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First Amendment to TEXAN 2000 – TWT - LS
Between
TEXAS DEPARTMENT OF INFORMATION RESOURCES
And
Time Warner Telecom

This First Amendment to the TEXAN 2000 – TWT – LS, is entered into by and between the State of Texas, acting by and through the Department of Information Resources (DIR), with its principal place of business at 300 W. 15th Street, Suite 1300, Austin, Texas 78701, and Time Warner Telecom (Vendor) a Delaware corporation, with offices at 8000 Centre Park Drive, Suite 160, Austin, Texas 78754.

This contract is the result of a public procurement process conducted in compliance with applicable Texas law. For ease of use of the parties, the TEXAN 2000 – TWT – LS is amended and restated as follows:

For valuable consideration, the parties agree as follows:

1. DEFINITIONS

A. "Contract Administrator" refers to the individual appointed by DIR to administer this contract on behalf of the State of Texas and the authorized Customers.

B. "Customer" means any Texas State agency as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, §61.003), state agencies purchasing through this contract by an Interagency Contract, as authorized by Chapter 771, Texas Government Code, political subdivisions as defined in §2170.004 (4), Texas Government Code and pre-qualified private institutions of higher education as authorized by Section 2170.004 (5), Texas Government Code.

C. "Local Services" are the telecommunications services to be provided by Vendor as described in this Contract.

D. "Purchase Order" means an electronic or paper document issued by a Customer, which directs Vendor to deliver Local Services, pursuant to this contract.

E. "Day" shall mean business days, Monday through Friday, except for State and Federal Holidays. If the contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

F. "Effective Date" of this contract shall be September 29, 2004.

G. "Vendor" means Time Warner Telecom.

2. TERM OF CONTRACT

This contract shall begin on its Effective Date and expires on August 31, 2007. DIR retains two options to extend the contract for one-year periods thereafter by issuing a written intention to extend to Vendor no less than thirty (30) days from the then-effective expiration date of the Contract.

3. PURPOSE OF THIS CONTRACT

Vendor shall provide Local Services **only** as specified in the Request for Offers Document No. 99-Tele-2000, Exhibit A and Exhibit C hereto to Customers in accordance with the terms of this contract. Vendor shall provide Local Services only upon the issuance and acceptance by Vendor of valid purchase orders issued by Customers. A Customer may purchase any quantity of Local Services available from Vendor at the prices negotiated by DIR ("DIR Discounted Price"). Unless it issues a specific Purchase Order under this contract, DIR is not a Customer under this Contract. Each Customer is responsible for its performance under the Purchase Orders it issues to Vendor.

4. ENTIRE CONTRACT AND ORDER OF PRECEDENCE

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Exhibit A – the RFO incorporated by reference; Exhibit B – Vendor's response to the RFO, incorporated by reference, Exhibit C – Pricing and Additional Terms and Conditions for Local Services, Exhibit C-1, Applicable Telecommunications Fees and Exhibit D - HUB Sub-contracting Plan constitute the entire Contract between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, Appendix A, Exhibits D, C-1, C, B and A, in that order. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

5. NO QUANTITY GUARANTEES

This contract is not exclusive to the named Vendor. DIR makes no representations or express or implied warranties whatsoever that any particular number of purchase orders will be issued or that any particular quantity or dollar amount of Local Services will be procured through this contract. State agency-customers, political subdivisions and institutions of higher education, whether public or private, are authorized to use this DIR sponsored contract, but are not mandated to do so.

6. SERVICES AVAILABLE

Local Services include the services Vendor offers as set forth in Exhibit C.

Vendor will maintain a list including pricing and descriptions for all services offered within the scope of this Contract. The services list may be updated at any time during the term of this

Contract to incorporate changes to the service offering so long as such changes are within the scope of the Contract.

7. PRICING

The price to the Customer under this Contract will be as set forth in this Contract and shall be the minimum discounted price offered by Vendor to any Texas governmental entity for the same Product or Services without volume or term commitments. Any violation of this provision may result in this Contract being terminated.

