

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF HARRIS    §

4660611954  
2013-0365

**1. PARTIES**

**1.1. Parties**

**THIS AGREEMENT FOR HIGH-CAPACITY FIBER CIRCUIT SERVICES** (this "**Agreement**") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("**City**"), a Texas home-rule city, and **PHONOSCOPE LIGHT WAVE, INC.** ("**Contractor**"), a Texas corporation.

**1.2. Address**

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City  
City Purchasing Agent  
For Administration & Regulatory Affairs  
Department  
PO Box 1562  
Houston, TX 77251

Contractor  
Phonoscope Light Wave, Inc.  
6101 Westline Drive  
Houston, Texas 77036

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- C. Equal Employment Opportunity Ordinance
- D. Drug Policy Compliance Agreement
- E. Drug Policy Compliance Declaration
- F. Contractor's Certification of No Safety Impact Positions in Performance of a City Contract
- G. Pay or Play

**1.4. Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

**1.5. Controlling Parts**

If a conflict among the Sections and Exhibits arises, the Sections control over the Exhibits.

**1.6. Signatures**

The Parties have executed this Agreement in multiple copies, each of which is an original, as of the date of countersignature by the City Controller of the City of Houston.

**CONTRACTOR:**  
**PHONOSCOPE LIGHT WAVE, INC.**

**CITY:**  
**THE CITY OF HOUSTON, TEXAS**

By: *R Cumming*  
Name: Rhonda Cumming  
Title: President

By: *Archie D. Parker*  
Mayor *Matthew D. Rapp*

ATTEST/SEAL:

ATTEST/SEAL:

By: *M. Massey*  
Corporate Secretary

By: *Cora Russell*  
City Secretary

Tax Identification: 27-3137397

APPROVED:  
*John D. Wells*  
City Purchasing Agent

APPROVED AS TO FORM:

*Angela Z. F.*  
Assistant City Attorney  
L.D. File No. 0371300046001

COUNTERSIGNED  
*Ronald C. Harris*  
City Controller *Ch.B. M.*

DATE COUNTERSIGNED

*5-14-13*

## 2. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

**2.1. "Agreement"** means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

**2.2. "City"** is defined in the preamble of this Agreement and includes its successors and assigns.

**2.3. "City RFP"** means City's RFP No. S10-T24384.

**2.4. "Contractor"** is defined in the preamble of this Agreement and includes its successors and assigns.

**2.5. "Countersignature Date"** means the date shown as the date countersigned on the signature page of this Agreement.

**2.6. "Department"** means the Administration & Regulatory Affairs ("ARA") Department.

**2.7. "Director"** means the City Purchasing Agent, or the person he or she designates or the HITS Director, or the person he or she designates.

**2.8. "HITS Director"** means the City Director of Houston Information Technology Services, or the person he or she designates.

## 3. DUTIES OF CONTRACTOR

### 3.1. Scope of Services - Services in General

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit A.

### 3.2. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

### 3.3. Reports

Contractor shall submit all reports and progress updates required by the Director and any network management reports including but not limited to: i) bandwidth utilization by circuit reports; and ii) any reports that show bandwidth utilization abnormalities or outages.

### 3.4. Prompt Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND**

**INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.** Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

**3.5. RELEASE**

**CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

**3.6. INDEMNIFICATION**

**CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

**3.6.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

**3.6.2. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**

**3.6.3. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**3.7. INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT**

**CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR,**

ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER 1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, 2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

### 3.8. INDEMNIFICATION – SUBCONTRACTOR'S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

### 3.9. INDEMNIFICATION – PROCEDURES

**3.9.1 Notice of Claims.** If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

1. a description of the indemnification event in reasonable detail,
2. the basis on which indemnification may be due, and
3. the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

### 3.9.2 Defense of Claims

1. **Assumption of Defense.** Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not

assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

2. Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

### 3.10. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Worker's Compensation must name the City as an additional insured. (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
  - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Worker's Compensation including Broad Form All States endorsement:
  - Statutory amount
- (3) Automobile Liability insurance
  - \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED, MATERIALLY CHANGED OR NON-RENEWED.** Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

### **3.11. Warranties**

**3.11.1.** Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

**3.11.2.** Contractor warrants that during the Term, the circuits it provides under this Agreement shall perform in accordance with the technical specifications described in the City RFP, the products documentation and shall meet the service levels set out in Exhibit A.

**3.11.3.** Contractor agrees to assign all manufacturers' warranties for any equipment supplied as part of the services to be provided under this Agreement and will deliver all related documentation to the Director within 5 days after execution of this Agreement.

### **3.12. Confidentiality – Protection of City's Interests**

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

### **3.13. Licenses and Permits**

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

### **3.14. Compliance with Laws**

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

### **3.15. Compliance with Equal Opportunity Ordinance**

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit C.

### **3.16. Drug Abuse Detection and Deterrence**

**3.16.1.** It is the policy of the City to achieve a drug-free workforce and workplace. The

manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

**3.16.2.** Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

**3.16.3.** Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

**3.16.4.** Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

1. a copy of its drug-free workplace policy,
2. the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit D, together with a written designation of all safety impact positions and,
3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit F.

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit E. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

### **3.17. Pay or Play**

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes, subject to any and all HIPAA regulations. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Contractor shall complete and submit to the Director Exhibit G, POP-2 Form prior to the execution of this Agreement.

## **4. DUTIES OF CITY**

### **4.1. Payment Terms**

**4.1.1.** The City shall pay and Contractor shall accept the applicable monthly fees for each location set out in Exhibit B (Fee Schedule). City shall pay no termination fees for terminating circuits at any time during the term of this Agreement, except in the case of circuits that have no connectivity to a City location before being installed under this Agreement ("Initial Install"), the City shall pay fifty percent (50%) of the monthly fee for the remainder of the first (1<sup>st</sup>)

year from the date such Initial Install circuit is activated in the event the City Terminates, with thirty (30) days written notice to Contractor, such a circuit within the first year of its installation. The termination fees shall not apply in the event the City terminates a circuit that has been installed for the City by Contractor for a period of more than one (1) year.

