 to panel 3. In Sub 7 patch from panel 3 to panel 1	
Fox Ridge	Sub 5, Sub 7	In Sub 5, patch fiber from panel 5 to panel 3. At Sub 7, patch fiber from panel 3 to panel 1	ST to SC, SC to SC
Wredling	Manhole by East high School Switch gear	Splice fiber directly from Wredling to East high School.	ST to SC, SC to SC
Norton Creek	Sub 7	In Sub 7, patch fiber from Panel 2 to panel 1	ST to SC, SC to SC