A. Customer Rates

The price to the Customer for Local Services is based on the rates reflected in Exhibit C and includes the DIR administrative fee specified in Section 9 of the Contract and shall become effective as of the effective date of this contract.

Customers purchasing Local Services under the Contract may negotiate more advantageous pricing or participate in special promotional offers based on volume or term commitments, as may be agreed between the Vendor and Customer. In such event, Vendor shall supply a copy of such better offerings to DIR and report the more advantageous pricing and pay the applicable administrative fee on such sales to DIR as required by Article 9.

If pricing for Local Services available under the Contract is provided at a more advantageous rate and under the same volume and term commitments as this contract, to an eligible Customer who is not purchasing Local Services under the Contract then the available rates in the Contract shall be adjusted to those more advantageous rates and Vendor shall be required to report such sales and pay the applicable administrative fees to DIR as set forth in Article 9. The Contract shall be amended in accordance with Section 14 of Appendix A within ten (10) days to reflect the new rates.

Vendor agrees that it shall offer and make available this DIR Contract for all sales of Local Services to eligible DIR Customers during its term.

B. DIR Administrative Fee

The DIR administrative fee specified in Section 9, Reporting and Administrative Fees, is included in the Exhibit C rates. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Rates, Taxes and Telecommunications Fees

- 1) The rates set forth in this Contract may not be changed except by Amendment to the Contract.
- 2) FCC and PUC telecommunications fees, surcharges and assessments may apply to certain services covered under this contract. A complete list of those applicable charges

is attached as Exhibit C-1. No other FCC or PUC authorized fee, surcharge or assessment applicable to Local Services may be imposed during the term of this Contract, without the prior amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers, that are political subdivisions, are exempt from the imposition and collection of certain Texas telecommunications fees, including the Texas Universal Service Fund Charge and Texas Infrastructure Fund assessment. In addition, state agency-Customers have additional exemptions from Texas fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC or PUC and which are otherwise not applicable to Local Services. Vendor also agrees to not bill for items for which a Customer has an exemption. Vendor agrees to promptly correct any incorrect billings that occur.

- 3) During the term of this Contract, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee on these Services, which Vendor desires to impose under this Contract, shall require an amendment in order to be effective against the State of Texas and Customers. In the event of a change in the law or fee structures, which results in an exemption from payment in favor of the state of Texas or its Customers, Vendor shall give effect to the exemption without the necessity of a contract amendment.
- 4) Vendor acknowledges that Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency- Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. Customers may issue a tax exemption certificate upon request.

E. Changes to Rates

The prices set forth in this contract may not be changed except by amendment to the contract. No rate increases shall be allowed during the term of this Contract. Rate decreases shall take effect automatically during this Contract term and Vendor shall pass all rate decreases on to the Customer. Vendor is authorized to offer more advantageous rates for large orders, term commitments and/or minimum annual revenue commitments on a Customer-by-Customer basis without amendment to this contract, so long as the more advantageous rates are offered pursuant to this Contract.

Within the scope of the services authorized to be purchased through this Contract, amendments may be executed to add new services.

8. ORDER PROCESSING AND PAYMENTS

A. All Customer purchase orders will be placed directly with the Vendor and should reference the DIR contract number. Accurate purchase orders shall be effective and binding upon Vendor when placed in the mail or electronically transmitted prior to the termination of the Contract.

B. Invoices shall be submitted by the Vendor directly to the Customer and shall be issued by the Vendor in compliance with Chapter 2251, Texas Government Code. All payments for

services purchased under this Contract and any provision of acceptance of such services shall be made to the Vendor by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

C. Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. **REPORTING AND ADMINISTRATIVE FEES**

Vendor shall be responsible for reporting all services purchased under this Contract. The failure to file the quarterly sales reports, monthly HUB subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Vendor submits three (3) consecutive quarterly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Vendor's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Vendor. DIR acknowledges that DIR must provide written/electronic notification following each incorrectly submitted report in order to be permitted to suspend or terminate this Contract for cause.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books.