**4.2. Taxes**

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

**4.3. Method of Payment**

The City shall pay Contractor on the basis of monthly invoices submitted by Contractor and approved by the Director, showing the services performed and the corresponding fee. The City shall pay Contractor within 30 days of receipt of an approved invoice.

**4.4. Method of Payment – Disputed Payments**

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

**4.5. Limit of Appropriation**

**4.5.1.** The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

**4.5.2.** In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$203,584.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

**4.5.3.** The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

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**4.5.4.** The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

#### **4.6. Changes**

**4.6.1.** At any time during the term of this Agreement, the Director may issue Contractor a written notice to add circuits to this Agreement. In the event the Director sends Contractor such a written request, then, Contractor shall provide circuits and services detailed in Exhibit A at the applicable fee set out for such circuits in Exhibit B, or at Contractor's prevailing rates in the event the circuits requested are not identical to the ones listed in Exhibit B. If such circuits require the City to pay non-recurring one-time construction or installation costs, then, the Director may approve on a case-by-case basis, such one-time costs in an amount not to exceed 5% of the total funds allocated for this contract. For purposes of this section, the "Effective Date" means the date on which Contractor receives the written notice from the Director. As of the Effective Date, each circuit added by the Director is subject to this Agreement, as if it had originally been a part of this Agreement, but the charges for such circuits and services starts to accrue only when the newly added circuit satisfies the City's Acceptance requirements (set out in Exhibit A).

The total charges for additions to this Agreement must never exceed 25% of the original contract amount unless:

- the additions are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Govt. Code Chapter 252; or
- the City requires the additions from Contractor through a competitive bid or competitive proposal.

**4.6.2.** At any time during the term of this Agreement, the Director may issue Contractor a written notice to delete a circuit and related services from this Agreement. On receiving the Director's written notice, Contractor shall discontinue providing the circuit and related services effective the day Contractor receives the notice or the date stated in the notice. After Contractor submits an invoice to City for the circuit and related services provided prior to the Director's written notice, Contractor shall exclude all charges for the deleted circuit from invoices submitted after such charges have been paid, provided, however, this section is in no way intended to conflict with the early termination provision of Item 4.1.1.

**4.6.3.** If this Agreement is terminated before the end of the period for which payment has been made in advance, Contractor shall refund pro rata the City's advance payment equal to the percentage of the prepaid period remaining after termination. This refund must be made within 30 days of the termination of this Agreement.

#### **4.7. Access to Site**

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to

perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

## **5. TERM AND TERMINATION**

### **5.1. Contract Term**

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement (the "Initial Term").

### **5.2. Renewals**

Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions (the "Renewal Term", together with the Initial Term shall be the "Term"). If at the end of the Renewal Term the Director or the City chooses not to renew this Agreement, the Director shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current term.

### **5.3. Termination for Convenience by City**

**5.3.1.** The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future, provided, however, this section is in no way intended to conflict with the early termination provision of Item 4.1.1.

**5.3.2.** On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section 4.1 unless the fees exceed the allocated funds remaining under this Agreement. Contractor shall refund pro rata any advance fees paid for the period remaining after the termination of this Agreement.

**5.3.3.** TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

### **5.4. Termination for Cause**

Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver

a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after Contractor's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director shall act on behalf of the City to notify Contractor of a default and to effect termination.

## 6. MISCELLANEOUS

### 6.1. Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

### 6.2. Force Majeure

**6.2.1.** Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

**6.2.2.** This relief is not applicable unless the affected party does the following:

- 6.2.2.1.** uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- 6.2.2.2.** provides the other party with prompt written notice of the cause and its anticipated effect.

**6.2.3.** The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

**6.2.4.** The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

**6.2.5.** If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE**

## **TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

**6.2.6.** Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

### **6.3. Severability**

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

### **6.4. Entire Agreement**

This Agreement embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

### **6.5. Written Amendment**

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

### **6.6. Applicable Laws**

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

### **6.7. Notices**

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

### **6.8. Captions**

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

### **6.9. Non-Waiver**

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

#### **6.10. Inspection and Audits**

Upon 15 days written notice to Contractor, City representatives may perform, or have performed (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

#### **6.11. Enforcement**

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

#### **6.12. Ambiguities**

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

#### **6.13. Survival**

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

#### **6.14. Parties In Interest**

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

#### **6.15. Successors and Assigns**

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City or Contractor.

#### **6.16. Business Structure and Assignments**

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all

of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

#### **6.17. Remedies Cumulative**

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

#### **6.18. Contractor Debt**

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

### **EXHIBIT A**

#### **SCOPE OF SERVICES**

##### **1. PURPOSE**

- 1.1. Contractor shall provide high-speed, fiber optic circuits for the City's Metropolitan Area Network (defined as the network area within Houston city limits, plus surrounding areas where the City provides any services) to connect:
  - a. the City's redundant Core Network sites; and
  - b. the City's Core Network sites to City and Departmental Distribution sites.
- 1.2. Contractor shall also provide the City with a number of lower-speed, fiber optic circuits to serve other network applications, in the event the HITS Director sends Contractor a written request to provide such circuits. The HITS Director has the option to request Contractor to provide up to 60 months of service at over 80 locations. City reserves the right to change locations or reduce the total number of fiber optic circuits it requests, based on the needs and the best interests of the City at the time when the City has to make decisions regarding such circuits.

