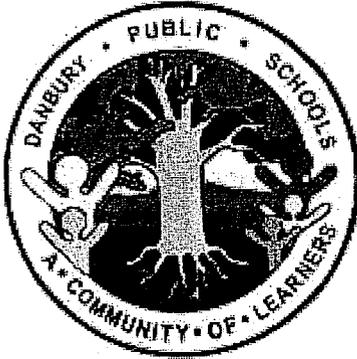


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12

CORPORATION COUNSEL



DANBURY PUBLIC SCHOOLS

Administrative Center
63 Beaver Brook Road
Danbury, Connecticut 06810-6211
(203) 797-4701
FAX (203) 830-6562
Email address: pascas@danbury.k12.ct.us

Sal V. Pascarella, Ed.D.
Superintendent of Schools

To: Mayor Mark Boughton
David St. Hilaire, Director of Finance
Les Pinter, Deputy Corporation Counsel ✓

RE: Fibertech Networks, LLC. – Broadband services

Date: March 18, 2010

Please find attached for your review a Master Facilities Agreement between Fibertech Networks, LLC., and Danbury Public Schools. The Danbury Public Schools wishes to lease broadband service from Fibertech Networks for five (5) fiscal years commencing with fiscal year 2010-2011.

Presently, the Danbury Public Schools technology infrastructure includes twenty-four (24) T-1 communication lines at a monthly cost of \$280 per line, or \$77,760 in total annually. Our telecommunication expenditures are partially reimbursable through the federally-funded E-Rate assistance program for schools and libraries. Our current reimbursement rate is fifty-eight (58%) percent. Danbury Public Schools benefits by the E-Rate program purchasing telecommunication services for 42% of market price.

The Fibertech agreement calls for nine (9) fiber optic lines to replace the existing T-1 lines. All fiber lines will be leased, not owned by the district. The annual lease payment is \$135,060. We are confident that the district will continue to receive E-Rate reimbursements and that the fiber lines will also qualify for a fifty-eight (58%) percent reimbursement. Our application has been filed with E-Rate pending final approval of the City Council.

I have attached a cost analysis of the total variance the district will experience as it transitions to fiber optic. The net cost variance will be absorbed by the district's technology department budget. Therefore, additional funds are not needed for the fiber line lease.

On February 24, 2010, the Board of Education voted unanimously to approve the lease arrangement and to forward a request to the City of Danbury City Council asking it to approve the lease agreement at the next meeting date.

I respectfully ask that this request be placed on the Common Council's April 6, 2010, agenda for action.

Please review this package and contact Mr. Elio Longo, Jr., the district's finance director, with any concerns, required changes or recommendations that you may have. Mr. Longo can be reached by calling his office, 797-4703.

Regards,



Sal V. Pascarella, Ed.D.
Superintendent, Danbury Public Schools



RESOLUTION

12-2.

CITY OF DANBURY, STATE OF CONNECTICUT

_____ A.D. 2010

RESOLVED BY THE CITY COUNCIL OF THE CITY OF DANBURY

WHEREAS, the Danbury Public Schools are desirous of engaging Fiber Technologies Networks, LLC for purposes of leasing broadband service for the coming five (5) year period to assist in the upgrade of Schools' services; and

WHEREAS, the expenditures for such installation include a federal "E-Rate" reimbursement of fifty-eight (58%) percent, with the balance coming from the Schools' technology infrastructure fund; and

WHEREAS, the new technology will replace existing "T-1" lines; and

WHEREAS, the annual lease payments pursuant to the engagement will be \$135,060.00, prior to the E-Rate reimbursement reduction; and

WHEREAS, the contract requires the approval of the School Board as well as the City Council, for the multi-year engagement.

NOW, THEREFORE BE IT RESOLVED THAT Danbury Schools Superintendent Dr. Salvatore Pascarella be and hereby is authorized to execute a *Master Facilities Agreement between Fiber Technologies Networks, LLC and the Danbury Public Schools* in accordance with approvals obtained through the Board of Education, funding authorization and non appropriations provisions recognized pursuant to contract.

12-3

MASTER FACILITIES AGREEMENT

EDUCATION LIT SERVICES

This Master Facilities Agreement ("MFA") is entered into as of the ___ day of _____, 2010 ("Execution Date") between FIBER TECHNOLOGIES NETWORKS, L.L.C., a New York limited liability company, having its principal place of business at 300 Meridian Center, Rochester, New York 14618 ("Lessor") and Danbury Public Schools having its principal place of business at 63 Beaver Brook Road, Danbury, CT 06810 ("Lessee") (sometimes collectively referred to as "Parties" or individually as "Party").

Whereas, Lessee desires to lease ("Lease") Broadband Service from Lessor and Lessor desires to Lease such Broadband Service to Lessee pursuant to the terms and conditions set forth herein.