A. Detailed Quarterly Report

Vendor shall electronically provide DIR with a detailed quarterly report, which breaks out monthly sales activities, in the format required by DIR showing the dollar volume of any and all sales under this Contract. Reports shall be submitted to the DIR Contract Coordinator. Reports are due on the fifteenth (15th) day of the close of the previous quarter. The monthly report shall include each Billed Customer name (for services as agreed to between DIR and the Vendor), service description, quantity, unit price and extended price. Each services line item must contain all information listed above or the report will be rejected and returned to the Vendor for correction.

Sales reports shall be due quarterly in compliance with the following schedule:

September – November: due by December 15th

December – February: due by March 15th

March – May: due June 15th

June – August: due September 15th

B. Historically Underutilized Business Subcontract Reports

Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. The HUB Subcontracting Reports are due monthly by the 15th of the close of the previous month. Reports shall also be submitted to DIR.

C. DIR Administrative Fee

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

Vendor will pay DIR, on the fifteenth (15th) day of the close of the previous quarter, a two percent (2%) DIR administrative fee based on the dollar value of all services provided to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits.

Administrative Fee payments shall be due quarterly in compliance with the following schedule:

- September – November: due by December 15th
- December – February: due by March 15th
- March – May: due June 15th
- June – August: due September 15th

D. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the services.

10. CONTRACT ADMINISTRATOR

DIR shall appoint a contract administrator whose duties shall include but not be limited to the following:

- A. Facilitating dispute resolution between the Vendor and Customers. Unresolved disputes shall be presented to DIR for resolution;
- B. Advising DIR regarding Vendor's performance under the terms and conditions of the contract;
- C. Reviewing and approving monthly contract utilization reports and the administration fee calculations and payments; and
- D. Periodically verifying that the Local Services rates conform to the Contract.

12. CHANGE IN VENDOR REPRESENTATIVES

Vendor shall appoint a primary representative to work with the Contract Administrator to maintain, support, and market this contract. DIR reserves the right to require a change in Vendor's then-current primary representative if the assigned representative is not, in the opinion of DIR, serving the needs of the State of Texas and the Customers adequately. The DIR Contract Administrator will escalate to Vendor management any unresolved issues, before a change in Vendor's then-current representative is requested by DIR.

13. WEB SITE MAINTENANCE

A. Vendor warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Vendor's web site. Vendor will use commercially reasonable efforts to post, maintain and display the Contract and related information.

B. DIR will conduct periodic checks of the content on Vendor's website to ensure accuracy of the information posted as compared with the Contract terms. Vendor shall promptly correct its website at the direction of DIR.

C. Use of access data is prohibited. If Vendor stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

D. Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's web site. Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

14. SUCCESSION

This contract shall be entered into and be binding upon the successors of the parties. Vendor may not assign this contract without the prior written consent of DIR.

15. NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by e-mail, facsimile transmission, personal service or hand delivery or three business days after being mailed via certified mail with proof of delivery to the sending party.

If sent to the State:

Sherri Parks, Service Delivery Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

To: Vendor:

TIME WARNER TELECOM

ATTENTION: Jenny Rogers

8000 Centre Park Drive, Suite 160

Austin, TX 78754

email: jenny.rogers@twtelecom.com

Voice Phone: 512-485-6396

FAX: 512-485-1760

Either party may change its representative or address above by written notice.

17. OTHER GOVERNING PROVISIONS

Other governing provisions are contained in Appendix A, Exhibits A, B., C, C-1, and D to this Contract.

18. BINDING CONTRACT

This contract has been duly authorized, executed and delivered by the parties and constitutes the valid, legal and binding Contract of the parties, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this contract to be effective September 29, 2004.

TIME WARNER TELECOM of Texas, L.P.