##### **2. DEFINITIONS**

- 2.1. SC means Subscriber Connector/Standard Connector
- 2.2. LC means Local Connector/Lucent Connector
- 2.3. GBIC means Gigabit Interface Converters
- 2.4. City means City of Houston Information Technology Services (HITS) or Information Technology Department
- 2.5. TSP means Telecommunications Service Priority
- 2.6. VoiP means Voice-Over Internet Protocol
- 2.7. QoS means Quality of Service
- 2.8. CoS means Cost of Service
- 2.9. DC means Data Center
- 2.10. MDF means Main Distribution Frame

### 3. GENERAL REQUIREMENTS

- 3.1. Contractor warrants that its network proposed by it in response to the City RFP and described in Exhibit A-1 (Contractor's Data Circuit Service Diagram) and its Network Devices with the technical specifications listed in Exhibit A-2 (Contractor's Network Devices and Technical Specifications) support the City's need for low latency, high availability data circuit connections by meeting the minimum technical specifications and design requirements detailed below.

#### 3.2. Circuit Specifications

- 3.2.1. Contractor shall provide circuits to the City according to the speeds detailed and requested in the fee schedule, with either fiber or copper handoffs. City will specify the protocol, handoff type and handoff location on order. The City requires 1 Gigabit port handoffs for ordered speeds of 100 Megabits to 1 Gigabit, and prefers 1 Gigabit ports for all connections. For speeds lower than 100 Megabits, 100 Megabit ports are acceptable. For speeds over 1 Gigabit, 10 Gigabit links are required.
- 3.2.2. Management, diagnostics, and reporting services shall be included in the monthly price.
- 3.2.3. All circuits provided under this Agreement must be registered as TSP circuits with Contractor's assurance that in the event an emergency is declared by the City or the state or federal government, then, Contractor shall assign the highest priority to restoring to service such TSP circuits it supplies to City under this Agreement; and
- 3.2.4. Where City requests dual circuits to the same locations, then, Contractor must provide redundant hardware and diverse routing paths into separate entry points for each circuit terminating at each location.
- 3.2.5. Where City requests, Contractor shall provide multi-point and trunking VLANs over circuit links.

#### 3.3. Essential Service Level Requirements

- 3.3.1. Contractor shall make all circuits it supplies to City under this Agreement

available 99.99% of the time, and shall respond within 4 hours of notification by the City of a circuit or network equipment failure, 24 hours a day, 7 days of the week. In the event of any outage occurrence, Contractor shall provide email notification to the City within 30 minutes of such outage event. Contractor shall provide status updates on trouble reported once every two hours until the problem is resolved.

- 3.3.2.** Contractor shall ensure that packet data that the City transmits over the circuits it provides under this Agreement have a maximum latency of 30 milliseconds, a maximum jitter of 20 milliseconds and a maximum packet loss of .01%.

SLA Measurements	Guaranteed Levels
Network Availability	99.99%
Packet Delivery Rate (PDR)	99.99%
Latency	< 30 ms
Jitter	< 20 ms

- 3.3.3.** Contractor shall assign the City highest priority in order to provide connectivity to City public safety data/voice/video whenever the City, the State of Texas or the federal government declares an emergency within the City. Contractor shall not charge the City overages for bandwidth utilization during a declared emergency. In consultation with the HITS Director, Contractor and the City will mutually agree to any changes in the technical specifications of circuits which are installed by Contractor under this Agreement. Contractor shall refund on a prorated basis any prepaid amounts for circuits that are disconnected by the City prior to the end of the term for which disconnected circuits were installed. The HITS Director will give Contractor 30 calendar days' written notice to disconnect any circuits, and a minimum of 14 calendar days' notice to activate a circuit (or a mutually agreed upon date if construction is necessary). Contractor shall bill the City for service from the first business day on which service on that circuit is accepted by the HITS Director as set out in Section 3.6 below.

- 3.3.4.** In the event Contractor is unable to meet the service levels set out in Section 3.3.2 above, Contractor shall credit the City as provided in Contractor's Service Level Agreement (see Exhibit H).

- 3.3.5.** Contractor warrants that the methodology, design, and technical specifications of the circuits proposed by Contractor in response to the City RFP provide equivalent or superior service to that outlined in the specifications listed in the tables below.

### **3.4. Traffic Management**

- 3.4.1.** Contractor shall allow the City to prioritize certain portions of City data, by running such data before it runs other types of City data, by giving City the right to assign or rank by importance City data traffic, such as, for example, designating Class of Service or Quality of Service levels to inbound and outbound City data, or by giving preference to Voice Over IP

communications, as the City generally does under normal circumstances.

### **3.5. 24 x 7 Network Operation Center**

**3.5.1.** Contractor shall operate its Network Operations Center (NOC) 24 hours a day, 7 days of the week and designate such center as its main contact for all problems and service questions from the City. Contractor shall staff its NOC with well-trained, well-qualified and motivated, customer-oriented employees. Contractor shall ensure that its NOC employees are capable of providing immediate customer assistance and have been instructed by Contractor to initiate escalation procedures to notify on-call senior engineers, if needed. Contractor shall ensure that its NOC monitors all City-installed network equipment as well as data circuit connectivity to City. Contractor shall ensure that its employees are equipped with monitoring tools to identify problems quickly and to proactively work on a solution that restores network connectivity to City.

**3.5.2.** Contractor shall monitor all Network Devices it provides to City under this Agreement, 24 hours a day, 7 days of the week. Contractor's personnel at the NOC shall immediately notify City by email within 30 minutes of detecting an alarm associated with a City network or circuit within the NOC. Contractor shall also dispatch its technicians within one hour of an alarm notifying it that City has lost circuit connectivity, unless the outage is related to planned customer maintenance.