Now, Therefore, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. DEFINITIONS

The following terms shall have the following definitions:

- 1.1 Demarcation Point(s). The point(s) on one side of which the equipment is and shall remain the property of Lessee and which is Lessee's responsibility for liabilities, ensuring connections, and paying for and installing equipment, termed Premise Side. The other side of the Demarcation Point of which the equipment is and shall remain the property of Lessor and which is Lessor's responsibility for liabilities, ensuring connections, and paying for and installing equipment is termed Network Side.
- 1.2 Fiber(s). Fiber optic strands.
- 1.3 Lit Services. The transmission of light impulses to the Demarcation Points using Fiber to which optronics or electronics have been connected.
- 1.4 Location(s). Each of the designated buildings or points set forth in **Exhibit A**, annexed hereto where the Lit Services shall be provided.
- 1.5 Related Equipment. All electronics, optronics and other equipment owned by Lessor, which is reasonably required to facilitate Lessor's delivery of Lit Services to the Demarcation Points, including but not limited to terminating modulating optronics.

2. LEASE OF LIT SERVICES

Upon and subject to the terms and conditions of this MFA, Lessor shall provide Lit Services to Lessee in accordance with the specifications ("Specifications") set forth in **Exhibit A**. The Lit Services shall be delivered to Lessee for use in accordance with the schedule of delivery set forth in **Exhibit A**. The rights granted to Lessee under this MFA shall be limited to include only the right to use the Lit Services for the transmission of telecommunications and information services and such other rights as are specifically set forth in this MFA.

Exhibit # 10-41

12-4.

3. CHARGES

In consideration of the Lease, the Lessee shall pay to the Lessor the charges ("Charges") set forth in **Exhibit B**, annexed hereto. Lessee's obligations hereunder are not dependant on the approval of E-rate funds for Lessee. Lessee shall pay the Charges in accordance with **Exhibit B**. In the event the Lessee fails to pay any invoice on or before its due date, Lessee shall pay, in addition to all other remedies available to Lessor hereunder, a late fee to Lessor in the amount of the lesser of one and one half percent (1.5%) of the unpaid amount per month or the maximum lawful rate under applicable state law, which late fee shall accrue from the due date.

4. TERM

This MFA shall become binding on the Execution Date unless terminated pursuant to another provision of this MFA, and shall remain in effect for a period of five (5) years from the Acceptance Date (as defined below) ("Term") with the right to renew the MFA on the terms and conditions set forth in **Exhibit B** for three (3) periods of five (5) years each ("Renewal Period(s)") by Lessee delivering a notice to Lessor in writing no later than sixty (60) days prior to the expiration of the Term or Renewal Period, as the case may be.

5. INSTALLATION AND MAINTENANCE

- a. Lessor shall install Fibers and Related Equipment to the Locations set forth in **Exhibit A** along such routes and in such method as selected by Lessor. Lessor shall have complete control and authority over the installation of the Fibers and Related Equipment.
- b. Lessee shall provide access to, and permission to use the property owned or controlled by the Lessee. This shall include, but not be limited to Lessor's right to install, maintain, inspect, repair and otherwise service the Fibers and Related Equipment installed by Lessor. In the event that Lessor is unable to gain access to the Fibers or any part of the Related Equipment installed by Lessor to install, operate or maintain the Fibers or the Related Equipment, Lessor's performance under this MFA shall be excused for the period that such access is unavailable or denied, and the time periods for Lessor's performance shall be extended for the period that such access is unavailable or denied.
- c. Lessor shall be solely responsible for maintaining the Fibers and any Related Equipment installed by Lessor in accordance with the terms of this MFA. In the event of any sustained service interruption caused by any failure of the Fibers to operate within the requirements of this MFA, the Lessor shall respond to the Lessee's request for service within four (4) hours of notification of such service interruption by Lessee.
- d. Lessor shall provide notice to Lessee twenty-four (24) hours in advance of any routine maintenance to be performed on the Fibers or Related Equipment, which shall result in or require the interruption of service.
- e. Lessee shall not, by itself or through any agent, take any action which damages or interferes with the Fibers or Related Equipment, and if it does so Lessor shall have the right to take whatever action it deems necessary or appropriate to repair and restore or prevent damage to the Fibers and Related Equipment, in which event Lessee shall indemnify and hold Lessor harmless pursuant to Section 11 below for such damage.

12-5

6. ACCEPTANCE BY LESSEE

- 6.1 Lessor shall provide notice of completion ("Completion Notice") when the Fibers and Related Equipment have been placed and tested between the Demarcation Points. In the event that Lessor cannot complete the network to the Demarcation Points due to a delay caused by Lessee, a Force Majeure event or third party then Lessor shall provide Completion Notices for the portions unaffected by such delay.
- 6.2 Lessee shall be deemed to have accepted ("Accept(ed)(ance)") the Services on the "Acceptance Date", which shall be defined as the earlier of (a) the date Lessee delivers an Acceptance Notice, or (b) delivery of the Completion Notice by Lessor to Lessee in accordance with the process below, or (c) the date when Lessee uses the services for purposes other than testing. Lessee shall have five (5) business days from receipt of the Completion Notice to test the Service. In the event that non conformities are discovered, Lessee may deliver to Lessor a failure notice ("Failure Notice") within such five (5) business day period. If a Failure Notice is served, Lessor shall correct the failure and send a new Completion Notice to Lessee, and Lessee shall have five (5) business days within which to re-test and may deliver another Failure Notice within such period. This procedure shall be repeated until the Service tests acceptably. Lessor shall also have the right at any time to test the Service and provide the results to Lessee. In the event that the Lessee orders multiple circuits under a single order, each circuit will be independent and will follow the acceptance process.