By: Time Warner Telecom General Partnership, its general partner

By, Time Warner Telecom Holdings Inc., its managing general partner

THE STATE OF TEXAS,

acting by and through the

**DEPARTMENT OF
INFORMATION RESOURCES**

By: Signature on File

Name: **Jenny Rogers**

Title: **General Manager, Vice President**

Date: 03/22/05

By: Signature on File

Name: Edward Serna

Title: **Director, Service Delivery Division**

Date: 03/16/05

Legal: CJK 03/15/05

Attachments:

Appendix A – Standard Terms and Conditions

- **Exhibit A – RFO (incorporated by reference)**
- **Exhibit B – Vendor response to RFO (incorporated by reference)**
- **Exhibit C – Pricing and Additional Terms and Conditions for Local Services**
- **Exhibit C-1 – Applicable Telecommunications Fees**
- **Exhibit D – HUB Subcontracting Plan**

APPENDIX A

**STANDARD CLAUSES
STATE OF TEXAS, DIR CONTRACTS**

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STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other Contract of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

1. INDEMNIFICATION CLAUSE. Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Vendor. Vendor agrees to defend against any and all such claims at Vendor's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. NON-ASSIGNMENT CLAUSE. This Contract shall be entered into and be binding upon the successors of the parties. Neither party may assign this Contract without the prior written consent of the other. Any attempt to assign this Contract without the written consent of the other party is null and void.

3. CONFIDENTIALITY CLAUSE. Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

4. VENDOR CERTIFICATIONS.

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification

is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; (viii) to the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under this Contract, (ix) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (x) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control.

5. EQUAL OPPORTUNITY COMPLIANCE.

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this Contract. If Vendor is found to be not in compliance with these requirements during the term of this Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

6. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)

Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the

technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

7. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Vendor shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Vendor represents it will not license through a signed or unsigned license Contract, volume licensing Contract or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

8. RECORDS AND AUDIT. The Vendor shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and un-appealable resolution of all Compliance Check or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, Vendor invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the compliance checks designated by DIR, including compliance checks of the State Auditor' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Vendor without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of Compliance Check.

If any inspection or Compliance Check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such Compliance Check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the Compliance Check or inspection, shall be reimbursed to DIR within thirty

(30) days from receipt of an invoice from DIR reflecting the cost of the Compliance Check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

Vendor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract. Vendor will reimburse the State of Texas for all costs associated with enforcing this provision.

9. ABILITY TO CONDUCT BUSINESS IN TEXAS. The Vendor is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Vendor is a "Catalog Information Systems Vendor" as defined in §2157.001, Texas Government Code. All computer networking products and services offered to Customers under this Contract are listed in Vendor's catalogue on file with the Texas Building and Procurement Commission.

10. QUOTATIONS, WARRANTY, AND RETURN POLICIES. Vendor will adhere to their then-currently published policies concerning quotations, warranties, and return policies. Warranty and return policies for Customers will not be more restrictive or more costly than any warranty and return policies maintained by Vendor for other similarly situated Customers for like products or services.

11. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

12. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Vendor and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity. Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute

resolution process of the Customer. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

13. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

14. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Vendor. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Vendor may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Vendor shall furnish a copy of such better offerings to DIR upon request.

15. DIR LOGO. Vendor may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo; (iii) the DIR logo is only used to communicate the availability of computer networking products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

16. VENDOR LOGO. DIR may use the Vendor's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Vendor's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

17. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Vendor prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

18. TRAINING Vendor may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Vendor.

19. TRADE SHOW PARTICIPATION At DIR's discretion, Vendor may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all

trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

20. USE OF SUBCONTRACTORS. Vendor may subcontract installation, training, warranty, or maintenance services. However, Vendor shall remain solely responsible for the performance of its obligations under this Contract. If Vendor uses any subcontractors, Vendor shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

21. FORCE MAJEURE. DIR, Customer, or Vendor may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, local exchange carrier, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

22. TERMINATION FOR NON-APPROPRIATION. Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor will be provided ten (10) days written notice of intent to terminate.

23. TERMINATION FOR CONVENIENCE. Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer. DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control, or ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

24. TERMINATION FOR CAUSE.

a) Contract - Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available,

cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

b) Purchase Order - Customer may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order.