### **3.6. Billing and Acceptance**

**3.6.1.** Contractor shall start billing the City for a new data circuit it provides under this Agreement only when the circuit has been successfully tested and accepted in writing within three business days of its installation by the City's designated representative from the City's Information and Technology Department ("Acceptance"). A new data circuit shall be considered automatically accepted by the City nine (9) days after installation it has been confirmed the digital signal has been successfully transmitted to the City equipment located on City premises, the City has provided no notice of refusal of acceptance, and the City fails to provide the written acceptance within three business days of installation. The City considers the installation of a data circuit complete only when Contractor's field service technician has demonstrated to the City by testing the installed circuit and successfully transmitting a digital signal ("pinging") to the City equipment located on City premises. In the event Contractor's field service technician is unable to demonstrate connectivity by pinging a signal to City equipment located on City premises when a data circuit is installed, then, Contractor's field service technician shall use their laptops or other devices provided by Contractor to complete circuit testing until circuit Acceptance.

## **4. CONTRACTOR SPECIFIC REQUIREMENTS**

### **4.1. Contractor's Core Network**

**4.1.1.** Contractor shall use the most current network technology on its core

network to support the City's full use of the bandwidth the City purchases under this Agreement. Contractor's router must connect to two different main nodes on a fiber ring, providing redundancy in case of a main node failure. At its core center locations, Contractor must provide the following at its Datacenter:

- 4.1.1.1. Redundant connections to Contractor's network router (MAN);
- 4.1.1.2. Redundant Power feeds;
- 4.1.1.3. Uninterruptible Power Supply (UPS) systems;
- 4.1.1.4. Backup Generator Power with ability to sustain use for prolonged periods of time;
- 4.1.1.5. Fire Suppression System;
- 4.1.1.6. 24x7 monitored Security;
- 4.1.1.7. Local NOC onsite 24x7 to monitor and to provide system administration;
- 4.1.1.8. Plan for staying current in technology;
- 4.1.1.9. Contingency plan for rapid fix of a break on Contractor's network;
- 4.1.1.10. Assistance to City with compliance and participation in the federal Homeland Security Department's Disaster Recovery Program; and
- 4.1.1.11. A documented Disaster Recovery Plan that can be reviewed by the City's IT Department.

#### **4.2. Data Circuit Service Diagram.**

Contractor's High-Level Diagram of its Data Circuit Services within a thirty mile radius of the metropolitan Houston area proposed by it in its response to City RFP is attached and made a part of this Agreement as Exhibit A-1. Additionally, Contractor shall maintain network drawings of the service to the City and kept such drawings up to date, and make them available to the City upon City's request. Contractor shall provide diagrams and drawings to the City with the addition of each new site. Such diagrams and drawings shall include the circuit ID, speed, and port number of the provider premises switch. Drawings shall be submitted to the City regardless of recent changes on January 15 and June 15 of each contract year.

#### **4.3. Redundant Hardware.**

- 4.3.1. Where dual circuits to the same locations are requested, then, Contractor shall provide redundant hardware and diverse routing paths for each circuit terminating at each location requested by the City.
- 4.3.2. Contractor shall ensure that each switch has dual power supplies and redundant supervisor engines as well as redundant fiber connections to different main nodes on its fiber ring in order to have a setup that compliments a fault-tolerant and high availability design.

### **5. SECURITY**

- 5.1. Contractor shall meet or exceed City's security requirements by using highly trained

and skilled employees as support staff, network technicians and field personnel to install, monitor or access the network devices provided to City under this Agreement. The Contractor shall also provide high-level information indicating security provisions for the Contractor's network. This information shall substantiate that a comprehensive security plan is in place.

## **5.2. Device Security.**

Contractor shall ensure that:

- 5.2.1.** All network devices are configured with only the active ports and services needed and that ports not in use by the City are not a member of any VLAN configuration.
- 5.2.2.** Management access to switches is only possible from an internal management VLAN and that management accounts are radius based, and frequent password changes are mandatory.
- 5.2.3.** All configurations are stored on a back-up server in the event a network device fails.
- 5.2.4.** All configuration changes are systematically recorded and e-mailed to an internal review group.
- 5.2.5.** Internal routing protocols are authenticated using encrypted "handshakes."
- 5.2.6.** Unauthorized information shall not be injected into the network.

## **5.3. Data Circuit Security.**

Contractor shall ensure that:

- 5.3.1.** an Intrusion Detection System is running on certain key IP addresses to gather a current network thread view.
- 5.3.2.** Netflow statistics as well as access-list provide filtering capabilities in case of trojan virus outbreaks.
- 5.3.3.** in case of a security problem, filters will be deployed to protect the customers.

## **5.4. Physical Security**

- 5.4.1.** Contractor must ensure that all major ring nodes are located in secure collocation or locked facilities; and the physical security perimeter has a type of gate, door, or wall that is intended to restrict and control the physical access or egress of personnel. Contractor must use the gate as a means to limit access to authorized persons through measures such as unique keying systems, "smart locks" access card systems, or the use of security personnel. Contractor must have perimeter alarm systems in place to

monitor forced intrusion into and surveillance of the location.

- 5.4.2. Contractor must ensure that fiber routes are kept confidential and are not accessible to third parties.

## **6. NETWORK MANAGEMENT**

- 6.1. Contractor's support staff must be trained, experienced and qualified network engineers capable of understanding and supporting the City's IT environment. Contractor's network engineering support staff shall proactively support all current and future efforts relating to the monitoring of the City's network so as to identify problems as soon as possible before users of the City's network are affected.
- 6.2. Contractor must provide corrective and preventive maintenance and must have the capacity to upgrade circuits to facilitate optimum network performance as part of the technical support and maintenance it provides under this Agreement.
- 6.3. Contractor agrees that all planned maintenance that impacts public safety must be pre-approved and accepted by Houston IT Services and will be scheduled from 2:00am – 6:00am on Tuesdays.
- 6.4. As part of network administration, Contractor must keep track of network resources and must have a clear picture of where it has assigned such resources by location.