7. SERVICE INTERRUPTIONS

In the event of any service interruption which is not caused, in whole or in part by (a) any act or omission of Lessee, or (b) Force Majeure, Lessee shall be entitled to a credit ("Credit") against future Charges to become due hereunder in the amount of fifty dollars (\$50.00) for each full hour that such Lit Services are interrupted after the fourth (4th) contiguous hour. Notwithstanding the foregoing, in the event that such credit is the result of a service interruption occurring in the final month of the Term, Lessee will be paid such credit if no future charges are applicable. This Credit shall be Lessee's sole remedy for any such service interruption and Lessor shall not be liable for any other damages of any kind whatsoever, including but not limited to consequential damages. The foregoing notwithstanding, Lessee shall have no right to any Credit, reimbursement or any other payment to the extent such service interruption (a) is caused in whole or in part by an act or omission of Lessee or Lessee's System; (b) is caused in whole or in part by Force Majeure; or (c) occurs at a time when the Lessee is in Breach (as defined below) of the MFA.

8. TAXES

Charges and/or other fees referred to in this MFA do not include taxes. Lessee shall pay any and all existing or future sales, use, excise, franchise or other transfer or transactional taxes imposed or levied by any federal, state or local taxing authority on the Charges and/or other payments made by Lessee to Lessor. Applicable taxes shall be invoiced by Lessor to Lessee. Lessee shall pay all such taxes unless Lessee provides Lessor with a valid and applicable tax exemption certificate.

9. CHANGES IN FACILITIES

Lessor may make any changes or modifications to the Fibers or any of the Related Equipment in performance of this MFA as it deems necessary or advisable without the prior consent of the Lessee as long as Lessor continues to provide Lit Services which comply with the Specifications.

12-6

10. USE OF LIT SERVICES, FIBERS OR RELATED EQUIPMENT

Lessee shall not install any intervening termination or access points on the Fiber without the express written consent of the Lessor, which consent may be withheld by Lessor in Lessor's sole discretion. The Fibers and Related Equipment are and shall remain the property of Lessor and Lessee shall not have the right to allow any third parties usage of or access to the Fibers or Related Equipment. The Lit Services are supplied by Lessor to Lessee for Lessee's sole use and no portion of the Lit Services shall be resold, transferred, sublicensed or alienated in any way without the express written consent of Lessor which consent may be withheld by Lessor for any reason or no reason in its sole discretion. The repair, maintenance, or replacement of all electronic equipment or other facilities installed by Lessee for the use of the Lit Services shall be the responsibility of the Lessee and Lessee shall be solely liable for any damage to the Fibers or Related Equipment caused by any such equipment or facilities installed by Lessee, or any act or omission of Lessee or its agents, servants, employees, contractors or representatives.

11. INDEMNIFICATION

- 11.1 Indemnification By Both Parties. Subject to the limitations set forth in this MFA, each Party shall indemnify, hold harmless, and defend the other Party, its subsidiaries and affiliates, and their respective officers, directors, employees, attorneys, successors and assigns, from and against any loss, damages claims, suits, or causes of action for damages, including reasonable attorney's fees, which may arise out of: (a) any injury to or death of any person and damage to property related to activities arising out of this MFA to the extent such injury, death or damage is caused by the negligent acts or omissions or willful misconduct of the indemnifying Party or its principals, employees, agents, or invitees, or by its equipment; (b) the indemnifying Party's violation of applicable federal, state or local statutes, regulations, ordinances or orders; or (c) the indemnifying Party's Breach (as defined below) of this MFA; or (d) infringement or misappropriation by a Party of any intellectual property rights under this Agreement.
- 11.2 Indemnification By Lessee. Subject to the limitations of liability set forth in this MFA, Lessee agrees to indemnify, hold harmless, and defend the Lessor, its subsidiaries and affiliates, and their respective officers, directors, employees, attorneys, successors and assigns, from and against any loss, damages, claims, suits, or causes of action for damages, including reasonable attorney's fees, which may arise out of the use by Lessee of the products or services leased by Lessee hereunder, including without limitation, defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortious or illegal conduct.
- 11.3 Each Party shall give prompt notice of any claim for which indemnification is or shall be sought under this Section 11 and shall cooperate and assist the indemnifying Party in the defense of the claim. The applicable Party shall bear the cost of and have the right to control the defense and shall have the right to select counsel after consulting with the other Party.
- 11.4 This Section 11 shall survive any termination or expiration of this MFA.

12. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants that it has full authority to enter into and perform this MFA, that this MFA does not conflict with any other document or agreement to which it is a party or is bound, and that this MFA is fully enforceable in accordance with its terms, and that each is an entity validly existing and in good standing under the laws of the states in which they are authorized to do business.

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13. DISCLAIMERS AND LIMITATION OF LIABILITY

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING (WITH THE EXCEPTION OF THE PROVISIONS OF SECTION 11), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY AFFILIATED, CONNECTED WITH OR DOING BUSINESS WITH EITHER PARTY WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STRICT LIABILITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES, PROFITS AND/OR GOODWILL REGARDLESS OF THE FORESEEABILITY THEREOF.

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING (WITH THE EXCEPTION OF THE PROVISIONS OF SECTION 11), THE TOTAL LIABILITY OF EITHER PARTY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN ORDER FORM (EXCLUDING EARLY TERMINATION CHARGES (AS DEFINED IN THE RELATED SUPPLEMENT)) IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES PAYABLE BY CUSTOMER DURING THE TERM SET FORTH THEREIN. ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, LESSOR MAKES NO WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES IN CONNECTION WITH THIS MFA, OR THE FIBER WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

THIS SECTION 13 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS MFA. LESSOR MAKES NO REPRESENTATIONS WITH RESPECT TO THE ANY FIBERS EXCEPT AS SPECIFICALLY SET FORTH HEREIN, LESSOR SHALL NOT HAVE ANY LIABILITY WHATSOEVER FOR, OR IN CONNECTION WITH FIBER FAILURE UNLESS SUCH FAILURE IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LESSOR. LESSOR SHALL HAVE NO RESPONSIBILITY FOR ANY OF LESSEE'S EQUIPMENT.

14. TERMINATION AND BREACH

14.1 This MFA shall terminate at the end of the Term, unless earlier terminated pursuant to the terms hereof. If Lessee or Lessor shall take such action which is prohibited, in any material respect, by the terms of this MFA, or fail to perform (whether any such failure shall arise as the result of the voluntary or involuntary action or inaction of such Party), in any material respect, any of its obligations set forth in this MFA, including without limitation any violation of law (which is material and which adversely affects either Party's obligations under the MFA), and such prohibited action or failure to perform is not excused by any provision of this MFA and continues un-remedied for a period of thirty (30) days following written notice from the non-breaching party ("Non-Breaching Party") or no period if such prohibited action or failure to perform is not susceptible to cure (the "Cure Period"), then such action or failure shall, upon and from the expiration of the applicable Cure Period, if any, constitute a "Breach"; provided, however, if a Party has taken such measures to initiate a cure but such cure shall take longer than the applicable Cure Period, no Breach shall be deemed to have occurred as long as such Party is using its best efforts to promptly cure such potential Breach. Any action or failure to act which is directly or primarily caused by the actions of the other Party shall not constitute a Breach. Anything contained herein to the contrary notwithstanding, in the event Lessee fails to pay any Charges within thirty (30) days of the due date, Lessor shall have the right to declare that all Charges which are then due and owing, or are to become due and owing Lessor by Lessee for the remainder of the Term (or if failure to pay occurs during a Renewal Period for the remainder of the Renewal Period) shall at once become all due and payable by Lessee to Lessor

12-8

In the event of a Breach, the Non-Breaching Party may, in its sole discretion, terminate this MFA and have no further obligations or liability hereunder; except only that each Party shall pay the other Party any amounts due, owing and unpaid by such Party. The Non-Breaching Party shall also have the right to pursue any and all rights it may have against the breaching party ("Breaching Party"), now or hereafter under the law, subject to the express limitations contained in this MFA, including without limitation, the right to seek injunctive relief to prevent the Breaching Party from continuing to Breach its obligations under this MFA. Anything contained herein to the contrary notwithstanding, in the event of termination of the MFA by Lessor as a result of a Breach of this MFA by Lessee all Charges which are then due and owing, or are to become due and owing Lessor by Lessee for the remainder of the Term shall at once become all due and payable by Lessee to Lessor.

Notwithstanding the other provisions of this Section 14.1, in no event will Lessor be entitled to payment of Charges beyond those that have accrued, or will accrue, during the fiscal year in which non-payment, or other Breach hereunder, occurs, so long as Lessee exercises its right to terminate the MFA pursuant to subsection 14.2 below. Lessee may exercise its rights under subsection 14.2 either before or after a Breach.