25. CUSTOMER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order in accordance with the terms of the Purchase Order.

26. VENDOR RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, the Customer Purchase Order may survive, unless terminated by the Customer. In any event, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date of a Purchase Order and ultimately accepted.

27. SURVIVAL. All warranty and/or service agreements that were entered into between Vendor and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.. A Customer Purchase Order for a term shall survive DIR's termination of the underlying contract.

28. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

29. SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors.

30. BACKGROUND AND/OR CRIMINAL HISTORY INVESTIGATION

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

Exhibit A TO CONTRACT
TEXAN 2000 RFO
(incorporated by reference)

Exhibit B TO CONTRACT
Vendor Response to TEXAN 2000 RFO
(incorporated by reference)

Exhibit C to First Amendment to TEXAN2000 – TWT - LS
Pricing and Additional Terms and Conditions for Local Services
Local Services Pricing

Time Warner Telecom has local service coverage in Dallas, Austin, San Antonio, and Houston.

	Recurring Monthly Cost	Installation Cost	Mileage Cost If App	Cost to Move Svc	CPE Equip Costs (1)	
Flat Rate Business Line	\$15.84	NC		NC	N/A	(Per Line)
Analog Line (2-way)	\$22.00	NC		NC	N/A	(Per Line)
Multiple Line Hunt Group	.85 per line in hunt group	NC			N/A	
Digital Facility	\$205.52	\$250.00		\$200.00	N/A	(T-1 Facility that Supports Digital Trunks)
Digital Trunk 2-Way	\$13.00	NC		NC	N/A	
Digital Trunk Inbound	\$13.00	NC		NC	N/A	
Digital Trunk Outbound	\$13.00	NC		NC	N/A	
ISDN PRI Circuit (2-way)	\$705.00	\$250.00		\$250.00	N/A	(Includes 23B+1D)
ISDN PRI Measured Service	\$239.70	\$250.00		\$250.00	N/A	PRI Select Product Only
Unlimited Inbound calls included	Inbound Included				N/A	
Per Minute on Outbound calls	\$0.04	NC		NC	N/A	\$.04 per minute on outbound calls
Extended Area Service per PRI	\$455.00				N/A	
Extended Area Service per channel	\$20.00					
Call Forwarding	\$3.00	NC		NC	N/A	(Per Analog Line)
Remote Call Forward	\$3.00	NC		NC	N/A	(Per Original Path)
Caller ID Feature	NC	NC		NC	N/A	
Toll Restrictions	NC	NC		NC	N/A	
Telephone Numbers - Each DID	\$0.10	NC		NC	N/A	
Metro Ethernet - 10 Mbps	\$850.00	\$500.00		\$500.00	N/A	(Switched Native LAN Per Location)
Metro Ethernet - 100 Mbps	\$1,850.00	\$500.00		\$500.00	N/A	(Switched Native LAN Per Location)
Metro Ethernet - 622 Mbps	\$4,500.00	\$500.00		\$500.00	N/A	(Switched Native LAN Per Location)
Metro Ethernet - 1000 Mbps	\$5,500.00	\$500.00		\$500.00	N/A	(Switched Native LAN Per Location)
Metro Ethernet - 100 Mbps	\$1,200.00	\$500.00		\$500.00	N/A	(Customer Direct Native LAN Per Location)
Metro Ethernet - 1000 Mbps	\$2,750.00	\$500.00		\$500.00	N/A	(Customer Direct Native LAN Per Location)

Contact Name: Marva Bennett
Address: 8000 Centre Park Dr.
Suite 160
Austin, Texas 78754
Phone: (512) 485-6390
Toll Free Phone: (800) 831-7935
Fax: (512) 334-1831
Email: texan2000.order@twtelecom.com

Exhibit C-1

Applicable Telecommunications Fees

FCC and PUC telecommunication fees, surcharges and assessments may apply to certain services covered under this contract:

FUSF

PICC

(EUCL) FCC CUSTOMER APPROVED LINE CHARGE

911 FEE – Applies only to Political Subdivisions

911 SURCHARGE – Applies only to Political Subdivisions

TEXAS POSITION CONTROL – Applies only to Political subdivisions

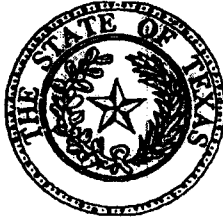
EXPANDED TOLL-FREE CALLING SURCHARGE

MUNI FEE

Exhibit D TO CONTRACT
HUB Subcontracting Plan

EXHIBIT D

GFEP-A-1



Bidder Name: Time Warner Telecom _____
 Signature: Anna M Bowen
 Contract Number: RFO-99-Tele 2000
 Bid Opening Date: Feb. 4, 1999

Good Faith Effort Program (GFEP) – Commodities and Other Services Form

In accordance with the State's policy of encouraging the use of HUBs in state procurement, the GSC shall make a good faith effort to utilize HUBs in contracts for commodities and service purchases. Any business that contracts with GSC shall be required to make a good faith effort to award necessary subcontracts to HUBs. The annual HUB participation program goal for all "Other Services" contracts is 33%. The HUB participation program goal for "Commodities" contracts is 12.6%. This Good Faith Effort Program goals do not prevent any business group from participating in contracting opportunities with the State of Texas.

A contractor shall be presumed to have made a good faith effort by submitting the required forms and implementing the following procedures:

1. The contractor shall provide notice as required in DGFE Form (Attachment GFEP-B) with sufficient time to allow all interested parties the opportunity to participate effectively. The contractor shall send such notice to at least five businesses in the current GSC directory of certified HUBs that perform the type of work required in the area in which the work will be performed. (document on GFEP-C).
2. If a non-HUB subcontractor is selected through means other than competitive bidding, or a HUB bid is the lowest price responsive bidder to a competitive bid, but not selected, the contractor will be required to document the selection process on the DGFE Form. While it is a contractor's choice to determine which subcontractors or suppliers best suit its needs, this does not exclude the contractor from meeting the HUB goals if there is a HUB that is willing and able to perform the services called for under the terms and conditions in the contract.
3. The contractor shall maintain business records documenting its compliance and shall make a compliance report to the contracting state agency and report in the format required by the contracting state agency's contract documents, provided that reporting shall be required at least once for each calendar quarter during the term of the contract. (Attachment GFEP-E or GFEP-F).

Note: When the contractor is a HUB, it must satisfy the good faith effort requirements by performing at least 25% of the contract with its employees. The HUB prime may subcontract the remaining 75% of the contract with HUB or non-HUB contractors. Any contractor that seeks to satisfy the good faith effort requirement in this manner shall report quarterly to the GSC the volume of work performed under the contract and the portion of the work that was performed with its employees. If a HUB contractor performs less than 25% of the cumulative total contract with its employees, then for the next quarter, the contractor shall report its subcontractors as required by a non-HUB contractor.

Bidder must answer the following questions:

1. If an award is issued, do you plan to utilize a subcontractor for all or any portion of the contract? _____ Yes No
2. If answer to question 1 is yes, then:
 - a. What percentage of work will be subcontracted? _____ %
 - b. Have you made a good faith effort to subcontract with a HUB in the context of your offer? _____ Yes _____ No
 - c. What percentage of work will be subcontracted with a HUB? _____ %
3. Are you certified as a Texas, Historically Underutilized Business (HUB)? Yes No Certification No.: _____

Note: The bidder will be required to prepare and submit the following Good Faith Effort Program forms: Determination of Good Faith Effort (DGFE) with supporting documentation, HUB-Solicitation Form (SF), HUB-Letter of Intent (LOI) and Progress Assessment Report (PAR) within the designated time period stated on each form. The GSC will ensure that a bidder has complied with the Good Faith Effort Program as a condition of awarding this contract.

PLEASE RETURN THIS FORM WITH OFFER. ALL OFFERS RECEIVED WITHOUT THIS FORM WILL BE REJECTED.

Return to: General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, Fax: (512) 463-3360