## **7. SECURITY MANAGEMENT**

- 7.1. Contractor shall ensure the security of City data transmitted over Contractor's network and circuits provided to City under this Agreement, and, shall assist the City's Information Technology Department, which is charged with IT Security Management for the City in general, maintain the security of such data by using industry best practices to enable the City to comply with regulatory agency requirements, including but not limited to CJIS (law enforcement), and federal privacy requirements of health related data under HIPAA.

## **8. REPORTING REQUIREMENTS**

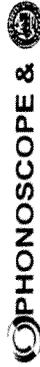
- 8.1. Contractor shall provide HITS Director with a monthly report of bandwidth utilization by circuit shall be required, and a "Point-in-Time" report may be requested at any time by the City. This report shall indicate peak, average, and trends in utilization. The format of the report and information requirements shall be specified at the time of the request. Contractor shall immediately alert the City of any bandwidth utilization abnormalities or outages. Provide an example of a sample report that indicates peak, average, and trends in utilization.

## **9. RESPONSE TIME**

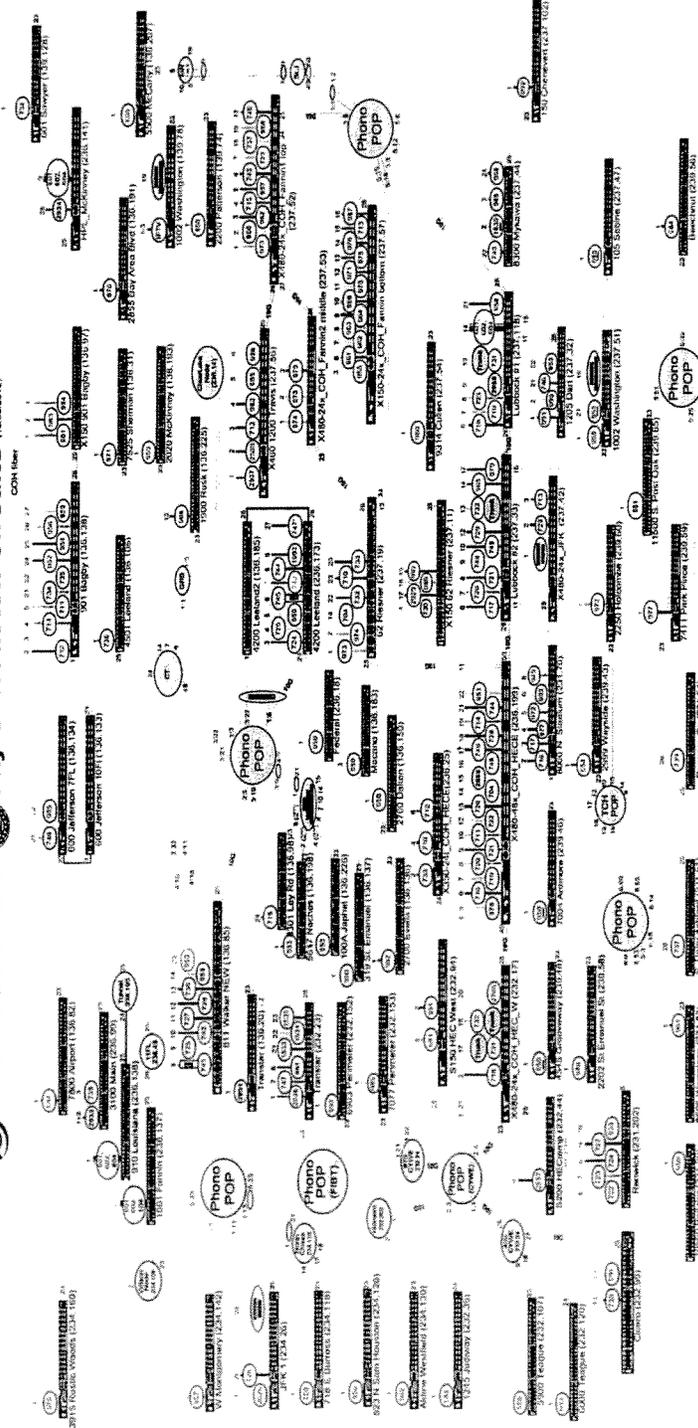
- 9.1. Contractor must be accessible to the City by telephone during normal business hours, defined as Monday through Friday, 7:00 A.M. to 6:00 P.M., Central Time. Contractor must be ready to start work on any circuit within two hours of receiving a call for service from the City's designated representative from its Information and Technology Department.

- 9.2.** Contractor must be available and accessible to the City by telephone to work overtime if requested by the City's designated representative from its Information Technology Department.
- 9.3.** Contractor must be available and accessible to the City by telephone to work on an emergency basis, if requested by the City's designated representative from its Information Technology Department.
- 9.4.** Contractor shall start an emergency job immediately without scheduling delays, and shall not restrict such emergency jobs to normal working hours. The HITS Director will coordinate emergency and overtime work with Contractor through the City's designated representative from its Information Technology Department.