- 14.2 **Non-Appropriation and Lease Approval:** The parties hereto understand that the Lessee is dependent upon receiving continued appropriations or budgeted funds to continue this Agreement throughout its intended term. Notwithstanding any other provisions to the contrary, the Lessee may terminate the MFA at the end of any fiscal period, if subsequent to its having employed reasonable, good faith efforts to maintain adequate budgeted funds for the next fiscal year of the MFA term, Lessee cannot sustain payment for the next fiscal year of the MFA term. Lessee will be deemed to have employed reasonable, good faith efforts if the funds necessary to pay for the next fiscal year of the MFA term were duly considered by the Danbury, Connecticut Board of Education ("the Board") at a regularly scheduled or special meeting of the Board in light of the Board's other budget requirements. In order to effectuate such termination the Lessee must give thirty (30) days written notice to the Lessor that it cannot sustain payment for the next fiscal year of the MFA term.. If the Lessee terminates the MFA pursuant to this Section, unless the following would affect the validity of the Agreement, the Lessee will not purchase, lease, rent, seek appropriations for, or otherwise obtain another contract serving the same function as the MFA utilizing fiber optic strands and/or bandwidth that is approximately 50 MB per site or greater for the fiscal period in which such termination occurs or the next succeeding fiscal period (unless that period is beyond the original contract period) and such an obligation will survive termination of the MFA. Within thirty (30) days following such termination, the parties shall meet and make available to each other all information and documentation necessary in order to determine the amount of fees due to the Lessor. No penalties, interest or indirect or consequential costs or damages shall be owed or paid by the Lessee upon such termination.
- 14.3 **Required Approvals:** The MFA is subject to approval by the Danbury, Connecticut Board of Education ("the Board") and the City Council of Danbury, Connecticut ("the Council"). The MFA is also subject to the approval of E-Rate reimbursement of at least fifty-percent (50%) ("Minimum Reimbursement Level") by the SLD. In the event that either the Board or the Council fails to approve the MFA, and/or if E-Rate reimbursement is not approved by SLD at the Minimum Reimbursement Level, then the MFA will be null and void in its entirety.
15. **FORCE MAJEURE**
- 15.1 **Force Majeure Events.** Neither Lessee nor Lessor shall be liable for any failure or delay in performing its obligations hereunder (other than payment of any sums due hereunder), or for any loss or damage resulting therefrom, due to the following force majeure events ("Force Majeure Events") :

12-9

- a. fire, flood, strike or other labor difficulty, natural disasters, equipment failure, acts of God or public enemy, act of war restraint or hindrance by any governmental or regulatory authority including, without limitation, unfavorable actions or failures to act of or by such authorities, war, acts of terrorism, insurrection, riot, injunction, or
 - b. any other causes beyond the Parties' reasonable control, or causes beyond the reasonable control of their suppliers.
- 15.2 Abatement of Force Majeure. To the extent practicable, both Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. Lessee shall promptly notify Lessor of any delay and its effect on the performance by Lessee. Lessor shall promptly notify Lessee of any delay in Lessee's performance.
- 15.3 Suspension Pending Force Majeure. If a Force Majeure Event should occur, the Parties' performance of this MFA (other than payment of any sum due hereunder) shall be suspended for so long as such Force Majeure Event continues. At the conclusion of a Force Majeure Event, the period of time so suspended shall be added to the dates, schedules and other performance-related matters under this MFA.

16. STANDARD AND CODES

All installations and services rendered by Lessor under this MFA shall meet or exceed any appropriate local, city, county, state, federal and Connecticut State Education Department codes and regulations. This includes, but is not limited to, OSHA, NEC, EPA, NEMA and ANSI standards.

12-10

17. TITLE AND ENCUMBRANCES

Lessor shall at all times maintain and be vested irrevocably with legal title to the Lit Services, Fibers and Related Equipment. Lessee shall not, in any way, encumber or permit to be encumbered, the Lit Services, Fibers or any Related Equipment or property that is owned by the Lessor. In the event that any property of either Party becomes encumbered as a result of any act or omission by the other Party, such other Party shall promptly, and to the fullest extent permitted by law, take all actions necessary to remove such encumbrances. The Party causing such encumbrance shall (a) within five (5) days post a bond in an amount equal to the value of any such lien or encumbrance, (b) discharge the encumbrance as soon as possible, but no later than thirty (30) days after creation of the encumbrance and (c) indemnify and hold the other Party harmless from and against any such encumbrance and any costs incurred in the discharge thereof. Upon the termination or expiration of this MFA, all rights granted to Lessee hereunder shall revert to Lessor.

18. VENUE

The venue of any litigation arising from or related to this MFA shall be Danbury, Connecticut or the United States District Court, District of Connecticut.

19. ASSIGNMENT

Subject to the limitations set forth herein, either Party may assign any of its rights under this MFA without the prior written consent of the other Party; provided, that upon any such assignment or transfer (a) the assignee or transferee shall expressly agree to be bound by all provisions of this MFA, and (b) the assigning or transferring Party shall remain jointly and severally liable for the performance of its obligations under this MFA unless released in writing by the other Party to this MFA; and (c) in Lessee's case compliance with Section 10. Such release shall be given by the other Party upon reasonable proof provided by the assignor or transferor, in the form of pro forma financial statements prepared in accordance with generally accepted accounting principles indicating the financial condition of the assignee or transferee as of the date of such assignment or transfer after giving effect to such assignment or transfer, that the assignee or transferee is at least as credit worthy as the assignor or transferor.