EXHIBIT A-1  
Contractor's Data Circuit Service Diagram



(10/26/07)



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**EXHIBIT A-2**

**Contractor's Network Devices and Technical Specifications**

**EXHIBIT B**

**FEE SCHEDULE**

1. **PRICING.** Contractor's pricing shall include the following:
  - 1.1. Total monthly cost (flat rate) of each circuit at the minimum standard bandwidth, as stated in the Fee Schedule.
  - 1.2. Installation and disconnect fees (if applicable). Contractor shall not charge any disconnection fees for any circuit installed for more than one year.
  - 1.3. Total monthly costs for upgrading 50 MB circuits--up to 1 GB and in 100 MB increments (see Fee Schedule).
  - 1.4. Indicate the monthly total cost of bandwidth utilization above the standard bandwidth for both, 50 Mbps circuits and 5 Mbps circuits. This amount should be in 100 Mbps increments for a 50 Mbps circuit, and 5 Mbps increments for 5 Mbps circuits. Contractor shall not charge City overage charges during a City, State or Federally declared emergency.
  - 1.5. Contractor shall provide the number of days required to establish service, and to have services available for City usage.
  - 1.6. The future sites detailed in the price schedule shall be used to upgrade bandwidth at current locations to new bandwidth at the rates defined in the Fee Schedule. If there are exceptions for the sites for higher or lower pricing, then they should be detailed.
  - 1.7. The future sites shall also include locations that are not physical (i.e., Internet access. If separate pricing is required for these type of circuits, then detail these charges in the alternative Schedule.
  - 1.8. Costs in the Fee Schedule should represent the total monthly recurring charge for the link--including port costs, speed, and any other monthly costs associated with the monthly recurring charge.

Site	"A" Location	"Z" Location	Current Speed at Site	Current Circuit ID	Monthly Connection Fee			Install Cost
					Year 1 thru 3	Year 4	Year 5	
<b>CURRENT SITES</b>								
1	910 Louisiana	901 Bagby Mezzanine DC	5 Mbps Circuit	601	\$350.00	\$340.00	\$335.00	\$0.00
2	1001 Fannin	901 Bagby Mezzanine DC	5 Mbps Circuit	602	\$350.00	\$340.00	\$335.00	\$0.00
3	6922 Old Katy Rd.	5320 N. Shepherd	5 Mbps Circuit	681	\$350.00	\$340.00	\$335.00	\$0.00
4	406 Caroline	62 Reisner	5 Mbps Circuit	730	\$350.00	\$340.00	\$335.00	\$0.00
5	601 Sawyer	901 Bagby	10Mbps Circuit	734	\$650.00	\$635.00	\$620.00	\$0.00
6	3100 Main	901 Bagby	10Mbps Circuit	735	\$650.00	\$635.00	\$620.00	\$0.00
7	4501 Leeland	611 Walker	10Mbps Circuit	736	\$650.00	\$635.00	\$620.00	\$0.00
8	4200 Leeland	6922 Old Katy Rd.	10Mbps Circuit	747	\$650.00	\$635.00	\$620.00	\$0.00
9	2700 Evella	901 Bagby	10Mbps Circuit	952	\$650.00	\$635.00	\$620.00	\$0.00
10	2999 S. Wayside	901 Bagby	10Mbps Circuit	754	\$650.00	\$635.00	\$620.00	\$0.00
11	1002 Washington	62 Reisner	10Mbps Circuit	955	\$650.00	\$635.00	\$620.00	\$0.00
12	523 N. Sam Houston Pkwy	901 Bagby	10Mbps Circuit	956	\$650.00	\$635.00	\$620.00	\$0.00
13	2020 McKinney	901 Bagby	10Mbps Circuit	959	\$650.00	\$635.00	\$620.00	\$0.00
14	8605 West Place Drive	62 Reisner	10Mbps Circuit	961	\$650.00	\$635.00	\$620.00	\$0.00
15	1700 Aldine Westfield	62 Reisner	10Mbps Circuit	962	\$650.00	\$635.00	\$620.00	\$0.00
16	6000 Teague	62 Reisner	10Mbps Circuit	963	\$650.00	\$635.00	\$620.00	\$0.00
17	4503 Beechnut	62 Reisner	10Mbps Circuit	964	\$650.00	\$635.00	\$620.00	\$0.00
18	8300 Mykawa	1400 Lubbock	10Mbps Circuit	965	\$650.00	\$635.00	\$620.00	\$0.00
19	1900 Rusk	62 Reisner	10Mbps Circuit	966	\$650.00	\$635.00	\$620.00	\$0.00
20	2202 St. Emmanuel Street	62 Reisner	10Mbps Circuit	970	\$650.00	\$635.00	\$620.00	\$0.00
21	7525 Sherman	62 Reisner	10 Mbps Circuit	971	\$650.00	\$635.00	\$620.00	\$0.00
22	2252 Holcombe	8000 N. Stadium	10Mbps Circuit	972	\$650.00	\$635.00	\$620.00	\$0.00
23	3915 Rustic Woods	62 Reisner	10 Mbps Circuit	975	\$650.00	\$635.00	\$620.00	\$0.00
24	2855 Bay Area Blvd.	62 Reisner	10 Mbps Circuit	976	\$650.00	\$635.00	\$620.00	\$0.00
25	7411 Park Palce	8000 N. Stadium	10 Mbps Circuit	977	\$650.00	\$635.00	\$620.00	\$0.00
26	9314 Cullen Blvd.	8000 N. Stadium	10 Mbps Circuit	980	\$650.00	\$635.00	\$620.00	\$0.00
27	11500 South Post Oak Road	901 Bagby	10 Mbps Circuit	981	\$650.00	\$635.00	\$620.00	\$0.00
28	5617 Neches	901 Bagby	10 Mbps Circuit	983	\$650.00	\$635.00	\$620.00	\$0.00
29	1245 Judiway	901 Bagby	10 Mbps Circuit	984	\$650.00	\$635.00	\$620.00	\$0.00
30	2700 Dalton	Multipoint	10 Mbps Circuit	950-01	\$650.00	\$635.00	\$620.00	\$0.00
31	718 E. Buress	Multipoint	10 Mbps Circuit	950-02	\$650.00	\$635.00	\$620.00	\$0.00
32	2200 Patterson	Multipoint	10 Mbps Circuit	950-03	\$650.00	\$635.00	\$620.00	\$0.00
33	105 Sabine	Multipoint	10 Mbps Circuit	950-04	\$650.00	\$635.00	\$620.00	\$0.00
34	7004 Ardmore	Multipoint	10 Mbps Circuit	950-05	\$650.00	\$635.00	\$620.00	\$0.00
35	319 St. Emmanuel	Multipoint	10 Mbps Circuit	950-06	\$650.00	\$635.00	\$620.00	\$0.00
36	5900 Teague	Multipoint	10 Mbps Circuit	950-07	\$650.00	\$635.00	\$620.00	\$0.00
37	2525 Marcario Gardia	Multipoint	10 Mbps Circuit	950-08	\$650.00	\$635.00	\$620.00	\$0.00
38	2300 Federal Road	Multipoint	10 Mbps Circuit	950-09	\$650.00	\$635.00	\$620.00	\$0.00
39	10500 Bellaire Blvd.	Multipoint	10Mbps Circuit	950-10	\$650.00	\$635.00	\$620.00	\$0.00