20. LESSOR'S RIGHT TO PLEDGE OR ENCUMBER

Lessor shall have the right at any time, without the prior consent of Lessee, to mortgage, pledge, grant a security interest in, assign or transfer its interest in this MFA and/or any of Fibers and Related Equipment in connection with any borrowing or financing activity of Lessor, and the rights of Lessee granted under this MFA shall be subject and subordinate to the lien of any mortgage, pledge, security interest or assignment now in place or hereafter granted by Lessor.

21. ENTIRE AGREEMENT

The terms and provisions of this MFA, and all Exhibits annexed hereto, and any documents specifically referred to herein shall constitute the entire agreement between Lessor and Lessee with regard to the subject matter hereto and supersede all previous understandings, commitments or representations concerning the subject matter.

12-11

22. MISCELLANEOUS

- a. Applicable Law. This MFA shall be governed by, construed and interpreted in accordance with the laws of the State of Connecticut without reference to its conflicts of laws provisions.
- b. Modifications. This MFA may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by the Parties.
- c. Notices. All notices and communications from either Party to the other hereunder (except those specified below) shall be in writing and shall be deemed received upon (a) actual receipt when personally delivered (b) the expiration of the third business day after being deposited in the U.S. mail, postage prepaid, certified or registered mail, or (c) the expiration of one business day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier company addressed to the other Party as follows:

To Lessor:

Fiber Technologies Networks, L.L.C.
300 Meridian Centre
Rochester, NY 14618
Attn: General Counsel

To Lessee:

Danbury Public Schools
63 Beaver Brook Road
Danbury, CT 06810
Attn: Director of Finance

Each Party may change its address by giving the other Party notice thereof in conformity with this section.

- d. Damage and Outage Notification. In the event that the Lessee Fibers or Related Equipment are damaged , or there is a service interruption the Party discovering such damage or service interruption shall notify the other Party of said damage by telephone at:

(a) As to Lessor:

FT Network Operations
300 Meridian Centre
Rochester, NY 14618
(800) 497-5578

(b) As to Lessee:

Danbury Public Schools
63 Beaver Brook Road
Danbury, CT 06810
Yevgeniy Skylar
203 790 2684 sklyay@danbury.k12.ct.us

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These are 24 hours, 7 day per week emergency notification numbers. Calls shall be directed to the supervisor on duty, and the caller should be able to provide the following information:

- Name of company making report;
 - Location reporting problem;
 - Name of contact person reporting problem;
 - Telephone number to call back with progress report;
 - Description of the problem in as much detail as possible;
 - Time and date the problem occurred or began; and
 - If appropriate, a statement that an emergency exists and that a problem presents a threat to the property of Lessor, Lessee or a third party.
- e. Waiver. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- f. Headings. The headings of each section of this MFA are inserted for convenience only and do not constitute a part of this MFA.
- g. Invalidity. If any provision of this MFA is found to be invalid or unenforceable, such invalidity or non-enforceability shall not invalidate or render unenforceable any other portion of this MFA. The entire MFA shall be construed as if it did not contain the particular invalid or non-enforceable provision and the rights and obligations of the Parties shall be construed and enforced accordingly.
- h. Post Termination. Obligations and rights under this MFA, which by their nature would continue beyond the termination or expiration of this MFA shall survive any such termination or expiration.
- i. Binding Effect. This MFA shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.
- j. Counterparts. This MFA may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. This MFA may also be executed via counterpart facsimiles upon (a) the telecopy by each Party of a signed signature page thereof to the other Party, with return receipt by telecopy requested and received and (b) the Parties' agreement that they shall each concurrently post, by overnight courier, a fully executed original counterpart of the MFA to the other Party.

12-13

IN WITNESS WHEREOF, the undersigned have executed this MFA as of the date first above written.

FIBER TECHNOLOGIES NETWORKS, L.L.C.

LESSEE

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

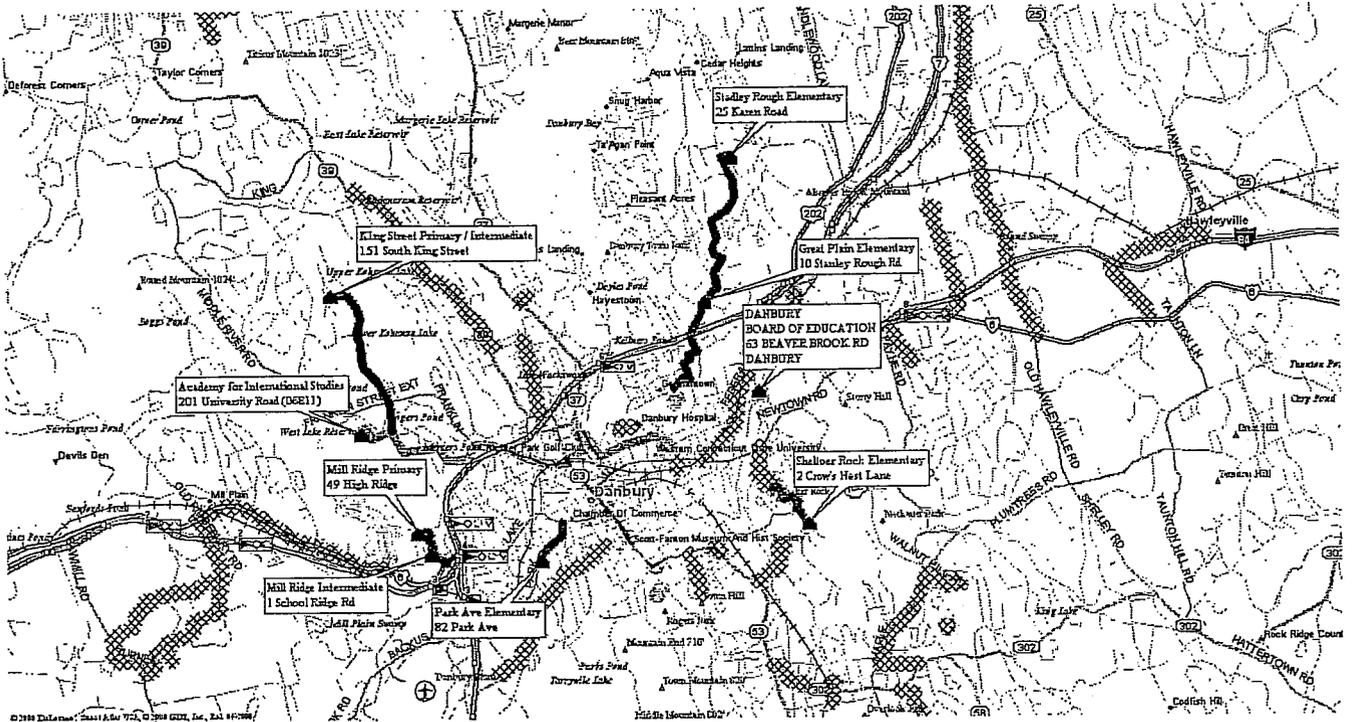
Title: _____

Date: _____

Date: _____

12-14

Exhibit A Overhead map of schools to be attached to the Danbury BOE Network.



Circuit #1 King Street Intermediate to King Street Primary	1GB Connection
Circuit # 2 King Street Primary to Academy for International Studies	1GB Connection
Circuit # 3 Academy for International Studies to Danbury BOE	1GB Connection
Circuit # 4 Stedley Rough Elementary to Great Plain Elementary	1GB Connection
Circuit # 5 Great Plain Elementary to Danbury BOE	1GB Connection
Circuit # 6 Shelter Rock Elementary to Danbury BOE	1GB Connection
Circuit # 7 Mill Ridge Primary to Mill Ridge Intermediate	1GB Connection
Circuit # 8 Mill Ridge Intermediate to Park Ave Elementary	1GB Connection
Circuit # 9 Park Ave Elementary to Danbury BOE	1GB Connection

Delivery Schedule: Circuits will be delivered between 150-180 days after notification from the School District that the project has been approved by the SLD. If the Circuits are not dependent upon SLD approval of the 471 form, then the Lessee can request to have the circuits installed before an SLD approval is granted. In this case, circuits will be delivered between 150-180 days from such notification.

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Exhibit B

Charges

Monthly Use Charge Circuit # 1 (1 GB connection from King Street Intermediate to King Street Primary)

Amount: \$ 200.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 2 (1 GB connection from King Street Primary to Academy for International Studies)

Amount: \$ 1700.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 3 (1 GB connection from Academy for International Studies to Danbury BOE)

Amount: \$ 2705.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 4 (1 GB connection from Stadley Rough Elementary to Great Plain Elementary)

Amount: \$ 1950.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 5 (1 GB connection from Great Plains Elementary to Danbury BOE)

Amount: \$ 1560.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 6 (1 GB connection from Shelter Rock Elementary to Danbury BOE)

Amount: \$ 940.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 7 (1 GB connection from Mill Ridge Primary to Mill Ridge Intermediate)

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Amount: \$ 450.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 8 (1 GB connection from Mill Ridge Intermediate to Park Ave Elementary)

Amount: \$ 570.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

Monthly Use Charge Circuit # 9 (1 GB connection from Park Ave Elementary to Danbury BOE)

Amount: \$ 1180.00/mo
Commencement Date: Acceptance Date
Due Date: 1st of each month

TOTAL OF MONTHLY USE CHARGES Years 1-5: \$11,255.00 per month
Years 1-5 Total Cost: \$ 675,300.00

TOTAL OF MONTHLY USE CHARGES Years 6-10: \$ 9335.00 per month
(if contract is renewed at discretion of the district)
Years 6-10 Total Cost: \$ 448,080.00

TOTAL OF MONTHLY USE CHARGES Years 11-15: \$ 9335.00 per month
(if contract is renewed at discretion of the district)
Years 11-15 Total Cost: \$ 448,080.00

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Customer Contact Information

Please take a moment to tell us how to contact you in the future. Filling out this information as completely as possible will allow Fibertech to serve you more effectively. This will be important in the event of Scheduled Maintenance, as well as general communications between your company and Fibertech. Thank you in advance for your assistance.