Site	"A" Location	"Z" Location	Current Speed at Site	Current Circuit ID	Monthly Connection Fee			Install Cost
					Year 1 thru 3	Year 4	Year 5	
<b>CURRENT SITES</b>								
40	100 Japhet	Multipoint	10Mbps Circuit	950-15	\$650.00	\$635.00	\$620.00	\$0.00
41	4545 Groveway	Multipoint	10Mbps Circuit	950-16	\$650.00	\$635.00	\$620.00	\$0.00
42	5500 McCarty	Multipoint	10Mbps Circuit	950-17	\$650.00	\$635.00	\$620.00	\$0.00
43	500 McKinney	901 Bagby	50 Mbps Circuit	604	\$1,000.00	\$980.00	\$960.00	\$0.00
44	6922 Old Katy Rd.	5320 N. Shepherd	50 Mbps Circuit		\$1,000.00	\$980.00	\$960.00	\$0.00
45	HEC - Reisner	62 Reisner	50 Mbps Circuit	704	\$1,000.00	\$980.00	\$960.00	\$0.00
46	HEC - Reisner	62 Reisner	50 Mbps Circuit	710	\$1,000.00	\$980.00	\$960.00	\$0.00
47	HEC - Bagby	901 Bagby	50 Mbps Circuit	714	\$400.00	\$395.00	\$385.00	\$0.00
48	1200 Travis	62 Reisner	50 Mbps Circuit		\$1,000.00	\$980.00	\$960.00	\$0.00
49	901 Bagby	5320 N Shepherd	50 Mbps Circuit	711	\$1,000.00	\$980.00	\$960.00	\$0.00
50	8000 N. Stadium	5320 N. Shepherd	50 Mbps Circuit	716	\$1,000.00	\$980.00	\$960.00	\$0.00
51	8000 N. Stadium	1400 Lubbock	50 Mbps Circuit	717	\$1,000.00	\$980.00	\$960.00	\$0.00
52	1400 Lubbock	5320 N. Shepherd	1000 Mbps Circuit	731	\$1,425.00	\$1,400.00	\$1,370.00	\$0.00
53	1400 Lubbock	5320 N. Shepherd	1000 Mbps Circuit	732	\$1,425.00	\$1,400.00	\$1,370.00	\$0.00
54	1400 Lubbock	5320 N. Shepherd	1000 Mbps Circuit	748	\$1,425.00	\$1,400.00	\$1,370.00	\$0.00
55	1400 Lubbock	5320 N. Shepherd	1000 Mbps Circuit	749	\$1,425.00	\$1,400.00	\$1,370.00	\$0.00
56	7101 Renwick	5320 N. Shepherd	50Mbps Circuit	722	\$1,000.00	\$980.00	\$960.00	\$0.00
57	7101 Renwick	1400 Lubbock	50Mbps Circuit	723	\$400.00	\$395.00	\$385.00	\$0.00
58	4200 Leeland	7101 Renwick	50Mbps Circuit	724	\$400.00	\$395.00	\$385.00	\$0.00
59	4200 Leeland	611 Walker	50Mbps Circuit	725	\$1,000.00	\$980.00	\$960.00	\$0.00
60	611 Walker	5320 N. Shepherd	50Mbps Circuit	762	\$1,000.00	\$980.00	\$960.00	\$0.00
61	611 Walker	7101 Renwick	50Mbps Circuit	727	\$400.00	\$395.00	\$385.00	\$0.00
62	IAH, 16930 JFK	5320 N. Shepherd	50Mbps Circuit	728	\$400.00	\$395.00	\$385.00	\$0.00
63	IAH, 16930 JFK	1400 Lubbock	50Mbps Circuit	729	\$1,000.00	\$980.00	\$960.00	\$0.00
64	1400 Lubbock	5320 N. Shepherd	1000 Mbps Circuit	720	\$1,425.00	\$1,400.00	\$1,370.00	\$0.00
65	1400 Lubbock	5320 N. Shepherd	1000 Mbps Circuit	721	\$1,425.00	\$1,400.00	\$1,370.00	\$0.00
65	5320 N. Shepherd	62 Reisner	50Mbps Circuit	733	\$1,000.00	\$980.00	\$960.00	\$0.00
66	3203 S. Dairy Ashford	62 Reisner	50Mbps Circuit	737	\$1,000.00	\$980.00	\$960.00	\$0.00
67	14123 Cicero	62 Reisner	50Mbps Circuit	738	\$1,000.00	\$980.00	\$960.00	\$0.00
68	7277 Regency Square	62 Reisner	50Mbps Circuit	739	\$1,000.00	\$980.00	\$960.00	\$0.00
69	8300 Mykawa	62 Reisner	50 Mbps Circuit	740	\$1,000.00	\$980.00	\$960.00	\$0.00
70	4200 Leeland	5320 N. Shepherd	50Mbps Circuit	744	\$1,000.00	\$980.00	\$960.00	\$0.00
71	4200 Leeland	611 Walker	50Mbps Circuit	742	\$1,000.00	\$980.00	\$960.00	\$0.00
72	600 Jefferson	1205 Dart	50Mbps Circuit	746	\$1,000.00	\$980.00	\$960.00	\$0.00
73	1400 Lubbock	5320 N. Shepherd	50Mbps Circuit	718	\$400.00	\$395.00	\$385.00	\$0.00
74	1400 Lubbock	5320 N. Shepherd	50Mbps Circuit	719	\$400.00	\$395.00	\$385.00	\$0.00
75	1205 Dart	5320 N. Shepherd	50Mbps Circuit	953	\$1,000.00	\$980.00	\$960.00	\$0.00
76	9455 W. Montgomery	62 Reisner	50Mbps Circuit	957	\$1,000.00	\$980.00	\$960.00	\$0.00
77	8300 Mykawa	1400 Lubbock	50Mbps Circuit	958	\$1,000.00	\$980.00	\$960.00	\$0.00
78	1301 Fannin	62 Reisner	50Mbps Circuit	973	\$1,000.00	\$980.00	\$960.00	\$0.00