CUSTOMER INFORMATION			
Business Name	Danbury Public Schools	<input type="checkbox"/> Corp <input type="checkbox"/> Partnership <input type="checkbox"/> LLC	
Street	63 Beaver Brook Road		
City, State, Zip	Danbury, CT 06810		
Main Phone	203-797-4700	E.I.N.	
Billing Address <small>(if different from above)</small>			

PRIMARY ACCOUNT CONTACT			
Name	Yevgeniy Skylar	Title	Technology Infrastructure Manager
Phone (Office)	203-790-2684	Phone (Mobile)	1- (203) 994-4050
Email	sklyay@danbury.k12.ct.us		

ON-SITE CONTACT			
Check if Same As...	<input type="checkbox"/> Same as PRIMARY CONTACT <input type="checkbox"/> Same as MAINTENANCE CONTACT <input type="checkbox"/> Same as BILLING CONTACT		
Name		Title	
Phone (Office)		Phone (Mobile)	
Email			
Site(s)			

MAINTENANCE CONTACT <small>(first contact for Fibertech's Network Operation Center)</small>			
Check if Same As...	<input type="checkbox"/> Same as PRIMARY CONTACT <input type="checkbox"/> Same as ON-SITE CONTACT <input type="checkbox"/> Same as BILLING CONTACT		
Name		Title	
Phone (Office)		Phone (Mobile)	
Email			

BILLING CONTACT			
Check if Same As...	<input type="checkbox"/> Same as PRIMARY CONTACT <input type="checkbox"/> Same as ON-SITE CONTACT <input type="checkbox"/> Same as MAINTENANCE CONTACT		
Name	The Business Center	Title	
Phone (Office)	203-790-2684	Phone (Mobile)	
Email			

PURCHASING DEPARTMENT INFORMATION			
Contact Name		Title	
Address <small>(if different from above)</small>			
Phone (Office)		Phone (Mobile)	
Fax			
Email			
Is a PO required for Non-recurring billing?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If "Yes," please provide PO	
Is a PO required for MONTHLY recurring billing?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If "Yes," please provide PO	
Is a PO required for ANNUAL recurring billing?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If "Yes," please provide PO	
Is this purchase item exempt from sales tax?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If "yes," please provide Fibertech with exemption certificate. Fibertech Networks' policy is to invoice the sales tax unless an exception certificate is provided by the purchaser.	

FIBERTECH ON-LINE CUSTOMER PORTAL	
Who would you like to designate as the "Admin" for your On-Line Customer Portal? <small>Check only one. Fibertech will use Primary Contact as a default, unless otherwise noted.</small>	<input checked="" type="checkbox"/> PRIMARY CONTACT <input type="checkbox"/> MAINTENANCE CONTACT <input type="checkbox"/> ON-SITE CONTACT <input type="checkbox"/> BILLING CONTACT
NOTE - The "Admin" for your company will be able to set-up on-line accounts for others within your company.	

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Fibertech Contract Cost Analysis
Estimated E-Rate Funds

	<u>Quantity</u>	<u>Monthly Rate (per line)</u>	<u>Monthly Total</u>	<u>Annual Total</u>	
T-1 lines	24	\$ 270	\$ 6,480	\$ 77,760	
				\$ 45,101	E-Rate (58%)
				\$ 32,659	BOE net cost (42%)
 Fiber	 9	 Districtwide	 \$ 11,255	 \$ 135,060	
				\$ 78,335	E-Rate (58%) - estimate
				\$ 56,725	BOE net cost (42%)

Board of Education Cost Share (42%)

FY 2009-2010	T-1			\$ 32,659	
FY 2010-2011	Fiber			\$ 56,725	
	T-1	credit		\$ (32,659)	
		<i>Net cost variance</i>		<u>\$ 24,066</u>	

Technology Services

Acct. 325

FY 2009-2010 Appropriation		\$ 260,000	
FY 2010-2011 Budget Recommendation		\$ 260,000	
	<i>Net change</i>		0%

Budget plan:

Annual software fees	\$ 153,500	
Service subscription fees	\$ 16,500	
Network Support expense	\$ 45,000	
Non-network support expense	\$ 30,000	
Maintenance	\$ 15,000	
	<u>\$ 260,000</u>	
 Network Support expense	 \$ 45,000	
<i>Net cost variance</i>	<u>\$ (24,066)</u>	53%
Network Support expense (net)	\$ 20,934	47%