Site	"A" Location	"Z" Location	Current Speed at Site	Current Circuit ID	Monthly Connection Fee			Install Cost
					Year 1 thru 3	Year 4	Year 5	
<b>CURRENT SITES</b>								
79	1301 Fannin	5320 N. Shepherd	50Mbps Circuit	978	\$400.00	\$395.00	\$385.00	\$0.00
80	1301 Fannin	1400 Lubbock	50Mbps Circuit	979	\$400.00	\$395.00	\$385.00	\$0.00
81	1301 Fannin	1200 Travis	50Mbps Circuit	982	\$400.00	\$395.00	\$385.00	\$0.00
82	1002 Washington	Multipoint	50Mbps Circuit	950-10	\$1,000.00	\$980.00	\$960.00	\$0.00
83	611 Walker	Multipoint	50Mbps Circuit	950-11	\$1,000.00	\$980.00	\$960.00	\$0.00
84	7101 Renwick	Multipoint	50Mbps Circuit	950-12	\$1,000.00	\$980.00	\$960.00	\$0.00
85	4200 Leeland	611 Walker	1000 Mbps Circuit	745	\$2,850.00	\$2,790.00	\$2,735.00	\$0.00
86	4200 Leeland	Multipoint	1000 Mbps Circuit	950-13	\$2,850.00	\$2,790.00	\$2,735.00	\$0.00
87	1301 Fannin	62 Reisner	1000 Mbps Circuit	974	\$2,850.00	\$2,790.00	\$2,735.00	\$0.00
88	1400 Lubbock	Internet	500Mbps		\$3,198.00	\$3,135.00	\$3,070.00	\$0.00
89	16934 JFK Blvd.	Internet	50Mbps	2525	\$1,000.00	\$980.00	\$960.00	\$0.00
90	1200 Travis	Internet	50Mbps	2507	\$1,000.00	\$980.00	\$960.00	\$0.00
91	5320 N. Shepherd	Internet	500Mbps	2998	\$3,198.00	\$3,135.00	\$3,070.00	\$0.00
92	3100 Main	Internet	10Mbps	2933	\$650.00	\$635.00	\$620.00	\$0.00
93	6922 Old Katy Rd.	Internet	500Mbps	2991	\$3,198.00	\$3,135.00	\$3,070.00	\$0.00
94	4200 Leeland	Internet	200Mbps	1990	\$1,950.00	\$1,910.00	\$1,870.00	\$0.00

Site	"A" Location	"Z" Location	Current Speed at Site	Monthly Connection Fee			Install Cost
				Year 1 thru 3	Year 4	Year 5	
<b>PROBABLE SITES</b>							
1	7125 Ardmore	901 Bagby	10 Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
2	7125 Ardmore	62 Riesner	10Mbps Circuit	\$300.00	\$295.00	\$290.00	\$0.00
3	8030 Braniff	1205 Dart	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
4	1475 W. Gray	901 Bagby	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
5	7440 Cullen	4200 Leland	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
6	8402 Lawson	62 Riesner	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
7	3100 North Terminal*	62 Riesner	10 Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
8	5980 Renwick	62 Riesner	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
9	17375 Tomball Pkwy.	62 Riesner	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
10	7800 Airport	62 Riesner	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
11	6201 Bonhomme	8000 N. Stadium	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
12	8504 Schuller	8000 N. Stadium	10 Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
13	6402 Market	8000 N. Stadium	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
14	3611 Ennis	8000 N. Stadium	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
15	6402 Market	901 Bagby	10Mbps Circuit	\$300.00	\$295.00	\$290.00	\$0.00
16	151 Chenevert	62 Riesner	10Mbps Circuit	\$650.00	\$635.00	\$620.00	\$0.00
17	151 Chenevert	1400 Lubbock	10 Mbps Circuit	\$300.00	\$295.00	\$290.00	\$0.00

Title

**EXHIBIT E**

**DRUG POLICY COMPLIANCE DECLARATION**

I, Rhonda Cumming - President as an  
owner or officer of  
(Name) (Print/Type) (Title)  
Phonoscope Light Wave,  
Inc. \_\_\_\_\_  
(Contractor)  
\_\_\_\_\_  
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from 09.01.12 thru 02.28.13.

RC  
Initials

A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

RC  
Initials

Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

RC  
Initials

Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

RC  
Initials

Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 56.

From 09.01.12 to 02.28.13 the following test has occurred  
(Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	<u>18</u>	<u>0</u>	<u>8</u>	<u>26</u>
Number Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Percent Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

RC  
Initials

Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

RC  
Initials

I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

17 April 2013  
(Date)  
Name)

Rhonda Cumming  
(Typed or Printed)  
R Cumming  
(Signature)

President \_\_\_\_\_  
(Title)